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

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**FORM 8-K**

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

**Date of Report (Date of Earliest Event Reported): February 6, 2014**

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**PDL BioPharma, Inc.**  
(Exact name of Company as specified in its charter)

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**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**000-19756**  
(Commission  
File Number)

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

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

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

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## **Item 1.01 Entry into a Material Definitive Agreement.**

### Underwriting Agreement

On February 6, 2014, PDL BioPharma, Inc. (the Company) entered into an underwriting agreement (the Underwriting Agreement) with RBC Capital Markets, LLC and Wells Fargo Securities, LLC as representatives of several underwriters (collectively, the Underwriters), relating to the issuance and sale of \$260,870,000 aggregate principal amount of the Company's 4.00% Convertible Senior Notes due 2018 (or \$300,000,000 if the Underwriters exercise their overallotment option in full) (the Notes). Under the terms of the Underwriting Agreement, the Company granted the Underwriters an option, exercisable for up to 12 days after the closing of the offering, to purchase up to an additional \$39,130,000 principal amount of the Notes solely to cover over-allotments, if any. On February 7, 2014, the Underwriters exercised their overallotment option to purchase the additional Notes in full.

The offering was made pursuant to the Company's shelf registration statement on Form S-3 (File No. 333-189536), which became effective on June 21, 2013, as supplemented by the preliminary prospectus supplement filed with the Securities and Exchange Commission (the Commission) on February 5, 2014, and the prospectus supplement filed with the Commission on February 10, 2014.

The Underwriting Agreement includes customary representations, warranties and covenants by the Company. Under the terms of the Underwriting Agreement, the Company has agreed to indemnify the Underwriters against certain liabilities.

The description of the Underwriting Agreement is qualified in its entirety by reference to the Underwriting Agreement attached as Exhibit 1.1 to this Current Report and incorporated herein by reference.

### Indenture

On February 12, 2014, the Company closed its previously announced public offering of the Notes. In connection with the issuance of the Notes, the Company entered into an indenture (the Base Indenture) with The Bank of New York Mellon Trust Company, N.A., as trustee (the Trustee), as supplemented by a supplemental indenture thereto, between the same parties (the Supplemental Indenture, and together with the Base Indenture, the Indenture).

The terms of the Notes are governed by the Indenture. The Notes bear interest at a rate of 4.00% per annum on the principal amount thereof, payable semi-annually in arrears on February 1 and August 1 of each year, beginning on August 1, 2014, to holders of record at the close of business on the preceding January 15 and July 15, respectively. The Notes will mature on August 1, 2018, unless earlier repurchased or converted. The Company may not redeem the Notes prior to their stated maturity date.

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

Holders may convert their Notes under the following conditions at any time prior to the close of business on the business day immediately preceding August 1, 2017, in multiples of \$1,000 principal amount, under the following circumstances:

- during any fiscal quarter (and only during such fiscal quarter) commencing after the fiscal quarter ending June 30, 2014, if the last reported sale price of Company common stock for at least 20 trading days (whether or not consecutive) in the period of 30 consecutive trading days ending on the last trading day of the immediately preceding fiscal quarter exceeds 130% of the conversion price for the Notes on each applicable trading day;
- during the five business-day period immediately after any five consecutive trading-day period in which the trading price per \$1,000 principal amount of Notes for each trading day of that measurement period was less than 98% of the product of the last reported sale price of Company common stock and the conversion rate for the Notes for each such trading day; or
- upon the occurrence of specified corporate events as described in the Indenture.

In addition, holders may convert their Notes at their option at any time beginning on August 1, 2017, and ending on the close of business on the second scheduled trading day immediately preceding the stated maturity date of the Notes, without regard to the foregoing circumstances.

The initial conversion rate for the Notes is 109.1048 shares of Company common stock per \$1,000 principal amount of Notes, which is equivalent to an initial conversion price of approximately \$9.17 per share of common stock, subject to adjustments upon the occurrence of certain specified events as set forth in the Indenture. Upon conversion, the Company will be required to pay cash and, if applicable, deliver shares of Company common stock as described in the Indenture.

In addition, upon the occurrence of a fundamental change (as defined in the Indenture), holders of the Notes may require the Company to repurchase the Notes at a purchase price of 100% of the principal amount of the Notes, plus any accrued and unpaid interest, if any, to but not including, the fundamental change repurchase date.

The events of default, which may result in the acceleration of the maturity of the Notes, include default by the Company in the payment of principal of the Notes, default by the Company in the payment of interest on the Notes when due and the continuance of such default for a period of 30 days, failure by the Company to perform certain of its agreements required under the Indenture if such failure continues for 60 days after notice is given in accordance with the Indenture, failure by the Company to pay the repurchase price of any Note when due upon a fundamental change, failure by the Company to comply with its conversion obligations upon exercise of a holder's conversion right under the Indenture, failure by the Company to provide timely notice of a fundamental change or specified corporate transaction, if required, and such failure continues for

5 business days after notice of such failure is given, failure by the Company to comply with its obligations in respect of certain merger transactions, failure by the Company to timely discharge certain other indebtedness, entry of certain judgments against the Company which are not paid, discharged or stayed within 30 days, and certain events of bankruptcy or insolvency involving the Company.

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

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

#### Convertible Note Hedge Transactions

On February 6 and 7, 2014, in connection with the pricing of the offering of the Notes and the exercise of the overallotment option provided in the Underwriting Agreement, respectively, the Company entered into privately negotiated convertible note hedge transactions with respect to its common stock with each of Royal Bank of Canada and Wells Fargo Bank, National Association, affiliates of certain of the Underwriters (the Option Counterparties).

The convertible note hedge transactions cover, subject to anti-dilution adjustments substantially similar to those applicable to the conversion rate of the Notes, the number of shares of the Company's common stock that will initially underlie the Notes. The convertible note hedge transactions are intended generally to reduce the potential dilution to the Company's outstanding common stock upon conversion of the Notes in the event that the market price per share of the common stock is greater than the strike price of the convertible note hedge transactions.

#### Warrant Transactions

On February 6 and 7, 2014, in connection with the pricing of the offering of the Notes and the exercise of the overallotment option provided in the Underwriting Agreement, respectively, the Company also entered into privately negotiated warrant transactions with the Option Counterparties, whereby the Company sold to the Option Counterparties warrants to purchase, subject to customary anti-dilution adjustments, the number of shares of the Company's common stock that will initially underlie the Notes at a strike price of \$10.3610 per share, also subject to adjustment, which represents a premium of approximately 30% over the last reported sale price of the Company's common stock of \$7.97 on February 6, 2014. The warrant transactions could have a dilutive effect to the extent that the market price of the Company's common stock exceeds the applicable strike price of the warrants. The warrants were sold in private placements to the Option Counterparties pursuant to the exemptions from the registration requirements of the Securities Act of 1933, as amended, afforded by Section 4(a)(2) thereof.

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

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

**Item 3.02      Unregistered Sales of Equity Securities.**

The disclosure set forth under the heading Warrant Transactions of this Current Report is incorporated by reference into this Item 3.02.

**Item 8.01      Other Events.**

On February 12, 2014, the Company issued a press release announcing the closing of an offering of \$300 million of its 4.00% Convertible Senior Notes due February 1, 2018. The press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
1.1	Underwriting Agreement among the Company and RBC Capital Markets, LLC and Wells Fargo Securities, LLC, as Representatives to the Underwriters, dated February 6, 2014.
4.1	Indenture between the Company and The Bank of New York Mellon Trust Company, N.A, as trustee, dated February 12, 2014.
4.2	Supplemental Indenture between the Company and The Bank of New York Mellon Trust Company, N.A, as trustee, dated February 12, 2014.
4.3	Form of 4.00% Convertible Senior Note due 2018 (incorporated by reference to Exhibit 4.2 hereto)
5.1	Opinion of Gibson, Dunn & Crutcher LLP, dated February 12, 2014.
23.1	Consent of Gibson, Dunn & Crutcher LLP (included as part of exhibit 5.1).
99.1	Press Release.

**SIGNATURES**

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

PDL BIOPHARMA, INC.  
(Company)

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

Dated: February 12, 2014

## EXHIBIT INDEX

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PDL BIOPHARMA, INC.

(a Delaware corporation)

\$260,870,000

4.00% Convertible Senior Notes Due 2018

UNDERWRITING AGREEMENT

Dated: February 6, 2014

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PDL BIOPHARMA, INC.

(a Delaware corporation)

\$260,870,000

4.00% Convertible Senior Notes Due 2018

**UNDERWRITING AGREEMENT**

February 6, 2014

RBC Capital Markets, LLC  
Wells Fargo Securities, LLC

as Representatives of the several Underwriters

c/o RBC Capital Markets, LLC  
Three World Financial Center  
200 Vesey Street  
New York, New York 10281

c/o Wells Fargo Securities, LLC  
375 Park Avenue  
4th Floor  
New York, New York 10152

Ladies and Gentlemen:

PDL BioPharma, Inc., a Delaware corporation (the “**Company**”), confirms its agreement with RBC Capital Markets, LLC (“**RBC**”), Wells Fargo Securities, LLC (“**Wells Fargo**”) and each of the other Underwriters named in Schedule A hereto (collectively, the “**Underwriters**,” which term shall also include any underwriter substituted as hereinafter provided in Section 10 hereof), for whom RBC and Wells Fargo are acting as representatives (in such capacity, the “**Representatives**”), with respect to (i) the sale by the Company and the purchase by the Underwriters, acting severally and not jointly, of the respective principal amounts set forth in said Schedule A of \$260,870,000 aggregate principal amount of the Company’s 4.00% Convertible Senior Notes Due 2018 (the “**Initial Securities**”) and (ii) the grant by the Company to the Underwriters, acting severally and not jointly, of the option to purchase all or any part of an additional \$39,130,000 aggregate principal amount of its 4.00% Convertible Senior Notes Due 2018 (the “**Option Securities**” and, together with the Initial Securities, the “**Securities**”) to cover overallocments. The Securities are to be issued pursuant to an indenture to be dated as of February 12, 2014 (the “**Base Indenture**”) between the Company and Bank of New York Mellon Trust Company, N. A., as trustee (the “**Trustee**”). Certain terms of the Securities will be established pursuant to a supplemental indenture to be dated as of February 12, 2014 (the “**Supplemental Indenture**” and, together with the Base Indenture, the “**Indenture**”).

The Company understands that the Underwriters propose to make a public offering of the Securities as soon as the Representatives deem advisable after this Agreement has been executed and delivered and the Indenture has been qualified under the Trust Indenture Act of 1939, as amended (together with the rules and regulations promulgated thereunder, the “**1939 Act**”).

The Company has prepared and filed with the Securities and Exchange Commission (the “**Commission**”) an automatic shelf registration statement on Form S-3 (File No. 333-189536) covering the public offering and sale of certain securities, including the Securities, under the Securities Act of 1933, as amended (the “**1933 Act**”), and the rules and regulations promulgated thereunder (the “**1933 Act Regulations**”), which automatic shelf registration statement became effective under Rule 462(e) under the 1933 Act Regulations (“**Rule 462(e)**”). Such registration statement, as of any time, means such registration statement as amended by any post-effective amendments thereto to such time, including the exhibits and any schedules thereto at such time, the documents incorporated or deemed to be incorporated by reference therein at such time pursuant to Item 12 of Form S-3 under the 1933 Act and the documents otherwise deemed to be a part thereof as of such time pursuant to Rule 430B under the 1933 Act Regulations (“**Rule 430B**”), is referred to herein as the “**Registration Statement**,” provided, however, that the “Registration Statement” without reference to a time means such registration statement as amended by any post-effective amendments thereto as of the time of the first contract of sale for the Securities, which time shall be considered the “new effective date” of such registration statement with respect to the Securities within the meaning of paragraph (f)(2) of Rule 430B, including the exhibits and schedules thereto as of such time, the documents incorporated or deemed incorporated by reference therein at such time pursuant to Item 12 of Form S-3 under the 1933 Act and the documents otherwise deemed to be a part thereof as of such time pursuant to the Rule 430B. Each preliminary prospectus used in connection with the offering of the Securities, including the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act, are collectively referred to herein as a “preliminary prospectus.” Within the time period required by Rule 424(b) under the 1933 Act Regulations (“**Rule 424(b)**”) after execution and delivery of this Agreement, the Company will prepare and file a final prospectus relating to the Securities in accordance with the provisions of Rule 424(b). The final prospectus, in the form first furnished or made available to the Underwriters for use in connection with the offering of the Securities, including the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act, are collectively referred to herein as the “**Prospectus**.” For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system or any successor system (“**EDGAR**”).

In connection with the offering and sale of the Securities by the Company pursuant to the terms of this Agreement, the Company is entering into one or more base convertible note hedge and base warrant transactions with one or more of the Underwriters or affiliates thereof (the “**Call Spread Counterparties**”) pursuant to base convertible note hedge confirmation letters and base warrant confirmation letters (the “**Base Warrant Confirmations**”), in each case, dated as

of the date hereof, subject to an agreement in the form of the ISDA 2002 Master Agreement (the “**Base Note Hedge and Warrant Documents**”). In connection with any exercise by the Underwriters of their option to purchase any Option Securities, the Company may enter into one or more additional convertible note hedge and additional warrant transactions with the Call Spread Counterparties pursuant to additional convertible note hedge confirmation letters and additional warrant confirmation letters (the “**Additional Warrant Confirmations**”), in each case, to be dated as of or about the date of such exercise, subject to an agreement in the form of the ISDA 2002 Master Agreement (the “**Additional Note Hedge and Warrant Documents**” and, together with the Base Note Hedge and Warrant Documents, the “**Note Hedge and Warrant Documents**”). This Agreement, the Indenture, the Securities and the Note Hedge and Warrant Documents are referred to herein collectively as the “Operative Documents.”

As used in this Agreement:

“**Applicable Time**” means 12:23 a.m., New York City time, on February 7, 2014 or such other time as agreed by the Company and the Representatives.

“**General Disclosure Package**” means any Issuer General Use Free Writing Prospectuses issued at or prior to the Applicable Time and the most recent preliminary prospectus (including any documents incorporated therein by reference) that is distributed to investors prior to the Applicable Time, all considered together.

“**Issuer Free Writing Prospectus**” means any “issuer free writing prospectus,” as defined in Rule 433 of the 1933 Act Regulations (“**Rule 433**”), including without limitation any “free writing prospectus” (as defined in Rule 405 of the 1933 Act Regulations (“**Rule 405**”)) prepared by or on behalf of the Company relating to the Securities that is (i) required to be filed with the Commission by the Company, (ii) a “road show that is a written communication” within the meaning of Rule 433(d)(8)(i), whether or not required to be filed with the Commission, (iii) exempt from filing with the Commission pursuant to Rule 433(d)(5)(i) because it contains a description of the Securities or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g), or (iv) the Final Term Sheet (as defined below).

“**Issuer General Use Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being specified in Schedule B hereto.

“**Issuer Limited Use Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is not an Issuer General Use Free Writing Prospectus.

All references in this Agreement to financial statements and schedules and other information which is “contained,” “included” or “stated” (or other references of like import) in the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to include all such financial statements and schedules and other information incorporated or deemed incorporated by reference in the Registration Statement, any preliminary prospectus or the Prospectus, as the case may be, prior to the execution and delivery of this Agreement; and all

references in this Agreement to amendments or supplements to the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to include the filing of any document under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the “**1934 Act**”), incorporated or deemed to be incorporated by reference in the Registration Statement, the preliminary prospectus or the Prospectus, as the case may be, at or after the execution and delivery of this Agreement.

Section 1. **Representations and Warranties.**

(a) *Representations and Warranties by the Company.* The Company represents and warrants to each Underwriter as of the date hereof, the Applicable Time, the Closing Time (as defined below) and any Date of Delivery (as defined below), and agrees with each Underwriter, as follows:

(i) *Registration Statement and Prospectuses.* The Company meets the requirements for use of Form S-3 under the 1933 Act. The Registration Statement is an “automatic shelf registration statement” (as defined in Rule 405) and the Securities have been and remain eligible for registration by the Company on such automatic shelf registration statement. Each of the Registration Statement and any post-effective amendment thereto has become effective under the 1933 Act. No stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the 1933 Act, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the Company’s knowledge, contemplated. The Company has complied with each request (if any) from the Commission for additional information.

Each of the Registration Statement and any post-effective amendment thereto, at the time it became effective and at each deemed effective date with respect to the Underwriters pursuant to Rule 430B(f)(2) under the 1933 Act Regulations, complied in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations. Each preliminary prospectus, the Prospectus and any amendment or supplement thereto, at the time each was filed with the Commission, complied in all material respects with the requirements of the 1933 Act Regulations. Each preliminary prospectus and the Prospectus delivered to the Underwriters for use in connection with this offering was identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

The documents incorporated or deemed to be incorporated by reference in the Registration Statement, any preliminary prospectus and the Prospectus, when they became effective or at the time they were or hereafter are filed with the Commission, complied and will comply in all material respects with the requirements of the 1934 Act and the rules and regulations of the Commission under the 1934 Act (the “**1934 Act Regulations**”).

(ii) *Accurate Disclosure.* Neither the Registration Statement nor any amendment thereto, at its effective time, at the Closing Time or at any Date of Delivery,

contained, contains or will contain an untrue statement of a material fact or omitted, omits or will omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. As of the Applicable Time, neither (A) the General Disclosure Package nor (B) any individual Issuer Limited Use Free Writing Prospectus, when considered together with the General Disclosure Package, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Neither the Prospectus nor any amendment or supplement thereto (including any prospectus wrapper), as of its issue date, at the time of any filing with the Commission pursuant to Rule 424(b), at the Closing Time or at any Date of Delivery, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The documents incorporated or deemed to be incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, at the time the Registration Statement became effective or when such documents incorporated by reference were filed with the Commission, as the case may be, when read together with the other information in the Registration Statement, the General Disclosure Package or the Prospectus, as the case may be, did not and will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

The representations and warranties in this subsection shall not apply to (i) the Statement of Eligibility (Form T-1) of the Trustee under the 1939 Act or (ii) statements in or omissions from the Registration Statement (or any amendment thereto), the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) made in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives expressly for use therein. For purposes of this Agreement, the only information so furnished shall be the information in the first paragraph under the heading “Underwriting— Commissions and Discounts,” the information in the first and second paragraphs under the heading “Underwriting (Conflicts of Interest) —Price Stabilization, Short Positions”, the second paragraph and the first two sentences of the third paragraph under the heading “Underwriting—Convertible Note Hedge and Warrant Transactions” and the information under the heading “Underwriting—Electronic Offer, Sale and Distribution of Securities” in each case contained in the Prospectus (collectively, the “**Underwriter Information**”).

(iii) *Issuer Free Writing Prospectuses*. No Issuer Free Writing Prospectus conflicts or will conflict with the information contained in the Registration Statement or the Prospectus, including any document incorporated by reference therein, and any preliminary or other prospectus deemed to be a part thereof that has not been superseded or modified. Any offer that is a written communication relating to the Securities made prior to the initial filing of the Registration Statement by the Company or any person acting on its behalf (within the meaning, for this paragraph only, of Rule 163(c) of the 1933 Act Regulations) has been filed with the Commission in accordance with the exemption provided by Rule 163 under the 1933 Act Regulations (“**Rule 163**”) and

otherwise complied with the requirements of Rule 163, including without limitation the legending requirement, to qualify such offer for the exemption from Section 5(c) of the 1933 Act provided by Rule 163.

(iv) *Well-Known Seasoned Issuer.* (A) At the original effectiveness of the Registration Statement, (B) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the 1933 Act (whether such amendment was by post-effective amendment or incorporated report filed pursuant to Section 13 or 15(d) of the 1934 Act), (C) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c)) made any offer relating to the Securities in reliance on the exemption of Rule 163, and (D) as of the Applicable Time, the Company was and is a “well-known seasoned issuer” (as defined in Rule 405).

(v) *Company Not Ineligible Issuer.* At the time of filing the Registration Statement and any post-effective amendment thereto, at the earliest time thereafter that the Company or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) of the 1933 Act Regulations) of the Securities and at the date hereof, the Company was not and is not an “ineligible issuer,” as defined in Rule 405, without taking account of any determination by the Commission pursuant to Rule 405 that it is not necessary that the Company be considered an ineligible issuer.

(vi) *Independent Accountants.* Ernst & Young LLP, the accountants who certified the financial statements and supporting schedules included in the Registration Statement, the General Disclosure Package and the Prospectus, are independent public accountants as required by the 1933 Act, the 1933 Act Regulations, the 1934 Act, the 1934 Act Regulations and the Public Company Accounting Oversight Board.

(vii) *Financial Statements; Non-GAAP Financial Measures.* The financial statements included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, together with the related schedules and notes, present fairly, in all material respects, the consolidated financial position of the Company and its consolidated subsidiaries at the dates indicated and the consolidated statement of operations, stockholders’ equity and cash flows of the Company and its consolidated subsidiaries for the periods specified; said financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America (“GAAP”) applied on a consistent basis throughout the periods involved. The supporting schedules, if any, present fairly, in all material respects, in accordance with GAAP the information required to be stated therein. The selected financial data and the summary financial information included in the Registration Statement, the General Disclosure Package and the Prospectus present fairly, in all material respects, the information shown therein and have been compiled on a basis consistent with that of the audited financial statements included therein. Except as included therein, no historical or pro forma financial statements or supporting schedules are required to be included or incorporated by reference in the Registration Statement, the General Disclosure Package or the Prospectus under the 1933 Act or the 1933 Act Regulations. All disclosures contained in the Registration Statement, the General Disclosure Package or the Prospectus, or incorporated by reference therein, regarding “non- GAAP financial

measures” (as such term is defined by the rules and regulations of the Commission) comply with Regulation G of the 1934 Act and Item 10 of Regulation S-K of the 1933 Act, to the extent applicable.

(viii) *No Material Adverse Change in Business.* Except as otherwise stated therein, since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, (A) there has been no material adverse change, or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings or business affairs of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business (a “**Material Adverse Effect**”), (B) there have been no transactions entered into by the Company or any of its subsidiaries, other than those in the ordinary course of business, that are material with respect to the Company and its subsidiaries considered as one enterprise, (C) except for dividends on the Company’s common stock, par value \$0.01 per share (the “**Common Stock**”), in an amount consistent with the prior quarter, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock, and (D) there has been no decision by the Company to wind up the Company’s business.

(ix) *Good Standing of the Company.* The Company has been duly organized and is validly existing as a corporation in good standing under the laws of the State of Delaware and has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the General Disclosure Package or the Prospectus and to enter into and perform its obligations under the Operative Documents; and the Company is duly qualified as a foreign corporation to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect.

(x) *Good Standing of Subsidiaries.* Each subsidiary of the Company listed on Exhibit 21.1 to the Company’s Form 10-K filed for the year ended December 31, 2012 (each, a “**Subsidiary**” and, collectively, the “**Subsidiaries**”) has been duly organized or formed and is validly existing in good standing under the laws of the jurisdiction of its incorporation or organization, has corporate or similar power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or to be in good standing would not result in a Material Adverse Effect. Except as otherwise disclosed in the Registration Statement, the General Disclosure Package or the Prospectus or as would not result in a Material Adverse Effect, all of the issued and outstanding capital stock or other equity or ownership interest of each Subsidiary has been duly authorized and validly issued, is fully paid and non-assessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity. None of the outstanding shares of capital stock or other equity or



ownership interest of any Subsidiary were issued in violation of the preemptive or similar rights of any securityholder of such Subsidiary. The only subsidiaries of the Company are QHP Royalty Sub LLC, BTI Acquisition I Corp., and BioTransplant Incorporated.

