UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): July 15, 2019

Aquestive Therapeutics, Inc.

(Exact name of Registrant as specified in its charter)

Delaware	**001-38599**	**82-3827296**
(State or Other Jurisdiction of Incorporation or Organization)	**(Commission File Number)**	**(I.R.S. Employer Identification No.)**

30 Technology Drive
Warren, NJ 07059
(908) 941-1900
(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Not Applicable
(Former name or former address, if changed since last report)

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

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

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

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

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

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.001 per share	AQST	Nasdaq Global Market

Item 1.01 Entry into a Material Definitive Agreement.

Indenture

In a closing (the "Closing") on July 15, 2019 (the "Closing Date"), Aquestive Therapeutics, Inc. (the "Company") issued $70.0 million aggregate principal amount of its 12.5% senior secured notes due 2025 (the "Notes") and Warrants (as defined below) (the "Offering") and entered into an indenture (the "Indenture") governing the Notes with U.S. Bank National Association, a national banking association, as trustee (the "Trustee") and collateral agent (the "Collateral Agent"). In addition, the Indenture provides opportunity to issue up to $30.0 million of additional Notes under certain conditions for a total possible issuance amount of $100.0 million, as described below.

The Company has the option to issue (i) an additional $10.0 million aggregate principal amount of the Notes if the Company has filed a new drug application for its product candidate Libervant with the U.S. Food and Drug Administration (the "FDA") on or prior to March 31, 2021, provided that it has obtained the written consent of the holders of a majority in aggregate principal amount of outstanding Notes (the "First Additional Notes"), and (ii) up to an additional $30.0 million (less the amount of any First Additional Notes issued by the Company) (the "Second Additional Notes") if the Company obtains approval from the FDA of its product candidate Libervant (the "Libervant FDA Approval") on or prior to March 31, 2021; in each case, subject to certain conditions, including that no event of default under the Indenture has occurred and is continuing.

The Company estimates that the net proceeds from the Closing, including proceeds from the sale of the Notes and Warrants, will be approximately $67 million, after deducting the estimated Offering expenses payable by the Company in connection with the Closing. The Notes and Warrants were sold only to qualified institutional buyers within the meaning of Rule 144A under the Securities Act of 1933, as amended, pursuant to the exemption for transactions by an issuer not involving any public offering under Section 4(a)(2) of the Securities Act of 1933, as amended. Morgan Stanley & Co. LLC served as sole placement agent for the private placement of the Notes and the Warrants.

The Company plans to use the net proceeds from the Notes and the Warrants (as defined below) to repay all outstanding obligations under its previously existing Credit Agreement and Guaranty, dated as of August 16, 2016, by and among MonoSol Rx, LLC, the Subsidiary Guarantors from time to time parties thereto, the Lenders from time to time parties thereto and Perceptive Credit Holdings, LP, as administrative agent and collateral agent for the Lenders (as amended to date, the "Credit Agreement"), and otherwise for general corporate purposes.

Interest on the Notes accrues at a rate of 12.5% per annum and is payable quarterly in arrears on March 30th, June 30th, September 30th and December 30th of each year (each, a "Payment Date") commencing on September 30, 2019. On each Payment Date commencing on September 30, 2021, the Company will also pay an installment of principal of the Notes pursuant to a fixed amortization schedule.

Upon any Apomorphine Disposition (as defined below), the Company shall offer (each such offer, an "Apomorphine Asset Sale Offer") to purchase each holder's Notes on a pro rata basis at a repurchase price in cash equal to 112.5000% of the principal amount of such Notes, plus accrued and unpaid interest, if any, thereon to the repurchase date; provided, however, that the Issuer shall not repurchase more than certain agreed upon amounts set forth in the Indenture from the cash proceeds from all such Apomorphine Dispositions.

"Apomorphine Disposition" means, directly or indirectly, (i) any disposition (including via a monetization), including to a royalty subsidiary, of the Company's right to receive royalties or milestone payments under any license or similar arrangement (whether such arrangement is in existence on the Closing Date or thereafter) in respect of Apomorphine (and any related rights) (an "Apomorphine Royalty Disposition") or (ii) any license, development or commercialization of any intellectual property in respect of Apomorphine resulting in fixed cash payments not based on the occurrence (or non-occurrence) of any event (other than solely the passage of time).

At any time prior to Libervant FDA Approval, to the extent that the aggregate principal amount of Notes repurchased pursuant to any Apomorphine Asset Sale Offer (together with any prior Apomorphine Asset Sale Offers) is less than the applicable agreed upon amount set forth in the Indenture, the difference between (i) the cash proceeds in respect of all such Apomorphine Dispositions (but only in respect of the applicable agreed upon amount) and (ii) the aggregate principal amount of Notes so repurchased will be deposited into a segregated account (the "Collateral Account") pursuant to the Indenture, which Collateral Account will be subject to a lien established under the security documents relating to the Notes collateral (the "Security Documents") and will be part of the Notes collateral. The funds in the Collateral Account will be released to the Company (free and clear of any lien in respect of the Notes), in whole or in part, only (i) upon Libervant FDA Approval and the receipt by the Trustee of an officers' certificate related to the Libervant FDA Approval or (ii) with the written consent of the holders of a majority in principal amount of outstanding Notes.

The cash proceeds in respect of any Apomorphine Disposition in excess of the agreed upon amounts set forth in the Indenture may be used by the Company for any purpose that is not prohibited by the Indenture. At any time following Libervant FDA Approval, after any repurchase of Notes resulting from an Apomorphine Asset Sale Offer, any cash proceeds in respect of the related Apomorphine Disposition not used for such repurchase may be used by the Company for any purpose that is not prohibited by the Indenture.

The Notes are senior secured obligations of the Company and will be equal in right of payment to all existing and future pari passu indebtedness of the Company, will be senior in right of payment to all existing and future subordinated indebtedness of the Company, will have the benefit of a security interest in the Notes collateral and will be junior in lien priority in respect of any collateral that secures any first priority lien obligations incurred from time to time in accordance with the Indenture. The stated maturity date of the Notes is June 30, 2025. Upon the occurrence of a Change of Control, subject to certain conditions, holders of the Notes may require the Company to repurchase for cash all or part of their Notes at a repurchase price equal to 101.00% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest to the date of repurchase.

The Company may redeem the Notes at its option, in whole or in part from time to time, prior to July 15, 2021, at a redemption price equal to 100.00% of the principal amount of the Notes being redeemed, plus accrued and unpaid interest, if any, through the redemption date, plus a make-whole premium computed using a discount rate equal to the treasury rate in respect of such redemption date plus 100 basis points. The Company may redeem the Notes at its option, in whole or in part from time to time, on or after July 15, 2021 at a redemption price equal to: from and including July 15, 2021 to and including July 14, 2022, 112.500% of the principal amount of the Notes to be redeemed, and, thereafter, pursuant to a declining fixed redemption price schedule as set forth in the indenture.

The Indenture permits the Company, upon the continuing satisfaction of certain conditions, including that the Company (on a consolidated basis) has at least $75 million of net revenues for the most recently completed twelve calendar month period, to enter into an asset-based borrowing facility not to exceed $10 million (the "ABL Facility"). The ABL Facility may be collateralized by assets constituting only inventory, accounts receivable and the proceeds thereof of the Company.

The description of the Indenture contained herein is qualified in its entirety by reference to the Indenture, which is filed as Exhibit 4.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Warrants

In connection with the Offering, on the Closing Date, the Company agreed to issue to the Purchasers (as defined below) unregistered warrants (the "Warrants") to purchase up to an aggregate of 2,000,000 shares of common stock, par value $0.001 per share, of the Company (the "Warrant Shares"). The Warrants are exercisable beginning on the date of their issuance until June 30, 2025 at an initial exercise price equal to $4.25. The exercise price of the Warrants will be subject to adjustment for stock splits, reverse splits, and similar capital transactions as described in the Warrants. The Warrants also contain customary change of control provisions and are exercisable on a "cashless" basis. The Warrants include an obligation for the Company to use reasonable best efforts to register the Warrant Shares for resale with the Securities and Exchange Commission within 90 days of the Closing and grant customary piggy-back rights to Warrant holders.

The description of the Warrants contained herein is qualified in its entirety by reference to the form of Warrant, which is filed as Exhibit 4.2 to this Current Report on Form 8-K and is incorporated herein by reference.

Purchase Agreements

Also in connection with the Offering, on the Closing Date, the Company entered into purchase agreements (the "Purchase Agreements") with the purchasers named therein (the "Purchasers") pursuant to which the Company agreed to issue and sell the Notes and the Warrants to the Purchasers. The Purchase Agreements include the terms and conditions of the offer and sale of the Notes and Warrants, indemnification and contribution obligations and other terms and conditions customary in agreements of this type. Pursuant to the Purchase Agreements, the Purchasers have a right of first refusal to purchase the First Additional Notes and Second Additional Notes.

The description of the Purchase Agreements contained herein is qualified in its entirety by reference to the form of Purchase Agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Collateral Agreement

Also, in connection with the Offering, the Company entered into a collateral agreement, dated as of the Closing Date, with the Collateral Agent, the Trustee and the other grantors from time to time party thereto (the "Collateral Agreement"). Pursuant to the terms of the Collateral Agreement, the Notes are secured by a first priority lien on substantially all of the Company's assets, in each case, subject to certain prior liens and other exclusions, and a pledge of the equity interests of the Company's subsidiaries, if any.

The description of the Collateral Agreement contained herein is qualified in its entirety by reference to the Collateral Agreement, which is filed as Exhibit 10.2 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 1.02 Termination of a Material Definitive Agreement.

Termination

On the Closing Date, the Company used a portion of the net proceeds from the Offering to repay an aggregate amount of approximately $52 million (the "Payoff Amount"), comprised of the full principal amount, all accrued and unpaid interest and applicable prepayment and end-of-term fees, owed to lenders under the Credit Agreement. Upon receipt of the Payoff Amount, the Credit Agreement was terminated and the release of the lenders' security interest in any Company assets or property was authorized.

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

The information required by this Item 2.03 relating to the Notes and the Indenture is set forth under Item 1.01 of this Current Report on Form 8-K and is incorporated by reference herein.

Item 3.02 Unregistered Sales of Equity Securities

The information set forth above under Item 1.01 is incorporated herein by reference.

Item 8.01 Other Events

On July 15, 2019, the Company issued a press release announcing the Closing of the Offering and the issuance of the Warrants. A copy of the press release is attached hereto as Exhibit 99.1 and incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

Exhibit Number	Description
4.1	Indenture Dated as of July 15, 2019, among Aquestive Therapeutics, Inc., as Issuer, any Guarantor that becomes party thereto and U.S. Bank National Association, as Trustee and Collateral Agent
4.2	Form of Warrant
10.1	Form of Purchase Agreement
10.2	Collateral Agreement dated as of July 15, 2019 among Aquestive Therapeutics, Inc., as Issuer, the Other Grantors from time to time party thereto, U.S. Bank National Association, as Trustee, and U.S. Bank National Association, as Collateral Agent
99.1	Press Release of the Company issued on July 15, 2019

SIGNATURE

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

Dated: July 15, 2019

Aquestive Therapeutics, Inc.

By: /s/ John T. Maxwell
Name: John T. Maxwell
Title: Chief Financial Officer

Exhibit 4.1

AQUESTIVE THERAPEUTICS, INC.,

as Issuer,

and any Guarantor that becomes party hereto pursuant to Section 4.10 hereof

12.5% Senior Secured Notes due 2025

INDENTURE

Dated as of July 15, 2019

U.S. BANK NATIONAL ASSOCIATION,
as Trustee and as Collateral Agent

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

INDENTURE dated as of July 15, 2019 among Aquestive Therapeutics, Inc., a Delaware corporation with an address at 30 Technology Drive, Warren, New Jersey 07059 (the "Issuer"), any Guarantor that becomes party hereto pursuant to Section 4.10, and U.S. Bank National Association, as trustee (as more fully defined in Section 1.01, the "Trustee") and as collateral agent (as more fully defined in Section 1.01, the "Collateral Agent").

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders of the Issuer's 12.5% Senior Secured Notes due 2025 (as more fully defined in Section 1.01, the "Securities").

ARTICLE 1

DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.01. Definitions.

"ABL Agreement" means any revolving credit, line of credit or similar agreement, debt facility, commercial paper facility, debt securities, indenture or other form of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers' acceptances) or other instruments or agreements evidencing Secured Bank Indebtedness, in each case, with the same or different borrowers, lenders, noteholders or other creditors or agents, as amended, extended, renewed, restated, supplemented, waived, replaced (whether or not upon termination), restructured, repaid, refunded, refinanced or otherwise modified from time to time.

"ABL Collateral" means, with respect to ABL Obligations under any ABL Document, any and all of the following assets and properties owned by any Grantor as of the Issue Date or at any time thereafter acquired by any Grantor and, in either case, pledged under the related ABL Security Document (but solely to the extent that such Grantor is a party to such ABL Security Document, and solely to the extent such Grantor has granted an ABL Lien on such assets and properties that secures such ABL Obligations pursuant to such ABL Security Document): (a) all Inventory; (b) all Accounts arising from the sale of Inventory or the provision of services; (c) to the extent evidencing, governing or securing the items referred to in the preceding clauses (a) and (b), all of such Grantor's (i) General Intangibles, (ii) Chattel Paper, (iii) Instruments, (iv) Documents, (v) Payment Intangibles (including tax refunds), other than any Payment Intangibles that represent tax refunds in respect of or otherwise relate to real property, Fixtures, Equipment or any other Noteholder First Lien Collateral and (vi) Supporting Obligations; (d) collection accounts and Deposit Accounts, including any Lockbox Account, and any cash or other assets in any such accounts constituting Proceeds of clause (a) or (b) (excluding identifiable cash proceeds in respect of Noteholder First Lien Collateral, including proceeds from the sale of the Securities or any cash, checks or other property held therein or credited thereto in respect of Noteholder First Lien Collateral); (e) all Indebtedness that arises from cash advances to enable the obligor or obligors thereon to acquire Inventory; (f) all books and records related to the foregoing; and (g) all Products and Proceeds of any and all of the foregoing in whatever form received, including proceeds of insurance policies related to Inventory or Accounts arising from the sale of Inventory of such Grantor or the provision of services by such Grantor and business interruption insurance; *provided*, *however*, that the following items shall not constitute ABL Collateral and shall be expressly excluded from the definition thereof: (x) Proceeds of ABL Collateral described in clauses (c) and (d) above unless such Proceeds would otherwise constitute ABL Collateral in any of the foregoing clauses (a) through (e); and (y) the Collateral Account, all funds and other assets or property from time to time deposited therein or credited thereto and the Proceeds thereof. All capitalized terms used in this definition and not otherwise defined herein have the respective meanings assigned to them in the Uniform Commercial Code.