(xi) *Capitalization.* The authorized, issued and outstanding shares of capital stock of the Company are as set forth in the Registration Statement, the General Disclosure Package and the Prospectus in the column entitled "Actual" under the caption "Capitalization" (except for subsequent issuances, if any, pursuant to this Agreement, pursuant to reservations, agreements or employee benefit plans referred to in the Registration Statement, the General Disclosure Package and the Prospectus or pursuant to the exercise of convertible securities or options referred to in the Registration Statement, the General Disclosure Package and the Prospectus).

(xii) *Authorization of Agreement.* This Agreement has been duly authorized, executed and delivered by the Company.

(xiii) *Authorization of the Note Hedge and Warrant Documents.* (x) Each of the Base Note Hedge and Warrant Documents has been duly authorized, executed and delivered by the Company and constitutes, and (y) any Additional Note Hedge and Warrant Documents have been duly authorized by the Company and, when duly executed and delivered by the Company, will constitute, in each case, a valid and binding agreement of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or other similar laws relating to or affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(xiv) *Authorization of the Indenture.* The Base Indenture has been duly authorized by the Company and duly qualified under the 1939 Act and, when the Supplemental Indenture is duly executed and delivered by the Company and the Trustee, the Indenture will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or other similar laws relating to or affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(xv) *Authorization of the Securities and the Common Stock.* The Securities have been duly authorized and, at the Closing Time, will have been duly executed by the Company and, when authenticated, issued and delivered in the manner provided for in the Indenture and delivered against payment of the purchase price therefor as provided in this Agreement, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating

to fraudulent transfers), reorganization, moratorium or other similar laws relating to or affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), will be in the form contemplated by, and entitled to the benefits of, the Indenture. The maximum number of shares of Common Stock issuable upon conversion of the Securities pursuant to the terms thereof (including the maximum number of shares of Common Stock that may be issued upon conversion of the Securities in connection with a make-whole fundamental change (the "Maximum Underlying Shares")) have been duly authorized and reserved for issuance upon such conversion by all necessary corporate action and such shares, when issued upon such conversion in accordance with the terms of the Securities, will be validly issued and will be fully paid and non-assessable; no holder of such shares will be subject to personal liability by reason of being such a holder; and the issuance of such shares upon such conversion will not be subject to the preemptive or other similar rights of any securityholder of the Company.

(xvi) *Authorization of the Maximum Number of Warrant Shares.* The maximum number of shares of Common Stock of the Company issuable upon exercise of the warrants evidenced by the Base Warrant Confirmations and any Additional Warrant Confirmations have been duly authorized and reserved for issuance upon exercise of the warrant transactions evidenced by the Base Warrant Confirmations and any Additional Warrant Confirmations (such aggregate maximum number of shares of Common Stock of the Company, the "**Maximum Number of Warrant Shares**"). Any shares of Common Stock issuable upon exercise of the Base Warrant Confirmations or any Additional Warrant Confirmations, when so issued, will be validly issued, fully paid and non-assessable, and the issuance of such shares of Common Stock will not be subject to the preemptive or other similar rights of any securityholder of the Company.

(xvii) *Description of the Securities, the Common Stock and the Indenture.* The Securities and the Indenture will conform in all material respects to the respective statements relating thereto contained in the Registration Statement, the General Disclosure Package and the Prospectus and will be in substantially the respective forms filed or incorporated by reference, as the case may be, as exhibits to the Registration Statement. The Common Stock conforms to all statements relating thereto contained or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus and such description conforms to the rights set forth in the instruments defining the same. The statements set forth in the General Disclosure Package and the Prospectus, insofar as such statements purport to summarize certain provisions of the Note Hedge and Warrant Documents, provide a fair summary of such provisions.

(xviii) *Related Party Transactions.* There are no material business relationships or transactions involving the Company or any subsidiary on one hand and a related party on the other that have not been described in the General Disclosure Package or the Prospectus.

(xix) *Registration Rights.* There are no persons with registration rights or other similar rights to have any securities registered for sale pursuant to the Registration Statement or otherwise registered for sale or sold by the Company under the 1933 Act pursuant to this Agreement.

(xx) *Absence of Violations, Defaults and Conflicts.* Neither the Company nor any of its Subsidiaries is (A) in violation of its charter, by-laws or similar organizational document, (B) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound or to which any of the properties or assets of the Company or any subsidiary is subject (collectively, “**Agreements and Instruments**”), except for such defaults that would not, singly or in the aggregate, result in a Material Adverse Effect, or (C) in violation of any law, statute, rule, regulation, judgment, order, writ or decree of any arbitrator, court, governmental body, regulatory body, administrative agency or other authority, body or agency having jurisdiction over the Company or any of its subsidiaries or any of their respective properties, assets or operations (each, a “**Governmental Entity**”), except for such violations that would not, singly or in the aggregate, result in a Material Adverse Effect. The execution, delivery and performance of the Operative Documents (including, without limitation, the issuance of the Maximum Underlying Shares and the Maximum Number of Warrant Shares) and the consummation of the transactions contemplated therein and in the Registration Statement, the General Disclosure Package and the Prospectus (including the issuance and sale of the Securities and the use of the proceeds from the sale of the Securities as described therein under the caption “**Use of Proceeds**”) and compliance by the Company with its obligations hereunder have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or Repayment Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Company or any subsidiary pursuant to, the Agreements and Instruments (except for such conflicts, breaches, defaults or Repayment Events or liens, charges or encumbrances that would not, singly or in the aggregate, result in a Material Adverse Effect), nor will such action result in any violation of the provisions of the charter, by-laws or similar organizational document of the Company or any of its subsidiaries or any law, statute, rule, regulation, judgment, order, writ or decree of any Governmental Entity. As used herein, a “Repayment Event” means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

(xxi) *Absence of Labor Dispute.* No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent, and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its or any subsidiary’s principal suppliers, manufacturers, customers or contractors, which, in either case, would result in a Material Adverse Effect.

(xxii) *Absence of Proceedings.* Except as disclosed in the Registration Statement, the General Disclosure Package or the Prospectus, there is no action, suit,

proceeding, inquiry or investigation before or brought by any Governmental Entity now pending or, to the knowledge of the Company, threatened, against or affecting the Company or any of its subsidiaries that, if resolved against the Company as of the date hereof, would result in a Material Adverse Effect, or that, if resolved as of the date hereof, would materially and adversely affect their respective properties or assets, including Intellectual Property assets, or the consummation of the transactions contemplated in the Operative Documents or the performance by the Company of its obligations hereunder; and the aggregate of all pending legal or governmental proceedings to which the Company or any such subsidiary is a party or of which any of their respective properties or assets is the subject which are not described in the Registration Statement, the General Disclosure Package and the Prospectus, including ordinary routine litigation incidental to the business, would not, if resolved against the Company as of the date hereof, result in a Material Adverse Effect.

(xxiii) *Accuracy of Exhibits*. There are no contracts or documents which are required to be described in the General Disclosure Package or the Prospectus or to be filed as exhibits to the Registration Statement which have not been so described and filed as required.

(xxiv) *Absence of Further Requirements*. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Governmental Entity is necessary or required for the performance by the Company of its obligations hereunder, in connection with the offering, issuance or sale of the Securities hereunder or the consummation and performance of the transactions contemplated by the Operative Documents (including, without limitation, the issuance of the Maximum Underlying Shares and the Maximum Number of Warrant Shares), except such as have been already obtained or as may be required under the 1933 Act, the 1933 Act Regulations, the rules of the NASDAQ Stock Market LLC, state securities laws or the rules of Financial Industry Regulatory Authority, Inc. (“**FINRA**”).

(xxv) *Possession of Licenses and Permits*. The Company and its subsidiaries possess such permits, licenses, approvals, consents and other authorizations (collectively, “**Governmental Licenses**”) issued by the appropriate Governmental Entities necessary to conduct the business now operated by them, except where the failure so to possess would not, singly or in the aggregate, result in a Material Adverse Effect. The Company and its subsidiaries are in compliance with the terms and conditions of all Governmental Licenses, except where the failure so to comply would not, singly or in the aggregate, result in a Material Adverse Effect. All of the Governmental Licenses are valid and in full force and effect, except when the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect would not, singly or in the aggregate, result in a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any Governmental Licenses which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would result in a Material Adverse Effect.

(xxvi) *Title to Property.* The Company and its subsidiaries have good and marketable title to all real property owned by them and good title to all other properties (excluding intangible properties covered by Section 1(a)(xxvii)) owned by them, in each case, free and clear of all mortgages, pledges, liens, security interests, claims, restrictions or encumbrances of any kind except such as (A) are described in the Registration Statement, the General Disclosure Package and the Prospectus or (B) do not, singly or in the aggregate, materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company or any of its subsidiaries; and all of the leases and subleases material to the business of the Company and its subsidiaries, considered as one enterprise, and under which the Company or any of its subsidiaries holds properties described in the Registration Statement, the General Disclosure Package or the Prospectus, are in full force and effect, and neither the Company nor any such subsidiary has received any written notice of any claim that has been asserted by anyone adverse to the rights of the Company or any subsidiary under any of the leases or subleases mentioned above, or affecting or questioning the rights of the Company or such subsidiary to the continued possession of the leased or subleased premises under any such lease or sublease, in each case, where such claim if adversely determined would result in a Material Adverse Effect.

(xxvii) *Possession of Intellectual Property.* The Company and its subsidiaries own or possess sufficient rights to use all patents (inclusive of supplementary protection certificates based thereon), copyrights, trade secrets, trademarks, licenses, approvals, inventions, technology and other intellectual property rights, including registrations and applications for registration thereof (collectively, “**Intellectual Property**”) used in, held for use in or necessary to carry on the business now operated by them, except where the failure to so own, possess, or license or have other rights to use would not result in a Material Adverse Effect, and except as described in the Registration Statement, the General Disclosure Package and the Prospectus. Neither the Company nor any of its subsidiaries has received any notice or claim of infringement of, misappropriation of or conflict with, and, to the Company’s knowledge, the operation of the Company’s business does not infringe, misappropriate or conflict with, the Intellectual Property of any third party, except where, singly or in the aggregate, such infringement, misappropriation or conflict would not result in a Material Adverse Effect. Except as set forth in the Registration Statement, the General Disclosure Package and the Prospectus, and except as would not, if determined adversely to the Company or any of its subsidiaries, singly or in the aggregate, have a Material Adverse Effect, there is no pending or, to the Company’s knowledge, threatened action, suit, proceeding or claim by any third party challenging (i) the validity, enforceability or scope of any Intellectual Property of the Company or any of its subsidiaries or (ii) the Company’s or any of its subsidiaries’ rights in and to their Intellectual Property. To the Company’s knowledge, no third party is infringing, misappropriating or in conflict with any Intellectual Property of the Company or any of its subsidiaries, except where such infringement, misappropriation or conflict would not result in a Material Adverse Effect. Except as set forth in the Registration Statement, the General Disclosure Package and the Prospectus, (x) the Intellectual Property owned or purported to be owned by the Company or any of its subsidiaries is owned solely by the Company and its subsidiaries; (y) to the Company’s knowledge, none of the Intellectual Property of the Company or its

subsidiaries is invalid or unenforceable; and (z) the Company has substantially complied with, and, to the Company's knowledge, each counter party is in substantial compliance with, the terms of any agreement pursuant to which the Intellectual Property used or held for use by the Company or any of its subsidiaries has been licensed to or from the Company.

(xxviii) *Environmental Laws.* Except as described in the Registration Statement, the General Disclosure Package or the Prospectus or would not, singly or in the aggregate, result in a Material Adverse Effect, (A) neither the Company nor any of its subsidiaries is in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products, asbestos-containing materials or mold (collectively, "Hazardous Materials") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "Environmental Laws"), (B) the Company and its subsidiaries have all permits, authorizations and approvals required under any applicable Environmental Laws and are each in compliance with their requirements, (C) there are no pending or, to the Company's knowledge, threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company or any of its subsidiaries and (D) there are no events or circumstances that would reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or Governmental Entity, against or affecting the Company or any of its subsidiaries relating to Hazardous Materials or any Environmental Laws.

(xxix) *Accounting Controls and Disclosure Controls.* The Company and each of its subsidiaries maintain effective internal control over financial reporting (as defined under Rule 13-a15 and 15d-15 under the 1934 Act Regulations) and a system of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management's general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management's general or specific authorization; and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as described in the Registration Statement, the General Disclosure Package or the Prospectus, since the end of the Company's most recent audited fiscal year, there has been (1) no material weakness in the Company's internal control over financial reporting required to be disclosed under the 1934 Act (whether or not remediated) and (2) no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over

financial reporting. The Company and each of its subsidiaries maintain an effective system of disclosure controls and procedures (as defined in Rule 13a-15 and Rule 15d-15 under the 1934 Act Regulations) that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms, and is accumulated and communicated to the Company's management, including its principal executive officer or officers and principal financial officer or officers, as appropriate, to allow timely decisions regarding disclosure.

(xxx) *Compliance with the Sarbanes-Oxley Act.* There is and has been no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply in all material respects with the applicable provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith, including Section 402 related to loans and Sections 302 and 906 related to certifications.

(xxxi) *Payment of Taxes.* All United States federal income tax returns of the Company and its subsidiaries required by law to be filed have been filed and all taxes shown by such returns or otherwise assessed, which are due and payable, have been paid, except assessments against which appeals have been or will be promptly taken and as to which adequate reserves have been provided. The Company and its subsidiaries have filed all other tax returns that are required to have been filed by them pursuant to applicable foreign, state, local or other law except insofar as the failure to file such returns would not result in a Material Adverse Effect, and has paid all taxes shown on such returns or pursuant to any assessment received by the Company and its subsidiaries, except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been established by the Company. The Company has maintained the charges, accruals and reserves on the books of the Company in respect of any income and corporation tax liability in accordance with GAAP, except to the extent that would not result in a Material Adverse Effect.

(xxxii) *No Stamp or Transfer Taxes.* There are no stamp or other issuance or transfer taxes or duties or other similar fees or charges under federal law or the laws of any state, or any political subdivision thereof, or any other U.S. or non-U.S. governmental authority required to be paid in connection with the execution and delivery of this Agreement or the issuance or sale by the Company of the Securities or upon the issuance of Common Stock upon the conversion thereof.

(xxxiii) *Insurance.* Except, in each case, as would not result in a Material Adverse Effect, the Company and its subsidiaries carry or are entitled to the benefits of insurance, with financially sound and reputable insurers, in such amounts and covering such risks that the Company reasonably believes is adequate, and all such insurance is in full force and effect. The Company has no reason to believe that it or any of its subsidiaries will not be able (A) to renew its existing insurance coverage as and when such policies expire or (B) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Effect.

(xxxiv) *Investment Company Act*. The Company is not required, and upon the issuance and sale of the Securities as herein contemplated and the application of the net proceeds therefrom as described in the Registration Statement, the General Disclosure Package and the Prospectus will not be required, to register as an “investment company” under the Investment Company Act of 1940, as amended (the “**1940 Act**”).

(xxxv) *Absence of Manipulation*. The Company has not taken, and the Company will not take, directly or indirectly, any action which is designed, or would be expected, to cause or result in, or which has constitutes, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities or to result in a violation of Regulation M under the 1934 Act.

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

(xxxvii) *Money Laundering Laws*. The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Entity (collectively, the “**Money Laundering Laws**”); and no action, suit or proceeding by or before any Governmental Entity involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(xxxviii) *OFAC*. None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee, affiliate or other person acting on behalf of the Company or any of its subsidiaries is an individual or entity (“**Person**”) that is (i) the subject of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“**OFAC**”) ; nor (ii) located, organized or resident in a country or territory that is the subject of OFAC (including, without limitation, Cuba, Iran, North Korea, Sudan and Syria). The Company will not directly or indirectly use the proceeds of the sale of the Securities, or lend, contribute or



otherwise make available such proceeds to any of its subsidiaries, joint venture partners or other Person: (iii) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of OFAC; or (iv) in any other manner that will result in a violation of OFAC by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise). For the past 5 years, the Company and its subsidiaries have not knowingly engaged in, are not now knowingly engaged in any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of OFAC.

(xxxix) *Statistical and Market-Related Data.* Any statistical and market-related data included in the Registration Statement, the General Disclosure Package or the Prospectus are based on or derived from sources that the Company believes, to be reliable and accurate and, to the extent required, the Company has obtained the consent to the use of such data from such sources.

(xl) *eXtensible Business Reporting Language.* The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

(xli) *No Broker's Fees.* Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against the Company or any of its subsidiaries or any Underwriter for a brokerage commission, finder's fee or like payment in connection with the offering and sale of the Securities.

(b) *Officer's Certificates.* Any certificate signed by any officer of the Company or any of its subsidiaries delivered to the Representatives or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

## **Section 2. *Sale and Delivery to Underwriters; Closing.***

(a) *Initial Securities.* On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company agrees to sell to each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Company, at the price set forth in Schedule A, the aggregate principal amount of Initial Securities set forth in Schedule A, plus any additional principal amount of Initial Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof, subject to such adjustments as the Representatives in their discretion shall make to ensure that any sales or purchases are in authorized denominations.

(b) *Option Securities.* In addition, on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company hereby grants an option to the Underwriters, severally and not jointly, to purchase the Option Securities,

at the price set forth in Schedule A. The option hereby granted may be exercised at any time after the date hereof and prior to the latest permissible Date of Delivery hereunder and may be exercised in whole or in part from time to time only for the purpose of covering overallotments made in connection with the offering and distribution of the Initial Securities upon notice by the Representatives to the Company setting forth the amount of Option Securities as to which the several Underwriters are then exercising the option and the time and date of payment and delivery for such Option Securities. Any such time and date of delivery (a "**Date of Delivery**") shall be determined by the Representatives, but shall not be later than seven full business days after the exercise of said option, nor in any event (a) prior to the Closing Time or (b) later than the 12th day following the Closing Time. If the option is exercised as to all or any portion of the Option Securities, each of the Underwriters, acting severally and not jointly, will purchase that proportion of the total principal amount of Option Securities then being purchased which the number of Initial Securities set forth in Schedule A opposite the name of such Underwriter bears to the total principal amount of Initial Securities, plus any additional principal amount of Option Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof, subject to such adjustments as the Representatives in their discretion shall make to ensure that any sales or purchases are in authorized denominations.

(c) *Payment.* Payment of the purchase price for, and delivery of certificates for, the Initial Securities shall be made at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 at 10:00 A.M. New York City time on February 12, 2014 or at such other place as shall be agreed upon by the Representatives and the Company, at 9:00 A.M. (New York City time) on the third (fourth, if the pricing occurs after 4:30 P.M. (New York City time) on any given day) business day after the date hereof (unless postponed in accordance with the provisions of Section 10), or such other time not later than ten business days after such date as shall be agreed upon by the Representatives and the Company (such time and date of payment and delivery being herein called "**Closing Time**").

In addition, in the event that any or all of the Option Securities are purchased by the Underwriters, payment of the purchase price for, and delivery of certificates for, such Option Securities shall be made at the above-mentioned offices, or at such other place as shall be agreed upon by the Representatives and the Company, on each Date of Delivery as specified in the notice from the Representatives to the Company.

Payment shall be made to the Company by wire transfer of immediately available funds to a bank account designated by the Company, against delivery to the Representatives for the respective accounts of the Underwriters of certificates for the Securities to be purchased by them. It is understood that each Underwriter has authorized the Representatives, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Initial Securities and the Option Securities, if any, which it has agreed to purchase. RBC, individually and not as representative of the Underwriters, may (but shall not be obligated to) make payment of the purchase price for the Initial Securities or the Option Securities, if any, to be purchased by any Underwriter whose funds have not been received by the Closing Time or the relevant Date of Delivery, as the case may be, but such payment shall not relieve such Underwriter from its obligations hereunder.

(d) *Denominations; Registration.* Certificates for the Initial Securities and the Option Securities, if any, shall be in such denominations (\$1,000 or integral multiples thereof) and registered in such names as the Representatives may request in writing at least one full business day before the Closing Time or the relevant Date of Delivery, as the case may be. The Initial Securities and the Option Securities, if any, will be made available for examination and packaging by the Representatives in The City of New York not later than 10:00 A.M. (New York City time) on the business day prior to the Closing Time or the relevant Date of Delivery, as the case may be.

Section 3. *Covenants of the Company.* The Company covenants with each Underwriter as follows:

(a) *Compliance with Securities Regulations and Commission Requests.* The Company, subject to Section 3(b), will comply with the requirements of Rule 430B, and will notify the Representatives immediately, and confirm the notice in writing, (i) when any post-effective amendment to the Registration Statement shall become effective or any amendment or supplement to the Prospectus shall have been filed, (ii) of the receipt of any comments from the Commission, (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus, including any document incorporated by reference therein or for additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment or of any order preventing or suspending the use of any preliminary prospectus or the Prospectus, or of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes or of any examination pursuant to Section 8(d) or 8(e) of the 1933 Act concerning the Registration Statement and (v) if the Company becomes the subject of a proceeding under Section 8A of the 1933 Act in connection with the offering of the Securities. The Company will effect all filings required under Rule 424(b), in the manner and within the time period required by Rule 424(b) (without reliance on Rule 424(b)(8)), and will take such steps as it deems necessary to ascertain promptly whether the form of prospectus transmitted for filing under Rule 424(b) was received for filing by the Commission and, in the event that it was not, it will promptly file such prospectus. The Company will make every reasonable effort to prevent the issuance of any stop order, prevention or suspension and, if any such order is issued, to obtain the lifting thereof at the earliest possible moment. The Company shall pay the required Commission filing fees relating to the Securities within the time required by Rule 456(b)(1)(i) under the 1933 Act Regulations without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) under the 1933 Act Regulations (including, if applicable, by updating the "Calculation of Registration Fee" table in accordance with Rule 456(b)(1)(ii) either in a post-effective amendment to the Registration Statement or on the cover page of a prospectus filed pursuant to Rule 424(b)).

(b) *Continued Compliance with Securities Laws.* The Company will comply with the 1933 Act, the 1933 Act Regulations, the 1934 Act and the 1934 Act Regulations so as to permit the completion of the distribution of the Securities as contemplated in this Agreement and in the Registration Statement, the General Disclosure Package and the Prospectus. If at any time when a prospectus relating to the Securities is (or, but for the exception afforded by Rule 172 of the 1933 Act Regulations ("**Rule 172**"), would be) required by the 1933 Act to be delivered in

connection with sales of the Securities, any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or for the Company, to (i) amend the Registration Statement in order that the Registration Statement will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) amend or supplement the General Disclosure Package or the Prospectus in order that the General Disclosure Package or the Prospectus, as the case may be, will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser or (iii) amend the Registration Statement or amend or supplement the General Disclosure Package or the Prospectus, as the case may be, in order to comply with the requirements of the 1933 Act or the 1933 Act Regulations, the Company will promptly (A) give the Representatives notice of such event, (B) prepare any amendment or supplement as may be necessary to correct such statement or omission or to make the Registration Statement, the General Disclosure Package or the Prospectus comply with such requirements and, a reasonable amount of time prior to any proposed filing or use, furnish the Representatives with copies of any such amendment or supplement and (C) file with the Commission any such amendment or supplement; provided that the Company shall not file or use any such amendment or supplement to which the Representatives or counsel for the Underwriters shall object. The Company will furnish to the Underwriters such number of copies of such amendment or supplement as the Underwriters may reasonably request. The Company has given the Representatives notice of any filings made pursuant to the 1934 Act or 1934 Act Regulations within 48 hours prior to the Applicable Time; the Company will give the Representatives notice of its intention to make any such filing from the Applicable Time to the Closing Time and will furnish the Representatives with copies of any such documents a reasonable amount of time prior to such proposed filing, as the case may be, and will not file or use any such document to which the Representatives or counsel for the Underwriters shall reasonably object.