"ABL Documents" means, with respect to any ABL Obligations under an ABL Agreement, such ABL Agreement, any related "Loan Documents" (or similar term) as such term is defined in such ABL Agreement, any related ABL Security Documents, each of the other agreements, documents and instruments providing for or evidencing such ABL Obligations, and any other document or instrument executed or delivered at any time in connection with such ABL Obligations, including any intercreditor or joinder agreement among holders of such ABL Obligations, in each case, as amended, extended, renewed, restated, supplemented, waived, replaced (whether or not upon termination), restructured, repaid, refunded, refinanced or otherwise modified from time to time.

"ABL Liens" means, with respect to ABL Obligations under any ABL Document, Liens on the ABL Collateral created under the related ABL Security Document to secure such ABL Obligations.

"ABL Obligations" means all "Secured Obligations" as such term is defined in each applicable ABL Document (or, if "Secured Obligations" is not defined therein, then all the liabilities and obligations under all ABL Documents secured, in whole or in part, pursuant to the related ABL Security Documents), including, if so secured, any hedging obligations and cash management obligations and whether for principal, interest (including interest that, but for the filing of a petition in any proceeding under any Bankruptcy Law with respect to any Grantor, would have accrued on any ABL Obligation, whether or not a claim is allowed against such Grantor for such interest in such proceeding), premium, fees, expenses, indemnification, performance or otherwise.

"ABL Security Documents" means, with respect to ABL Obligations under an ABL Document, such ABL Document (insofar as the same grants a Lien on any assets or properties of any Grantor to secure any such ABL Obligations) and any other documents existing as of the Issue Date or entered into after the Issue Date that grant a Lien on any assets or properties of any Grantor to secure any such ABL Obligations, as amended, extended, renewed, restated, supplemented, waived, replaced (whether or not upon termination), restructured, repaid, refunded, refinanced or otherwise modified from time to time.

"Accredited Investors" means "accredited investors" as defined in Rule 501(a)(1), (a)(2), (a)(3) or (a)(7) of Regulation D under the Securities Act.

"Acquired Indebtedness" means, with respect to any specified Person:

(1) Indebtedness of any other Person existing at the time such other Person is merged, amalgamated or consolidated with or into or became a Restricted Subsidiary of such specified Person; and

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

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under common control with such specified Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"Apomorphine" means the product referred to as APL-130277 (apomorphine) (whether marketed under such name or any other name).

"Apomorphine Disposition" means (i) any Apomorphine Royalty Disposition or (ii) any Apomorphine License Transaction.

"Apomorphine License Transaction" means, directly or indirectly, any license, development or commercialization of any Intellectual Property in respect of Apomorphine resulting in fixed cash payments not based on the occurrence (or non-occurrence) of any event (other than solely the passage of time).

"Apomorphine Royalty Disposition" means, directly or indirectly, any Disposition (including via a monetization), including to a Royalty Subsidiary, of the Issuer's right to receive royalties or milestone payments under any license or similar arrangement (whether such arrangement is in existence on the Issue Date or thereafter) in respect of Apomorphine (and any related rights).

"Applicable Premium" means, with respect to any Security (or portion thereof) to be redeemed on any redemption date, the greater of (i) 1.0% of the amount of principal of such Security to be redeemed and (ii) the amount, if any, by which (a) the present value at such redemption date of (1) the redemption price of the amount of principal of such Security to be redeemed on the First Call Date (as stated in the table immediately following the second paragraph under Paragraph 5 of the form of Security set forth in Exhibit A) plus (2) all required interest payments due on the amount of principal of such Security to be redeemed through the First Call Date (excluding accrued but unpaid interest, if any, to the redemption date), computed using a discount rate equal to the Treasury Rate in respect of such redemption date plus 100 basis points, exceeds (b) the amount of principal of such Security to be redeemed. The Trustee shall have no duty to calculate or verify the calculation of the Applicable Premium.

"Bank Indebtedness" means any and all amounts payable under or in respect of any Credit Agreement and the other Credit Agreement Documents, as amended, restated, supplemented, waived, replaced, restructured, repaid, refunded, refinanced or otherwise modified from time to time (including after termination of such Credit Agreement), including principal, premium (if any), interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Issuer whether or not a claim for post-filing interest is allowed in such proceedings), fees, charges, expenses, reimbursement obligations, guarantees and all other amounts payable thereunder or in respect thereof.

"Board of Directors" means, as to any Person, the board of directors, board of managers or similar governing body, as applicable, of such Person (or, if such Person is a partnership, the board of directors or other governing body of the general partner of such Person) or any duly authorized committee thereof. References in this Indenture to directors (on a Board of Directors) shall also be deemed to refer to managers (on a Board of Managers).

"Business Day" means a day other than a Saturday, Sunday or other day on which banking institutions are authorized or required by law to close in New York City or the city in which the Corporate Trust Office is located.

"Capital Stock" means:

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

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

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

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person;

in each case to the extent treated as equity in accordance with GAAP.

"Capitalized Lease Obligation" means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease (or a finance lease upon adoption by the Issuer of *ASU No. 2016-02, Leases (Topic 842)*) that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) in accordance with GAAP.

"Cash Equivalents" means:

(1) U.S. Dollars, Canadian dollars, pounds sterling, euros or the national currency of any member state in the European Union;

(2) securities issued or directly and fully guaranteed or insured by the U.S. government, Canada, the United Kingdom or any country that is a member of the European Union or any agency or instrumentality thereof, in each case maturing not more than two years from the date of acquisition;

(3) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus in excess of $250,000,000 and whose long-term debt is rated "A" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another nationally recognized statistical rating organization);

(4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above and clause (5) below entered into with any financial institution meeting the qualifications specified in clause (3) above;

(5) commercial paper issued by a Person (other than an Affiliate of the Issuer) rated at least "A-1" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another nationally recognized statistical rating organization), and in each case maturing within one year after the date of acquisition;

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

(7) Indebtedness issued by Persons (other than an Affiliate of the Issuer) with a rating of "A" or higher from S&P or "A-2" or higher from Moody's (or reasonably equivalent ratings of another nationally recognized statistical rating organization), in each case with maturities not exceeding two years from the date of acquisition;

(8) marketable short-term money market and similar securities rated at least "A-1" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another nationally recognized statistical rating organization), and in each case maturing within twelve months after the date of creation thereof; and

(9) investment funds investing at least 95% of their assets in securities of the types described in clauses (1) through (8) above.

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

(i) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all the assets of the Issuer and its Subsidiaries, taken as a whole, to a Person other than (x) any of the Permitted Holders or (y) any of the Issuer or its Restricted Subsidiaries;

(ii) the Issuer becomes aware of (by way of report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by any Person or "group" (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any "group" acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act or any successor provision), other than any of the Permitted Holders, in a single transaction or in a related series of transactions, by way of merger, amalgamation, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), of more than 50% of the total voting power of the issued and outstanding Voting Stock of the Issuer; or

(iii) the adoption of a plan relating to the Issuer's dissolution or liquidation in accordance with the Issuer's organizational documents.

Notwithstanding the foregoing, the acquisition, directly or indirectly, of 100% of the total voting power of the issued and outstanding Voting Stock of the Issuer by any Person who, immediately after such acquisition, has no material assets other than the Capital Stock of the Issuer or its direct or indirect parent company will not, by itself, constitute a Change of Control.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Collateral Agent" means U.S. Bank National Association in its capacity as "Collateral Agent" under this Indenture and under the Security Documents and any successor thereto in such capacity.

"Collateral Agreement" means the Collateral Agreement dated as of the date hereof among the Issuer, the Guarantors party thereto from time to time, the Trustee and the Collateral Agent, as may be amended, extended, renewed, restated, supplemented, waived or otherwise modified from time to time.

"Confidentiality Agreement" means a confidentiality agreement substantially in the form of Exhibit E.

"Consolidated Interest Expense" means, with respect to any Person for any period, the sum, without duplication, of:

(1) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted in computing Consolidated Net Income (including amortization of original issue discount, the interest component of Capitalized Lease Obligations, and net payments and receipts (if any) pursuant to interest rate Hedging Obligations, amortization of deferred financing fees, debt issuance costs, commissions, fees and expenses, non-cash interest expense, all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances and expensing of any bridge, commitment or other financing fees); plus

(2) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued; minus

(3) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by the Issuer to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

"Consolidated Leverage Ratio" means, with respect to any Person, at any date (the "Consolidated Leverage Calculation Date"), the ratio of (i) Indebtedness (other than Indebtedness of the kind described in clause 1(c) of the definition of Indebtedness) of such Person and its Restricted Subsidiaries as of the Consolidated Leverage Calculation Date (determined on a consolidated basis in accordance with GAAP) to (ii) EBITDA of such Person for the most recent four full fiscal quarters ended on the last day of the most recent fiscal quarter for which internal financial statements are available immediately preceding such Consolidated Leverage Calculation Date. In the event that the Issuer or any of its Restricted Subsidiaries Incurs, repays, repurchases, defeases or redeems any Indebtedness subsequent to such last day but prior to the Consolidated Leverage Calculation Date, then the Consolidated Leverage Ratio shall be calculated giving *pro forma* effect to such Incurrence, repayment, repurchase, defeasance or redemption of Indebtedness as if the same had occurred at the beginning of the applicable four-quarter period; *provided* that the Issuer may elect pursuant to an Officers' Certificate delivered to the Trustee to treat all or any portion of the commitment under any agreement evidencing Indebtedness as being Incurred on the first day of the applicable four-quarter measurement period, in which case any subsequent Incurrence of Indebtedness under such commitment shall not be deemed, for purposes of this calculation, to be an Incurrence at such subsequent time.

For purposes of making the computation referred to above, Investments, acquisitions, Dispositions, mergers, amalgamations, consolidations and discontinued operations (as determined in accordance with GAAP), in each case with respect to a business, a division or an operating unit of a business, as applicable, that the Issuer or any of its Restricted Subsidiaries has determined to make or made during the applicable four-quarter measurement period or subsequent to such measurement period and on or prior to or simultaneously with the Consolidated Leverage Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, Dispositions, mergers, amalgamations, consolidations and discontinued operations (and the change of any associated Indebtedness and the change in EBITDA resulting therefrom) had occurred on the first day of the applicable four-quarter measurement period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Issuer or any Restricted Subsidiary since the beginning of such period shall have made any Investment, acquisition, Disposition, merger, amalgamation, consolidation or discontinued operation, in each case, with respect to a business, a division or an operating unit of a business, as applicable, that would have required adjustment pursuant to this definition, then the Consolidated Leverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment, acquisition, Disposition, merger, amalgamation, consolidation or discontinued operation had occurred on the first day of the applicable four-quarter measurement period.

For purposes of this definition, whenever *pro forma* effect is to be given to any event, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Issuer in accordance with Regulation S-X under the Securities Act. Any such *pro forma* calculation may include adjustments appropriate, in the reasonable good faith determination of the Issuer in accordance with Regulation S-X under the Securities Act, to reflect operating expense reductions, cost savings and other operating improvements or synergies reasonably expected to result from the applicable event; *provided*, that any such expected operating expense reductions, cost savings, operating improvements or synergies shall not increase EBITDA by more than 10% in the aggregate for the most recent four full fiscal quarters ended on the last day of the most recent fiscal quarter for which internal financial statements are available immediately preceding the Consolidated Leverage Calculation Date.

For purposes of this definition, any amount in a currency other than U.S. Dollars will be converted to U.S. Dollars based on the average exchange rate for such currency for the most recent four full fiscal quarters immediately prior to the date of determination in a manner consistent with that used in calculating EBITDA for the applicable period.

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

(1) any net after-tax extraordinary, non-recurring or unusual gains or losses (less all fees and expenses relating thereto) shall be excluded;

(2) effects of purchase accounting adjustments (including the effects of such adjustments pushed down to such Person and such Subsidiaries) in amounts required or permitted by GAAP, resulting from the application of purchase accounting in relation to any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded;

(3) the Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period;

(4) any net after-tax income or loss from Disposed, abandoned, transferred, closed or discontinued operations and any net after-tax gains or losses on Disposal of Disposed, abandoned, transferred, closed or discontinued operations shall be excluded;

(5) any net after-tax gains or losses (less all fees and expenses or charges relating thereto) attributable to business Dispositions or asset Dispositions other than in the ordinary course of business (as determined in good faith by the Issuer) shall be excluded;

(6) any net after-tax gains or losses (less all fees and expenses or charges relating thereto) attributable to the early extinguishment of Indebtedness, and any unrealized gains and losses relating to Hedging Obligations or other derivative instruments, shall be excluded;

(7) the Net Income for such period of any Person that is not a Subsidiary of such Person, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be included only to the extent of the amount of dividends or distributions or other payments paid in cash (or to the extent converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period;

(8) solely for the purpose of determining the amount available for Restricted Payments under clause (1) of the definition of "Cumulative Credit", the Net Income for such period of any Restricted Subsidiary (other than any Guarantor) shall be excluded to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary of its Net Income is not at the date of determination with respect to such Restricted Payment permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders or equityholders, unless such restrictions with respect to the payment of dividends or similar distributions have been legally waived; *provided* that the Consolidated Net Income of such Person shall be increased by the amount of dividends or other distributions or other payments actually paid in cash (or converted into cash) by any such Restricted Subsidiary to such Person, to the extent not already included therein;

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

(10) any non-cash expense realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights (including any of the foregoing related to terminated employees) shall be excluded;

(11) any one-time non-cash compensation charges shall be excluded;

(12) accruals and reserves that are established or adjusted within 12 months after the Issue Date and that are so required to be established or adjusted in accordance with GAAP or as a result of adoption or modification of accounting policies shall be excluded;

(13) non-cash gains, losses, income and expenses resulting from fair value accounting required by the applicable standard under GAAP and related interpretations shall be excluded;

(14) any currency translation gains and losses related to currency remeasurements of Indebtedness, and any net loss or gain resulting from Hedging Obligations, shall be excluded;

(15) solely for the purposes of calculating Restricted Payments, if positive, any permanent difference (but excluding, for the avoidance of doubt, any temporary difference the Issuer reasonably expects to be paid in cash in any future tax period) by which (A) the Consolidated Taxes of the Issuer calculated in accordance with GAAP exceeds (B) the actual Consolidated Taxes paid in cash by the Issuer during such period shall be excluded;

(16) any non-cash after-tax interest expense resulting from the application of Accounting Standards Codification Topic 470-20 “Debt — Debt With Conversion and Other Options” shall be excluded;

(17) to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (a) not denied by the applicable carrier in writing and (b) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), such loss or expense amounts as are so reimbursed, or reimbursable, by insurance providers in respect of liability or casualty events or business interruption shall be excluded; and

(18) to the extent covered by fees, costs, expenses and losses that are, or (without duplication) are required to be, covered by contractual indemnities, guaranty obligations, purchase price adjustments, insurance policies or other contractual reimbursement obligations of third parties, to the extent actually indemnified or reimbursed or with respect to which the Issuer has determined that a reasonable basis exists for indemnification or reimbursement, but only to the extent that such amount is actually indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period of any amount so added back to the extent not so indemnified or reimbursed within such 365 days), shall be excluded.

Notwithstanding the foregoing, for the purpose of Section 4.04 only, there shall be excluded from Consolidated Net Income any dividends, repayments of loans or advances or other transfers of assets from Unrestricted Subsidiaries of the Issuer or a Restricted Subsidiary of the Issuer to the extent such dividends, repayments or transfers increase the amount of Restricted Payments permitted under Section 4.04 pursuant to clauses (5) and (6) of the definition of “Cumulative Credit”.

“Consolidated Non-cash Charges” means, with respect to any Person for any period, the aggregate depreciation, amortization and other non-cash expenses of such Person and its Restricted Subsidiaries reducing Consolidated Net Income of such Person for such period on a consolidated basis and otherwise determined in accordance with GAAP, but excluding any such charge that consists of or requires an accrual of, or cash reserve for, anticipated cash charges for any future period.

“Consolidated Taxes” means, with respect to any Person for any period, the provision for taxes for such Person and its Restricted Subsidiaries based on income, profits or capital, including state, franchise, property and similar taxes and foreign withholding taxes (including penalties and interest related to such taxes or arising from tax examinations).

“Contingent Obligations” means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent:

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(2) to advance or supply funds:

(a) for the purchase or payment of any such primary obligation; or

(b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"Corporate Trust Office" means the address of the Trustee specified in Section 12.01 or such other address as to which the Trustee may give notice to the Holders and the Issuer.

"Credit Agreement" means (i) if designated by the Issuer to be included in the definition of "Credit Agreement", any revolving credit, line of credit or similar agreement, as amended, restated, supplemented, waived, replaced (whether or not upon termination, and whether with the original lenders or otherwise), restructured, repaid, refunded, refinanced or otherwise modified from time to time, including any agreement or instrument extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Indebtedness under such agreement or instrument or any successor or replacement agreement or agreements or instrument or instruments or increasing the amount loaned or issued thereunder or altering the maturity thereof and (ii) whether or not the agreements or instruments referred to in clause (i) above remain outstanding, and if designated by the Issuer to be included in the definition of "Credit Agreement", one or more (a) debt facilities or commercial paper facilities, providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to lenders or to special purpose entities formed to borrow from lenders against such receivables) or letters of credit, or (b) debt securities, indentures or other forms of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers' acceptances), in each case, with the same or different borrowers or issuers and, in each case, as amended, supplemented, modified, extended, restructured, renewed, refinanced, restated, replaced or refunded in whole or in part from time to time.

"Credit Agreement Documents" means any Credit Agreement, any notes issued pursuant thereto and the guarantees thereof, and the collateral documents relating thereto, as amended, supplemented, restated, renewed, refunded, replaced, restructured, repaid, refinanced or otherwise modified from time to time.

"Cumulative Credit" means the sum of (without duplication):

(1) 50% of the Consolidated Net Income for the period (taken as one accounting period, the "Reference Period") from July 1, 2019 to the end of the Issuer's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payments (or, in the case such Consolidated Net Income for such Reference Period is a deficit, minus 100% of such deficit); plus

(2) 100% of the aggregate net proceeds, including cash and the Fair Market Value (as determined in good faith by the Issuer) of property other than cash, received by the Issuer on or after July 1, 2019 from the issue or sale of Equity Interests of the Issuer (excluding Refunding Capital Stock, Designated Preferred Stock and Disqualified Stock), including Equity Interests issued upon conversion of Indebtedness or Disqualified Stock or upon exercise of warrants or options (other than an issuance or sale to a Restricted Subsidiary of the Issuer or to an employee stock ownership plan or trust established by the Issuer or any of its Subsidiaries); plus

(3) 100% of the aggregate amount of contributions to the capital of the Issuer received in cash and the Fair Market Value (as determined in good faith by the Issuer) of property other than cash after the Issue Date (other than Refunding Capital Stock, Designated Preferred Stock and Disqualified Stock); plus

(4) the principal amount of any Indebtedness, or the liquidation preference or maximum fixed repurchase price, as the case may be, of any Disqualified Stock of the Issuer or any Restricted Subsidiary thereof issued after the Issue Date (other than Indebtedness or Disqualified Stock issued to a Restricted Subsidiary) that has been converted into or exchanged for Equity Interests in the Issuer (other than Disqualified Stock) or any direct or indirect parent of the Issuer (*provided* in the case of any such parent, such Indebtedness or Disqualified Stock is retired or extinguished); plus

(5) 100% of the aggregate amount received by the Issuer or any Restricted Subsidiary after the Issue Date in cash and the Fair Market Value (as determined in good faith by the Issuer) of property other than cash received by the Issuer or any Restricted Subsidiary after the Issue Date from:

(A) the Disposition (other than to the Issuer or a Restricted Subsidiary of the Issuer) of Restricted Investments made by the Issuer and its Restricted Subsidiaries and from repurchases and redemptions of such Restricted Investments from the Issuer and its Restricted Subsidiaries by any Person (other than the Issuer or any of its Restricted Subsidiaries) and from repayments of loans or advances that constituted Restricted Investments (other than in each case to the extent that the Restricted Investment was made pursuant to clause (vii) of Section 4.04(b));

(B) the sale (other than to the Issuer or a Restricted Subsidiary of the Issuer) of the Capital Stock of an Unrestricted Subsidiary; or

(C) a distribution or dividend from an Unrestricted Subsidiary; plus

(6) in the event any Unrestricted Subsidiary of the Issuer has been redesignated as a Restricted Subsidiary or has been merged, amalgamated or consolidated with or into, or transfers or conveys its assets to, or is liquidated into, the Issuer or a Restricted Subsidiary of the Issuer, the Fair Market Value (as determined in good faith by the Issuer) of the Investment of the Issuer or a Restricted Subsidiary in such Unrestricted Subsidiary at the time of such redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable), after taking into account any Indebtedness associated with the Unrestricted Subsidiary so designated or combined or any Indebtedness associated with the assets so transferred or conveyed (other than in each case to the extent that the designation of such Subsidiary as an Unrestricted Subsidiary was made pursuant to clause (vii) of Section 4.04(b) or constituted a Permitted Investment), which Fair Market Value shall not exceed the amount invested in such Unrestricted Subsidiary by the Issuer and its Restricted Subsidiaries.

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

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

"Disposition" means the sale, assignment, conveyance, transfer, license or other disposition (whether in a single transaction or a series of related transactions) of property or assets (including by way of a Sale/Leaseback Transaction) of the Issuer or any Restricted Subsidiary of the Issuer.

"Disqualified Stock" means, with respect to any Person, any Capital Stock of such Person that, by its terms (or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable), or upon the happening of any event:

(1) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than as a result of a change of control; *provided* that the relevant change of control provisions, taken as a whole, are no more favorable in any material respect to holders of such Capital Stock than the provisions of Section 4.08 and any purchase requirement triggered thereby may not become operative until after compliance with the provisions of Section 4.08 (including the purchase of any Securities tendered pursuant thereto));

(2) is convertible or exchangeable at the option of the holder thereof for Indebtedness or Disqualified Stock of such Person; or

(3) is redeemable at the option of the holder thereof, in whole or in part (other than solely as a result of a change of control),

in each case, prior to 91 days after the earlier of the Stated Maturity of the Securities and the date the Securities are no longer outstanding; *provided*, *however*, that only the portion of Capital Stock that so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; *provided*, *further*, *however*, that if such Capital Stock is issued to any employee or to any plan for the benefit of employees of the Issuer or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Issuer in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability; *provided*, *further*, that any class of Capital Stock of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Capital Stock that is not Disqualified Stock shall not be deemed to be Disqualified Stock.

"EBITDA" means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period plus, without duplication, to the extent the same was deducted (or otherwise not included) in calculating Consolidated Net Income:

(1) Consolidated Taxes; plus

(2) Consolidated Interest Expense plus all cash dividend payments (excluding items eliminated in consolidation) on a series of Preferred Stock or Disqualified Stock of such Person and its Subsidiaries that are Restricted Subsidiaries; plus

(3) Consolidated Non-cash Charges; plus

(4) any costs or expenses incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of the Issuer or a Guarantor or net cash proceeds of an issuance of Equity Interests of the Issuer (other than Disqualified Stock) solely to the extent that such net cash proceeds are excluded from the calculation of the Cumulative Credit; plus

(5) any expenses in connection with earn-out obligations of such Person and its Restricted Subsidiaries for such period; plus

(6) Consolidated Net Income attributable to, or adding to the losses attributable to, the minority equity interests of third parties in any Restricted Subsidiary that is not a Wholly Owned Restricted Subsidiary of such Person, except to the extent of dividends declared or paid with respect to such period or any prior period on the shares of Capital Stock of such Restricted Subsidiary held by such third parties; plus

(7) any ordinary course dividend or distribution or other payment paid in cash and received from any Person, in each case in excess of amounts included in clause (7) of the definition of Consolidated Net Income;

less, without duplication,

(8) non-cash items increasing Consolidated Net Income for such period (excluding the recognition of deferred revenue or any items that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges that reduced EBITDA in any prior period and any items for which cash was received in a prior period).

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

"Exchange Act" means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Excluded Assets" means, subject to Section 4.11, (i) any license, contract, permit or agreement of the Issuer or any of the Guarantors, if and only for so long as and to the extent that the grant of a security interest therein under the Security Documents would result in a breach or default under, or abandonment, invalidation or unenforceability of, that license, contract, permit or agreement (except (a) to the extent the relevant term that would result in such breach, default, abandonment, invalidation or unenforceability is rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or equivalent statutes of any jurisdiction) or any other applicable law or (b) any such license, contract, permit or agreement between the Issuer and any Subsidiary of the Issuer or between Subsidiaries of the Issuer), (ii) (a) any fee interest in real property (excluding fixtures) if the greater of the cost and the book value of such interest is less than $500,000 or (b) any leasehold interest in real property if the annual base rent is less than $500,000, (iii) any asset or property to the extent that the grant of a security interest in such asset or property is prohibited by any applicable law or requires a consent not obtained of any Governmental Authority pursuant to applicable law (except to the extent the law prohibiting such grant or requiring such consent is rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or equivalent statutes of any jurisdiction) or any other applicable law), (iv) any assets or property as to which the Issuer or the Collateral Agent (at the direction of the Holders of a majority in principal amount of the Securities then outstanding) reasonably determines in good faith that the costs of obtaining such a security interest are excessive in relation to the value of the security to be afforded thereby, (v) any Equity Interests of any Unrestricted Subsidiaries and any Royalty Subsidiaries, (vi) any tax accounts, trust accounts, wage and benefit accounts, fiduciary accounts, zero balance accounts, payroll accounts, payroll withholding tax accounts, pension and pension reserve accounts and employee benefit accounts to the extent funded or maintained in accordance with prudent business practice or as required by law, (vii) any trademark or service mark applications filed in the United States Patent and Trademark Office on the basis of the intent of the Issuer or any Guarantor to use such trademark or service mark, unless and until evidence of use of such mark acceptable to the United States Patent and Trademark Office has been filed with the United States Patent and Trademark Office pursuant to Section 1(c) or Section 1(d) of the Lanham Act (15 U.S.C., et seq.), to the extent that granting a security interest in such application prior to such filing would adversely affect the validity or enforceability of such trademark application, (viii) any motor vehicle or other equipment that is (a) subject to a certificate of title and (b) obtained and used in the ordinary course of business and (ix) any Lockbox Account to the extent such Lockbox Account is pledged as collateral to secure any First Priority Lien Obligations.

"Fair Market Value" means, at the time of any given transaction, with respect to any asset or property, the price (after taking into account any liabilities related to such asset or property) that could be negotiated in an arm's-length transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Indenture (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"FDA" means the United States Food and Drug Administration (including any of its successor agencies or departments).

"Federal Deposit Insurance Corporation" means the Federal Deposit Insurance Corporation or any successor thereto.