(c) *Delivery of Registration Statements.* The Company has furnished or will deliver to the Representatives and counsel for the Underwriters, without charge, signed copies of the Registration Statement as originally filed and each amendment thereto (including exhibits filed therewith or incorporated by reference therein and documents incorporated or deemed to be incorporated by reference therein) and signed copies of all consents and certificates of experts, and will also deliver to the Representatives, without charge, a conformed copy of the Registration Statement as originally filed and each amendment thereto (without exhibits) for each of the Underwriters. The copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(d) *Delivery of Prospectuses.* The Company has delivered to each Underwriter, without charge, as many copies of each preliminary prospectus as such Underwriter reasonably requested, and the Company hereby consents to the use of such copies for purposes permitted by the 1933 Act. The Company will furnish to each Underwriter, without charge, during the period when a prospectus relating to the Securities is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the 1933 Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request. The Prospectus and

any amendments or supplements thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) *Blue Sky Qualifications.* The Company will use its best efforts, in cooperation with the Underwriters, to qualify the Securities for offering and sale under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Representatives may designate and to maintain such qualifications in effect so long as required to complete the distribution of the Securities; provided, however, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(f) *Rule 158.* The Company will timely file such reports pursuant to the 1934 Act as are necessary in order to make generally available to its securityholders as soon as practicable an earnings statement for the purposes of, and to provide to the Underwriters the benefits contemplated by, the last paragraph of Section 11(a) of the 1933 Act.

(g) *Use of Proceeds.* The Company will use the net proceeds received by it from the sale of the Securities in the manner specified in the Registration Statement, the General Disclosure Package and the Prospectus under "Use of Proceeds."

(h) *Listing.* The Company will use its best efforts to effect and maintain the listing of the Maximum Underlying Shares and the Maximum Number of Warrant Shares on the Nasdaq Global Select Market.

(i) *Restriction on Sale of Securities.* During a period of 90 days from the date of the Prospectus, the Company will not, without the prior written consent of the Representatives (which consent shall not be unreasonably withheld, conditioned or delayed), (i) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or file any registration statement under the 1933 Act with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Common Stock, whether any such swap or transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (A) the Securities to be sold hereunder or any shares of Common Stock issued upon conversion thereof, (B) any shares of Common Stock issued by the Company upon the exercise of an option or warrant or the conversion or exchange of a security outstanding on the date hereof, (C) any shares of Common Stock issued or options to purchase Common Stock granted pursuant to existing employee benefit plans of the Company (including, without limitation, the Company's 2005 Equity Incentive Plan), (D) any shares of Common Stock issued pursuant to any non-employee director stock plan or dividend reinvestment plan referred to in the Registration Statement, the General Disclosure Package and the Prospectus or (E) the entry into the transactions contemplated by the Note Hedge and Warrant Documents and any issuance and delivery of any shares of Common Stock upon any

settlement or termination of the Base Warrant Confirmations or any Additional Warrant Confirmations. Nothing in this Section 3(i) shall prevent the Company from filing any registration statements on Form S-8 or S-4 relating to the issuance of securities pursuant to clauses (A), (B), (C), (D) or (E) set forth in this Section 3(i). Notwithstanding the foregoing, if (1) during the last 17 days of the 90-day restricted period the Company issues an earnings release or material news or a material event relating to the Company occurs or (2) prior to the expiration of the 90-day restricted period, the Company announces that it will issue an earnings release or becomes aware that material news or a material event will occur during the 16-day period beginning on the last day of the 90-day restricted period, the restrictions imposed in this clause (i) shall continue to apply until the expiration of the 18-day period beginning on the date of the issuance of the earnings release or the occurrence of the material news or material event, unless the Representatives waive, in writing, such extension.

(j) *Reporting Requirements.* The Company, during the period when a Prospectus relating to the Securities is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the 1933 Act, will file all documents required to be filed with the Commission pursuant to the 1934 Act within the time periods required by the 1934 Act and 1934 Act Regulations.

(k) *Final Term Sheet; Issuer Free Writing Prospectuses.* The Company will prepare a final term sheet (the “**Final Term Sheet**”), in the form set forth in Annex B-1 hereto, reflecting the final terms of the Securities, in form and substance satisfactory to the Representatives, and shall file such Final Term Sheet as an “issuer free writing prospectus” pursuant to Rule 433 prior to the close of business two business days after the date hereof; provided that the Company shall furnish the Representatives with copies of any such Final Term Sheet a reasonable amount of time prior to such proposed filing and will not use or file any such document to which the Representatives or counsel to the Underwriters shall object. The Company agrees that, unless it obtains the prior written consent of the Representatives, it will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a “free writing prospectus,” or a portion thereof, required to be filed by the Company with the Commission or retained by the Company under Rule 433; provided that the Representatives will be deemed to have consented to the Issuer Free Writing Prospectuses listed on Schedule B hereto and any “road show that is a written communication” within the meaning of Rule 433(d)(8)(i) that has been reviewed by the Representatives. The Company represents that it has treated or agrees that it will treat each such free writing prospectus consented to, or deemed consented to, by the Representatives as an “issuer free writing prospectus,” as defined in Rule 433, and that it has complied and will comply with the applicable requirements of Rule 433 with respect thereto, including timely filing with the Commission where required, legending and record keeping. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement, any preliminary prospectus or the Prospectus or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representatives and will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(l) *DTC*. The Company will cooperate with the Representatives and use its reasonable best efforts to permit the offered Securities to be eligible for clearance and settlement through the facilities of The Depository Trust Company.

(m) *Reserved Shares*. The Company will reserve and keep available at all times, free of preemptive rights, the Maximum Underlying Shares and the Maximum Number of Warrant Shares.

(n) *Conversion Rate*. Between the date hereof and the Closing Time, the Company will not do or authorize any act or thing that would result in an adjustment of the conversion rate applicable to the Securities.

#### Section 4. *Payment of Expenses*.

(a) *Expenses*. The Company will pay or cause to be paid all expenses incident to the performance of their obligations under this Agreement, including (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and each amendment thereto, (ii) the preparation, printing and delivery to the Underwriters of copies of each preliminary prospectus, each Issuer Free Writing Prospectus and the Prospectus and any amendments or supplements thereto and any costs associated with electronic delivery of any of the foregoing by the Underwriters to investors, (iii) preparation, issuance and delivery of the Securities to the Underwriters and the Common Stock issuable upon conversion thereof, (iv) the preparation, issuance and delivery of the Note Hedge and Warrant Documents and the Maximum Number of Warrant Shares issuable upon exercise of the Base Warrant Confirmations and any Additional Warrant Confirmations, (v) the fees and disbursements of the Company's counsel, accountants and other advisors, (vi) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(e) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of the Blue Sky Survey and any supplement thereto, (vii) all fees and expenses of the Trustee and any expenses of any transfer agent or registrar for the Securities or the Common Stock issuable upon conversion of the Securities or upon exercise of the Base Warrant Confirmations and any Additional Warrant Confirmations, (viii) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the Securities, including without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations, travel and lodging expenses of the representatives and officers of the Company and any such consultants, and the cost of aircraft and other transportation chartered in connection with the road show, (ix) the filing fees incident to, and the reasonable fees and disbursements of counsel to the Underwriters in connection with, the review by FINRA of the terms of the sale of the Securities, (x) the fees and expenses incurred in connection with the listing of the Maximum Underlying Shares issuable upon conversion of the Securities and the Maximum Number of Warrant Shares issuable upon exercise of the Base Warrant Confirmations and any Additional Warrant Confirmations on the Nasdaq Global Select Market and (xi) the costs and expenses (including, without limitation, any damages or other amounts payable in connection with legal or contractual liability) associated with the reforming of any contracts for sale of the Securities made by the Underwriters caused by a breach of the representation contained in the third sentence of Section 1(a)(ii). For the

avoidance of doubt, the Company will not pay or otherwise be responsible for the fees or expenses of counsel for the Underwriters, except as provided in clause (vi) of this Section 4(a) in respect of the preparation of the Blue Sky Survey.

(b) *Termination of Agreement.* If this Agreement is terminated by the Representatives in accordance with the provisions of Section 5, Section 9(a)(i) or (iii) or Section 10 hereof, the Company shall reimburse the Underwriters (or, in the case of Section 10, solely the non-defaulting Underwriters) for all of their reasonable, documented out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Underwriters.

Section 5. **Conditions of Underwriters' Obligations.** The obligations of the several Underwriters hereunder are subject to the accuracy of the representations and warranties of the Company contained herein or in certificates of any officer of the Company or any of its subsidiaries, to the performance by the Company of its covenants and other obligations hereunder, and to the following further conditions:

(a) *Effectiveness of Registration Statement.* The Registration Statement has become effective and at Closing Time no stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the 1933 Act, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the Company's knowledge, contemplated; and the Company has complied with each request (if any) from the Commission for additional information. The Company shall have paid the required Commission filing fees relating to the Securities within the time period required by Rule 456(1)(i) under the 1933 Act Regulations without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) under the 1933 Act Regulations and, if applicable, shall have, if necessary, updated the "Calculation of Registration Fee" table in accordance with Rule 456(b)(1)(ii) either in a post-effective amendment to the Registration Statement or on the cover page of a prospectus filed pursuant to Rule 424(b).

(b) *Opinions and Negative Assurance of Counsel for Company and Opinion of General Counsel for the Company.* At the Closing Time, the Representatives shall have received the favorable opinion and negative assurance letter, dated the Closing Time, of Gibson, Dunn & Crutcher LLP, counsel for the Company, and the favorable opinion of Christopher L. Stone, General Counsel for the Company, dated the Closing Time, in form and substance reasonably satisfactory to counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters to the effect set forth in Exhibit A-1, Exhibit A-2 and Exhibit B, respectively, attached hereto.

(c) *Opinion and Negative Assurance of Counsel for Underwriters.* At the Closing Time, the Representatives shall have received the favorable opinion and negative assurance letter, dated the Closing Time, of Davis Polk & Wardwell LLP, counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters, in form and substance satisfactory to the Underwriters.

(d) *Officers' Certificate.* At the Closing Time, there shall not have been, since the date hereof or since the respective dates as of which information is given in the Registration



Statement, the General Disclosure Package or the Prospectus, any material adverse change, or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings or business affairs of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, and the Representatives shall have received a certificate of the Chief Executive Officer of the Company and of the Chief Financial Officer of the Company, dated the Closing Time, to the effect that (i) there has been no such material adverse change, (ii) the representations and warranties of the Company in this Agreement are true and correct with the same force and effect as though expressly made at and as of the Closing Time, (iii) the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Time, and (iv) no stop order suspending the effectiveness of the Registration Statement under the 1933 Act has been issued, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to their knowledge, contemplated.

(e) *Accountant's Comfort Letter.* At the time of the execution of this Agreement, the Representatives shall have received from Ernst & Young LLP a letter, dated such date, in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such letter for each of the other Underwriters containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement, the General Disclosure Package and the Prospectus.

(f) *Bring-down Comfort Letter.* At the Closing Time, the Representatives shall have received from Ernst & Young LLP a letter, dated as of the Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (e) of this Section, except that the specified date referred to shall be a date not more than three business days prior to the Closing Time.

(g) *Approval of Listing.* At the Closing Time, the Maximum Underlying Shares and the Maximum Number of Warrant Shares shall have been approved for listing on the Nasdaq Global Select Market, subject only to official notice of issuance.

(h) *Lock-up Agreements.* At the date of this Agreement, the Representatives shall have received an agreement substantially in the form of Exhibit C hereto signed by the persons listed on Schedule C hereto.

(i) *Maintenance of Rating.* Since the execution of this Agreement, there shall not have been any decrease in or withdrawal of the rating of any securities of the Company or any of its subsidiaries by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the 1933 Act) or any notice given of any intended or potential decrease in or withdrawal of any such rating or of a possible change in any such rating that does not indicate the direction of the possible change.

(j) *Conditions to Purchase of Option Securities.* In the event that the Underwriters exercise their option provided in Section 2(b) hereof to purchase all or any portion of the Option Securities, the representations and warranties of the Company contained herein and the

statements in any certificates furnished by the Company and any of its subsidiaries hereunder shall be true and correct as of each Date of Delivery and, at the relevant Date of Delivery, the Representatives shall have received:

(i) *Officers' Certificate*. A certificate, dated such Date of Delivery, of Chief Executive Officer of the Company and of the Chief Financial Officer of the Company confirming that the certificate delivered at the Closing Time pursuant to Section 5(d) hereof remains true and correct as of such Date of Delivery.

(ii) *Opinions of Counsel for Company*. The favorable opinion and negative assurance letter of Gibson, Dunn & Crutcher LLP, counsel for the Company, and the favorable opinion of the general counsel for the Company, substantially in the same form and substance of the applicable opinion furnished to the Representatives pursuant to Section 5(a) hereof, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery.

(iii) *Opinion of Counsel for Underwriters*. The favorable opinion and negative assurance letter of Davis Polk & Wardwell LLP, counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(c) hereof.

(iv) *Bring-down Comfort Letter*. A letter from Ernst & Young LLP, in form and substance satisfactory to the Representatives and dated such Date of Delivery, substantially in the same form and substance as the letter furnished to the Representatives pursuant to Section 5(e) hereof, except that the "specified date" in the letter furnished pursuant to this paragraph shall be a date not more than three business days prior to such Date of Delivery.

(k) *Additional Documents*. At the Closing Time and at each Date of Delivery (if any) counsel for the Underwriters shall have been furnished with such documents as they may require for the purpose of enabling them to pass upon the issuance and sale of the Securities as herein contemplated, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Company in connection with the issuance and sale of the Securities as herein contemplated shall be reasonably satisfactory in form and substance to the Representatives and counsel for the Underwriters.

(l) *Termination of Agreement*. If any condition specified in this Section shall not have been fulfilled when and as required to be fulfilled, this Agreement, or, in the case of any condition to the purchase of Option Securities on a Date of Delivery which is after the Closing Time, the obligations of the several Underwriters to purchase the relevant Option Securities, may be terminated by the Representatives by notice to the Company at any time at or prior to Closing Time or such Date of Delivery, as the case may be, and such termination shall be without liability of any party to any other party except as provided in Section 4 and except that Sections 1, 6, 7, 8, 14 and 15 shall survive any such termination and remain in full force and effect.

Section 6. **Indemnification.**

(a) *Indemnification of Underwriters.* The Company agrees to indemnify and hold harmless each Underwriter, its affiliates (as such term is defined in Rule 501(b) under the 1933 Act (each, an “**Affiliate**”)), its selling agents and each person, if any, who controls any Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), including any information deemed to be a part thereof pursuant to Rule 430B, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact included (A) in any preliminary prospectus, any Issuer Free Writing Prospectus, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) or (B) in any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the offering of the Securities (“Marketing Materials”), if any, including any roadshow or investor presentations made to investors by the Company (whether in person or electronically), or the omission or alleged omission in any preliminary prospectus, Issuer Free Writing Prospectus, Prospectus or in any Marketing Materials of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 6(d) below) any such settlement is effected with the written consent of the Company;

(iii) against any and all reasonable expenses, as incurred (including the reasonable fees and disbursements of counsel chosen by the Representatives), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

*provided, however,* that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in the Registration Statement (or any amendment thereto), including any information deemed to be a part thereof pursuant to Rule 430B, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(b) *Indemnification of Company, Directors and Officers.* Each Underwriter severally agrees to indemnify and hold harmless the Company, its directors, each of its officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), including any information deemed to be a part thereof pursuant to Rule 430B, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(c) *Actions against Parties; Notification.* Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In the case of parties indemnified pursuant to Section 6(a) above, counsel to the indemnified parties shall be selected by the Representatives, and, in the case of parties indemnified pursuant to Section 6(b) above, counsel to the indemnified parties shall be selected by the Company. An indemnifying party may participate at its own expense in the defense of any such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 6 or Section 7 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) *Actions against Parties; Notification.* If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for the reasonable fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a)(ii) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

Section 7. **Contribution.** If the indemnification provided for in Section 6 hereof is for any reason (other than failure to meet the requirements for indemnification thereunder) unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and of the Underwriters, on the other hand, in connection with the statements or omissions that resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company, on the one hand, and the total underwriting discount received by the Underwriters, on the other hand, in each case as set forth on the cover of the Prospectus, bear to the aggregate initial public offering price of the Securities as set forth on the cover of the Prospectus.

The relative fault of the Company, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 7. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 7 shall be deemed to include any unreimbursed legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 7, no Underwriter shall be required to contribute any amount in excess of the underwriting commissions received by such Underwriter in connection with the Securities underwritten by it and distributed to the public.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 7, each person, if any, who controls an Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and each Underwriter's Affiliates and selling agents shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company. The Underwriters' respective obligations to contribute pursuant to this Section 7 are several in proportion to the aggregate principal amount of Initial Securities set forth opposite their respective names in Schedule A hereto and not joint.

Section 8. **Representations, Warranties and Agreements to Survive.** All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company or any of its subsidiaries submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of any Underwriter or its Affiliates or selling agents, any person controlling any Underwriter, its officers or directors or any person controlling the Company and (ii) delivery of and payment for the Securities.

Section 9. **Termination of Agreement.**

(a) *Termination.* The Representatives may terminate this Agreement, by notice to the Company, at any time at or prior to the Closing Time (i) if there has been, in the judgment of the Representatives, since the time of execution of this Agreement or since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, any material adverse change, or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings or business affairs of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, or (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Representatives, impracticable or inadvisable to proceed with the completion of the offering or to enforce contracts for the sale of the Securities, or (iii) if trading in any securities of the Company has been suspended or materially limited by the Commission or the Nasdaq Global Select Market, or (iv) if trading generally on the New York Stock Exchange or in the Nasdaq Global Market has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by order of the Commission, FINRA or any other governmental authority, or (v) a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States or with respect to Clearstream or Euroclear systems in Europe, or (vi) if a banking moratorium has been declared by either Federal or New York authorities.

(b) *Liabilities.* If this Agreement is terminated pursuant to this Section, such termination shall be without liability of any party to any other party except as provided in Section 4 hereof, and provided further that Sections 1, 6, 7, 8, 14 and 15 shall survive such termination and remain in full force and effect.

Section 10. **Default by One or More of the Underwriters.** If one or more of the Underwriters shall fail at Closing Time or a Date of Delivery to purchase the Securities which it or they are obligated to purchase under this Agreement (the “**Defaulted Securities**”), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

(i) if the number of Defaulted Securities does not exceed 10% of the aggregate principal amount of the Securities to be purchased on such date, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

(ii) if the number of Defaulted Securities exceeds 10% of the aggregate principal amount of the Securities to be purchased on such date, this Agreement or, with respect to any Date of Delivery which occurs after the Closing Time, the obligation of the Underwriters to purchase, and the Company to sell, the Option Securities to be purchased and sold on such Date of Delivery shall terminate without liability on the part of any non-defaulting Underwriter.

No action taken pursuant to this Section shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement or, in the case of a Date of Delivery which is after the Closing Time, which does not result in a termination of the obligation of the Underwriters to purchase and the Company to sell the relevant Option Securities, as the case may be, either the (i) Representatives or (ii) the Company shall have the right to postpone Closing Time or the relevant Date of Delivery, as the case may be, for a period not exceeding seven days in order to effect any required changes in the Registration Statement, the General Disclosure Package or the Prospectus or in any other documents or arrangements. As used herein, the term “Underwriter” includes any person substituted for an Underwriter under this Section 10.

Section 11. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be directed to RBC at Three World Financial Center, 200 Vesey Street, New York, New York 10281, attention of Equity Syndicate Desk, with a copy to Wells Fargo at Wells Fargo Securities, LLC, 375 Park Avenue, New York, New York 10152, Attention: Equity Syndicate Department (fax no: (212) 214-5918); notices to the Company shall be directed to it at 932 Southwood Boulevard, Incline Village, Nevada 89451, attention of Danny Hart, and with a copy to Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, California 90071, attention of Karen Bertero.

Section 12. **No Advisory or Fiduciary Relationship.** The Company acknowledges and agrees that (a) the purchase and sale of the Securities pursuant to this Agreement, including

the determination of the initial public offering price of the Securities and any related discounts and commissions, is an arm's-length commercial transaction between the Company, on the one hand, and the several Underwriters, on the other hand, (b) in connection with the offering of the Securities and the process leading thereto, each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Company, any of its subsidiaries or their respective stockholders, creditors, employees or any other party, (c) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Company with respect to the offering of the Securities or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company or any of its subsidiaries on other matters) and no Underwriter has any obligation to the Company with respect to the offering of the Securities except the obligations expressly set forth in this Agreement, (d) the Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company and (e) the Underwriters have not provided any legal, accounting, regulatory or tax advice with respect to the offering of the Securities and the Company has consulted its own respective legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

Section 13. **Parties.** This Agreement shall each inure to the benefit of and be binding upon the Underwriters and the Company and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriters and the Company and their respective successors and the controlling persons and officers and directors referred to in Sections 6 and 7 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Underwriters and the Company and their respective successors, and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Securities from any Underwriter shall be deemed to be a successor by reason merely of such purchase.

Section 14. **Trial by Jury.** The Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates) and each of the Underwriters hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

Section 15. **GOVERNING LAW.** THIS AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF, THE STATE OF NEW YORK WITHOUT REGARD TO ITS CHOICE OF LAW PROVISIONS.

Section 16. **TIME.** TIME SHALL BE OF THE ESSENCE OF THIS AGREEMENT. EXCEPT AS OTHERWISE SET FORTH HEREIN, SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME.



Section 17. **Partial Unenforceability.** The invalidity or unenforceability of any Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Section, paragraph or provision hereof. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

Section 18. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

Section 19. **Effect of Headings.** The Section headings herein are for convenience only and shall not affect the construction hereof.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the Underwriters and the Company in accordance with its terms.

Very truly yours,

PDL BIOPHARMA, INC.

By: \_\_\_\_\_  
Name:  
Title:

CONFIRMED AND ACCEPTED,  
as of the date first above written:

RBC Capital Markets, LLC

By: \_\_\_\_\_  
Name:  
Title:

Wells Fargo Securities, LLC

By: \_\_\_\_\_  
Name:  
Title:

For themselves and as Representatives of the other Underwriters named in Schedule A hereto.

SCHEDULE A

1. The public offering price of the Securities shall be 100% of the principal amount thereof, plus accrued interest, if any, from the date of issuance.
2. The purchase price to be paid by the Underwriters for the Securities shall be 97% of the principal amount thereof.
3. The interest rate on the Securities shall be 4.00% per annum.
4. The conversion rate for the Securities shall be 109.1048 shares per \$1,000 principal amount of the Securities.