"Financial Officer" of any Person shall mean the Chief Financial Officer and/or principal financial officer, Chief Accounting Officer and/or principal accounting officer, Treasurer, Assistant Treasurer or Controller of such Person.

"First Additional Securities" means the Issuer's 12.5% Senior Secured Notes due 2025 that may be issued after the Issue Date pursuant to Section 2.01(c).

"First Additional Securities Triggering Event" means the filing of a new drug application for Libervant by the Issuer with the FDA.

"First Amortization Date" means, with respect to any security, the date specified in such security as the fixed date on which the first payment of principal of such security is due and payable.

"First Lien Agent" means the Representative(s) of the holders of the First Priority Lien Obligations to the extent designated as such in an Intercreditor Agreement.

"First Priority Lien Obligations" means (i) all Secured Bank Indebtedness and (ii) all other Obligations (not constituting Indebtedness) of the Issuer and its Restricted Subsidiaries under the agreements governing Secured Bank Indebtedness, to the extent that, in the case of each of clause (i) or (ii), such Indebtedness or other Obligations are secured, in whole or in part, by the ABL Collateral and have otherwise been incurred in accordance with this Indenture.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, in each case, as in effect on the Issue Date, other than reports and financial information required to be delivered under Section 4.02, which shall be prepared in accordance with GAAP in effect as of the date thereof.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Grantor" means any Person that shall have granted any Lien in favor of an ABL Collateral Agent (as defined in the Intercreditor Agreements) or the Collateral Agent on any of its assets or properties to secure any of the Obligations, including any such Person as debtor-in-possession and any receiver or trustee for such Person (or any similar officer under any Bankruptcy Law) in any proceeding under any Bankruptcy Law.

"guarantee" means a guarantee or other provision of credit support (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations, including by providing security therefor or by becoming a co-obligor with respect thereto. The term "guarantee," when used as a verb, shall mean to provide a guarantee.

"Guarantee" means any guarantee of the obligations of the Issuer under this Indenture and the Securities by any Person in accordance with the provisions of this Indenture.

"Guarantor" means any Person that Incurs a Guarantee pursuant to Section 4.10; *provided*, *however*, that upon the release or discharge of such Person from its Guarantee in accordance with this Indenture, such Person ceases to be a Guarantor.

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

(1) currency exchange, interest rate or commodity swap agreements, currency exchange, interest rate or commodity cap agreements and currency exchange, interest rate or commodity collar agreements; and

(2) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange, interest rates or commodity prices or to otherwise manage interest rate risk or currency exchange risk.

"Holder" means the Person in whose name a Security is registered on the Registrar's books.

"Immaterial Subsidiary" means, at any time, any Subsidiary of the Issuer that (x) has not Incurred any Indebtedness and (y) has, excluding its Subsidiaries, (i) total assets that are individually less than 2.5% of the consolidated total assets of the Issuer and its Subsidiaries in the aggregate and (ii) gross revenues that are individually less than 2.5% of the consolidated gross revenues of the Issuer and its Subsidiaries in the aggregate; *provided*, *however*, that if, at any time, the aggregate amount of the consolidated total assets or consolidated gross revenues attributable to all Subsidiaries of the Issuer that would otherwise be Immaterial Subsidiaries exceeds 5.0% in the aggregate of the consolidated total assets or consolidated gross revenues, respectively, of the Issuer and its Subsidiaries, only those Immaterial Subsidiaries with the smallest percentage of assets (not exceeding 5.0% in the aggregate of the consolidated total assets of the Issuer and its Subsidiaries) shall constitute Immaterial Subsidiaries.

"Incur" means issue, assume, guarantee, incur or otherwise become liable for; *provided*, *however*, that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Subsidiary (whether by merger, amalgamation, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Subsidiary; and "Incurrence" has a correlative meaning.

"Indebtedness" means, with respect to any Person:

(1) the principal and premium (if any) of any indebtedness of such Person, whether or not contingent, (a) in respect of borrowed money, (b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof), (c) representing the deferred and unpaid purchase price of any property (except (i) any such balance that constitutes a trade payable or similar obligation to a trade creditor Incurred in the ordinary course of business and (ii) any liabilities accrued in the ordinary course of business), which purchase price is due more than twelve months after the date of placing the property in service or taking delivery and title thereto, (d) in respect of Capitalized Lease Obligations or (e) representing any Hedging Obligations, if and solely to the extent that any of the foregoing indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability on a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(2) to the extent not otherwise included under clause (1) above and without duplication, any obligation of such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the Indebtedness of another Person (other than by endorsement of negotiable instruments for collection in the ordinary course of business); and

(3) to the extent not otherwise included under clause (1) above and without duplication, Indebtedness of another Person secured by a Lien on any asset owned by such Person (whether or not such Indebtedness is assumed by such Person); *provided*, *however*, that the amount of such Indebtedness will be the lesser of: (a) the Fair Market Value (as determined in good faith by such Person) of such asset at such date of determination; and (b) the amount of such Indebtedness of such other Person;

provided, *however*, that notwithstanding the foregoing, Indebtedness shall be deemed not to include: (i) Contingent Obligations incurred in the ordinary course of business and not in respect of borrowed money; (ii) deferred or prepaid revenues; (iii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller; (iv) any earn-out obligations, contingent consideration, purchase price adjustments, deferred purchase money amounts, repayment obligations, milestone or bonus payments (whether performance or time-based), and royalty, licensing, revenue or profit sharing arrangements, in each case, characterized as such and arising expressly out of purchase and sale contracts, development arrangements or licensing arrangements; (v) deferred compensation; (vi) accrued expenses; or (vii) obligations in respect of Preferred Stock that does not have any of the features set forth in the definition of "Disqualified Stock".

Notwithstanding anything in this Indenture to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, the effects of Accounting Standards Codification section 815 and related interpretations to the extent such effects would otherwise increase or decrease the amount of Indebtedness deemed outstanding for purposes of this Indenture (so that such outstanding amount differs from the principal amount of such Indebtedness payable at maturity) as a result of accounting for any embedded derivatives created by the terms of such Indebtedness; and any such amounts that would have constituted Indebtedness under this Indenture but for the application of this sentence shall not be deemed an Incurrence of Indebtedness under this Indenture.

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

"Independent Financial Advisor" means an accounting, appraisal or investment banking firm or consultant, in each case of recognized standing in the United States, that is, in the good faith determination of the Issuer, qualified to perform the task for which it has been engaged.

"Intellectual Property" means, with respect to any Person, all intellectual property and proprietary rights in any jurisdiction throughout the world, and all corresponding rights, presently or hereafter existing, including: (i) all inventions (whether or not patentable or reduced to practice), all improvements thereto, and all patents, patent applications, industrial designs, industrial design applications, and patent disclosures, together with all reissues, continuations, continuations-in-part, revisions, divisionals, extensions, and reexaminations in connection therewith; (ii) all trademarks, trademark applications, tradenames, servicemarks, servicemark applications, trade dress, logos and designs, business names, company names, Internet domain names, and all other indicia of origin, all applications, registrations, and renewals in connection therewith, and all goodwill associated with any of the foregoing; (iii) all copyrights and other works of authorship, mask works, database rights and moral rights, and all applications, registrations, and renewals in connection therewith; (iv) all trade secrets, know-how, technologies, processes, techniques, new drug applications, abbreviated new drug applications, biologic license applications or 351(k) biologic license applications (or equivalent non-U.S. applications of any of the foregoing), protocols, methods, industrial models, designs, drawings, plans, specifications, research and development, biological, chemical, pharmacological, biochemical, toxological, pharmaceutical, physical and analytical, safety, quality control, manufacturing, technical, preclinical and clinical data (in each case, whether or not included in any regulatory filing) and confidential information (including technical information, customer and supplier lists, manufacturing processes, protocols and methods, pricing and cost information, and business and marketing plans and proposals); (v) all software (including source code, executable code, data, databases, and related documentation); (vi) all rights of privacy and publicity, including rights to the use of names, likenesses, images, voices, signatures and biographical information of real persons; and (vii) all copies and tangible embodiments or descriptions of any of the foregoing (in whatever form or medium).

"Intercreditor Agreement" means any intercreditor agreement, substantially in the form of Exhibit D, among the holders of First Priority Lien Obligations or their Representative(s), the Trustee or the Collateral Agent, the Issuer and each Guarantor that may be party thereto from time to time, as it may be amended from time to time in accordance with this Indenture.

"Intercreditor Collateral" means ABL Collateral in which the Noteholder Secured Parties have a Lien.

"Investment Grade Securities" means:

(1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) securities that have a rating equal to or higher than "Baa3" (or equivalent) by Moody's or "BBB-" (or equivalent) by S&P, or an equivalent rating by any other Rating Agency, but excluding any debt securities or loans or advances between and among the Issuer and its Subsidiaries;

(3) investments in any fund that invests exclusively in investments of the type described in clauses (1) and (2) above, which fund may also hold immaterial amounts of cash pending investment or distribution; and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition.

"Investments" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, trade credit and advances to customers and commission, travel and similar advances to officers, employees and consultants made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet of the Issuer in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. Except as otherwise provided in this Indenture, the outstanding amount of any Investment shall be deemed to be the initial cost of such Investment when made, purchased or acquired (without giving effect to any adjustments for subsequent increases or decreases in value), but giving effect to any repayments, interest, returns, profits, dividends, distributions, proceeds, fees, income and other amounts actually received by the Issuer or any Restricted Subsidiary of the Issuer in respect of such Investment and determined without regard to any write-downs or write-offs of any investments, loans or advances in connection therewith. For purposes of the definition of "Unrestricted Subsidiary" and Section 4.04:

(1) "Investments" shall include the portion (proportionate to the Issuer's equity interest in such Subsidiary) of the Fair Market Value (as determined in good faith by the Issuer) of the net assets of a Subsidiary of the Issuer at the time that such Subsidiary is designated an Unrestricted Subsidiary or ceases to be a Subsidiary (to the extent the Issuer retains an Investment in such Person); and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its Fair Market Value (as determined in good faith by the Issuer) at the time of such transfer, in each case as determined in good faith by the Board of Directors of the Issuer.

"IRS" means the U.S. Internal Revenue Service.

"Issue Date" means July 15, 2019.

"Issuer" has the meaning set forth in the preamble hereof but, for the avoidance of doubt, shall not include any of its Subsidiaries.

"Libervant" means the product referred to as Libervant (whether marketed under such name or any other name).

"Libervant License" means an exclusive license of (or similar arrangement with respect to) the Issuer's Intellectual Property to a Person (other than any Affiliate of the Issuer) for the development or commercialization of Libervant in the United States.

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell, or give a security interest in, such asset and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes of any jurisdiction)); *provided* that in no event shall an operating lease be deemed to constitute a Lien.

"Lockbox Account" means any Deposit Account maintained at a depository institution whose customer deposits are insured by the Federal Deposit Insurance Corporation (to the extent required by law) or a similar institution in a jurisdiction other than the United States of America, into which account are paid solely the Proceeds of Inventory and Accounts that constitute ABL Collateral. All capitalized terms used in this definition and not defined elsewhere herein have the meanings assigned to them in the Uniform Commercial Code.

"Moody's" means Moody's Investors Service, Inc. or any successor to the rating agency business thereof.

"Net Income" means, with respect to any Person, the net income (loss) of such Person and its Subsidiaries, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

"Non-Recourse Debt" means Indebtedness as to which (i) neither the Issuer nor any of its Subsidiaries (other than any Royalty Subsidiary) (a) provides credit support of any kind (other than unsecured undertakings in respect of representations and warranties and covenants in connection with an Apomorphine Royalty Disposition that are usual and customary in transactions of that kind) or collateral security to secure such Indebtedness, (b) is directly or indirectly liable as an obligor, guarantor or otherwise or (c) constitutes the lender or counterparty thereto, (ii) no default with respect to such Indebtedness (including any rights that the holders of the Indebtedness may have to take enforcement action against a Royalty Subsidiary) would permit, upon notice, lapse of time or both, any holder of any other Indebtedness (other than the Securities) of the Issuer or its Subsidiaries to declare a default on such other Indebtedness or cause the payment of the Indebtedness to be accelerated or payable prior to its stated maturity date and (iii) the lenders have been notified in writing that they will not have any recourse to the stock or assets of the Issuer or any of its Subsidiaries (other than such Royalty Subsidiary).

"Noteholder First Lien Collateral" means any and all Notes Collateral other than Intercreditor Collateral.

"Noteholder Obligations" means the Obligations under this Indenture, the Securities and the Security Documents, whether for principal, interest (including interest that, but for the filing of a petition in any proceeding under any Bankruptcy Law, would have accrued on any Obligation, whether or not a claim is allowed or allowable for such interest in such proceeding), premium, fees, expenses, indemnification, performance or otherwise.

"Noteholder Secured Parties" means, at any time, the Trustee, the Collateral Agent, each Holder and each other holder of, or obligee in respect of, any Noteholder Obligations outstanding at such time.

"Notes Collateral" means all property subject, or purported to be subject from time to time, to a Lien under any Security Documents, including all Intellectual Property of the Issuer and the Collateral Account; *provided*, *however*, that (i) the Notes Collateral does not include the Excluded Assets and (ii) any funds released to the Issuer by the Trustee or other Paying Agent, as applicable, from the Collateral Account in accordance with Section 4.06(c)(iii) shall not constitute Notes Collateral and shall be expressly excluded from the definition thereof.

"Obligations" means any principal, interest, penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and bankers' acceptances), damages and other liabilities payable under the documentation governing any Indebtedness; *provided*, *however*, that Obligations with respect to the Securities shall not include fees, expenses or indemnifications in favor of the Trustee and the Collateral Agent or any other third party (other than any Holder).

"Officer" means the Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, the President, any Executive Vice President, any Senior Vice President, any Vice President, the Controller, the Treasurer or the Secretary or Assistant Secretary of the Issuer.

"Officers' Certificate" means a certificate signed on behalf of the Issuer by two Officers of the Issuer, one of whom must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of the Issuer that meets the requirements set forth in this Indenture.

"Opinion of Counsel" means a written opinion from legal counsel who is acceptable to the Trustee and may be an employee of or counsel to the Issuer or the Trustee.

"Original Securities" means the Issuer's 12.5% Senior Secured Notes due 2025 issued on the Issue Date pursuant to Section 2.01(b).

"Patent and Trademark Agreements" means each patent collateral agreement and trademark collateral agreement executed (and, if necessary, notarized) and delivered by a Grantor to the Collateral Agent to evidence or perfect the Collateral Agent's Lien in such Grantor's Intellectual Property.

"Permitted Asset Sale" means:

(1) a Disposition of (i) Cash Equivalents or Investment Grade Securities, (ii) obsolete, damaged or worn-out assets, property or equipment in the ordinary course of business (including the abandonment or other Disposition of Intellectual Property that is, in the reasonable judgment of the Issuer, no longer economically practicable or commercially reasonable to maintain or useful in any material respect, taken as a whole, in the conduct of the business of the Issuer and its Restricted Subsidiaries taken as a whole), (iii) Inventory (as defined in the Uniform Commercial Code) or goods (or other assets) held for sale in the ordinary course of business or (iv) equipment or other assets as part of a trade-in for replacement equipment;

(2) the Disposition of all or substantially all of the assets of the Issuer in a manner permitted pursuant to Section 5.01 or any Disposition that constitutes a Change of Control;

(3) any Restricted Payment that is permitted to be made, and is made, under Section 4.04 or any Permitted Investment;

(4) any Disposition of assets or issuance or sale of Equity Interests of the Issuer or any Restricted Subsidiary, which assets or Equity Interests so Disposed or issued have an aggregate Fair Market Value (as determined in good faith by the Issuer) of less than $250,000;

(5) any Disposition of property or assets, or the issuance of securities, (i) by a Restricted Subsidiary to the Issuer or (ii) by the Issuer or a Restricted Subsidiary to a Guarantor (or to an entity that contemporaneously therewith becomes a Guarantor);

(6) any exchange of assets (including a combination of assets and Cash Equivalents) (other than Intellectual Property) for assets related to a Similar Business of comparable or greater market value or usefulness to the business of the Issuer and its Restricted Subsidiaries as a whole, as determined in good faith by the Issuer, which in the event of an exchange of assets with a Fair Market Value in excess of (A) $250,000 shall be evidenced by an Officers' Certificate and (B) $500,000 shall be set forth in a resolution approved by a majority of the Board of Directors of the Issuer, evidenced by an Officers' Certificate certifying as to such approval;

(7) any sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(8) the lease, assignment or sublease of any real or personal property in the ordinary course of business;

(9) any license, collaboration agreement, strategic alliance or similar arrangement in the ordinary course of business providing for the licensing of Intellectual Property or the development or commercialization of Intellectual Property (except in each case for a Libervant License, unless the Issuer has received the written consent of the Holders of a majority in principal amount of the Securities then outstanding, it being understood that the Holders shall respond in a reasonably timely manner to any written request for such consent and such consent shall not otherwise be unreasonably withheld, conditioned or delayed) that, at the time of such license, collaboration agreement, strategic alliance or similar arrangement, does not materially and adversely affect the Issuer's business, condition (financial or otherwise) or prospects or the value of the Notes Collateral, taken as a whole; *provided*, that no Event of Default has occurred and is continuing;

(10) any surrender or waiver of contract rights or the settlement of, release of, recovery on or surrender of contract, tort or other claims of any kind;

(11) in the ordinary course of business, any swap of assets, or lease, assignment or sublease of any real or personal property, in each case, other than Intellectual Property, in exchange for services (including in connection with any outsourcing arrangements) of comparable or greater value or usefulness to the business of the Issuer and its Restricted Subsidiaries taken as a whole, as determined in good faith by the Issuer;

(12) the incurrence of Permitted Liens;

(13) any Disposition of Capital Stock of any Restricted Subsidiary pursuant to an agreement or other obligation with or to a Person (other than the Issuer or a Restricted Subsidiary of the Issuer) from whom such Restricted Subsidiary was acquired or from whom such Restricted Subsidiary acquired its business and assets (having been newly formed in connection with such acquisition), made as part of such acquisition and in each case comprising all or a portion of the consideration in respect of such sale or acquisition;

(14) Dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements;

(15) the issuance of Disqualified Stock pursuant to Section 4.03;

(16) the Disposition resulting from any involuntary loss of title or damage to, involuntary loss or destruction of, or condemnation or other taking of, any property or assets of the Issuer or any Restricted Subsidiary; and

(17) voluntary terminations, transitions, sales or other dispositions of Hedging Obligations.

"Permitted Holders" means, at any time, each of Mr. Douglas Bratton, Bratton Capital Management L.P., MRX Partners, LLC, Monoline R.X., L.P., Monoline II R.X., L.P. and Monoline III R.X., L.P.

"Permitted Investments" means:

(1) any Investment in the Issuer or any Restricted Subsidiary; *provided*, that any Notes Collateral may be transferred pursuant to this clause (1) only to a Restricted Subsidiary that is a Guarantor;

(2) any Investment in Cash Equivalents or Investment Grade Securities;

(3) any Investment by the Issuer or any Restricted Subsidiary of the Issuer in a Person if as a result of such Investment (a) such Person becomes a Guarantor or (b) such Person, in one transaction or a series of related transactions, is merged, amalgamated or consolidated with or into, or transfers or conveys all or substantially all of its assets to, or is liquidated into, the Issuer or a Guarantor;

(4) any Investment in securities or other assets not constituting Cash Equivalents and received in connection with a Permitted Asset Sale;

(5) any Investment existing on, or made pursuant to binding commitments existing on, the Issue Date or an Investment consisting of any extension, modification or renewal of any Investment existing on the Issue Date; *provided* that the amount of any such Investment may be increased as required by the terms of such Investment as in existence on the Issue Date;

(6) advances to employees not in excess of $100,000 outstanding at any one time in the aggregate;

(7) any Investment acquired by the Issuer or any of its Restricted Subsidiaries (a) in exchange for any other Investment or accounts receivable held by the Issuer or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable, (b) as a result of a foreclosure by the Issuer or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default or (c) in settlement of or other resolution of claims or disputes, and, in each case, extensions, modifications and renewals thereof;

(8) Hedging Obligations permitted under Section 4.03(b)(x);

(9) Investments by the Issuer or any of its Restricted Subsidiaries having an aggregate Fair Market Value, taken together with all other Investments made pursuant to this clause (9) that are at that time outstanding, not to exceed $1,000,000 (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value); *provided*, *however*, that if any Investment pursuant to this clause (9) is made in any Person that is not a Restricted Subsidiary at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (9) for so long as such Person continues to be a Restricted Subsidiary;

(10) loans and advances to officers, directors and employees for business-related travel expenses, moving expenses and other similar expenses, in each case Incurred in the ordinary course of business or consistent with past practice or to fund such person's purchase of Equity Interests of the Issuer or any direct or indirect parent of the Issuer, not to exceed $500,000 at any one time outstanding pursuant to this clause (10);

(11) Investments the payment for which consists of Equity Interests of the Issuer (other than Disqualified Stock) or any direct or indirect parent of the Issuer, as applicable; *provided, however*, that such Equity Interests will not increase the amount available for Restricted Payments under clause (3) of the definition of "Cumulative Credit";

(12) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 4.07(b) (except transactions described in clauses (ii), (iv), (v), (viii)(B) or (ix) of such Section);

(13) Investments consisting of the licensing of Intellectual Property or collaboration agreements, strategic alliances or similar arrangements in respect of Intellectual Property, in each case, for the development or commercialization of Intellectual Property (except in each case for a Libervant License, unless the Issuer has received the written consent of the Holders of a majority in principal amount of the Securities then outstanding, it being understood that the Holders shall respond in a reasonably timely manner to any written request for such consent and such consent shall not otherwise be unreasonably withheld, conditioned or delayed) that, at the time such license, collaboration agreement, strategic alliance or similar arrangement is entered into, does not materially and adversely affect the Issuer's business, condition (financial or otherwise) or prospects or the value of the Notes Collateral, taken as a whole; *provided*, that no Event of Default has occurred and is continuing;

(14) guarantees issued in accordance with Sections 4.03 and 4.10, including any guarantee or other obligation Incurred under any Credit Agreement in connection with any letter of credit issued for the account of the Issuer or any of its Subsidiaries (including with respect to the issuance of, or payments in respect of drawings under, such letters of credit);

(15) Investments consisting of or to finance purchases and acquisitions of inventory, supplies, materials, services or equipment or purchases of contract rights or licenses or leases of Intellectual Property (except in each case for a Libervant License, unless the Issuer has received the written consent of the Holders of a majority in principal amount of the Securities then outstanding, it being understood that the Holders shall respond in a reasonably timely manner to any written request for such consent and such consent shall not otherwise be unreasonably withheld, conditioned or delayed); *provided*, in the case of such a license or lease of Intellectual Property, that no Event of Default has occurred and is continuing;

(16) loans and advances relating to indemnification or reimbursement of any officers, directors or employees in respect of liabilities relating to their serving in such capacity;

(17) (i) lease, utility and other similar deposits and (ii) prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits, in each case, in the ordinary course of business;

(18) any redemption or repurchase of the Securities permitted and made in accordance with the terms of this Indenture;

(19) Investments consisting of earnest money deposits required in connection with a purchase agreement, or letter of intent, or other acquisitions to the extent not otherwise prohibited by this Indenture;

(20) Investments of a Restricted Subsidiary of the Issuer acquired after the Issue Date or of an entity merged into, amalgamated with, or consolidated with a Restricted Subsidiary of the Issuer in a transaction that is not prohibited by Article 5 after the Issue Date to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(21) any Investment in any Restricted Subsidiary of the Issuer or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business;

(22) Investments by the Issuer and its Restricted Subsidiaries consisting of deposits, prepayments and other credits to suppliers or landlords, and guaranties of business obligations owed to landlords, suppliers, customers, franchisees and licensees of the Issuer and its Subsidiaries; and

(23) any Investment in connection with a Sale/Leaseback Transaction not prohibited by this Indenture.

In the event that any Investment (or any portion thereof) meets the criteria of more than one of the categories of Permitted Investments described in clauses (1) through (23) above, or is entitled to be Incurred or made pursuant to Section 4.04, the Issuer shall, in its sole discretion, classify or reclassify, or later divide, classify or reclassify, such Investment (or any portion thereof) in any manner that complies with such categories above or Section 4.04. In addition, at the time of Incurrence or making of any Investment, the Issuer shall be entitled to divide and classify such Investment in more than one of the categories of Permitted Investments described above or described in Section 4.04.

"Permitted Liens" means, with respect to any Person:

(1) pledges or deposits by such Person under workmen's compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for taxes, assessments or other governmental charges being contested in good faith by appropriate proceedings or for the payment of rent, in each case Incurred in the ordinary course of business;

(2) Liens imposed by law, such as carriers', warehousemen's and mechanics' Liens, in each case for sums not overdue for more than 30 days or being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review;

(3) Liens for taxes, assessments or other governmental charges not yet due or payable or subject to penalties for nonpayment or that are being contested in good faith by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(4) Liens in favor of issuers of performance and surety bonds or bid bonds or with respect to other regulatory requirements or letters of credit issued pursuant to the request of and for the account of such Person in the ordinary course of its business (including any Liens securing Indebtedness permitted to be Incurred pursuant to Section 4.03(b)(v) and Section 4.03(b)(xi));

(5) minor survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real properties or title defects or Liens incidental to the conduct of the business of such Person or to the ownership of its properties that were not Incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(6) (A) Liens on the ABL Collateral securing Indebtedness permitted to be Incurred pursuant to Section 4.03(b)(i) and ABL Obligations related thereto, which Liens shall be subject to the Intercreditor Agreements, and (B) Liens securing Indebtedness permitted to be Incurred pursuant to Section 4.03(b)(iv) and Section 4.03(b)(xv) (*provided* that in the case of such Section 4.03(b)(xv) such Lien applies solely to acquired property or assets of the acquired entity, as the case may be);

(7) (A) Liens existing on the Issue Date, (B) Liens securing the Securities or the Guarantees, including Liens arising under or relating to the Security Documents, and (C) the Lien securing the Issuer's and the Guarantors' payment obligations under Section 7.06;

(8) Liens on assets, property or shares of stock of a Person at the time such Person becomes a Subsidiary; *provided*, *however*, that such Liens are not created or Incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary; *provided*, *further*, *however*, that such Liens may not extend to any other property owned by the Issuer or any Restricted Subsidiary of the Issuer;

(9) Liens on assets or property at the time the Issuer or a Restricted Subsidiary of the Issuer acquired the assets or property, including any acquisition by means of a merger, amalgamation or consolidation with or into the Issuer or any Restricted Subsidiary of the Issuer; *provided*, *however*, that such Liens are not created or Incurred in connection with, or in contemplation of, such acquisition; *provided*, *further*, *however*, that the Liens may not extend to any other property owned by the Issuer or any Restricted Subsidiary of the Issuer;

(10) Liens securing Indebtedness or other obligations of a Restricted Subsidiary owing to the Issuer or a Guarantor permitted to be Incurred in accordance with Section 4.03;

(11) Liens securing Hedging Obligations not Incurred in violation of this Indenture; *provided* that with respect to Hedging Obligations relating to Indebtedness, such Lien extends only to the property securing such Indebtedness;

(12) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(13) leases and subleases of real property that do not materially interfere with the ordinary conduct of the business of the Issuer or any of its Restricted Subsidiaries;

(14) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Issuer and its Restricted Subsidiaries in the ordinary course of business;

(15) Liens in favor of the Issuer or any Guarantor;

(16) deposits made in the ordinary course of business to secure liability to insurance carriers;

(17) Liens on the Equity Interests of Unrestricted Subsidiaries;