<u>Name of Underwriter</u>	<u>Principal Amount of Securities</u>
RBC Capital Markets, LLC	\$ 156,522,000
Wells Fargo Securities, LLC	\$ 91,305,000
Cowen and Company, LLC	\$ 7,826,000
Janney Montgomery Scott LLC	\$ 5,217,000
Total	<u>\$ 260,870,000</u>

Schedule A-1

SCHEDULE B  
Free Writing Prospectuses

1. Final Term Sheet substantially in the form of Annex B-1

Schedule B-1

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Annex B-1

Final Term Sheet

Annex B-1-1

**\$260,870,000**  
**PDL BioPharma, Inc.**  
**4.00% Convertible Senior Notes due 2018**  
**Final Term Sheet**

*The information in this pricing term sheet relates to PDL BioPharma, Inc.'s offering (the "Offering") of its 4.00% Convertible Senior Notes due 2018 and should be read together with the preliminary prospectus supplement dated February 5, 2014 relating to the Offering (the "Preliminary Prospectus Supplement"), including the documents incorporated by reference therein, and the base prospectus dated June 21, 2013, each filed pursuant to Rule 424(b) under the Securities Act of 1933, as amended, Registration Statement No. 333-189536. PDL BioPharma, Inc. has increased the size of the Offering to \$260,870,000 (or \$300,000,000 if the underwriters' over-allotment option is exercised in full). The final prospectus supplement relating to the Offering will reflect conforming changes relating to such increase in the size of the Offering.*

<b>Issuer:</b>	PDL BioPharma, Inc. (the "Issuer"), a Delaware corporation.
<b>Ticker / Exchange for Common Stock:</b>	PDLI / NASDAQ Global Select Market ("NQGS").
<b>Securities Offered:</b>	4.00% Convertible Senior Notes due 2018 (the "notes").
<b>Aggregate Principal Amount Offered:</b>	\$260,870,000 aggregate principal amount of notes (or \$300,000,000 aggregate principal amount if the underwriters' over-allotment option is exercised in full).
<b>Use of Proceeds:</b>	<p>The Issuer expects to receive net proceeds from the Offering of approximately \$252.4 million (or approximately \$290.3 million if the underwriters exercise their over-allotment option in full), after deducting underwriting discounts and estimated fees and expenses related to the Offering.</p> <p>The Issuer has entered into convertible note hedge transactions with one or more of the underwriters or their respective affiliates (the "option counterparties"), and also entered into warrant transactions with the option counterparties. The Issuer intends to use approximately \$17.0 million of the net proceeds from the Offering to pay the cost of the convertible note hedge transactions (after such cost is partially offset by the proceeds to the Issuer of the warrant transactions described in the Preliminary Prospectus Supplement).</p> <p>If the underwriters exercise their over-allotment option, the Issuer expects to sell additional warrants and use a portion of the net proceeds from the sale of such additional notes, together with the proceeds from the sale of the additional warrants, to enter into additional convertible note hedge transactions.</p> <p>The Issuer intends to use the remaining net proceeds from the Offering for working capital and general corporate purposes, including without limitation the repayment, repurchase or redemption of outstanding indebtedness or the acquisition of income-generating assets. Pending such uses, the Issuer intends to invest any remaining net proceeds of the Offering in interest-bearing, short-term securities issued or guaranteed as to principal or interest by the United States or a person controlled by the government of the United States.</p>

**Maturity:** February 1, 2018, subject to earlier repurchase or conversion.

**Interest and Payment Dates:** Interest on the notes will accrue at a rate of 4.00% on the principal amount from February 12, 2014, payable semiannually in arrears on February 1 and August 1 of each year, beginning on August 1, 2014.

	<u>Per Note</u>	<u>Without Option</u>	<u>With Option</u>
<b>Public Offering Price:</b>	100%	\$260,870,000.00	\$300,000,000.00
<b>Underwriting Discount:</b>	3%	\$ 7,826,100.00	\$ 9,000,000.00
<b>Proceeds, Before Expenses, to the Issuer:</b>	97%	\$253,043,900.00	\$291,000,000.00

**Trade Date:** February 7, 2014.

**Settlement Date:** February 12, 2014.

**Last Reported Sale Price on NQGS February 6, 2014:** \$7.97 per share of the Issuer's common stock.

**Conversion Premium:** Approximately 15% above the NQGS Last Reported Sale Price on February 6, 2014.

**Initial Conversion Price:** Approximately \$9.17 per share of the Issuer's common stock.

**Initial Conversion Rate:** 109.1048 shares of the Issuer's common stock per \$1,000 principal amount of notes.

**No Optional Redemption:** The Issuer may not redeem the notes prior to the maturity date and no "sinking fund" is provided for the notes, which means that the Issuer is not required to redeem or retire the notes periodically.

**Joint Book-Running Managers:** RBC Capital Markets, LLC  
Wells Fargo Securities, LLC

**Co-Managers:** Cowen and Company, LLC  
Janney Montgomery Scott LLC

**CUSIP:** 69329Y AF1

**ISIN:** US69329YAF16

**Increase in Conversion Rate Upon a Make-Whole Fundamental Change:** The following table sets forth the number of additional shares of the Issuer's common stock, if any, to be added to the conversion rate per \$1,000 principal amount of notes for conversions in connection with a "make-whole fundamental change" (as defined in the Preliminary Prospectus Supplement):

<u>Effective Date</u>	<u>Stock Price</u>									
	<u>\$7.97</u>	<u>\$8.50</u>	<u>\$9.00</u>	<u>\$9.50</u>	<u>\$10.00</u>	<u>\$10.50</u>	<u>\$11.00</u>	<u>\$11.50</u>	<u>\$12.00</u>	<u>\$12.50</u>
February 12, 2014	16.3657	12.1141	8.8611	6.2316	4.1370	2.5076	1.2945	0.4739	0.0433	0.0000
February 1, 2015	16.3657	12.8592	9.5898	6.9903	4.9276	3.2306	1.6780	0.6389	0.0876	0.0000
February 1, 2016	16.3657	12.8602	9.3794	6.5105	3.9655	2.1200	0.9041	0.2065	0.0015	0.0000
February 1, 2017	16.3657	11.7807	7.9967	5.1120	3.0099	1.5849	0.7193	0.2992	0.0000	0.0000
February 1, 2018	16.3657	8.5423	2.0064	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000



The exact stock price and effective date may not be set forth in the table above, in which case, if the stock price is:

- between two stock prices in the table above or the effective date is between two effective dates in the table, the number of additional shares will be determined by straight-line interpolation between the number of additional shares set forth for the higher and lower stock prices and the earlier and later effective dates, as applicable, based on a 365-day year;
- more than \$12.50 per share (subject to adjustment in the same manner as the stock prices set forth in the column headings of the table above, as described in the Preliminary Prospectus Supplement), no additional shares will be added to the conversion rate; and
- less than \$7.97 per share (subject to adjustment in the same manner as the stock prices set forth in the column headings of the table above, as described in the Preliminary Prospectus Supplement), no additional shares will be added to the conversion rate.

Despite the foregoing, in no event will the conversion rate, including any additional shares issuable under the table above, exceed 125.4705 shares of the Issuer's common stock per \$1,000 principal amount of notes, subject to adjustment in the same manner as the conversion rate as set forth under "Description of Notes—Conversion of Notes—Conversion Rate Adjustments" in the Preliminary Prospectus Supplement.

#### **Acquisition and Cancellation of Certain Outstanding 2015 Notes**

On February 6, 2014, the Issuer entered into exchange or purchase agreements with certain holders of approximately \$131,689,000 aggregate principal amount of the Issuer's outstanding 2.875% Convertible Senior Notes due 2015, or the 2015 Notes. The exchange agreements provide for the issuance by the Issuer of shares of common stock and the payment of a cash payment in exchange for those 2015 Notes being exchanged, and the purchase agreement provides for a cash payment for those 2015 Notes being purchased. The Issuer will issue a total of 20,293,751 shares of its common stock and pay an aggregate cash payment of \$34,237,881.29 pursuant to the exchange and purchase agreements. Consummation of the exchange transactions is conditioned on customary closing conditions and there is no assurance that the Issuer will ultimately consummate the acquisition of any of its 2015 Notes.

Annex B-1-4

The Issuer has filed a registration statement (including the Preliminary Prospectus Supplement, dated February 5, 2014, and an accompanying prospectus, dated June 21, 2013) with the Securities and Exchange Commission, or SEC, for the Offering to which this communication relates. Before you invest, you should read the Preliminary Prospectus Supplement and the accompanying prospectus in that registration statement and other documents the Issuer has filed with the SEC for more complete information about the Issuer and the Offering. You may get these documents for free by visiting EDGAR on the SEC website at [www.sec.gov](http://www.sec.gov). Alternatively, copies may be obtained from RBC Capital Markets, LLC, 3 World Financial Center, 200 Vesey Street, 8th Floor, New York, NY 10281-8098; Attention: Equity Syndicate; Phone: 877-822-4089; Fax: 212-428-6260, or Wells Fargo Securities, LLC, Attention: Equity Syndicate Department, 375 Park Avenue, New York, New York 10152; Phone: (800) 326-5897; E-mail: [cmclientsupport@wellsfargo.com](mailto:cmclientsupport@wellsfargo.com).

This communication should be read in conjunction with the Preliminary Prospectus Supplement, dated February 5, 2014, and the accompanying prospectus, dated June 21, 2013. The information in this communication supersedes the information in the Preliminary Prospectus Supplement and the accompanying prospectus to the extent inconsistent with the information in the Preliminary Prospectus Supplement and the accompanying prospectus. Terms used but not defined herein have the meanings given in the Preliminary Prospectus Supplement.

ANY DISCLAIMERS OR OTHER NOTICES THAT MAY APPEAR BELOW ARE NOT APPLICABLE TO THIS COMMUNICATION AND SHOULD BE DISREGARDED. SUCH DISCLAIMERS OR OTHER NOTICES WERE AUTOMATICALLY GENERATED AS A RESULT OF THIS COMMUNICATION BEING SENT VIA BLOOMBERG OR ANOTHER EMAIL SYSTEM.

Annex B-1-5

SCHEDULE C

List of Persons Subject to Lock-up

Name:	Office:
Peter S. Garcia	Vice President and Chief Financial Officer
Danny Hart	Deputy General Counsel and Assistant Secretary
Jody S. Lindell	Director
John P. McLaughlin	President, Chief Executive Officer and Director
David Montez	Controller and Chief Accounting Officer
Paul W. Sandman	Director
Harold E. Selick	Director
Christopher L. Stone	Vice President, General Counsel and Secretary

Schedule C-1

**FORM OF OPINION OF COMPANY'S COUNSEL  
TO BE DELIVERED PURSUANT TO SECTION 5(b) OF THE UNDERWRITING AGREEMENT**

(a) The Company is a validly existing corporation in good standing under the laws of the State of Delaware.

(b) The Company has the requisite corporate power and authority to own its properties and to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus and to execute and deliver the Operative Documents and perform its obligations thereunder.

(c) The authorized capital stock of the Company is as set forth in the Registration Statement, the General Disclosure Package and the Prospectus under the caption "Capitalization".

(d) Each Subsidiary is a validly existing as a corporation or limited liability company in good standing under the laws of the jurisdiction of its incorporation or formation.

(e) The execution, delivery and performance of the Underwriting Agreement have been duly authorized by all necessary corporate action on the part of the Company. The Underwriting Agreement has been duly executed and delivered by the Company.

(f) The execution, delivery and performance of the Indenture have been duly authorized by all necessary corporate action on the part of the Company. The Indenture has been duly executed and delivered by the Company and constitutes a legal, valid and binding agreement of the Company, enforceable against the Company in accordance with its terms.

(g) The execution, delivery and performance of each of the Note Hedge and Warrant Documents have been duly authorized by all necessary corporate action on the part of the Company. (x) Each of the Base Note Hedge and Warrant Documents has been duly executed and delivered by the Company and constitutes, and (y) any Additional Note Hedge and Warrant Documents, when duly executed and delivered by the Company, will constitute, in each case, the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

(h) The execution, delivery and performance of the Securities have been duly authorized by all necessary corporate action on the part of the Company. The Securities have been executed and delivered by the Company and, when duly authenticated in accordance with the provisions of the Indenture and paid for by the Underwriters as provided in the Underwriting Agreement, will constitute the legal, valid and binding obligations of the Company enforceable against the Company in accordance with their terms.

(i) The Indenture has been duly qualified under the 1939 Act.

(j) Insofar as the statements in the Registration Statement, the General Disclosure Package, and the Prospectus purport to describe specific provisions of the Common Stock, Indenture, Securities and Note Hedge and Warrant Documents, such statements present in all material respects an accurate summary of such provisions.

(k) The Securities are convertible into cash and, if applicable, shares of Common Stock of the Company in accordance with the terms of the Indenture. The Maximum Underlying Shares as of the Closing Date have been duly authorized and reserved for issuance upon such conversion and, when issued upon such conversion as provided in the Indenture, will be validly issued, fully paid and nonassessable and will not be subject to any preemptive or other similar right created by the Company's certificate of incorporation and the General Corporation Law of the State of Delaware.

(l) The Maximum Number of Warrant Shares have been duly authorized and reserved for issuance upon exercise of the warrant transactions evidenced by the Base Warrant Confirmations and any Additional Warrant Confirmations. Any shares of Common Stock issuable upon exercise of the Base Warrant Confirmations or any Additional Warrant Confirmations, when so issued, will be validly issued, fully paid and non-assessable, and the issuance of such shares of Common Stock will not be subject to the preemptive or other similar right created by the Company's certificate of incorporation and the Delaware General Corporation Law.

(m) Excluding the documents incorporated by reference into the Registration Statement, any required filing of each prospectus relating to the Securities (including the Prospectus) pursuant to Rule 424(b) under the Securities Act has been made in the manner and within the time period required by Rule 424(b) under the Securities Act (without reference to Rule 424(b)(8) under the Securities Act).

(n) To the extent that the statements in the Prospectus Supplement under the caption "Material U.S. Federal Income Tax Considerations," purport to describe specific provisions of the Internal Revenue Code of 1986, as amended, or the rules and regulations thereunder, such statements present in all material respects an accurate summary of such provisions.

(o) The execution, delivery and performance by the Company of the Underwriting Agreement, the Note Hedge and Warrant Documents or the Indenture (including, without limitation, the issuance of the Maximum Underlying Shares and the Maximum Number of Warrant Shares) do not (i) violate or require the consent, approval, filing with, authorization or order of any court or governmental agency or body of the State of New York or the United States of America under any law or regulation of the State of New York or the United States of America that, in our experience, is generally applicable to transactions in the nature of those contemplated by the Operative Documents or (ii) violate or require the consent, approval, filing with, authorization or order of any court or governmental agency or body of the State of Delaware under the Delaware General Corporation Law. We are expressing no opinion in this paragraph regarding federal or state securities laws.

(p) The execution, delivery and performance by the Company of each of the Operative Documents (including, without limitation, the issuance of the Maximum Underlying Shares and the Maximum Number of Warrant Shares) to which it is a party and the issuance of the Securities to the Underwriters (i) do not and will not violate the certificate of incorporation or

Exhibit A-1-2

bylaws of the Company, and (ii) do not and will not breach the terms of (a) any agreement identified to us in the certificate attached hereto as Annex 1 or (b) any order, judgment or decree of any court or other agency of government identified to us in the certificate attached hereto as Annex 2, in either case based solely on our review of such agreements, orders, judgments or decrees.

(q) The Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in Prospectus, will not be required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.

Exhibit A-1-3

**FORM OF NEGATIVE ASSURANCE LETTER OF COMPANY'S COUNSEL  
TO BE DELIVERED PURSUANT TO SECTION 5(b) OF THE UNDERWRITING AGREEMENT**

February 12, 2014

RBC Capital Markets, LLC  
Wells Fargo Securities, LLC

as Representatives of the several Underwriters

c/o RBC Capital Markets, LLC  
Three World Financial Center  
200 Vesey Street  
New York, New York 10281

c/o Wells Fargo Securities, LLC  
375 Park Avenue  
4th Floor  
New York, New York 10152

Re: *PDL BioPharma, Inc 4.00% Convertible Senior Notes Due 2018*

Ladies and Gentlemen:

We have acted as special counsel to PDL BioPharma, Inc., a Delaware corporation (the "Company"), in connection with the offering and sale by the Company of \$260,870,000 principal amount of the Company's 4.00% Convertible Senior Notes due 2018 (the "Securities") and in connection with the exercise by the Underwriters of an over-allotment option for an additional \$39,130,000 in aggregate principal amount of additional Securities pursuant to the Underwriting Agreement dated as of February 6, 2014 (the "Underwriting Agreement") among the Company and the Underwriters named therein for whom you are acting as Representatives. The Securities are being issued pursuant to the Indenture, dated as of February 12, 2014 (the "Base Indenture"), between the Company and The Bank of New York Mellon Trust Company, N.A, as Trustee (the "Trustee"), as supplemented by that certain Supplemental Indenture, dated as of February 12, 2014 (the "Supplemental Indenture" and, together with the Base Indenture, the "Indenture"). This letter is delivered to you pursuant to Section 5(b) and Section 5(j)(ii) of the Underwriting Agreement.

In connection with the offering and sale of the Securities, we have reviewed: (i) the Company's Registration Statement on Form S-3 (Registration No. 333-189536) filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the

Exhibit A-2-1

“Securities Act”), on June 21, 2013 for the registration of debt securities, common stock, preferred stock, depository shares, warrants, stock purchase contracts, stock purchase units, units of any of the foregoing, any derivative securities of the foregoing securities containing derivative features, or any combination of the foregoing securities (the “Registration Statement”); (ii) the core prospectus dated June 21, 2013 forming a part thereof, together with the documents incorporated therein by reference (the “Core Prospectus”); (iii) the preliminary prospectus supplement dated February 5, 2014 (the “Preliminary Prospectus Supplement”), in the form filed with the Commission pursuant to Rule 424(b) under the Securities Act on February 5, 2014; (iv) the final pricing term sheet dated February 6, 2014, prepared pursuant to Section 3(k) and in the form of Annex B-1 to the Underwriting Agreement, in the form filed with the Commission pursuant to Rule 433 under the Securities Act on February 7, 2014 and attached as Annex 1 hereto (the “Term Sheet”) and (v) the final prospectus supplement dated February 6, 2014 (the “Final Prospectus Supplement” and, collectively with the Preliminary Prospectus Supplement, the “Prospectus Supplement”) in the form filed with the Commission pursuant to Rule 424(b) under the Securities Act on February 7, 2014. The Core Prospectus together with the Final Prospectus Supplement is called the “Prospectus.” The Core Prospectus, including only the information incorporated therein by reference (as updated or superseded as provided therein) prior to 12:23 a.m., Eastern time, on February 7, 2014 (the “Applicable Time”), the Preliminary Prospectus Supplement and the Term Sheet are collectively called the “General Disclosure Package”. The documents incorporated by reference in the Registration Statement and the Prospectus were prepared and filed by the Company without our participation.

Based solely on the certificate of the Company attached as Annex 2 hereto, we are of the view that the Registration Statement has become effective under the Securities Act. To our knowledge, based solely upon telephonic confirmation from the Staff of the Commission on February 12, 2014, as of the time of such confirmation no stop order suspending the effectiveness of the Registration Statement has been issued under the Securities Act and no proceedings for that purpose have been instituted or are pending or threatened by the Commission.

We have participated in conferences with officers and other representatives of the Company, representatives of the independent auditors of the Company and your representatives and counsel at which the contents of the Registration Statement, the General Disclosure Package and the Prospectus and related matters were discussed. Because the purpose of our professional engagement was not to establish or confirm factual matters and because we did not independently undertake to verify the accuracy, completeness or fairness of the statements set forth in the Registration Statement, the General Disclosure Package or the Prospectus, we are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement, the General Disclosure Package or the Prospectus except insofar as such statements specifically relate to us. Our identification of information as constituting the General Disclosure Package is for the limited purpose of making the statements set forth in this letter. We express no opinion or belief as to the conveyance of the General Disclosure Package or the Prospectus or the information contained therein to investors generally or to any particular investors at any particular time or in any particular manner.

On the basis of the foregoing, and except for the financial statements and schedules, statistical information derived from the financial statements and other information of an accounting or



financial nature and the Statement of Eligibility on Form T-1 of the Trustee included or incorporated by reference therein, as to which we express no opinion or belief, no facts have come to our attention that led us to believe: (a) that the Registration Statement, at the time it became effective (which, for purposes of this letter, shall mean June 21, 2013), or the Prospectus, as of the date of the Final Prospectus Supplement, were not appropriately responsive in all material respects to the requirements of the Securities Act and the Trust Indenture Act and the applicable rules and regulations of the Commission thereunder; or (b)(i) that the Registration Statement, at the time it became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein, or necessary to make the statements therein not misleading, (ii) that the General Disclosure Package, at the Applicable Time, included an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading or (iii) that the Prospectus, as of its date or as of the date hereof, included or includes an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

We assume no obligation to revise or supplement this letter in the event of any changes in law or fact arising after the date hereof. The statements made in this letter are solely for your benefit in connection with the transactions contemplated by the Underwriting Agreement and the Indenture and are not to be used for any other purpose or circulated, quoted or otherwise referred to without, in each case, our written permission.

Very truly yours,

Exhibit A-2-3

**FORM OF OPINION OF COMPANY'S GENERAL COUNSEL  
TO BE DELIVERED PURSUANT TO SECTION 5(b) OF THE UNDERWRITING AGREEMENT**

(a) As used herein, "Intellectual Property Statements" means the statements relating to Intellectual Property matters included in the Registration Statement, the General Disclosure Package and the Prospectus, including but not limited to those appearing under the following captions: "Business – Intellectual Property," "Risk Factors" and "Legal Proceedings." Initially capitalized terms used herein but not defined herein are used as defined in the Underwriting Agreement. Nothing has come to my attention that causes me to believe that:

1. the Intellectual Property Statements included in the Registration Statement at the time the Registration Statement became effective contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading;

2. at the Applicable Time, the Intellectual Property Statements included in the General Disclosure Package contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; or

3. the Intellectual Property Statements included in the Prospectus as of its date or as of the date hereof contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(b) To the best of my knowledge, the Company and its subsidiaries own or otherwise possess sufficient rights under all Intellectual Property that is currently employed by the Company or its subsidiaries in connection with their respective businesses now operated by them as described in the Registration Statement, the General Disclosure Package and the Prospectus.

(c) As of the date hereof, the Company is the sole and exclusive owner of each of the patent registrations, patent applications and supplementary protection certificates listed in Annex 1 (the "**Patents**") and the other Intellectual Property referenced in the Registration Statement, the General Disclosure Package and the Prospectus (together with the Patents, the "**Company IP**"), which, to the best of my knowledge, are free and clear of debtor liens and security interests, except to the extent that the Company has granted certain license rights to its licensees under the Patents in the ordinary course of business. To the best of my knowledge, as of the date hereof, each of the Patents is valid and subsisting, all fees currently due in connection with such Patents have been paid, and all documents, information, recordations and certificates in connection with such Patents required to be filed have been properly filed with the relevant patent authorities, except where such failures would not result in a Material Adverse Effect. To the best of my knowledge, as of the date hereof, no facts or challenges to the Patents exist that preclude the Company or any of its subsidiaries from having valid license rights or clear title to the Company IP, or that is likely to lead to a finding of unenforceability or invalidity of any such rights or any portion thereof, including with respect to the preparation, filing or prosecution of the Patents, except for such facts or challenges that would not result in a Material Adverse Effect.

Exhibit B-1

(d) To the best of my knowledge, as of the date hereof, each contract listed on Annex 2 hereto constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms without violation of law, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(e) To the best of my knowledge, as of the date hereof, except as described in the Registration Statement, the General Disclosure Package and the Prospectus or as would not constitute a Material Adverse Effect, (i) there are no legal or other proceedings pending or threatened with respect to the Company IP, including as to its enforceability, scope or validity; (ii) neither the Company nor any of its subsidiaries are infringing, misappropriating or otherwise violating any Intellectual Property of others, nor have they received any notice or claim of any such infringement, misappropriation or violation; and (iii) there are no actual or alleged infringements, misappropriations or other violations by others of any of the Company IP or Intellectual Property exclusively licensed to the Company or any of its subsidiaries.

(f) The documents incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus (other than the financial statements and supporting schedules included therein or omitted therefrom, as to which I need express no opinion), when they became effective or were filed with the Commission, as the case may be, complied as to form in all material respects with the requirements of the 1934 Act and the 1934 Act Regulations.

(g) Except as disclosed in the Registration Statement, the General Disclosure Package or the Prospectus, to my knowledge, the Company is not party to any pending legal proceeding, or legal proceeding that has been overtly threatened in writing, to which the Company or any subsidiary is a party, or to which the property of the Company or any subsidiary is subject, before or brought by any Governmental Entity, that if resolved against the Company as of the date hereof, would result in a Material Adverse Effect, or, if resolved against the Company as of the date hereof, would materially and adversely affect the properties or assets thereof or the consummation of the transactions contemplated in the Registration Statement, the General Disclosure Package or the Prospectus or the performance by the Company of its obligations thereunder.

(h) All descriptions in the Registration Statement, the General Disclosure Package and the Prospectus of contracts and other documents to which the Company or its subsidiaries are a party are accurate in all material respects; to my knowledge, there are no franchises, contracts, indentures, mortgages, loan agreements, notes, leases or other instruments required to be described or referred to in the Registration Statement, the General Disclosure Package and the Prospectus other than those described or referred to therein or filed or incorporated by reference as exhibits thereto.

Exhibit B-2

## FORM OF LOCK-UP TO BE DELIVERED PURSUANT TO SECTION 5(h)

February 6, 2014

RBC Capital Markets, LLC  
Wells Fargo Securities, LLC

as Representatives of the several  
Underwriters to be named in the  
within-mentioned Underwriting Agreement

c/o RBC Capital Markets, LLC  
Three World Financial Center  
200 Vesey Street  
New York, New York 10281

c/o Wells Fargo Securities, LLC  
550 South Tryon Street, 5th Floor  
Charlotte, North Carolina 28202

Re: Proposed Offering by PDL BioPharma, Inc.

Dear Sirs:

The undersigned, a stockholder and an officer and/or director of PDL BioPharma, Inc., a Delaware corporation (the "**Company**"), understands that the Representatives propose to enter into an Underwriting Agreement (the "**Underwriting Agreement**") with the Company providing for the public offering of \$260,870,000 aggregate principal amount of the Company's 4.00% Convertible Senior Notes Due 2018 (the "**Securities**"). In recognition of the benefit that such an offering will confer upon the undersigned as a stockholder and an officer and/or director of the Company, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees, subject to the terms and conditions set forth herein, with each underwriter to be named in the Underwriting Agreement that, during the period beginning on the date hereof and ending on the date that is 90 days from the date of the Underwriting Agreement (the "**Lock-Up Period**"), the undersigned will not, without the prior written consent of the Representatives, directly or indirectly, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of, or otherwise dispose of or transfer any shares of the Company's common stock, par value \$0.01 per share (the "**Common Stock**"), or any securities convertible into or exchangeable or exercisable for Common Stock, whether now owned or hereafter acquired by the undersigned or with respect to which the undersigned has or hereafter acquires the power of disposition (collectively, the "**Lock-Up Securities**"), or exercise any right with respect to the registration of any of the Lock-up Securities, or file or cause to be filed any registration statement in

Exhibit C-1

connection therewith, under the Securities Act of 1933, as amended, or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Lock-Up Securities, whether any such swap or transaction is to be settled by delivery of Common Stock or other securities, in cash or otherwise.

Notwithstanding the foregoing, if:

(1) during the last 17 days of the Lock-up Period, the Company issues an earnings release or material news or a material event relating to the Company occurs; or

(2) prior to the expiration of the Lock-up Period, the Company announces that it will release earnings results or becomes aware that material news or a material event will occur during the 16-day period beginning on the last day of the Lock-up Period, the restrictions imposed by this lock-up agreement shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event, as applicable, unless the Representatives waive, in writing, such extension.

The undersigned agrees that, prior to engaging in any transaction or taking any other action that is subject to the terms of this lock-up agreement during the period from the date of this lock-up agreement to and including the 34<sup>th</sup> day following the expiration of the initial Lock-up Period, it will give notice thereof to the Company and will not consummate such transaction or take any such action unless it has received written confirmation from the Company that the Lock-up Period (as may have been extended pursuant to the previous paragraph) has expired.

Notwithstanding the foregoing, and subject to the conditions below, the undersigned may transfer the Lock-Up Securities without the prior written consent of the Representatives, provided that (1) the Representatives receive a signed lock-up agreement for the balance of the Lock-Up Period from each donee, trustee, distributee, or transferee, as the case may be, (2) any such transfer shall not involve a disposition for value, (3) no filing or public announcement by any party (transferor or transferee) shall be required or shall be voluntarily made in connection with such transfer or distribution and (4) the undersigned does not otherwise voluntarily effect any public filing or report regarding such transfers:

(i) as a *bona fide* gift or gifts;

(ii) by testate or intestate succession;

(iii) to any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned (for purposes of this lock-up agreement, “immediate family” shall mean any relationship by blood, marriage or adoption, not more remote than first cousin) and lineal descendants thereof;

(iv) as a distribution to members, limited partners or stockholders of the undersigned;

Exhibit C-2

(v) if the undersigned holds the Lock-Up Securities as a trustee of a trust, to such trust's beneficiaries; or

(vi) to the undersigned's direct or indirect affiliates or subsidiaries or to any investment fund or other entity controlled or managed by the undersigned.

Notwithstanding anything herein to the contrary, the foregoing shall not be deemed to restrict the undersigned with respect to (1) the exercise (including any cashless exercise involving the transfer of securities between the undersigned and the Company) of options or warrants issued by the Company to the undersigned to acquire Lock-Up Securities; provided that any Common Stock or any securities convertible into or exchangeable or exercisable for Common Stock issuable upon exercise or settlement of such options and warrants shall be subject to the provisions of this letter, (2) the withholding of Lock-Up Securities by the Company in connection with the vesting of restricted stock held by the undersigned as of the date of the Underwriting Agreement, (3) transactions that occur in connection with, or after, the termination of the undersigned's employment by, or service to, the Company or any of its subsidiaries and for which disposition or sale of such Lock-Up Securities does not require any filing or public announcement by any party (transferor or transferee) and no filing or public announcement shall be voluntarily made in connection with such transfer or distribution, (4) entering into any written trading plan or agreement ("**Rule 10b5-1 Plan**") with a broker designed to comply with Rule 10b5-1(c)(1) promulgated pursuant to the Exchange Act, provided that any such Rule 10b5-1 Plan shall specify that any sales of Lock-Up Securities sold for the undersigned's benefit pursuant to the Rule 10b5-1 Plan shall not occur prior to the expiration of the Lock-Up Period and provided further that such action does not trigger any public filing requirement and the undersigned does not make any such public filing or other public announcement, or (5) the disposition or sale of any Lock-Up Securities pursuant to any existing contract, instruction or plan entered into pursuant to a Rule 10b5-1 Plan in existence as of the date hereof.

The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the Lock-Up Securities except in compliance with the foregoing restrictions.

This letter agreement shall automatically terminate and the undersigned shall be released from his or her or its obligations hereunder if any of the following occurs: (i) the Company notifies you in writing that it does not intend to proceed with the offering of the Securities; or (ii) for any reason after the execution of the Underwriting Agreement, the Underwriting Agreement shall be terminated (other than the provisions thereof that survive termination) prior to the consummation of the purchase of the Securities in accordance with the terms of the Underwriting Agreement.

Exhibit C-3

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Very truly yours,

By: \_\_\_\_\_  
Name:  
Title:

Exhibit C-4

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**PDL BIOPHARMA, INC.**

Debt Securities

Indenture

Dated as of February 12, 2014

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

as Trustee

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## CROSS-REFERENCE TABLE

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

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(a)(2)	7.10
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N.A. means Not Applicable.

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**EXHIBIT A – Form of Security**

INDENTURE dated as of February 12, 2014, (the “**Base Indenture**”), by and among **PDL BIOPHARMA, INC.**, a Delaware corporation (the “**Company**”) and **The Bank of New York Mellon Trust Company, N.A.**, as trustee (the “**Trustee**”).

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

**ARTICLE ONE**  
**DEFINITIONS AND INCORPORATION BY REFERENCE**

**Section 1.01**      **Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

“**Depository**” means, with respect to Securities of any Series which the Company shall determine will be issued in whole or in part as a Global Security, DTC, another clearing agency, or any successor registered as a clearing agency under the Exchange Act, and any other applicable U.S. or foreign statute or regulation, which, in each case, shall be designated by the Company pursuant to Section 2.01.

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

“**DTC**” means The Depository Trust Company, New York, New York.

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

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

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

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

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

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

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

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

if and to the extent any of the preceding items (other than letters of credit and any Interest Protection Agreement or Currency Agreement) would appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP. In addition, the term “Indebtedness” includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, the guarantee by such Person of any indebtedness of any other Person.

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

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

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

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

“**Investments**” means, with respect to any Person, all investments by such Person in other Persons in the form of direct or indirect loans (but excluding advances to customers in the ordinary course of business that are recorded as accounts receivable on the balance sheet of such Person and guarantees of Indebtedness not otherwise prohibited from being incurred under this Indenture), advances or capital contributions (excluding commission, travel, payroll, entertainment, relocation and similar advances to officers and employees and profit sharing plan contributions made in the ordinary course of business), and purchases or other acquisitions for consideration of Indebtedness, Capital Stock or other securities. If the Company or any Restricted Subsidiary sells or otherwise disposes of any Capital Stock of any direct or indirect Restricted Subsidiary of the Company such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary of the Company, the Company shall be deemed to have made an Investment on the date of any such sale or disposition equal to the fair market value of the Company of such Subsidiary not sold or disposed of, as determined in good faith by the Board of Directors.

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

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

“**Non-Recourse Indebtedness**” with respect to any Person means Indebtedness of such Person for which (i) the sole legal recourse for collection of principal and interest on such Indebtedness is against the specific Property identified in the instruments evidencing or securing such Indebtedness (and any accessions thereto and proceeds thereof) and such Property was acquired with the proceeds of such Indebtedness or such Indebtedness was

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

**Section 1.02**      **Other Definitions.**

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

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

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

“Commission” means the SEC.

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

“indenture security holder” means a Securityholder.

“indenture to be qualified” means this Indenture.

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

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

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

**Section 1.04**      **Rules of Construction.**

Unless the context otherwise requires:

- (1) a term has the meaning assigned to it herein;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP and all accounting determinations shall be made in accordance with GAAP;
- (3) “or” is not exclusive and “including” means “including without limitation”;
- (4) words in the singular include the plural, and in the plural include the singular;
- (5) “herein,” “hereof” and “hereunder,” and other words of similar import, refer to this Indenture as a whole (including any Authorizing Resolution or supplemental indenture relating to the relevant Series) and not to any particular Article, Section or other subdivision;
- (6) all exhibits are incorporated by reference herein and expressly made a part of this Indenture; and
- (7) any transaction or event shall be considered “permitted by” or made “in accordance with” or “in compliance with” this Indenture or any particular provision thereof if such transaction or event is not expressly prohibited by this Indenture or such provision, as the case may be.

**ARTICLE TWO**  
**THE SECURITIES**

**Section 2.01**      **Form and Dating.**

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

- (1) the title of the Series;
- (2) the aggregate principal amount (or any limit on the aggregate principal amount) of the Series and, if any Securities of a Series are to be issued at a discount from their face amount, the method of computing the accretion of such discount;
- (3) the interest rate or method of calculation of the interest rate;
- (4) the date from which interest will accrue;
- (5) the record dates for interest payable on Securities of the Series;
- (6) the dates when, places where and manner in which principal and interest are payable;
- (7) the Registrar and Paying Agent;
- (8) the terms of any mandatory (including any sinking fund requirements) or optional redemption by the Company;

- (9) the terms of any redemption at the option of Holders;
- (10) the permissible denominations in which Securities of such Series are issuable, if different from \$2,000 and multiples of \$1,000 in excess thereof;
- (11) whether Securities of such Series will be issued in registered or bearer form and the terms of any such forms of Securities;
- (12) whether the Securities of the Series shall be issued in whole or in part in the form of a Global Security or Securities, the terms and conditions, if different from those contained in this Base Indenture, upon which such Global Security or Securities may be exchanged in whole or in part for Definitive Securities; the Depositary for such Global Security or Securities; the form of any legend or legends, if any, to be borne by any such Global Security or Securities in addition to or in lieu of the legends referred to in Section 2.15;
- (13) the currency or currencies (including any composite currency) in which principal or interest or both may be paid;
- (14) if payments of principal or interest may be made in a currency other than that in which Securities of such Series are denominated, the manner for determining such payments, including the time and manner of determining the exchange rate between the currency in which such Securities are denominated and the currency in which such Securities or any of them may be paid, and any deletions from or modifications of or additions to the terms of this Indenture to provide for or to facilitate the issuance of Securities denominated or payable, at the election of the Company or a Holder thereof or otherwise, in a Foreign Currency;
- (15) provisions for electronic issuance of Securities or issuance of Securities of such Series in uncertificated form;
- (16) any Events of Default, covenants and/or defined terms in addition to or in lieu of those set forth in this Base Indenture;
- (17) whether and upon what terms Securities of such Series may be defeased or discharged if different from the provisions set forth in this Base Indenture;
- (18) the form of the Securities of such Series, which, unless the Authorizing Resolution or supplemental indenture otherwise provides, shall be in the form of Exhibit A;
- (19) any terms that may be required by or advisable under applicable law;
- (20) the percentage of the principal amount of the Securities of such Series which is payable if the maturity of the Securities of such Series is accelerated in the case of Securities issued at a discount from their face amount;
- (21) whether Securities of such Series will or will not have the benefit of guarantees and the Company's Subsidiaries that will be the initial guarantors of such Series and, if applicable, the terms and conditions upon which such guarantees may be subordinated to other indebtedness of the respective guarantors;
- (22) whether the Securities of such Series are senior or subordinated debt securities, and if subordinated debt securities, the terms of such subordination;
- (23) whether the Securities of the Series will be convertible into or exchangeable for other Securities, common shares or other securities of any kind of the Company or another obligor, and, if so, the terms and conditions upon which such Securities will be so convertible or exchangeable, including

the initial conversion or exchange price or rate or the method of calculation, how and when the conversion price or exchange ratio may be adjusted, whether conversion or exchange is mandatory, at the option of the holder or at the Company's option, the conversion or exchange period, and any other provision in relation thereto; and

(24) any other terms in addition to or different from those contained in this Base Indenture applicable to such Series.

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

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

## **Section 2.02      Execution and Authentication.**

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

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

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

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

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

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

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

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

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

**Section 2.03      Registrar and Paying Agent.**

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

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

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

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

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

**Section 2.05      Securityholder Lists.**

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

**Section 2.06      Transfer and Exchange.**

Where a Security is presented to the Registrar or a co-Registrar with a request to register a transfer, the Registrar shall register the transfer as requested if the requirements of Section 8-401(a) of the NYUCC are met and the other provisions of this Section 2.06 are satisfied. Where Securities are presented to the Registrar or a co-Registrar with a request to exchange them for an equal principal amount of Securities of other denominations, the Registrar shall make the exchange as requested if the same requirements are met. To permit transfers and exchanges, the Trustee shall authenticate Securities at the Registrar’s request. The Registrar need not transfer or exchange any Security selected for redemption or repurchase, except the unredeemed or repurchased part thereof if the Security is redeemed or repurchased in part, or transfer or exchange any Securities for a period of 15 days before a selection of Securities to be redeemed or repurchased. Any exchange or transfer shall be without charge, except that the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto except in the case of exchanges pursuant to 2.09, 3.06, or 10.05 not involving any transfer.

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

**Section 2.07**      **Replacement Securities.**

If the Holder of a Security claims that the Security has been lost, destroyed, mutilated or wrongfully taken, the Company shall issue and execute a replacement security and, upon written request of any Officer of the Company, the Trustee shall authenticate such replacement Security, *provided*, in the case of a lost, destroyed or wrongfully taken Security, that the requirements of Section 8-405 of the NYUCC are met. If any such lost, destroyed, mutilated or wrongfully taken Security shall have matured or shall be about to mature, the Company may, instead of issuing a substitute Security therefor, pay such Security without requiring (except in the case of a mutilated Security) the surrender thereof. An indemnity bond must be sufficient in the judgment of the Company and the Trustee to protect the Company, the Trustee and any Agent from any loss which any of them may suffer if a Security is replaced, including the acquisition of such Security by a bona fide purchaser. The Company and the Trustee may charge for its expenses in replacing a Security.

**Section 2.08**      **Outstanding Securities.**

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

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

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

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

**Section 2.09**      **Temporary Securities.**

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

**Section 2.10**      **Cancellation.**

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

**Section 2.11**      **Defaulted Interest.**

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

**Section 2.12**      **Treasury Securities.**

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

**Section 2.13**      **CUSIP/ISIN Numbers.**

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

**Section 2.14**      **Deposit of Moneys.**

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

**Section 2.15**      **Book-Entry Provisions for Global Security.**

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

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

(b) Transfers of any Global Security shall be limited to transfers in whole, but not in part, to the Depositary, its successors or their respective nominees. Interests of beneficial owners in the Global Security may be

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

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

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

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

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

“THIS GLOBAL SECURITY IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS SECURITY) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE HOLDERS OF BENEFICIAL INTERESTS HEREIN, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE ANY SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO THE INDENTURE, (II) THIS GLOBAL SECURITY MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06 OF THE INDENTURE, (III) THIS GLOBAL SECURITY MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO THE INDENTURE AND (IV) THIS GLOBAL SECURITY MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE COMPANY.”

“UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN DEFINITIVE FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR TO ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.”



**Section 2.16**      **No Duty to Monitor.**

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

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

**ARTICLE THREE**  
**REDEMPTION**

**Section 3.01**      **Notices to Trustee.**

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

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

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

The Company shall give each notice provided for in this Section 3.01 at least 30 days before the notice of any such redemption is to be delivered to Holders (unless a shorter notice shall be satisfactory to the Trustee).

**Section 3.02**      **Selection of Securities to be Redeemed.**

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

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

**Section 3.03**      **Notice of Redemption.**

At least 30 days but not more than 60 days before a redemption date, the Company shall mail a notice of redemption by first-class mail, postage prepaid, to each Holder of Securities to be redeemed.

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

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

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at its expense; *provided, however*, that the Company shall deliver to the Trustee at least 15 days prior to the date on which notice of redemption is to be mailed or such shorter period as may be satisfactory to the Trustee, an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

**Section 3.04**      **Effect of Notice of Redemption.**

Once notice of redemption is mailed, Securities called for redemption become due and payable on the redemption date and at the redemption price as set forth in the notice of redemption. Upon surrender to the Paying Agent, such Securities shall be paid at the redemption price, *plus* accrued and unpaid interest to the redemption date.

**Section 3.05**      **Deposit of Redemption Price.**

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

**Section 3.06**      **Securities Redeemed in Part.**

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

**ARTICLE FOUR  
COVENANTS**

**Section 4.01**      **Payment of Securities.**

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

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

**Section 4.02**      **Maintenance of Office or Agency.**

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

**Section 4.03**      **Compliance Certificate.**

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

**Section 4.04**      **Payment of Taxes; Maintenance of Corporate Existence; Maintenance of Properties.**

The Company will:

(a) cause to be paid and discharged all lawful taxes, assessments and governmental charges or levies imposed upon the Company and its Restricted Subsidiaries or upon the income or profits of the Company and its Restricted Subsidiaries or upon Property or any part thereof belonging to the Company and its Restricted Subsidiaries before the same shall be in default, as well as all lawful claims for labor, materials and supplies which, if unpaid, might become a lien or charge upon such Property or any part thereof; *provided, however*, that the Company shall not be required to cause to be paid or discharged any such tax, assessment, charge, levy or claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and the nonpayment thereof does not, in the judgment of the Company, materially adversely affect the ability of the Company to pay all obligations under this Indenture when due; and *provided further* that the Company shall not be required to cause to be paid or discharged any such tax, assessment, charge, levy or claim if, in the judgment of the Company, such payment shall not be advantageous to the Company in the conduct of its business and if the failure so to pay or discharge does not, in its judgment, materially adversely affect the ability of the Company to pay all obligations under this Indenture when due;

(b) cause to be done all things necessary to preserve and keep in full force and effect the corporate existence of the Company and each of its Restricted Subsidiaries and to comply with all applicable laws; *provided*,

however, that nothing in this paragraph (b) shall prevent a consolidation or merger of the Company or any Restricted Subsidiary not prohibited by the provisions of Article Five or any other provision of this Indenture pertaining to a Series, and the Company may discontinue the corporate existence of any Restricted Subsidiary, or fail to comply with any such applicable laws, if, in the Company's judgment, such discontinuance or non-compliance does not materially adversely affect the ability of the Company to pay all obligations under this Indenture when due; and

(c) at all times keep, maintain and preserve all the Property of the Company and the Restricted Subsidiaries in good repair, working order and condition (reasonable wear and tear excepted) and from time to time make all needful and proper repairs, renewals, replacements, betterments and improvements thereto, so that the business carried on in connection therewith may be properly and advantageously conducted at all times; *provided, however*, that nothing in this paragraph (c) shall prevent the Company or any Restricted Subsidiary from discontinuing the operation and maintenance of any such properties if such discontinuance, in the judgment of the Company, does not materially adversely affect the ability of the Company to pay all obligations under this Indenture when due.

**Section 4.05**      **Waiver of Stay, Extension or Usury Laws.**

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Securities of any Series as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture; and (to the extent that it may lawfully do so) the Company expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

**ARTICLE FIVE**  
**SUCCESSOR CORPORATION**

**Section 5.01**      **When Company May Merge, etc.**

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

- (1) the Person formed by or surviving such consolidation or merger (if other than the Company), or to which such sale, lease, conveyance or other disposition will be made (collectively, the "**Successor**"), is a corporation or other legal entity organized and existing under the laws of the United States or any state thereof or the District of Columbia, and the Successor assumes by supplemental indenture in a form reasonably satisfactory to the Trustee all of the obligations of the Company under the Securities, as the case may be, and the Indenture, and
- (2) immediately after giving effect to such transaction, no Default or Event of Default has occurred and is continuing.