(18) any license, collaboration agreement, strategic alliance or similar arrangement providing for the licensing of Intellectual Property or the development or commercialization of Intellectual Property (except in each case for a Libervant License, unless the Issuer has received the written consent of the Holders of a majority in principal amount of the Securities then outstanding, it being understood that the Holders shall respond in a reasonably timely manner to any written request for such consent and such consent shall not otherwise be unreasonably withheld, conditioned or delayed) that, at the time of the grant thereof, does not materially and adversely affect the Issuer's business, condition (financial or otherwise) or prospects or the value of the Notes Collateral taken as a whole; *provided*, that no Event of Default has occurred and is continuing;

(19) Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness ("Refinancing Secured Indebtedness") secured by any Lien referred to in the foregoing clauses (6)(B) (in the case of Liens to secure any Refinancing Secured Indebtedness under such clause (6)(B), such Liens shall be deemed to have also been incurred under such clause (6)(B), and not this clause (19), for purposes of determining amounts outstanding under such clause (6)(B)), (7), (8) and (9); *provided*, *however*, that (w) such new Lien shall be limited to all or part of the same property that secured (or, under the written arrangements under which the original Lien arose, could secure) the Lien then securing such Indebtedness being refinanced, refunded, extended, renewed or replaced (plus improvements, accessions, proceeds, dividends or distributions in respect thereof), (x) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (a) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under such clauses (6)(B), (7), (8) and (9) at the time the original Lien became a Permitted Lien under this Indenture, and (b) an amount necessary to pay any fees and expenses, including premiums, related to such refinancing, refunding, extension, renewal or replacement, (y) any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in clause 7(B) above shall, at the election of the Issuer, be secured by and entitled to the benefits of the Security Documents and rank *pari passu* with the Indebtedness that is refinanced, refunded, extended, renewed or replaced and (z) any Lien securing the Refinancing Secured Indebtedness shall have a priority relative to the Liens securing the Securities and the Guarantees that is not greater than the relative priority of the Lien securing the Indebtedness that is refinanced, refunded, extended, renewed or replaced;

(20) Liens on equipment of the Issuer or any Restricted Subsidiary granted in the ordinary course of business to the Issuer's or such Restricted Subsidiary's client at which such equipment is located;

(21) judgment and attachment Liens not giving rise to an Event of Default and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;

(22) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(23) Liens Incurred to secure cash management services or to implement cash pooling arrangements in the ordinary course of business that do not, individually or in the aggregate, materially impair the value of the Notes Collateral;

(24) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement; *provided*, *however*, that this clause (24) shall not apply to any Liens securing Indebtedness;

(25) any amounts held by a trustee in the funds and accounts under an indenture securing any revenue bonds issued for the benefit of the Issuer or any Restricted Subsidiary;

(26) Liens arising by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies as to Deposit Accounts (as defined in the Uniform Commercial Code) or other funds maintained with a depository or financial institution;

(27) Liens on property subject to any Sale/Leaseback Transactions not prohibited under this Indenture;

(28) Liens that secure Indebtedness Incurred in the ordinary course of business not to exceed $250,000 at any one time outstanding;

(29) any interest of title of a lessor under any lease of real or personal property;

(30) Liens on the identifiable proceeds of any property or asset subject to a Lien otherwise constituting a Permitted Lien;

(31) Apomorphine License Transactions that comply with Section 4.06(b); and

(32) Liens arising on any real property as a result of eminent domain, condemnation or similar proceedings against such property.

For purposes of determining compliance with this definition, (a) Permitted Liens need not be incurred solely by reference to one category of Permitted Liens described above but are permitted to be incurred in part under any combination thereof and (b) in the event that a Lien (or any portion thereof) meets the criteria of one or more categories of Permitted Liens described above, the Issuer shall, in its sole discretion, classify (or later reclassify) such item of Permitted Liens (or any portion thereof) in any manner that complies with this definition and will only be required to include the amount and type of such item of Permitted Liens in one of the above clauses and such Lien will be treated as having been incurred pursuant to only one of such clauses.

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

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

"Rating Agency" means (i) Moody's, (ii) S&P or (iii) any "nationally recognized statistical rating organization" within the meaning of Section 3(a)(62) of the Exchange Act selected by the Issuer or any direct or indirect parent of the Issuer as a replacement agency for Moody's or S&P, as the case may be.

"Representative" means the trustee(s), agent(s) or representative(s) (if any) for an issue of Indebtedness; *provided*, *however*, that if, and for so long as, such Indebtedness lacks such a Representative, then, unless otherwise provided for in the document governing such Indebtedness, the Representative for such Indebtedness shall at all times constitute the holder or holders of a majority in outstanding principal amount of obligations under such Indebtedness.

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

"Restricted Subsidiary" means, with respect to any Person, any Subsidiary of such Person other than an Unrestricted Subsidiary of such Person. Unless otherwise indicated in this Indenture, all references to Restricted Subsidiaries shall mean Restricted Subsidiaries of the Issuer.

"Royalty Subsidiary" means any Subsidiary of the Issuer that is designated by the Board of Directors of the Issuer as a Royalty Subsidiary pursuant to a resolution of such Board of Directors, but only to the extent that such Subsidiary (i) has no Indebtedness other than Non-Recourse Debt, (ii) has no assets other than the assets that are the subject of an Apomorphine Royalty Disposition and is not engaged in any activities other than those related or incidental to an Apomorphine Royalty Disposition, (iii) is a Person with respect to which neither the Issuer nor any of its other Subsidiaries has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results and (iv) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Issuer or any of its other Subsidiaries.

"Royalty Subsidiary Liens" means Liens (i) solely on assets owned by a Royalty Subsidiary that are the subject of an Apomorphine Royalty Disposition securing the Non-Recourse Debt of such Royalty Subsidiary in connection with an Apomorphine Royalty Disposition and (ii) solely on the Equity Interests of a Royalty Subsidiary securing the Non-Recourse Debt of such Royalty Subsidiary in connection with an Apomorphine Royalty Disposition; *provided* that there is no recourse (whether as an obligor, guarantor or otherwise) to, or other credit support provided by, the Issuer or any other Subsidiary (other than unsecured undertakings in respect of representations and warranties and covenants in connection with such Apomorphine Royalty Disposition that are usual and customary in transactions of that kind).

"S&P" means S&P Global Ratings or any successor to the rating agency business thereof.

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

"SEC" means the United States Securities and Exchange Commission or any successor thereto.

"Second Additional Securities" means the Issuer's 12.5% Senior Secured Notes due 2025 that may be issued after the Issue Date pursuant to Section 2.01(d).

"Second Additional Securities Triggering Event" means the approval of Libervant by the FDA for sale in the United States.

"Secured Bank Indebtedness" means any Bank Indebtedness that is secured, in whole or in part, by a Lien Incurred or deemed Incurred pursuant to clause (6)(A) of the definition of "Permitted Liens".

"Secured Indebtedness" means any Indebtedness secured, in whole or in part, by a Lien.

"Securities" means the Issuer's 12.5% Senior Secured Notes due 2025 and shall include, for the avoidance of doubt, the Original Securities issued on the Issue Date and the First Additional Securities and the Second Additional Securities that may be issued after the Issue Date, in each case, as and to the extent issued pursuant to the terms and conditions of this Indenture.

"Securities Act" means the United States Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Security Documents" means the security agreements, pledge agreements, mortgages, collateral assignments and related agreements, as amended, supplemented, restated, renewed, refunded, replaced, restructured, repaid, refinanced or otherwise modified from time to time, creating, perfecting or otherwise evidencing the security interests granted by the Issuer or any Guarantor in favor of the Collateral Agent in the Notes Collateral as contemplated by this Indenture, including the Collateral Agreement and the Patent and Trademark Agreements.

"Similar Business" means a business, the majority of whose revenues are derived from the activities of the Issuer and its Subsidiaries as of the Issue Date or any business or activity that is reasonably similar or complementary thereto or a reasonable extension, development or expansion thereof or ancillary or complementary thereto.

"Stated Maturity" means, with respect to any security, the date specified in such security as the fixed date on which the final payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency beyond the control of the issuer unless such contingency has occurred).

"Subordinated Indebtedness" means (a) with respect to the Issuer, any Indebtedness of the Issuer that is (i) unsecured, (ii) by its terms subordinated in right of payment to the Securities or (iii) secured by Liens on Notes Collateral ranking junior to the Liens securing the Securities or (b) with respect to any Guarantor, any Indebtedness of such Guarantor that is (i) unsecured, (ii) by its terms subordinated in right of payment to its Guarantee or (iii) secured by Liens on Notes Collateral ranking junior to the Liens securing its Guarantee. For the avoidance of doubt, Subordinated Indebtedness shall be deemed to include any Indebtedness reflecting the payment subordination terms set forth in Exhibit F.

"Subsidiary" means, with respect to any Person, (i) any corporation, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, and (ii) any partnership, joint venture, limited liability company or similar entity of which (a) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general and limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, whether in the form of membership, general, special or limited partnership interests or otherwise, or (b) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity. For purposes of clarity, a Subsidiary of a Person shall not include any Person that is under common control with the first Person solely by virtue of having directors, managers or trustees in common and shall not include any Person that is solely under common control with the first Person (i.e., a sister company with a common parent).

"TIA" means the Trust Indenture Act of 1939 (15 U.S.C. Sections 77aaa-77bbbb) as interpreted and in effect on the Issue Date; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended or there is a change in its interpretation after the Issue Date, the term "TIA" shall mean, to the extent required by such amendment or such change in interpretation, the Trust Indenture Act of 1939, as so amended or interpreted. It is acknowledged that this Indenture will not be qualified under the TIA.

"Treasury Rate" means, in respect of any redemption date, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 that has become publicly available at least two Business Days prior to such redemption date (or, if such Federal Reserve Statistical Release H.15 is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such redemption date to the First Call Date; *provided*, that if the period from such redemption date to the First Call Date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"Trust Officer" means:

(1) any officer within the Corporate Trust Office of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee to whom any corporate trust matter relating to this Indenture is referred because of such Person's knowledge of and familiarity with the particular subject; and

(2) who shall have direct responsibility for the administration of this Indenture.

"Trustee" means the party named as such in this Indenture until a successor replaces it in accordance with the applicable provisions of this Indenture and, thereafter, means such successor.

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

"Unrestricted Subsidiary" means:

(1) any Subsidiary of the Issuer that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors of such Person in the manner provided below; and

(2) any Subsidiary of an Unrestricted Subsidiary;

provided, *however*, that, in each case, such Subsidiary does not own, acquire or license any Intellectual Property.

The Issuer may designate any Subsidiary of the Issuer (including any newly acquired or newly formed Subsidiary of the Issuer) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on any property of, the Issuer or any other Subsidiary of the Issuer that is not a Subsidiary of the Subsidiary to be so designated; *provided*, *however*, that the Subsidiary to be so designated and its Subsidiaries (i) do not at the time of designation have and do not thereafter Incur any Indebtedness that is guaranteed by the Issuer or any of its Restricted Subsidiaries (or that otherwise has recourse to the property or assets of the Issuer or any of its Restricted Subsidiaries) and (ii) do not at the time of designation and do not thereafter guarantee any other Indebtedness of the Issuer or any of its Restricted Subsidiaries; *provided*, *further*, *however*, that either:

(a) the Subsidiary to be so designated has total consolidated assets of $1,000 or less; or

(b) if such Subsidiary has consolidated assets greater than $1,000, then such designation would be permitted under Section 4.04.

The Issuer may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided*, *however*, that immediately after giving effect to such designation:

(x) (1) the Issuer could Incur $1.00 of additional Indebtedness pursuant to the Consolidated Leverage Ratio test set forth in Section 4.03(a) or (2) the Consolidated Leverage Ratio for the Issuer and its Restricted Subsidiaries would be less than such ratio for the Issuer and its Restricted Subsidiaries immediately prior to such designation, in each case on a *pro forma* basis taking into account such designation; and

(y) no Event of Default shall have occurred and be continuing.

Any such designation by the Issuer shall be evidenced to the Trustee by promptly filing with the Trustee a copy of the resolution of the Board of Directors of the Issuer or any committee thereof giving effect to such designation and an Officers' Certificate certifying that such designation complied with the foregoing provisions.

"U.S. Government Obligations" means securities that are:

(1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

(2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America,

which, in each case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any such U.S. Government Obligations or a specific payment of principal of or interest on any such U.S. Government Obligations held by such custodian for the account of the holder of such depository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligations or the specific payment of principal of or interest on the U.S. Government Obligations evidenced by such depository receipt.

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

"Weighted Average Life to Maturity" means, when applied to any Indebtedness or Disqualified Stock, as the case may be, at any date, the quotient obtained by dividing (i) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock multiplied by the amount of such payment, by (ii) the sum of all such payments.

"Wholly Owned Restricted Subsidiary" means any Wholly Owned Subsidiary that is a Restricted Subsidiary.

"Wholly Owned Subsidiary" of any Person means a Subsidiary of such Person 100% of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares or shares required to be held by foreign nationals or Subsidiaries not organized or existing under the laws of the United States of America or any state or territory thereof or the District of Columbia) is owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

SECTION 1.02. Other Definitions.