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

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

**ARTICLE SIX  
DEFAULTS AND REMEDIES**

**Section 6.01**      **Events of Default.**

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

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

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates \$50 million or more;

- (5) the Company or any Restricted Subsidiary that is a Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:
  - (A) commences a voluntary case,
  - (B) consents to the entry of an order for relief against it in an involuntary case,
  - (C) consents to the appointment of a Custodian of it or for all or substantially all of its Property, or
  - (D) makes a general assignment for the benefit of its creditors;
- (6) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
  - (A) is for relief against the Company or any Restricted Subsidiary that is a Significant Subsidiary as debtor in an involuntary case,

- (B) appoints a Custodian of the Company or any Restricted Subsidiary that is a Significant Subsidiary or a Custodian for all or substantially all of the Property of the Company, or
- (C) orders the liquidation of the Company or any Restricted Subsidiary that is a Significant Subsidiary, and the order or decree remains unstayed and in effect for 60 days.

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

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

#### **Section 6.02      Acceleration.**

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

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

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

#### **Section 6.03      Other Remedies.**

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

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

#### **Section 6.04      Waiver of Existing Defaults.**

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

**Section 6.05**      **Control by Majority.**

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

**Section 6.06**      **Limitation on Suits.**

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

- (1) the Holder gives to the Trustee written notice of a continuing Event of Default on the Series;
- (2) the Holders of at least a majority in principal amount of the outstanding Securities of the Series make a written request to the Trustee to pursue the remedy;
- (3) such Holder or Holders offer to the Trustee indemnity satisfactory to the Trustee against any loss, liability or expense;
- (4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and
- (5) no written request inconsistent with such written request shall have been given to the Trustee pursuant to this Section 6.06.

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

**Section 6.07**      **Rights of Holders to Receive Payment.**

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

**Section 6.08**      **Collection Suit by Trustee.**

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

**Section 6.09**      **Trustee May File Proofs of Claim.**

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements, and advances of the Trustee, its agents and counsel) and the Securityholders allowed in any judicial proceedings relative to the Company or its creditors or Property, and unless prohibited by applicable law or

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

**Section 6.10**      **Priorities.**

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

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

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

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

The Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section 6.10.

**Section 6.11**      **Undertaking for Costs.**

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having the due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in principal amount of the Series.

**ARTICLE SEVEN**  
**TRUSTEE**

**Section 7.01**      **Duties of Trustee.**

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

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

(1) The Trustee need perform only those duties that are specifically set forth in this Indenture and no others and no implied covenants or obligations shall be read into this Indenture against the Trustee.

(2) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. The Trustee, however, in the case of certificates or opinions specifically required by any provision hereof to be furnished to it, shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture but need not confirm or investigate the accuracy of mathematical calculations or other facts or matters stated therein.



(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(1) This paragraph does not limit the effect of paragraph (b) of this Section.

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

(3) The Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05 or any other direction of the Holders permitted hereunder.

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

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

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

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

## **Section 7.02      Rights of Trustee.**

Subject to Section 7.01:

(a) The Trustee may conclusively rely and shall be fully protected in acting or refraining from acting on any document, resolution, certificate, instrument, report, or direction believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document, resolution, certificate, instrument, report, or direction.

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

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

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

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

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

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

(h) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

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

(j) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

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

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

(m) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

**Section 7.03      Individual Rights of Trustee.**

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

**Section 7.04      Trustee's Disclaimer.**

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

**Section 7.05**      **Notice of Defaults.**

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

**Section 7.06**      **Reports by Trustee to Holders.**

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

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

**Section 7.07**      **Compensation and Indemnity.**

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

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

**Section 7.08**      **Replacement of Trustee.**

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

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

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

A successor trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Immediately after that, the retiring Trustee shall, upon payment of its charges hereunder, transfer all Property held by it as Trustee to the successor trustee, the resignation or removal of the retiring Trustee shall become effective, and the successor trustee shall have all the rights, powers and duties of the Trustee under this Indenture. A successor trustee shall mail notice of its succession to each Securityholder.

**Section 7.09**      **Successor Trustee by Merger, etc.**

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

**Section 7.10**      **Eligibility; Disqualification.**

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

**Section 7.11**      **Preferential Collection of Claims Against Company.**

The Trustee shall comply with TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated therein.

**ARTICLE EIGHT**  
**DISCHARGE OF INDENTURE**

**Section 8.01**      **Defeasance upon Deposit of Moneys or Government Obligations.**

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

(b) Upon the Company's exercise under paragraph (a) of the option applicable to this paragraph (b), with respect to any Series, the Company shall be deemed to have been released and discharged from its obligations with respect to the outstanding Securities of the Series on the date the applicable conditions set forth below are satisfied (hereinafter, "**Legal Defeasance**"). For this purpose, such Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Securities of a Series, which shall thereafter be deemed to be "outstanding" only for the purposes of the Sections and matters under this Indenture referred to in (i) and (ii) below, and the Company shall be deemed to have satisfied all its other obligations under such Securities and this Indenture insofar as such Securities are concerned, except for the following which

shall survive until otherwise terminated or discharged hereunder: (i) the rights of Holders of outstanding Securities of a Series to receive solely from the trust fund described in paragraph (d) below and as more fully set forth in such paragraph, payments in respect of the principal of and interest on such Securities when such payments are due and (ii) obligations listed in Section 8.02, subject to compliance with this Section 8.01. The Company may exercise its option under this paragraph (b) with respect to a Series notwithstanding the prior exercise of its option under paragraph (c) below with respect to the Securities of the Series.

(c) Upon the Company's exercise under paragraph (a) of the option applicable to this paragraph (c) with respect to a Series, the Company shall be released and discharged from the obligations under any covenant contained in Article Five and Sections 4.04 (but only to the extent it applies to Restricted Subsidiaries) and any other covenant contained in or referenced in the Authorizing Resolution or supplemental indenture relating to such Series (to the extent such release and discharge shall not be prohibited thereby), on and after the date the conditions set forth below are satisfied (hereinafter, "Covenant Defeasance"), and the Securities of such Series shall thereafter be deemed to be not "outstanding" for the purpose of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder. For this purpose, such Covenant Defeasance means that, with respect to the outstanding Securities of a Series, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.01(3) or otherwise, but, except as specified above, the remainder of this Indenture and such Securities shall be unaffected thereby.

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

(1) The Company shall have irrevocably deposited in trust with the Trustee (or another qualifying trustee), pursuant to an irrevocable trust and security agreement in form and substance reasonably satisfactory to the Trustee, money in the currency in which the Securities of such Series are payable or Government Obligations or a combination thereof in such amounts and at such times as are sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of and interest on the outstanding Securities of such Series to maturity or redemption; provided, however, that the Trustee (or other qualifying trustee) shall have received an irrevocable written order from the Company instructing the Trustee (or other qualifying trustee) to apply such money or the proceeds of such Government Obligations to said payments with respect to the Securities of such Series to maturity or redemption;

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

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

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

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

(6) the Company shall have delivered to the Trustee an Opinion of Counsel (subject to customary assumptions and qualifications) to the effect that, assuming no intervening bankruptcy of the Company between the date of deposit and the 123<sup>rd</sup> day following the deposit and assuming that no Holder is an "insider" of the Company under applicable Bankruptcy Law, after the 123<sup>rd</sup> day following the deposit, the trust funds shall not be subject to the effect of Section 547 of the United States Bankruptcy Code or any analogous New York State law provision; and

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

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

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

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

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

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

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

## **Section 8.02      Survival of the Company's Obligations.**

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

**Section 8.03**      **Application of Trust Money.**

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

**Section 8.04**      **Repayment to the Company.**

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

**Section 8.05**      **Reinstatement.**

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

**ARTICLE NINE  
RESERVED**

**ARTICLE TEN  
AMENDMENTS, SUPPLEMENTS AND WAIVERS**

**Section 10.01**      **Without Consent of Holders.**

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

- (1) to cure any ambiguity, omission, defect or inconsistency;
- (2) to comply with Article Five;

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

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

**Section 10.02      With Consent of Holders.**

The Company and the Trustee may amend or supplement this Indenture or the Securities of a Series without notice to any Securityholder of such Series but with the written consent of the Holders of at least a majority in principal amount of the outstanding Securities of each Series affected by the amendment (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities of such Series). Each such Series shall vote as a separate class. The Holders of a majority in principal amount of the outstanding Securities of any Series may waive compliance by the Company with any provision of the Securities of such Series or of this Indenture relating to such Series without notice to any Securityholder (including any waiver granted in connection with a purchase of, or tender offer or exchange offer for, Securities of such Series). Without the consent of each Holder of a Security affected thereby, however, an amendment, supplement or waiver, including a waiver pursuant to Section 6.04, may not:

- (1) reduce the amount of Securities of the relevant Series whose Holders must consent to an amendment, supplement or waiver;
- (2) reduce the rate of or extend the time for payment of interest, including defaulted interest, on any Security;

(3) reduce the principal of or extend the fixed maturity of any Security or alter the provisions (including related definitions) with respect to redemption of any Security pursuant to Article Three hereof or with respect to any obligations on the part of the Company to offer to purchase or to redeem Securities of a Series pursuant to the Authorizing Resolution or supplemental indenture pertaining to such Series;

(4) make any change that adversely affects any right of a Holder to convert or exchange any Security into or for shares of the Company's common stock or other securities, cash or other property in accordance with the terms of such Security;



(5) modify the ranking or priority of the Securities of the relevant Series or any guarantee thereof;

(6) release any guarantor of any Series from any of its obligations under its guarantee or this Indenture otherwise than in accordance with the terms of this Indenture;

(7) make any change in Sections 6.04, 6.07 or this Section 10.02;

(8) waive a continuing Default or Event of Default in the payment of the principal of or interest on any Security; or

(9) make any Security payable at a place or in money other than that stated in the Security, or impair the right of any Securityholder to bring suit as permitted by Section 6.07.

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

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

### **Section 10.03      Compliance with Trust Indenture Act.**

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

### **Section 10.04      Revocation and Effect of Consents.**

A consent to an amendment, supplement or waiver by a Holder shall bind the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. Unless otherwise provided in the consent or the consent solicitation statement or other document describing the terms of the consent, any Holder or subsequent Holder may revoke the consent as to its Security or portion of a Security. Any revocation of a consent by the Holder of a Security or any such subsequent Holder shall be effective only if the Trustee receives the notice of revocation before the date on which the Trustee receives an Officers' Certificate from the Company certifying that the requisite number of consents have been received.

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

An amendment, supplement or waiver with respect to a Series becomes effective upon the (i) receipt by the Company or the Trustee of the requisite consents, (ii) satisfaction of any conditions to effectiveness as set forth in this Indenture or any indenture supplemental hereto containing such amendment, supplement or waiver and (iii) execution of such amendment, supplement or waiver (or the related supplemental indenture) by the Company and the Trustee. After an amendment, supplement or waiver with respect to a Series becomes effective, it shall bind every Holder of such Series, unless it makes a change described in any of clauses (1) through (9) of Section 10.02, in which case, the amendment, supplement or waiver shall bind a Holder of a Security who is affected thereby only if it has consented to such amendment, supplement or waiver and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security; *provided* that no such waiver shall

impair or affect the right of any Holder to receive payment of principal of and interest on a Security, on or after the respective due dates expressed in such Security, or to bring suit for the enforcement of any such payment on or after such respective dates without the consent of such Holder.

**Section 10.05**      **Notation on or Exchange of Securities.**

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

**Section 10.06**      **Trustee to Sign Amendments, etc.**

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

**ARTICLE ELEVEN**  
**SECURITIES IN FOREIGN CURRENCIES**

**Section 11.01**      **Applicability of Article.**

Whenever this Indenture provides for (i) any action by, or the determination of any of the rights of, Holders of Securities of any Series in which not all of such Securities are denominated in the same currency, or (ii) any distribution to Holders of Securities, in the absence of any provision to the contrary pursuant to this Indenture or the Securities of any particular Series, any amount in respect of any Security denominated in a Foreign Currency shall be treated for any such action or distribution as that amount of Dollars that could be obtained for such amount on such reasonable basis of exchange and as of the record date with respect to Securities of such Series (if any) for such action, determination of rights or distribution (or, if there shall be no applicable record date, such other date reasonably proximate to the date of such action, determination of rights or distribution) as the Company may specify in a written notice to the Trustee or, in the absence of such written notice, as the Trustee may determine.

**ARTICLE TWELVE**  
**MISCELLANEOUS**

**Section 12.01**      **Trust Indenture Act Controls.**

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

**Section 12.02**      **Notices.**

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

if to the Company:

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

if to the Trustee:

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

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

Any notice or communication mailed to a Securityholder shall be mailed to him by first class mail at his address as it appears on the registration books of the Registrar and shall be sufficiently given to him if so mailed within the time prescribed.

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

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

In addition to the foregoing, the Trustee agrees to accept and act upon notice, instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods. If the party elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

**Section 12.03      Communications by Holders with Other Holders.**

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

**Section 12.04      Certificate and Opinion as to Conditions Precedent.**

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

- (1) an Officers' Certificate (which shall include the statements set forth in Section 12.05) stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and
- (2) an Opinion of Counsel (which shall include the statements set forth in Section 12.05) stating that, in the opinion of such counsel, all such conditions precedent and covenants, compliance with which constitutes a condition precedent, if any, provided for in this Indenture relating to the proposed action or inaction, have been complied with and that any such section does not conflict with the terms of this Indenture.

**Section 12.05**      **Statements Required in Certificate or Opinion.**

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- (1) a statement that the person making such certificate or opinion has read such covenant or condition;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

**Section 12.06**      **Rules by Trustee and Agents.**

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

**Section 12.07**      **Legal Holidays.**

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

**Section 12.08**      **Governing Law.**

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

**Section 12.09**      **No Adverse Interpretation of Other Agreements.**

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

**Section 12.10**      **No Recourse Against Others.**

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

**Section 12.11**      **Successors and Assigns.**

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

**Section 12.12**      **Duplicate Originals.**

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

**Section 12.13**      **Severability.**

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

**Section 12.14**      **Waiver of Jury Trial.**

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

**SIGNATURES**

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

**PDL BIOPHARMA, INC.**

By: \_\_\_\_\_  
Name:  
Title:

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

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

No. \_\_\_\_\_

CUSIP/ISIN No.: \_\_\_\_\_

[Title of Security]

**PDL BIOPHARMA, INC.**  
a Delaware corporation

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

Interest Payment Dates: \_\_\_\_\_ and \_\_\_\_\_

Record Dates: \_\_\_\_\_ and \_\_\_\_\_

Authenticated: \_\_\_\_\_ Dated: \_\_\_\_\_

**PDL BIOPHARMA, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The Bank of New York Mellon Trust Company, N.A.,  
as Trustee, certifies that this is one of the Securities  
referred to in the within mentioned Indenture.

By: \_\_\_\_\_  
Authorized Signatory

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

**PDL BIOPHARMA, INC.**

[Title of Security]

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

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

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

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

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

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

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

Notice of redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each Holder of Securities to be redeemed at its registered address. Securities in denominations larger than \_\_\_\_\_<sup>2</sup> may be redeemed in part. On and after the redemption date interest ceases to accrue on Securities or portions of them called for redemption, *provided* that if the Company shall default in the payment of such Securities at the redemption price together with accrued interest, interest shall continue to accrue at the rate borne by the Securities.

<sup>1</sup> If applicable.

<sup>2</sup> Insert applicable denominations and multiples.



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

**6. Denominations, Transfer, Exchange.** The Securities are in registered form only without coupons in denominations of <sup>4</sup> and integral multiples of <sup>5</sup> in excess thereof.<sup>5</sup> A Holder may transfer or exchange Securities by presentation of such Securities to the Registrar or a co-Registrar with a request to register the transfer or to exchange them for an equal principal amount of Securities of other denominations. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not transfer or exchange any Security selected for redemption or purchase, except the unredeemed or unpurchased part thereof if the Security is redeemed or purchased in part, or transfer or exchange any Securities for a period of 15 days before a selection of Securities to be redeemed or purchased.

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

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

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

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

**11. Trustee Dealings With Company.** Subject to certain limitations imposed by the TIA, the Trustee under the Indenture, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Company or its affiliates, and may otherwise deal with the Company or its affiliates, as if it were not Trustee, including owning or pledging the Securities.

<sup>3</sup> If applicable.

<sup>4</sup> Insert applicable denominations and multiples.

<sup>5</sup> Insert applicable denominations and multiples.

<sup>6</sup> If different terms apply, insert a brief summary thereof.

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

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

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

**15. Abbreviations.** Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= custodian), and U/G/M/A (= Uniform Gift to Minors Act).

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

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

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

**ASSIGNMENT FORM**

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

and irrevocably appoint \_\_\_\_\_ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: \_\_\_\_\_

\_\_\_\_\_  
Your signature  
(Sign exactly as your name appears on the other side of this Security)

Signature Guarantee:

\_\_\_\_\_

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**PDL BIOPHARMA, INC.**

as Issuer

**AND**

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

as Trustee

**SUPPLEMENTAL INDENTURE**

Dated as of February 12, 2014

\$300,000,000

4.00% Convertible Senior Notes due 2018

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SUPPLEMENTAL INDENTURE, dated as of February 12, 2014 (this “Supplemental Indenture”), between PDL BioPharma, Inc., a Delaware corporation (the “Company”), and The Bank of New York Mellon Trust Company, N.A, as trustee (the “Trustee”) under the Indenture dated as of February 12, 2014, between the Company and the Trustee (as amended or supplemented from time to time in accordance with the terms thereof, the “Original Indenture”).

#### RECITALS OF THE COMPANY

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

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

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

WHEREAS, pursuant to the terms of the Original Indenture, the Company desires to establish a new series of its Securities to be known as its “4.00% Convertible Senior Notes due 2018” (the “Notes”), the form and substance of such Notes and the terms, provisions and conditions thereof to be set forth as provided in the Original Indenture and this Supplemental Indenture;

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

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



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

## ARTICLE I

### DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

#### Section 1.01. Scope of Supplemental Indenture.

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

#### Section 1.02. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Conversion Rate” means, initially, 109.1048 shares of Common Stock per \$1,000 principal amount of Notes, subject to adjustment as set forth herein.

“Custodian” has the meaning specified in Section 5.01.

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

“Daily Settlement Amount,” for each of the 60 consecutive Trading Days during the Settlement Averaging Period, shall consist of:

- (i) cash equal to the lesser of (x) one-sixtieth (1/60th) of \$1,000 and (y) the Daily Conversion Value, and
- (ii) if the Daily Conversion Value exceeds one-sixtieth (1/60th) of \$1,000, a number of shares of Common Stock equal to (x) the difference between the Daily Conversion Value and one-sixtieth (1/60th) of \$1,000, divided by (y) the Daily VWAP of the Common Stock for such Trading Day.

“Daily VWAP” of the Common Stock, in respect of any Trading Day, means the per share volume-weighted average price on the Relevant Exchange as displayed under the heading “Bloomberg VWAP” on Bloomberg page “PDLI <EQUITY> AQR” (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such Trading Day as determined in a commercially reasonable manner by a nationally recognized independent investment

banking firm retained for the purpose by the Company, using a volume-weighted average price method). The Daily VWAP shall be determined without regard to after-hours trading or any other trading outside of the regular trading session.

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

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

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

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

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

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

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

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

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

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

(1) the Common Stock (or other common stock into which the Notes are convertible or American Depositary Shares representing such common stock) is not traded or quoted on any of the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or any of their respective successors); or

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

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

- (a) that does not result in a reclassification, conversion, exchange or cancellation of the outstanding Common Stock; or
  - (b) pursuant to which the holders of the Common Stock immediately prior to such transaction have the entitlement to exercise, directly or indirectly, 50% or more of the voting power of all shares of Capital Stock entitled to vote generally in the election of directors of the continuing or surviving corporation immediately after the transaction with such holders’ proportional voting power immediately after such event being in substantially the same proportions as their respective voting power before such event; or
  - (c) which is effected solely to change the Company’s jurisdiction of incorporation to another U.S. jurisdiction and results in a reclassification, conversion or exchange of outstanding shares of the Common Stock solely into shares of common stock of the surviving entity; or
- (4) the Company’s stockholders approve any plan or proposal for the liquidation or dissolution of the Company;

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

above consists of Publicly Traded Securities and, as a result of such transaction or transactions, the Notes become convertible into such consideration, subject to the provisions set forth under Section 4.03 of this Supplemental Indenture.

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

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

“Fundamental Change Repurchase Notice” has the meaning specified in Section 3.01(a)(i).

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

“Global Note” means any Note that is a Global Security.

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

“Initial Dividend Threshold” has the meaning specified in Section 4.04(d).

“Initial Notes” has the meaning specified in Section 2.01.

“Interest Payment Date” means, with respect to the payment of interest on the Notes, each February 1 and August 1 of each year, beginning on August 1, 2014.

“Last Reported Sale Price” of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the Relevant Exchange. The Last Reported Sale Price shall be determined without reference to after-hours or extended market trading. If the Common Stock is not listed for trading on the Relevant Exchange on the relevant date, the “Last Reported Sale Price” of the Common Stock shall be the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted, the “Last Reported Sale Price” of the Common Stock shall be the average of the midpoint of the last bid and ask prices for the Common Stock on the relevant date from each of three U.S. nationally recognized independent investment banking firms selected by the Company for this purpose.

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

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

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

“Merger Event” has the meaning specified in Section 4.07(a).

“Merger Valuation Percentage” for any Merger Event shall be equal to (x) the arithmetic average of the Last Reported Sale Prices of one share of such Merger Common Stock over the relevant Merger Valuation Period (determined as if references to “Common Stock” in the definition of “Last Reported Sale Price” were references to the “Merger Common Stock” for such Merger Event), *divided by* (y) the arithmetic average of the Last Reported Sale Prices of the Common Stock over the relevant Merger Valuation Period.

“Merger Valuation Period” for any Merger Event means the five consecutive Trading Day period immediately preceding, but excluding, the effective date for such Merger Event.

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

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

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

“Place of Payment” means, for purposes of the Notes, New York, New York.

“Publicly Traded Securities” means, in respect of a transaction or transactions described in clause (2) or clause (3) of the definition of Fundamental Change, shares of

common stock traded on the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or any of their respective successors), or which shall be so traded when issued or exchanged in connection with such transaction or transactions.

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

“Regular Record Date” means, with respect to the payment of interest on the Notes, the January 15 (whether or not a Business Day) immediately preceding an Interest Payment Date on February 1 and the July 15 (whether or not a Business Day) immediately preceding an Interest Payment Date on August 1.

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

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

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

“Settlement Averaging Period,” with respect to any Note, means the 60 consecutive Trading Day period beginning on, and including, the second Trading Day immediately following the related Conversion Date, except that “Settlement Averaging Period” means, with respect to any Note the Conversion Date for which occurs during the period beginning on, and including, August 1, 2017 and ending at the close of business on the second Scheduled Trading Day immediately preceding Stated Maturity, the 60 consecutive Trading Day period beginning on, and including, the 62nd Scheduled Trading Day immediately preceding Stated Maturity.

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

“Stated Maturity” means, with respect to any Note and the payment of the principal amount thereof, August 1, 2018.

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

“Trading Day” means a day on which (i) trading in the Common Stock (or other security for which a closing sale price must be determined) generally occurs on the Relevant Exchange or, if the Common Stock (or such other security) is not then listed on the Relevant Exchange, on the principal other market on which the Common Stock (or such other security) is then traded, and (ii) a Last Reported Sale Price for the Common Stock (or closing sale price for such other security) is available on such securities exchange or market; *provided* that, for purposes of determining Settlement Amounts due upon conversion only, “Trading Day” means a day on which (i) there is no Market

Disruption Event and (ii) trading in the Common Stock generally occurs on the Relevant Exchange or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then listed or admitted for trading; *provided, further*, that if the Common Stock is not so listed or admitted for trading, “Trading Day” means a Business Day.

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

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

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

“Valuation Period” has the meaning specified in Section 4.04(c).

Section 1.03. Rules of Construction.

Unless the context otherwise requires:

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

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP and all accounting determinations shall be made in accordance with GAAP;

(3) “or” is not exclusive and “including” means “including without limitation”;

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

(5) “herein,” “hereof” and “hereunder,” and other words of similar import, refer to this Supplemental Indenture as a whole (including any Authorizing Resolution or supplemental indenture relating to the relevant Series) and not to any particular Article, Section or other subdivision;



(6) all exhibits are incorporated by reference herein and expressly made a part of the Indenture;

(7) any transaction or event shall be considered “permitted by” or made “in accordance with” or “in compliance with” the Indenture or any particular provision thereof if such transaction or event is not expressly prohibited by the Indenture or such provision, as the case may be; and

(8) any reference to interest on, or in respect of, any Note in the Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 5.02 and any express mention of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

## ARTICLE II

### THE SECURITIES

#### **Section 2.01. Title and Terms; Payments.**

There is hereby established pursuant to Sections 2.01 and 2.02 of the Original Indenture a series of Securities designated the “4.00% Convertible Senior Notes due 2018” initially limited in aggregate principal amount to \$300,000,000 (as increased by the aggregate principal amount of any Additional Notes issued pursuant to this Section 2.01), except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes pursuant to this Indenture.

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

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

The Company may, without the consent of the Holders of the Notes, hereafter issue additional notes (“Additional Notes”) under the Indenture having the same ranking and the same interest rate, maturity and other terms as the Notes issued on the date of this Supplemental Indenture (the “Initial Notes”) in an unlimited aggregate principal amount; *provided* that no such Additional Notes shall be issued with the same CUSIP number unless they will be fungible with the Initial Notes for United States federal income tax and securities law purposes. Any such Additional Notes shall constitute a single series together with the Initial Notes for all purposes hereunder, including, without limitation, for purposes of any waivers, supplements or amendments to the Indenture requiring the approval of Holders of the Notes and any offers to purchase the Notes. Holders of such Additional Notes shall vote together with the Holders of the Notes as one class. In addition, the Company may, to the extent permitted by law, purchase Notes in the open market or by tender offer at any price or by private agreement. The Company shall cause all Notes surrendered for the purpose of payment, repurchase (including as described

above), registration of transfer or exchange or conversion, if surrendered to any Person other than the Trustee (including any of the Company's Agents, Subsidiaries or Affiliates), to be surrendered to the Trustee for cancellation in accordance with Section 2.10 of the Original Indenture. Any Notes repurchased by the Company or one of its Subsidiaries shall no longer be considered "outstanding" under the Indenture.

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

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

**Section 2.02. Book-Entry Provisions for Global Notes.**

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

(b) Definitive Notes shall be transferred to all beneficial owners in exchange for their beneficial interests in a Global Note if (i) the Depositary notifies the Company that it is unwilling or unable to continue as Depositary for the Global Note and a

successor depository is not appointed by the Company within 90 days of such notice, (ii) the Depository ceases to be registered as a clearing agency under the Exchange Act and a successor depository is not appointed by the Company within 90 days of such cessation, or (iii) an Event of Default has occurred and is continuing. Definitive Notes shall not be otherwise issuable. For the avoidance of doubt, this Section 2.02 supersedes the provisions of Section 2.15 of the Original Indenture to the extent inconsistent therewith.

**Section 2.03. Reporting Requirement.**

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

**ARTICLE III**

**FUNDAMENTAL CHANGES AND REPURCHASES THEREUPON**

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

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

interest, including any Additional Interest. The requirement for the Company to repurchase any Notes on the Fundamental Change Repurchase Date shall be subject to extension to comply with applicable law.

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

- (i) delivery to the Paying Agent by a Holder of a duly completed notice (the “Fundamental Change Repurchase Notice”) in the form set forth on the reverse of the Note as Exhibit C thereto, if the Notes are Definitive Notes, or in compliance with the Depository’s procedures for tendering interests in Global Notes, if the Notes are not Definitive Notes, in each case prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date; and
- (ii) delivery of the Notes, in the case of Definitive Notes, to the Paying Agent appointed by the Company (together with all necessary endorsements for transfer), or book-entry transfer of the Notes, in compliance with the procedures of the Depository, such delivery or transfer being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor.

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

- (i) if such Notes are Definitive Notes, the certificate numbers of such Notes to be repurchased;
- (ii) the portion of the principal amount of such Notes to be repurchased, which must be \$1,000 or an integral multiple thereof; and
- (iii) that such Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and the Indenture;

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

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

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

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

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

Each Fundamental Change Company Notice shall specify:

- (i) the events causing a Fundamental Change;
- (ii) whether such Fundamental Change is a Make-Whole Fundamental Change, in which case the provisions set forth in Section 4.06 shall be applicable;
- (iii) the date of the occurrence of the Fundamental Change;
- (iv) the last date on which a Holder of Notes may exercise the repurchase right pursuant to this Article III;
- (v) the Fundamental Change Repurchase Price;
- (vi) the Fundamental Change Repurchase Date;
- (vii) the name and address of the Paying Agent and the Conversion Agent, if applicable;
- (viii) the Conversion Rate and any adjustments to the Conversion Rate;
- (ix) that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of the Indenture; and
- (x) the procedures that Holders must follow to require the Company to repurchase their Notes.

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

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

**Section 3.02. Effect of Fundamental Change Repurchase Notice.**

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

**Section 3.03. Withdrawal of Fundamental Change Repurchase Notice.**

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

- (i) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted;
- (ii) if Definitive Notes have been issued, the certificate numbers of the withdrawn Notes; and
- (iii) the principal amount, if any, of such Notes that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of an integral multiple of \$1,000;

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

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

**Section 3.04. Deposit of Fundamental Change Repurchase Price.**

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

**Section 3.05. Notes Repurchased in Whole or in Part.**

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

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

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

**Section 3.07. Repayment to the Company.**

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

**ARTICLE IV**

**CONVERSION**

**Section 4.01. Right to Convert.**

(a) Subject to and upon compliance with the provisions of this Supplemental Indenture, each Holder of Notes shall have the right, at such Holder's option, to convert the principal amount of any such Notes, or any portion of such principal amount equal to \$1,000 or an integral multiple of \$1,000, at the Conversion Rate in effect on the Conversion Date for such Notes (subject to, and in accordance with, the settlement provisions of Section 4.02, the "Conversion Obligation"), (x) prior to the close of business on the Business Day immediately preceding August 1, 2017, only upon satisfaction of one or more of the conditions described in clauses (i) through (iv) below and (y) on or after August 1, 2017, at any time prior to the close of business on the second Scheduled Trading Day immediately preceding Stated Maturity irrespective of the conditions described in clauses (i) through (iv) below:

(i) Prior to the close of business on the Business Day immediately preceding August 1, 2017, a Holder of Notes may surrender all or any portion of its Notes for conversion at any time during any fiscal quarter (and only during such fiscal quarter) after the fiscal quarter ending on June 30, 2014 if the Last Reported Sale Price of the Common Stock for at least 20 Trading Days (whether or not consecutive) in the period of 30 consecutive Trading Days ending on the last Trading Day of the immediately preceding fiscal quarter exceeds 130% of the Conversion Price on each applicable Trading Day. The Company shall determine at the beginning of each fiscal quarter commencing after the fiscal quarter ending on June 30, 2014 whether the Notes are convertible as a result of the price of the Common Stock, and if the Company determines that the Notes are convertible in accordance with this Section 4.01(a)(i), the Company shall notify the Trustee and the Conversion Agent (if other than the Trustee).

(ii) Prior to the close of business on the Business Day immediately preceding August 1, 2017, a Holder of Notes may surrender all or any portion of its Notes for conversion at any time during the five Business Day period



immediately after any five consecutive Trading Day period (the "Measurement Period") in which the Trading Price per \$1,000 principal amount of Notes (as determined following a request by a Holder of Notes in accordance with the procedures set forth in this Section 4.01(a)(ii)) for each Trading Day of the Measurement Period was less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate on each such Trading Day (the "Trading Price Condition"), subject to compliance with the procedures and conditions set forth in this Section 4.01(a)(ii) concerning the obligation to make a Trading Price determination, in which event the Trading Price Condition shall be met.

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

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

(iii) If, prior to the close of business on the Business Day immediately preceding August 1, 2017, the Company elects to:

(A) distribute to all or substantially all holders of Common Stock any rights, options or warrants entitling them for a period of not more than 60 calendar days from the record date for such distribution to subscribe for or purchase shares of Common Stock at a price per share less than the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the declaration date for such distribution; or

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

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

(iv) Prior to the close of business on the Business Day immediately preceding August 1, 2017, if a transaction or event that constitutes a Fundamental Change (but without regard to the exclusion of transactions involving Publicly Traded Securities in the paragraph following clause (4) of that definition) or a Make-Whole Fundamental Change occurs, Holders may surrender Notes for conversion at any time from and after the 70th Scheduled Trading Day prior to the anticipated Effective Date of such transaction until the 45th day following the actual Effective Date of such transaction (or, if earlier and to the extent applicable, the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date). The Company shall notify Holders of the anticipated Effective Date of the Fundamental Change or Make-Whole Fundamental Change, as the case may be, (i) as soon as practicable following the date the Company publicly announces such transaction or event but in no event less than 70 Scheduled Trading Days prior to the anticipated Effective Date of such transaction or event; or (ii) if the Company does not have knowledge of such transaction or event at least 70 Scheduled Trading Days prior to the anticipated Effective Date of such transaction or event, within one Business Day of the date

upon which the Company receives notice, or otherwise becomes aware, of such transaction or event, but in no event later than the actual Effective Date of such transaction or event. The Company shall update its notice promptly if the anticipated Effective Date subsequently changes.

(b) Notwithstanding anything herein to the contrary, Holders may surrender all or any portion of their Notes for conversion at any time beginning on August 1, 2017, until the close of business on the second Scheduled Trading Day immediately preceding Stated Maturity irrespective of the conditions set forth in Section 4.01(a)

**Section 4.02. Conversion Procedures.**

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

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

(i) complete and manually sign the conversion notice provided on the back of the Note (the "Conversion Notice"), or a facsimile of the Conversion Notice;

(ii) deliver the Conversion Notice, which is irrevocable, and the Note to the Conversion Agent;

(iii) if required, furnish appropriate endorsements and transfer documents;

(iv) if required, pay all transfer or similar taxes as set forth in Section 4.08; and

(v) pay the funds, if any, required under Section 4.03(d).

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

(c) Each Conversion Notice shall state the name or names (with address or addresses) in which any certificate or certificates for shares of Common Stock which

shall be issuable on such conversion shall be issued. All such Notes surrendered for conversion shall, unless the shares issuable on conversion are to be issued in the same name as the registration of such Notes, be duly endorsed by, or be accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the Holder or his duly authorized attorney.

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

Each conversion shall be deemed to have been effected as to any such Notes (or portion thereof) surrendered for conversion immediately prior to the close of business on the relevant Conversion Date; *provided, however*, that the person in whose name the certificate or certificates for the number of shares of Common Stock, if any, that shall be issuable upon such conversion in respect of any Trading Day during a Settlement Averaging Period, if applicable, shall become the holder of record of such shares of Common Stock as of the close of business on the last Trading Day of such Settlement Averaging Period.

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

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

**Section 4.03. Settlement Upon Conversion.**

(a) Upon conversion of any Note, except as set forth in Section 4.06 and Section 4.07, on the third Trading Day immediately following the last Trading Day of the relevant Settlement Averaging Period, the Company shall pay or deliver, as the case may be, to converting Holders, in respect of each \$1,000 principal amount of Notes being converted, a "Settlement Amount" equal to the sum of the Daily Settlement Amounts for each of the 60 consecutive Trading Days during the related Settlement Averaging Period for such Note, together with cash, if applicable, in lieu of delivering any fractional share of Common Stock in accordance with Section 4.03(d).

(b) The Daily Settlement Amounts (if applicable) and the Daily Conversion Values (if applicable) shall be determined by the Company or its designated agent

promptly following the last day of the Settlement Averaging Period. Promptly after such determination of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering any fractional share of Common Stock, the Company shall notify the Trustee and the Conversion Agent (if other than the Trustee) of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering fractional shares of Common Stock. The Trustee and the Conversion Agent (if other than the Trustee) shall have no responsibility for any such determination.

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

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

(d) The Company shall not issue fractional shares of Common Stock upon conversion of Notes. If any fractional share of stock would be issuable upon the conversion of any Notes, the Company shall make payment therefor in cash in lieu of fractional shares of Common Stock based on the Daily VWAP of the Common Stock on the last Trading Day of the relevant Settlement Averaging Period. If multiple Notes shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issuable upon conversion shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted hereby) so surrendered.

**Section 4.04. Adjustment of Conversion Rate.**

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

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

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

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

where

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

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

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

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

Any adjustment to the Conversion Rate pursuant to this Section 4.04(a) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 4.04(a) is declared but not so paid or made, or any share split or combination of the type described in this Section 4.04(a) is announced but the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, or not to split or combine the outstanding shares of the Common Stock, as the case may be, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared or such share split or combination had not been announced.

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

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

where

CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

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

OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Dividend Date for such distribution;

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

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

Any increase to the Conversion Rate pursuant to this Section 4.04(b) shall be made successively whenever any such rights, options, or warrants are issued and shall become effective immediately after the open of business on the Ex-Dividend Date for such issuance. To the extent that shares of Common Stock are not delivered pursuant to such rights, options or warrants, after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered. To the extent such rights, options or warrants are not so issued, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such Ex-Dividend Date for such issuance had not occurred. For the purposes of this Section 4.04(b) and for the purpose of clause (A) of Section 4.01(a)(iii), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately

preceding the date of announcement of such distribution, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on the exercise or conversion thereof, with the value of such consideration, if other than cash, as shall be determined by the Board of Directors.

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

(i) dividends or distributions (including share splits) as to which an adjustment was effected pursuant to Section 4.04(a), Section 4.04(b) or Section 4.04(e);

(ii) dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to Section 4.04(d); and

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

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

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

where



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

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

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

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

Any increase to the Conversion Rate pursuant the preceding paragraph of this Section 4.04(c) shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, the

Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such distribution had not been declared.

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

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

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

where

CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for the Spin-Off;

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

FMV = the average of the Last Reported Sale Prices of the capital stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock (determined by reference to the definition of Last Reported Sale Price as if such Capital Stock or similar equity interest were the Common Stock) over the first 10 consecutive Trading Day period immediately following, and including, the Ex-Dividend Date for the Spin-Off (such period, the "Valuation Period"); and

MP<sub>0</sub> = the average of the Last Reported Sale Prices of Common Stock over the Valuation Period.

The adjustment to the Conversion Rate pursuant to the preceding paragraph of this Section 4.04(c) shall be made immediately after the open of business on the day after the last Trading Day of the Valuation Period, but shall be given effect as of the open of business on the Ex-Dividend Date for the Spin-Off. If the Ex-Dividend Date for the Spin-Off is less than 10 Trading Days prior to, and including, the end of the Settlement Averaging Period in respect of any conversion, references within this Section 4.04(c) to 10 consecutive Trading Days shall be deemed replaced, for purposes of calculating the affected Conversion Rates and the affected Daily Conversion Values in respect of that conversion, with such lesser number of Trading Days as shall elapse from, and including, the Ex-Dividend Date for the Spin-Off to, and including, the last Trading Day of such Settlement Averaging Period. For purposes of determining the Conversion Rate, in respect of any conversion during the 10 consecutive Trading Days commencing on the Ex-Dividend Date for any Spin-Off, references within the portion of this Section 4.04(c) related to Spin-Offs to 10 consecutive Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date for such Spin-Off to, but excluding, the relevant Conversion Date. If such Spin-Off is not consummated, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such Spin-Off had not been declared.

(d) If the Company makes or pays any cash dividend or distribution to all, or substantially all, holders of the outstanding Common Stock (other than a regular, quarterly cash dividend that does not exceed \$0.15 per share (the "Initial Dividend Threshold") and other than distributions pursuant to Section 4.04(e)), the Conversion Rate shall be increased based on the following formula:

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

where

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

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

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

$T$  = the Initial Dividend Threshold; *provided* that if the dividend or distribution is not a regular, quarterly cash dividend, the Initial Dividend Threshold shall be deemed to be zero; and

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

The Initial Dividend Threshold shall be subject to adjustment in a manner inversely proportional to adjustments to the Conversion Rate; *provided* that no adjustment shall be made to the Initial Dividend Threshold for any adjustment to the Conversion Rate pursuant to this Section 4.04(d).

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

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

(e) If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for Common Stock (subject to the tender offer rules under the Exchange Act then applicable), if the cash and value of any other consideration included in the payment per share of Common Stock exceeds the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which

tenders or exchanges may be made pursuant to such tender or exchange offer (the "Expiration Date"), the Conversion Rate shall be increased based on the following formula:

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

where

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

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

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

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

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

$SP$  = the average of the Last Reported Sale Prices of Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Expiration Date.

The adjustment to the Conversion Rate pursuant to this Section 4.04(e) shall be given effect at the open of business on the Trading Day next succeeding the Expiration Date. If the Trading Day next succeeding the Expiration Date is less than 10 consecutive Trading Days prior to, and including, the end of the Settlement Averaging Period in respect of any conversion, references in this Section 4.04(e) to 10 consecutive Trading Days shall be deemed replaced, for purposes of calculating the affected Conversion Rates and the affected Daily Conversion Values in respect of that conversion, with such lesser number of Trading Days as shall elapse from, and including, the Trading Day next succeeding the Expiration Date to, and including, the last Trading Day of such Settlement Averaging Period. For purposes of determining the Conversion Rate, in respect of any conversion during the 10 consecutive Trading Days commencing on the Trading Day next succeeding the Expiration Date, references in this Section 4.04(e) to 10 consecutive Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the Expiration Date to, but excluding, the relevant Conversion Date.

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

(g) Adjustments to the Conversion Rate shall be calculated to the nearest 1/10,000th of a share. No adjustment to the Conversion Rate shall be required to be made for the Company's issuance of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or the right, option or warrant to purchase shares of Common Stock or such convertible or exchangeable securities, other than as provided in this Section 4.04 and in Section 4.12 hereof.

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

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

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

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

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

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

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

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

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

(l) If:

(i) the Company is required to satisfy its Conversion Obligation through delivery of a combination of cash and Common Stock and shares of Common Stock are deliverable to settle the Daily Settlement Amount for a given Trading Day within the Settlement Averaging Period applicable to Notes that a Holder has converted,

(ii) any distribution or transaction set forth in Section 4.04(a), Section 4.04(b), Section 4.04(c), Section 4.04(d) or Section 4.04(e) has not yet resulted in an adjustment to the Conversion Rate on the Trading Day in question, and

(iii) the shares of Common Stock the Holder shall receive in respect of such Trading Day are not entitled to participate in the relevant distribution or transaction (because they were not held on a related record date or otherwise),

then the Company shall adjust the number of shares that it delivers to the Holder in respect of the relevant Trading Day to reflect the relevant distribution or transaction.

#### **Section 4.05. Adjustments of Prices.**

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

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

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

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

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

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

- (ii) more than \$12.50 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table in Schedule A pursuant to subsection (c) below), no Additional Shares shall be added to the Conversion Rate.
- (iii) less than \$7.97 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table in Schedule A pursuant to subsection (c) below), no Additional Shares shall be added to the Conversion Rate.

Notwithstanding the foregoing, in no event shall the Conversion Rate, as increased by any Additional Shares applicable, exceed 125.4705 per \$1,000 principal amount of Notes, subject to adjustment in the same manner and for the same events as the Conversion Rate as set forth in Section 4.04.

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

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

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



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

(a) In the event of:

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

in each case, as a result of which the outstanding Common Stock would be converted into, or exchanged for shares of stock, other securities or other property or assets (including cash or any combination thereof) (any such event, a "Merger Event"), then, at and after the effective time of the transaction, the right to convert each \$1,000 principal amount of Notes shall be changed into the right to convert such principal amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such transaction would have owned or been entitled to receive (the "Reference Property") upon such transaction; *provided* that, at and after the effective time of any such Merger Event, (i) any amount otherwise payable in cash upon conversion of the Notes as set forth under Section 4.03 shall continue to be payable in cash, (ii) the number of shares of Common Stock otherwise deliverable upon conversion of the Notes under Section 4.03, if any, shall be instead deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have received in such Merger Event and (iii) the Daily VWAP shall be calculated based on the value of a unit of Reference Property that a holder of one share of Common Stock would have received in such Merger Event.

For purposes of the foregoing, the Reference Property that a holder of Common Stock would have been entitled to in the case of reclassifications, consolidations, mergers, combinations, binding share exchanges, sales or transfers of assets or other transactions that cause the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election) shall be deemed to be (i) the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election or (ii) if no holders of Common Stock affirmatively make such an election, the types and amounts of consideration actually received by the holders of Common Stock. The Company shall notify Holders of the weighted average as soon as practicable after such determination is made. If the holders of Common Stock receive only cash in such transaction, then for all conversions that occur after the effective date of such transaction (x) the consideration due upon conversion of each \$1,000 principal amount of Notes shall be solely cash in an amount equal to the Conversion Rate in effect on the Conversion Date (as may be increased pursuant to

Section 4.06), multiplied by the price paid per share of Common Stock in such transaction and (y) the Company shall satisfy its Conversion Obligation by paying cash to converting Holders on the third Business Day immediately following the Conversion Date.

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

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

(d) In connection with any Merger Event, the Initial Dividend Threshold shall be subject to adjustment as described in clause (i), clause (ii) or clause (iii) below, as the case may be.

(i) In the case of a Merger Event in which the Reference Property (determined, as appropriate, pursuant to subsection (a) above and excluding any dissenters' appraisal rights) is composed entirely of shares of common stock (the "**Merger Common Stock**"), the Initial Dividend Threshold at and after the effective time of such Merger Event shall be equal to (x) the Initial Dividend Threshold immediately prior to the effective time of such Merger Event, *divided by* (y) the number of shares of Merger Common Stock that a holder of one share of Common Stock would receive in such Merger Event (such quotient rounded down to the nearest cent).

(ii) In the case of a Merger Event in which the Reference Property (determined, as appropriate, pursuant to subsection (a) above and excluding any dissenters' appraisal rights) is composed in part of shares of Merger Common Stock, the Initial Dividend Threshold at and after the effective time of such Merger Event shall be equal to (x) the Initial Dividend Threshold immediately prior to the effective time of such Merger Event, multiplied by (y) the Merger Valuation Percentage for such Merger Event (such product rounded down to the nearest cent).