Term	Defined in Section
“Acceleration”	6.02
“Affiliate Transaction”	4.07(a)
“After-Acquired Property”	4.13
“Apomorphine Asset Sale Offer”	4.06(b)(ii)
“Bankruptcy Law”	6.01
“Base Currency”	12.14(b)(i)
“Change of Control Offer”	4.08(b)
“Collateral Account”	4.06(c)(i)
“Confidential Information”	7.11
“Confidential Parties”	7.11
“Consolidated Leverage Calculation Date”	“Consolidated Leverage Ratio” definition
“covenant defeasance option”	8.01(c)
“Custodian”	6.01
“Definitive Security”	Appendix A
“Depository”	Appendix A
“Event of Default”	6.01
“First Call Date”	Exhibit A
“Global Security”	Appendix A
“Guaranteed Obligations”	10.01(a)
“Increased Amount”	4.11
“Judgment Currency”	12.14(b)(i)
“legal defeasance option”	8.01(c)
“Paying Agent”	2.04(a)
“Payment Date”	Exhibit A
“primary obligations”	“Contingent Obligations” definition
“primary obligor”	“Contingent Obligations” definition
“protected purchaser”	2.08
“Purchase Agreements”	Appendix A
“QIB”	Appendix A
“rate(s) of exchange”	12.14(d)
“Record Date”	Exhibit A
“Reference Period”	“Cumulative Credit” definition
“Refinancing Indebtedness”	4.03(b)(xiv)
“Refinancing Secured Indebtedness”	“Permitted Liens” definition
“Refunding Capital Stock”	4.04(b)(ii)
“Registrar”	2.04(a)
“Restricted Payments”	4.04(a)
“Retired Capital Stock”	4.04(b)(ii)
“Second Additional Securities Triggering Event Officers’ Certificate”	2.01(d)
“Securities”	Preamble
“Securities Custodian”	Appendix A
“Security Document Order”	11.10(i)
“Successor Company”	5.01(a)(i)
“Successor Guarantor”	5.02(a)(i)

SECTION 1.03. Rules of Construction. Unless the context otherwise requires:

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

(b) except as otherwise set forth in this Indenture, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP as defined herein, and an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP as defined herein;

(c) the word "or" is not exclusive;

(d) the word "including" means including without limitation, and any item or list of items set forth following the word "including", "include" or "includes" in this Indenture is set forth only for the purpose of indicating that, regardless of whatever other items are in the category in which such item or items are "included", such item or items are in such category and shall not be construed as indicating the items in the category in which such item or items are "included" are limited to such item or items similar to such items;

(e) all references in this Indenture to any designated "Article", "Section", "Appendix", "Exhibit", definition and other subdivision are to the designated Article, Section, Appendix, Exhibit, definition and other subdivision, respectively, of this Indenture;

(f) all references in this Indenture to (i) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section, Appendix, Exhibit and other subdivision, respectively, and (ii) the term "this Indenture" means this Indenture as a whole, including the Appendix and Exhibits;

(g) words in the singular include the plural and words in the plural include the singular;

(h) the principal amount of any non-interest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the issuer dated such date prepared in accordance with GAAP as defined herein;

(i) the principal amount of any Preferred Stock shall be (i) the maximum liquidation value of such Preferred Stock or (ii) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock, whichever is greater;

(j) "$" and "U.S. Dollars" each refers to United States dollars, or such other money of the United States of America that at the time of payment is legal tender for payment of public and private debts;

(k) the words "asset" or "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights;

(l) unless otherwise specified, all references to an agreement or other document include references to such agreement or document as from time to time amended, restated, reformed, supplemented or otherwise modified in accordance with the terms thereof (subject to any restrictions on such amendments, restatements, reformations, supplements or modifications set forth herein);

(m) all references to any Person shall be construed to include such Person's successors and permitted assigns (subject to any restrictions on assignment, transfer or delegation set forth herein), and any reference to a Person in a particular capacity excludes such Person in other capacities; and

(n) the word "will" shall be construed to have the same meaning and effect as the word "shall".

ARTICLE 2

THE SECURITIES

SECTION 2.01. Amount of Securities.

(a) The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is limited to $100,000,000.

(b) On the Issue Date, the Issuer shall issue and deliver, in accordance with this Article 2, Original Securities in an aggregate principal amount of $70,000,000.

(c) On any Business Day on or prior to March 31, 2021 that does not fall between a Record Date and its related Payment Date (but, for the avoidance of doubt, only one Business Day, but not more than one Business Day), the Issuer may issue and deliver, in accordance with this Article 2, with the written consent of the Holders of a majority in principal amount of the Original Securities then outstanding, upon five Business Days' written notice to the Trustee, First Additional Securities in an aggregate principal amount of $10,000,000; *provided*, that, as of such Business Day, as conditions to the issuance of such First Additional Securities, (i) no Event of Default has occurred and is continuing, (ii) the First Additional Securities Triggering Event has occurred and (iii) the Issuer shall deliver to the Trustee, in addition to the written order of the Issuer pursuant to Section 2.03, Officers' Certificates of the Issuer (A) certifying as to the receipt of such written consent of the Holders and the satisfaction of the foregoing clause (i) and clause (ii) and (B) stating that the representations and warranties of the Issuer in the Purchase Agreements are true and correct in all material respects on and as of such Business Day with the same force and effect as if expressly made on and as of such Business Day (except for such representations and warranties qualified by materiality or material adverse effect, which are true and correct in all respects). Such First Additional Securities shall have the same terms as the Original Securities, except that the issue date, the issue price, the initial Payment Date and the initial date from which interest shall accrue may vary. If the Issuer determines that such First Additional Securities are issued as part of a "qualified reopening" for U.S. federal income tax purposes, such First Additional Securities will have the same CUSIP number as the Original Securities and for U.S. federal income tax purposes will have the same issue date and issue price as the Original Securities. If the Issuer determines that such First Additional Securities are not issued as part of a "qualified reopening" for U.S. federal income tax purposes, such First Additional Securities will be required to have a CUSIP number that is different than the CUSIP number of the Original Securities.

(d) On any Business Day on or prior to March 31, 2021 that does not fall between a Record Date and its related Payment Date (but, for the avoidance of doubt, only one Business Day, but not more than one Business Day), the Issuer may issue and deliver, in accordance with this Article 2, without the consent of any Holder of or any holder of beneficial interests in the Original Securities or any First Additional Securities, upon five Business Days' written notice to the Trustee, Second Additional Securities in an aggregate principal amount of up to $30,000,000; *provided*, that, as of such Business Day, if the Issuer has issued the First Additional Securities, the Issuer may only issue and deliver such Second Additional Securities in an aggregate principal amount of up to $20,000,000; *provided*, *further*, that, as of such Business Day, as conditions to the issuance of such Second Additional Securities, (i) no Event of Default has occurred and is continuing, (ii) the Second Additional Securities Triggering Event has occurred and (iii) the Issuer shall deliver to the Trustee, in addition to the written order of the Issuer pursuant to Section 2.03, Officers' Certificates of the Issuer (A) certifying as to the satisfaction of the foregoing clause (i) and clause (ii) (the "Second Additional Securities Triggering Event Officers' Certificate") and (B) stating that the representations and warranties of the Issuer in the Purchase Agreements are true and correct in all material respects on and as of such Business Day with the same force and effect as if expressly made on and as of such Business Day (except for such representations and warranties qualified by materiality or material adverse effect, which are true and correct in all respects). Such Second Additional Securities shall have the same terms as the Original Securities and any First Additional Securities, except that the issue date, the issue price, the initial Payment Date and the initial date from which interest shall accrue may vary. If the Issuer determines that such Second Additional Securities are issued as part of a "qualified reopening" for U.S. federal income tax purposes, such Second Additional Securities will have the same CUSIP number as the Original Securities or any First Additional Securities, as the case may be, and for U.S. federal income tax purposes will have the same issue date and issue price as the Original Securities or such First Additional Securities, as the case may be. If the Issuer determines that such Second Additional Securities are not issued as part of a "qualified reopening" for U.S. federal income tax purposes, such Second Additional Securities will be required to have a CUSIP number that is different than the CUSIP number of the Original Securities and any First Additional Securities.

(e) The Securities shall be treated as a single class for all purposes under this Indenture, including directions provided to the Trustee pursuant to Section 6.05, waivers, amendments, redemptions and offers to purchase, and shall rank on a parity basis in right of payment and security.

SECTION 2.02. Form and Dating. Provisions relating to the Securities are set forth in Appendix A hereto, which is hereby incorporated in and expressly made a part of this Indenture. The Securities and the Trustee's certificate of authentication shall each be substantially in the form of Exhibit A, which is hereby incorporated in and expressly made a part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Issuer or any Guarantor is subject, if any, or usage (*provided* that any such notation, legend or endorsement is in a form acceptable to the Issuer). Each Security shall be dated the date of its authentication. The Securities shall be issuable only in registered form, without interest coupons, and in minimum denominations of $250,000 and any integral multiple of $1,000 in excess thereof.

SECTION 2.03. Execution and Authentication. The Trustee shall authenticate and make available for delivery upon a written order of the Issuer signed by one Officer (i) Original Securities for original issue on the Issue Date in an aggregate principal amount of $70,000,000, (ii) First Additional Securities for original issue pursuant to Section 2.01(c) and (iii) Second Additional Securities for original issue pursuant to Section 2.01(d). Such order shall specify the amount of the Securities to be authenticated, the form in which the Securities are to be authenticated and the date on which the original issue of Securities is to be authenticated.

One Officer shall sign the Securities for the Issuer 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 be valid nevertheless.

A Security shall not be valid until an authorized signatory of 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 Indenture.

The Trustee may appoint one or more authenticating agents reasonably acceptable to the Issuer to authenticate the Securities. Any such appointment shall be evidenced by an instrument signed by a Trust Officer, a copy of which shall be furnished to the Issuer. Unless limited by the terms of such appointment, an authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

SECTION 2.04. Registrar and Paying Agent.

(a) The Issuer shall maintain (i) an office or agency where Securities may be presented for registration of transfer or for exchange (the "Registrar") and (ii) an office or agency where Securities may be presented for payment (the "Paying Agent"). The Registrar shall keep a register of the Securities and of their transfer and exchange. The Issuer may have one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrars. The term "Paying Agent" includes the Paying Agent and any additional paying agents. The Issuer initially appoints the Trustee as Registrar, Paying Agent and the Securities Custodian with respect to the Global Securities and as Registrar and Paying Agent with respect to the Definitive Securities.

(b) The Issuer may enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Issuer shall notify the Trustee of the name and address of any such agent. If the Issuer fails to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.06. The Issuer or any of its domestically organized Wholly Owned Restricted Subsidiaries may act as Paying Agent or Registrar. Upon any Event of Default as described in Section 6.01(e), Section 6.01(f) or Section 6.01(g), the Trustee shall automatically be the Paying Agent.

(c) The Issuer may remove any Registrar or Paying Agent upon written notice to such Registrar or Paying Agent and to the Trustee; *provided*, *however*, that no such removal shall become effective until (i) if applicable, acceptance of an appointment by a successor as evidenced by an appropriate agreement entered into by the Issuer and such successor Registrar or Paying Agent, as the case may be, and delivered to the Trustee or (ii) notification to the Trustee that the Trustee shall serve as Registrar or Paying Agent until the appointment of a successor in accordance with clause (i) above. The Registrar or Paying Agent may resign at any time upon written notice to the Issuer and the Trustee; *provided*, *however*, that the Trustee may resign as Paying Agent or Registrar only if the Trustee also resigns as Trustee in accordance with Section 7.07.

(d) The Issuer shall promptly deliver to the Trustee (and any Holder upon written request) following the end of each calendar year a written notice specifying the amount of original issue discount, if any, accrued on the outstanding Securities for the previous calendar year, including daily rates and accrual periods, and such other information relating to original issue discount as may be required under the Code and applicable regulations, as amended from time to time.

SECTION 2.05. Paying Agent to Hold Money in Trust. On or prior to each due date of the principal of and interest on any Security, the Issuer shall deposit with each Paying Agent (or if the Issuer or a Wholly Owned Restricted Subsidiary is acting as Paying Agent, segregate and hold in trust for the benefit of the Persons entitled thereto) a sum sufficient to pay such principal and interest when so becoming due. The Issuer shall require each Paying Agent (other than the Trustee) to agree in writing that a Paying Agent shall act as an agent for or representative of the Trustee, and act solely as directed by the Trustee, in the administration of the Collateral Account. The Issuer shall require each Paying Agent (other than the Trustee) to agree in writing that a Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by a Paying Agent or in the Collateral Account for the payment of principal of and interest on the Securities, and shall notify the Trustee of any default by the Issuer in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. If the Issuer or a Wholly Owned Restricted Subsidiary of the Issuer acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it in trust for the benefit of the Persons entitled thereto. Upon any bankruptcy or reorganization proceedings relating to the Issuer, the Trustee will serve as Paying Agent if not otherwise so acting. The Issuer at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed by such Paying Agent. Upon complying with this Section 2.05, a Paying Agent shall have no further liability for the money delivered to the Trustee.

SECTION 2.06. Holder 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 Holders. If the Trustee is not the Registrar, the Issuer shall furnish, or cause the Registrar to furnish, to the Trustee, in writing at least five Business Days before each 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 Holders. The Issuer shall also maintain a copy of such list of the names and addresses of Holders at its registered office.

SECTION 2.07. Transfer and Exchange. The Securities shall be issued in registered form and shall be transferable only upon the surrender of a Security for registration of transfer and in compliance with Appendix A. When a Security is presented to the Registrar with a request to register a transfer, the Registrar shall register the transfer as requested if its requirements therefor are met. When Securities are presented to the 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 registration of transfers and exchanges, the Issuer shall execute and the Trustee shall authenticate Securities at the Registrar's request. No service charge will be made for any registration of transfer or exchange of the Securities, but the Issuer may require payment from the Holder of a sum sufficient to pay all taxes (including transfer taxes), assessments or other governmental charges in connection with any transfer or exchange pursuant to this Section 2.07. Upon any transfer or exchange, the Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents. The Issuer shall not be required to make, and the Registrar need not register, transfers or exchanges of Securities selected for redemption (except, in the case of Securities to be redeemed in part, the portion thereof not to be redeemed) or of any Securities for a period of 15 days prior to a selection of Securities to be redeemed.

Prior to the due presentation for registration of transfer of any Security, the Issuer, the Guarantors, the Trustee, the Paying Agent and the Registrar may deem and treat the Person in whose name a Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and interest, if any, on such Security and for all other purposes whatsoever, whether or not such Security is overdue, and none of the Issuer, any Guarantor, the Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

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

All Securities issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Securities surrendered upon such transfer or exchange.