(iii) For the avoidance of doubt, in the case of a Merger Event in which the Reference Property (determined, as appropriate, pursuant to subsection (a) above and excluding any dissenters' appraisal rights) is composed entirely of consideration other than shares of common stock, the Initial Dividend Threshold at and after the effective time of such Merger Event shall be equal to zero.

**Section 4.08. Taxes on Shares Issued.**

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

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

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

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

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

**Section 4.10. Responsibility of Trustee.**

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

**Section 4.11. Notice to Holders Prior to Certain Actions.**

In case:

(a) the Company shall declare a dividend (or any other distribution) on the Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 4.04; or

(b) the Company shall authorize the granting to the holders of all or substantially all of the Common Stock of rights, options or warrants to subscribe for or purchase any share of any class or any other rights, options or warrants that would require an adjustment in the Conversion Rate pursuant to Section 4.04 or Section 4.12 hereof; or

(c) of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale, lease or transfer of all or substantially all of the assets of the Company and its consolidated Subsidiaries; or

(d) of the voluntary or involuntary dissolution, liquidation or winding up of the Company or any of its Subsidiaries;

then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Supplemental Indenture), the Company shall cause to be filed with the Trustee and the Conversion Agent and to be mailed to each Holder of Notes at such Holder's address appearing on a list of Holders of Notes, which the Company shall provide to the Trustee, as promptly as practicable but in any event at least 10 days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend (or any other distribution) or rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights, options or warrants are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, lease, transfer, dissolution, liquidation or winding up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend (or any other distribution), reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up; *provided*, that any notice required under this Section 4.11 in respect of any regular cash dividend consistent in amount with the Company's historical practice may be made through the issuance of a press release containing the stipulated information rather than through the procedures otherwise provided for in this Section 4.11.

**Section 4.12. Stockholder Rights Plan.**

Each share of Common Stock issued upon conversion of Notes pursuant to this Article IV shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if

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

## ARTICLE V

### REMEDIES

#### **Section 5.01. Events of Default.**

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

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

(a) failure by the Company to pay principal on any Note when due;

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

(c) failure by the Company to perform any other agreement required of the Company in the Indenture (other than a covenant or agreement a default in whose performance or whose breach is specifically dealt with in clauses (a), (b), (d), (e), (f) or (g) in this definition hereof) if such failure continues for 60 days after notice is given in accordance with the notice provisions in this Section 5.01;

(d) failure by the Company to pay the Fundamental Change Repurchase Price of any Note when due;

(e) failure by the Company to comply with its obligation to convert the Notes into cash and, if applicable, shares of Common Stock in accordance with the Indenture upon exercise of a Holder's conversion right in accordance with Article IV hereof;

(f) failure by the Company to provide a timely Fundamental Change Company Notice pursuant to Section 3.01(b) or notice of a specified corporate transaction pursuant to Section 4.01(a)(iii) or Section 4.01(a)(iv), in each case, in accordance with the Indenture, and, in each case, such failure continues for a period of five Business Days;

(g) failure by the Company to comply with its obligations under Article IX;

(h) Indebtedness for money borrowed by the Company or one of its Significant Subsidiaries (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary) whether such Indebtedness now exists or shall hereafter be created, in an aggregate outstanding principal amount in excess of \$25 million is not paid at final maturity or upon acceleration and such Indebtedness is not discharged, or such acceleration is not cured or rescinded, within 60 days after written notice as provided in this Section 5.01;

(i) the Company or any Subsidiary that is a Significant Subsidiary (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary) fails to pay one or more final and non-appealable judgments entered by a court or courts of competent jurisdiction, the aggregate uninsured or unbonded portion of which is in excess of \$25 million, if the judgments are not paid, discharged or stayed within 30 days;

(j) the Company or any Subsidiary that is a Significant Subsidiary (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary) pursuant to or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case,

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

(iii) consents to the appointment of a Custodian of it or for all or substantially all of its Property, or

(iv) makes a general assignment for the benefit of its creditors; or

(k) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Company or any Subsidiary that is a Significant Subsidiary (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary) as debtor in an involuntary case,

(ii) appoints a Custodian of the Company or any Significant Subsidiary (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary) or a Custodian for all or substantially all of the Property of the Company, or

(iii) orders the liquidation of the Company or any Significant Subsidiary (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary), and the order or decree remains unstayed and in effect for 60 days.

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

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

**Section 5.02. Additional Interest.**

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

Any Additional Interest shall be paid at the same times and in the same manner as regular interest shall be paid in accordance with Section 2.01. Additional Interest shall accrue on the Notes that are then outstanding from the first day of the Event of Default to, but excluding, the earlier of (i) the date on which the Company has made the filings initially giving rise to the Filing Failure and (ii) the date that is one hundred eighty (180) days after the occurrence of the Event of Default. In order to elect to pay Additional Interest as the sole remedy during the first one hundred eighty (180) days after the occurrence of an Event of Default described in the preceding sentence, the Company must give written notice to Holders of the Notes, the Trustee and the Paying Agent of such election prior to the occurrence of such Event of Default. Upon the failure to timely give all Holders, the Trustee and the Paying Agent notice of such election or to pay such Additional Interest on a timely basis after electing to do so, the Notes shall be subject to

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

**Section 5.03. Acceleration.**

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

**Section 5.04. Limitation on Suits.**

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

Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any Holder to receive payment or delivery, as the case may be, of (x) the principal (including the Fundamental Change Repurchase Price, if applicable) of, (y) accrued and unpaid interest, if any, on, and (z) the consideration due upon conversion of, such Note, on or after the respective due dates expressed or provided for in such Note or in this Supplemental Indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be, shall not be impaired or affected without the consent of such Holder.



**Section 5.05. Collection Suit by Trustee.**

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

**ARTICLE VI**

**SATISFACTION AND DISCHARGE**

**Section 6.01. Satisfaction and Discharge of the Supplemental Indenture.**

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

Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee, including the fees and expenses of its counsel, and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Supplemental Indenture or the Notes.

## ARTICLE VII

### SUPPLEMENTAL INDENTURES

#### **Section 7.01. Amendments or Supplements Without Consent of Holders.**

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

(i) to add to the covenants of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company;

(ii) to appoint a successor trustee with respect to the Notes; or

(iii) to provide for the assumption by a Successor of the Company's obligations under the Indenture as described under Section 5.01 of the Original Indenture or Section 4.07 of this Supplemental Indenture, including to provide for the adjustments to the Conversion Rate as set forth in Section 4.07 of this Supplemental Indenture.

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

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

(ii) in applying subclause (11) of Section 10.01 of the Original Indenture to the Notes, the reference therein to the "final offering memorandum" shall be deemed to be to the prospectus dated June 21, 2013, as supplemented by the Supplemental Prospectus dated February 6, 2014 with respect to the Notes.

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

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

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

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

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

**Section 7.03. Notice of Amendment or Supplement.**

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

**ARTICLE VIII**

**INAPPLICABLE PROVISIONS OF THE ORIGINAL INDENTURE**

**Section 8.01. Redemption.**

The provisions of Article Three of the Original Indenture shall not apply to the Notes.

**ARTICLE IX**

**SUCCESSOR CORPORATION**

**Section 9.01. When Company May Merge, etc.** The Notes shall be subject to Article Five of the Original Indenture; *provided* that the words “or other legal entity” in clause (2) thereof shall be deleted for purposes of the Notes. The penultimate paragraph of Section 5.01 of the Original Indenture shall not apply to the Notes.

ARTICLE X

MISCELLANEOUS

**Section 10.01. Governing Law.**

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

**Section 10.02. Payments on Business Days.**

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

**Section 10.03. No Security Interest Created.**

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

**Section 10.04. Trust Indenture Act.**

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

**Section 10.05. Benefits of Indenture.**

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

**Section 10.06. Calculations.**

The Company and its agents shall be responsible for making all calculations called for under this Supplemental Indenture and the Notes. These calculations include, but are not limited to, determinations of any Last Reported Sale Prices of the Common Stock, the Daily VWAPs of the Common Stock, the Daily Conversion Values, the Daily Settlement Amounts, accrued interest payable on the Notes and the Conversion Rate. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Holders of Notes. The Company shall provide a schedule of its calculations to each of the Trustee and the Conversion Agent (if different than the Trustee), and each of the Trustee and the Conversion Agent (if different than the Trustee) is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee shall forward the Company's calculations to any Holder of Notes upon the request of that Holder at the sole cost and expense of the Company. Neither the Trustee nor the Conversion Agent shall be responsible for making any calculations for determining amounts to be paid or for monitoring any stock price.

**Section 10.07. Table of Contents, Headings, Etc.**

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

**Section 10.08. Execution in Counterparts.**

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

**Section 10.09. Severability.**

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

**Section 10.10. Trustee Disclaimer.**

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

*[Remainder of the page intentionally left blank]*

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

**PDL BIOPHARMA, INC.**

By: \_\_\_\_\_  
Name:  
Title:

[Trustee Signature Follows]

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

By: \_\_\_\_\_

Name:

Title:

## SCHEDULE A

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

Effective Date of Fundamental Change	Stock Price									
	\$ 7.97	\$ 8.50	\$ 9.00	\$ 9.50	\$ 10.00	\$ 10.50	\$ 11.00	\$ 11.50	\$ 12.00	\$ 12.50
February 12, 2014	16.3657	12.1141	8.8611	6.2316	4.1370	2.5076	1.2945	0.4739	0.0433	0.0000
February 1, 2015	16.3657	12.8592	9.5898	6.9903	4.9276	3.2306	1.6780	0.6389	0.0876	0.0000
February 1, 2016	16.3657	12.8602	9.3794	6.5105	3.9655	2.1200	0.9041	0.2065	0.0015	0.0000
February 1, 2017	16.3657	11.7807	7.9967	5.1120	3.0099	1.5849	0.7193	0.2992	0.0000	0.0000
February 1, 2018	16.3657	8.5423	2.0064	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

Sc. A-1



**EXHIBIT A**

**[Form of Note]**

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

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

Ex. A-1

PDL BIOPHARMA, INC.

4.00% Convertible Senior Note due 2018

No. [       ]

Initially \$[       ]

CUSIP No. 69329Y AF1

PDL BioPharma, Inc., a Delaware corporation (herein called the “Company”, which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay CEDE & CO., or registered assigns, [       ] (\$[       ]) (or such lesser principal amount as shall be specified in the “Schedule of Exchanges of Securities” attached hereto) on August 1, 2018 unless earlier converted or repurchased, and to pay interest thereon as set forth in the manner, at the rates and to the Persons set forth in the Indenture.

Interest Payment Dates: February 1 and August 1, commencing August 1, 2014.

Regular Record Dates: January 15 and July 15.

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

[Remainder of page intentionally left blank]

Ex. 2

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

Dated:

**PDL BIOPHARMA, INC.**

By: \_\_\_\_\_  
Name:  
Title:

Attest

By: \_\_\_\_\_  
Name:  
Title:

**CERTIFICATE OF AUTHENTICATION**

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

Dated:

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

By: \_\_\_\_\_  
Name:  
Title:

PDL BIOPHARMA, INC.

4.00% Convertible Senior Note due 2018

This Note is one of a duly authorized issue of Securities of the Company (herein called the “Notes”), issued under an Indenture dated as of February 12, 2014, as amended and supplemented from time to time in accordance with the terms thereof (herein called the “Original Indenture”) and as further supplemented by the Supplemental Indenture dated as of February 12, 2014 (herein called the “Supplemental Indenture” and the Original Indenture, as supplemented by the Supplemental Indenture, the “Indenture”) by and between the Company and The Bank of New York Mellon Trust Company, N.A., herein called the “Trustee”, and reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Notes and of the terms upon which the Notes are, and are to be, authenticated and delivered. Additional Notes may be issued in an unlimited aggregate principal amount, subject to conditions specified in the Indenture.

1. INTEREST

This Note shall bear interest at a rate of 4.00% per annum from February 12, 2014 or from the most recent date to which interest had been paid or provided to, but excluding, the next scheduled Interest Payment Date, until the principal hereof shall be repaid. Interest on this Note shall be computed on the basis of a 360-day year composed of twelve 30-day months. Interest is payable semi-annually in arrears on each February 1 and August 1, commencing on August 1, 2014, to the Person in whose name this Note (or one or more predecessor securities) is registered at the close of business on the Regular Record Date for such interest. Additional Interest shall be payable at the option of the Company on the terms set forth in Section 5.02 of the within-mentioned Supplemental Indenture.

The Company shall pay interest on overdue principal, and, to the extent lawful, on overdue interest, in each case at a rate of 4.00% per annum. Interest not paid when due and any interest on principal or interest not paid when due will be paid to Holders on a special record date, which will be the 15th day preceding the date fixed by the Company for the payment of such interest, whether or not such day is a Business Day. At least 15 days before a special record date, the Company will send to each Holder and to the Trustee a notice that sets forth the special record date, the payment date and the amount of interest to be paid.

2. MATURITY DATE

The Notes shall mature on August 1, 2018.

### 3. METHOD OF PAYMENT

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

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

### 4. PAYING AGENT, REGISTRAR, CONVERSION AGENT.

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

### 5. NO REDEMPTION

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

### 6. FUNDAMENTAL CHANGES AND REPURCHASES THEREUPON

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

## 7. CONVERSION

As provided in and subject to the provisions of the Indenture, the Holder hereof has the right, at its option, during periods and upon the occurrence of conditions specified in the Indenture, prior to the close of business on the second Scheduled Trading Day immediately preceding August 1, 2018, to convert this Note or a portion thereof that is \$1,000 or an integral multiple thereof, into cash up to the aggregate principal amount of the Notes to be converted and if applicable, shares of Common Stock, in respect of the remainder, if any, at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

## 8. SATISFACTION AND DISCHARGE

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

## 9. DENOMINATIONS, TRANSFER, EXCHANGE

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

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

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

## 10. DEFAULTS AND REMEDIES

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

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

#### 11. AMENDMENT, SUPPLEMENT AND WAIVER

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

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

#### 12. PERSONS DEEMED OWNERS

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

#### 13. DEFINITIONS

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

#### 14. AUTHENTICATION

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

#### 15. INDENTURE TO CONTROL; GOVERNING LAW

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

## 16. ABBREVIATIONS

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

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

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

Ex. 8



SCHEDULE A

SCHEDULES OF EXCHANGES OF NOTES

PDL BIOPHARMA, INC.

4.00% Convertible Senior Notes due 2018

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

<u>Date of Exchange, Repurchase or Conversion</u>	<u>Amount of Decrease in Principal Amount of this Global Note</u>	<u>Amount of Increase in Principal Amount of this Global Note</u>	<u>Principal Amount of this Global Note following Each Increase or Decrease</u>	<u>Signature of Authorized Officer of Trustee</u>
---	---	---	---	---

Ex. 9

**EXHIBIT B**

**[Form of Notice of Conversion]**

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

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

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

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

\* Signature guaranteed by:

By: \_\_\_\_\_

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

---

Signature Guarantee

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

---

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

---

(Name)

---

(Address)

---

Please print Name and Address  
(including zip code number)

---

Social Security or other Taxpayer  
Identifying Number

Ex. B-2

**EXHIBIT C**

**[Form of Fundamental Change Repurchase Notice]**

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

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

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

Dated:

---

Signature(s)

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

---

Signature Guaranty

Social Security or Other Taxpayer Identification Number

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

\$ \_\_\_\_\_, 000

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

**EXHIBIT D**

**[Form of Assignment and Transfer]**

For value received \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s) unto  
Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints  
books of the Company, with full power of substitution in the premises.

(Please insert social security or  
to transfer the said Note on the

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

\* Signature guaranteed by:

By: \_\_\_\_\_

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

February 12, 2014

PDL BioPharma, Inc. 73748  
932 Southwood Boulevard  
Incline Village, Nevada 89451

Re: PDL BioPharma, Inc.  
Registration Statement on Form S-3 (File No. 333-189536)

Ladies and Gentlemen:

We have acted as special counsel to PDL BioPharma, Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing with the Securities and Exchange Commission (the "Commission") of a Registration Statement on Form S-3, file no. 333-189536 (the "Registration Statement"), under the Securities Act of 1933, as amended (the "Securities Act"), the prospectus included therein, the prospectus supplement, dated February 6, 2014, filed with the Commission on February 10, 2014 pursuant to Rule 424(b) of the Securities Act (the "Prospectus Supplement"), and the offering by the Company pursuant thereto of \$300,000,000 aggregate principal amount of the Company's 4.00% Convertible Senior Notes due 2019 (the "Notes") and shares of the Company's common stock, \$0.01 par value per share, issuable upon conversion of the Notes (the "Shares").

The Notes have been issued pursuant to the Indenture dated as of February 12, 2014 (the "Base Indenture"), between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), as supplemented by the Supplemental Indenture, dated February 12, 2014, relating to the Notes (the "Supplemental Indenture" and together with the Base Indenture, the "Indenture") between the Company and the Trustee.

In arriving at the opinions expressed below, we have examined originals, or copies certified or otherwise identified to our satisfaction as being true and complete copies of the originals, of the Base Indenture, the Supplemental Indenture, and the Notes and such other documents, corporate records, certificates of officers of the Company and of public officials and other instruments as we have deemed necessary or advisable to enable us to render these opinions. In our examination, we have assumed, without independent investigation, the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies. As to any facts material to these opinions, we have relied to the extent we deemed appropriate and without independent investigation upon statements and representations of officers and other representatives of the Company and others.

Based upon the foregoing, and subject to the assumptions, exceptions, qualifications and limitations set forth herein, we are of the opinion that:

1. The Notes are legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms.
2. When issued upon conversion of the Notes as provided in the Indenture, the Shares will be legally issued, fully paid and nonassessable.

The opinions expressed above are subject to the following additional exceptions, qualifications, limitations and assumptions:

A. We render no opinion herein as to matters involving the laws of any jurisdiction other than the State of New York and the United States of America and, for purposes of paragraphs 1 and 2 above, the Delaware General Corporation Law. We are not admitted to practice in the State of Delaware; however, we are generally familiar with the Delaware General Corporation Law as currently in effect and have made such inquiries as we consider necessary to render the opinions contained in paragraphs 1 and 2 above. This opinion is limited to the effect of the current state of the laws of the State of New York, the United States of America and, to the limited extent set forth above, the laws of the State of Delaware and the facts as they currently exist. We assume no obligation to revise or supplement this opinion in the event of future changes in such laws or the interpretations thereof or such facts.

B. The opinions above are each subject to (i) the effect of any bankruptcy, insolvency, reorganization, moratorium, arrangement or similar laws affecting the rights and remedies of creditors' generally, including without limitation the effect of statutory or other laws regarding fraudulent transfers or preferential transfers, and (ii) general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance, injunctive relief or other equitable remedies regardless of whether enforceability is considered in a proceeding in equity or at law.

C. We express no opinion regarding the effectiveness of (i) any waiver of stay, extension or usury laws; (ii) provisions relating to indemnification, exculpation or contribution, to the extent such provisions may be held unenforceable as contrary to public policy or federal or state securities laws or due to the negligence or willful misconduct of the indemnified party; (iii) any provision in the Indenture or the certificates evidencing the global Notes waiving the right to object to venue in any court; (iv) any agreement to submit to the jurisdiction of any Federal court; (v) any waiver of the right to jury trial or (vi) any provision to the effect that every right or remedy is cumulative and may be exercised in addition to any other right or remedy or that the election of some particular remedy does not preclude recourse to one or more others.

February 12, 2014

Page 3

We consent to the filing of this opinion as an exhibit to the Registration Statement, and we further consent to the use of our name under the caption “Validity of the Notes” in the Registration Statement and the Prospectus Supplement. In giving these consents, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Gibson, Dunn & Crutcher LLP



**Contacts:**

Peter Garcia  
PDL BioPharma, Inc.  
775-832-8500  
peter.garcia@pdl.com

Jennifer Williams  
Cook Williams Communications,  
360-668-3701  
jennifer@cwcomm.org

**PDL BioPharma Issues \$300 Million of Convertible Senior Notes due 2018**

INCLINE VILLAGE, Nev., February 12, 2014, PDL BioPharma, Inc. (PDL) (NASDAQ: PDLI) announced today the closing of its previously announced offering of convertible senior unsecured notes maturing on February 1, 2018 (2018 Notes). PDL issued \$300 million aggregate principal amount of 2018 Notes, which included \$39.13 million aggregate principal amount of 2018 Notes issued pursuant to the exercise of the underwriters' overallotment option to purchase additional 2018 Notes. In connection with the offering of the 2018 Notes, PDL entered into privately negotiated convertible note hedge transactions with affiliates of RBC Capital Markets and Wells Fargo Securities ("hedge counterparties") and privately negotiated warrant transactions with the hedge counterparties relating to the same number of shares of PDL's common stock. RBC Capital Markets and Wells Fargo Securities acted as joint book-running managers for the 2018 Notes offering. Cowen and Company and Janney Montgomery Scott acted as co-managers.

The 2018 Notes bear interest at a rate of 4.00% per year payable semiannually in arrears on August 1 and February 1 of each year, beginning on August 1, 2014. The 2018 Notes are not redeemable prior to maturity. The 2018 Notes are convertible, only during certain periods and subject to certain circumstances, into cash, or a combination of cash and shares of PDL's common stock. The conversion rate of the 2018 Notes will initially be 109.1048 shares of common stock per \$1,000 principal amount of the 2018 Notes, equivalent to an initial conversion price of approximately \$9.17 per share of common stock. The conversion rate, subject to increase under certain circumstances, will not be increased in respect of regular quarterly cash dividends paid by us that do not exceed \$0.15 per share.

The net proceeds from the offering were approximately \$290.3 million after deducting the underwriters' discounts, estimated fees and expenses. PDL used approximately \$19.5 million to fund the cost of the previously announced and the additional convertible note hedge transactions (after such cost was partially offset by proceeds from the previously announced and the additional warrant transactions).

The registration statement pursuant to which this offering was made is effective pursuant to the Securities Act of 1933. Offers and sales of the 2018 Notes may be made only by the prospectus and related prospectus supplement, which may be obtained from RBC Capital Markets, Attention: Equity Syndicate, Three World Financial Center, 200 Vesey Street, 8th Floor, New York, NY 10281 or by calling (877) 822-4089 or from Wells Fargo Securities, Attention: Equity Syndicate Department, 375 Park Avenue, New York, New York, 10152, at (800) 326-5897 or email a request to [cmclientsupport@wellsfargo.com](mailto:cmclientsupport@wellsfargo.com).

This press release does not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of these securities, in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

**About PDL BioPharma, Inc.**

PDL BioPharma manages a portfolio of patents and royalty assets, consisting primarily of its Queen et al. antibody humanization patents and license agreements with various biotechnology and pharmaceutical companies. PDL pioneered the humanization of monoclonal antibodies and, by doing so, enabled the discovery of a new generation of targeted treatments for cancer and immunologic diseases for which it receives significant royalty revenue. PDL is currently focused on intellectual property asset management, acquiring new income generating assets, and maximizing value for its shareholders.

The company was formerly known as Protein Design Labs, Inc. and changed its name to PDL BioPharma, Inc. in 2006. PDL was founded in 1986 and is headquartered in Incline Village, Nevada.

NOTE: PDL BioPharma and the PDL BioPharma logo are considered trademarks of PDL BioPharma, Inc.

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