SECTION 2.08. Replacement Securities. If a mutilated Security is surrendered to the Registrar or if the Holder of a Security claims that the Security has been lost, destroyed or wrongfully taken, the Issuer shall issue and the Trustee shall authenticate a replacement Security if the requirements of Section 8-405 of the Uniform Commercial Code are met, such that the Holder (a) satisfies the Issuer or the Trustee within a reasonable time after such Holder has notice of such loss, destruction or wrongful taking and the Registrar does not register a transfer prior to receiving such notification, (b) makes such request to the Issuer or the Trustee prior to the Security being acquired by a protected purchaser as defined in Section 8-303 of the Uniform Commercial Code (a "protected purchaser") and (c) satisfies any other reasonable requirements of the Issuer and the Trustee. If required by the Trustee or the Issuer, such Holder shall furnish an indemnity bond sufficient in the judgment of the Trustee to protect the Trustee, the Paying Agent and the Registrar (if the Registrar also serves as the Paying Agent) and of the Issuer to protect the Issuer, each Guarantor, the Paying Agent and the Registrar (if the Trustee is not serving in the role of Paying Agent or Registrar, as the case may be) from any loss that any of them may suffer if a Security is replaced. The Issuer and the Trustee may charge the Holder for their expenses in replacing a Security (including attorneys' fees and disbursements in replacing such Security). In the event any such mutilated, lost, destroyed or wrongfully taken Security has become or is about to become due and payable, the Issuer in its discretion may pay such Security instead of issuing a new Security in replacement thereof.

Upon its due issuance, every replacement Security will be an obligation of the Issuer evidencing the same debt, and entitled to the same benefits under this Indenture, as the Security surrendered therefor or replaced thereby.

The provisions of this Section 2.08 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, lost, destroyed or wrongfully taken Securities.

SECTION 2.09. Outstanding Securities. Securities outstanding at any time are all Securities authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation and those described in this Section 2.09 as not outstanding. Subject to Section 12.04, a Security does not cease to be outstanding because the Issuer or an Affiliate of the Issuer holds the Security.

If a Security is replaced pursuant to Section 2.08 (other than a mutilated Security surrendered for replacement), it ceases to be outstanding unless the Trustee and the Issuer receive proof satisfactory to them that the replaced Security is held by a protected purchaser. A mutilated Security ceases to be outstanding upon surrender of such Security and replacement thereof pursuant to Section 2.08.

If the principal amount of any Securities (or portions thereof) is considered paid under Section 4.01, such Securities (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

If a Paying Agent segregates and holds in trust, in accordance with this Indenture, on a redemption date or maturity date money sufficient to pay all principal and interest payable on that date with respect to the Securities (or portions thereof) to be redeemed or maturing, as the case may be, and no Paying Agent is prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture, then on and after that date such Securities (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

SECTION 2.10. Temporary Securities. In the event that Definitive Securities are to be issued under the terms of this Indenture, until such Definitive Securities are ready for delivery, the Issuer 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 Issuer considers appropriate for temporary Securities. Without unreasonable delay, the Issuer shall prepare and the Trustee shall authenticate Definitive Securities and make them available for delivery in exchange for temporary Securities upon surrender of such temporary Securities at the office or agency of the Issuer, without charge to the Holder. Until such exchange, temporary Securities shall be entitled to the same rights, benefits and privileges as Definitive Securities under this Indenture.

SECTION 2.11. Cancellation. The Issuer at any time may deliver Securities to the Trustee for cancellation. The Registrar and each Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange, payment or cancellation. The Trustee and no one else shall cancel all Securities surrendered for registration of transfer, exchange, payment or cancellation and shall dispose of canceled Securities in accordance with its customary procedures. Certification of the destruction of all cancelled Securities shall be delivered to the Issuer. The Issuer may not issue new Securities to replace Securities it has redeemed, paid or delivered to the Trustee for cancellation. The Trustee shall not authenticate Securities in place of canceled Securities other than pursuant to the terms of this Indenture.

SECTION 2.12. Defaulted Interest. If the Issuer defaults in a payment of interest on the Securities, the Issuer shall pay the defaulted interest then borne by the Securities (plus interest on such defaulted interest to the extent lawful) in any lawful manner. The Issuer may pay the defaulted interest to the Persons who are Holders on a subsequent special record date. The Issuer shall fix or cause to be fixed any such special record date and payment date and shall promptly provide or cause to be provided to each affected Holder a written notice that states the special record date, the payment date and the amount of defaulted interest to be paid. The special record date for the payment of such defaulted interest shall not be more than 15 days and shall not be less than 10 days prior to the proposed payment date and shall not be less than 10 days after the receipt by the Trustee of the notice of the proposed payment.

SECTION 2.13. CUSIP Numbers, ISINs, etc. The Issuer in issuing the Securities may use CUSIP numbers, ISINs and “Common Code” numbers (if then generally in use) and, if so, the Trustee shall use CUSIP numbers, ISINs and “Common Code” numbers in notices (including notices of redemption) as a convenience to Holders; *provided, however*, that any such notice may state that no representation is made as to the correctness of such numbers, either as printed on the Securities or as contained in any notice that reliance may be placed only on the other identification numbers printed on the Securities and that any such notice shall not be affected by any defect in or omission of such numbers. The Issuer shall advise the Trustee of any change in the CUSIP numbers, ISINs and “Common Code” numbers.

SECTION 2.14. Calculation of Principal Amount of Securities. The aggregate principal amount of the Securities, at any date of determination, shall be the aggregate principal amount of the Securities outstanding at such date of determination. With respect to any matter requiring consent, waiver, approval or other action of the Holders of a specified percentage of the principal amount of all the Securities, such percentage shall be calculated, on the relevant date of determination, by dividing (a) the principal amount, as of such date of determination, of Securities, the Holders of which have so consented, waived, approved or taken other action by (b) the aggregate principal amount, as of such date of determination, of the Securities then outstanding, in each case, as determined in accordance with the preceding sentence, Section 2.09 and Section 12.04. Any such calculation made pursuant to this Section 2.14 shall be made by the Issuer and delivered to the Trustee pursuant to an Officers' Certificate. The Issuer and the Trustee agree that any action of the Holders may be evidenced by the Depository applicable procedures or by such other procedures as the Issuer and Trustee may agree.

SECTION 2.15. Statement to Holders. After the end of each calendar year but not later than the latest date permitted by applicable law, the Trustee shall (or shall instruct any Paying Agent to) furnish to each Person who at any time during such calendar year was a Holder a statement (for example, a Form 1099 or any other means required by applicable law) prepared by the Trustee containing the interest and original issue discount paid (based solely upon information provided by the Issuer) with respect to the Securities for such calendar year or, in the event such Person was a Holder during only a portion of such calendar year, for the applicable portion of such calendar year, and such other items as may be (a) required pursuant to the then-applicable regulations under the Code or (b) readily available to the Trustee and that a Holder shall reasonably request as necessary for the purpose of such Holder's preparation of its U.S. federal income or other tax returns. In the event that any such information has been provided by any Paying Agent directly to such Person through other tax-related reports or otherwise, the Trustee in its capacity as Paying Agent shall not be obligated to comply with such request for information.

ARTICLE 3

REDEMPTION

SECTION 3.01. Redemption. The Securities may be redeemed by the Issuer at its option, in whole, or from time to time in part, on any Business Day specified by the Issuer, subject to the conditions and at the redemption prices set forth in Paragraph 5 of the form of Security set forth in Exhibit A, which is hereby incorporated by reference and made a part of this Indenture, together with accrued and unpaid interest to the redemption date.

SECTION 3.02. Applicability of Article. Redemption of Securities at the election of the Issuer or otherwise, as permitted or required by any provision of this Indenture, shall be made in accordance with such provision and this Article 3.

SECTION 3.03. Notices to Trustee. If the Issuer elects to redeem Securities pursuant to the optional redemption provisions of Paragraph 5 of the Security, it shall notify the Trustee and the Holders in writing of (i) the Section of this Indenture and the Paragraph of the Security (if any) pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of Securities to be redeemed and (iv) the redemption price (if then ascertainable).

The Issuer shall provide written notice to the Trustee provided for in this Section 3.03 at least 30 days (or such shorter period as may be acceptable to the Trustee) but not more than 60 days before a redemption date if the redemption is pursuant to Paragraph 5 of the Security. Such notice shall be accompanied by an Officers' Certificate from the Issuer to the effect that such redemption will comply with the conditions herein. If fewer than all the Securities are to be redeemed, the record date relating to such redemption shall be selected by the Issuer and given to the Trustee, which record date shall be not fewer than 15 days after the date of notice to the Trustee. Any such notice may be canceled at any time prior to written notice of such redemption being provided to any Holder and shall thereby be void and of no effect.

SECTION 3.04. Selection of Securities to Be Redeemed. In the case of any partial redemption, and if the Securities are Global Securities held by the Depository, the particular Securities or portions thereof to be redeemed shall be allocated on a pro rata pass-through distribution of principal basis in accordance with Depository procedures; *provided*, that, so long as the Securities are held in book-entry form, the selection for redemption of such Securities shall be made in accordance with the operational arrangements of the Depository then in effect, and if the Depository operational arrangements do not allow for redemption on a pro rata pass-through distribution of principal basis, the Securities will be selected for redemption, in accordance with Depository procedures, by lot. If the Securities are not Global Securities held by the Depository, selection of the Securities for redemption will be made by the Trustee on a pro rata basis to the extent practicable or such other method the Trustee deems fair and appropriate; *provided* that no Securities of $1,000 or less shall be redeemed in part. The Trustee shall make the selection from outstanding Securities not previously called for redemption. The Trustee may select for redemption portions of the principal of Securities that have denominations larger than $1,000. Securities and portions of them the Trustee selects shall be in amounts of $1,000 or any integral multiple of $1,000 in excess thereof. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. The Trustee shall notify the Issuer promptly of the Securities or portions of Securities to be redeemed and the principal amount thereof.

SECTION 3.05. Notice of Optional Redemption.

(a) At least 30 days but not more than 60 days before a redemption date pursuant to Paragraph 5 of the Security, the Issuer shall provide or cause to be provided a written notice of redemption to each Holder whose Securities are to be redeemed.

Any such notice shall identify the Securities to be redeemed and shall state:

(i) the redemption date;

(ii) the redemption price (or manner of calculation thereof if not then known) and the amount of accrued and unpaid interest to the redemption date;

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

(iv) that Securities called for redemption must be surrendered to the Paying Agent to collect the redemption price, plus accrued and unpaid interest;

(v) that all outstanding Securities are to be redeemed or, if fewer than all the outstanding Securities are to be redeemed, the certificate numbers and principal amounts of the particular Securities to be redeemed, the aggregate principal amount of Securities to be redeemed and the aggregate principal amount of Securities to be outstanding after such partial redemption;

(vi) that, unless the Issuer defaults in making such redemption payment or the Paying Agent is prohibited from making such payment pursuant to the terms of this Indenture, interest on Securities (or portion thereof) called for redemption ceases to accrue on and after the redemption date;

(vii) the CUSIP number, ISIN or "Common Code" number, if any, printed on the Securities being redeemed;

(viii) that no representation is made as to the correctness or accuracy of the CUSIP number or ISIN or "Common Code" number, if any, listed in such notice or printed on the Securities; and

(ix) such other matters as the Issuer deems desirable or appropriate.

Notice of any redemption pursuant to this Section 3.05 may, at the Issuer's direction, be revocable and be subject to one or more conditions precedent, including the receipt by the Trustee, on or prior to the redemption date, of money sufficient to pay the principal of, and premium, if any, and interest on, the Securities being redeemed.

(b) At the Issuer's request, the Trustee shall give the notice of redemption in the Issuer's name and at the Issuer's expense. In such event, the Issuer shall provide the Trustee a notice containing the information required by this Section 3.05 at least five Business Days (unless the Trustee consents to a shorter period) prior to the date such notice is to be provided to Holders and such notice may not be canceled but may be subject to such conditions precedent as shall be set forth in such notice.

SECTION 3.06. Effect of Notice of Redemption. Once written notice of redemption is provided in accordance with Section 3.05, Securities called for redemption become due and payable on the redemption date and at the redemption price stated in the notice, subject to the satisfaction or waiver of any conditions precedent in the notice of redemption. Upon surrender to the Paying Agent, such Securities shall be paid at the redemption price stated in the notice, plus accrued and unpaid interest, to, but not including, the redemption date; *provided*, *however*, that if the redemption date is after a Record Date and on or prior to the related Payment Date, the accrued and unpaid interest shall be payable to the Holder of the redeemed Securities registered on such Record Date. Failure to give notice or any defect in the notice to any Holder shall not affect the validity of the notice to any other Holder.

SECTION 3.07. Deposit of Redemption Price.With respect to any Securities, prior to 10:00 a.m., New York City time, on the redemption date (provided that the Issuer shall have confirmed in writing to the Trustee the satisfaction or waiver of all conditions to such redemption pursuant to Section 3.05(a)), the Issuer shall deposit with the Paying Agent (or, if the Issuer or a Wholly Owned Restricted Subsidiary is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the redemption price of and accrued and unpaid interest on all Securities or portions thereof to be redeemed on that date other than Securities or portions of Securities called for redemption that have been delivered by the Issuer to the Trustee for cancellation. On and after the redemption date, interest shall cease to accrue on Securities or portions thereof called for redemption so long as the Issuer has deposited with the Paying Agent funds sufficient to pay the principal of, plus accrued and unpaid interest on, the Securities to be redeemed, unless the Paying Agent is prohibited from making such payment pursuant to the terms of this Indenture, *provided* that, if necessary, the Issuer has provided an Officers' Certificate to the Trustee stating that all conditions precedent (if any) to which such redemption has been made subject have been satisfied. Upon redemption of any Securities by the Issuer, such redeemed Securities will be cancelled.

SECTION 3.08. Securities Redeemed in Part. Upon surrender of a Security that is redeemed in part, the Issuer shall execute and the Trustee shall authenticate for the Holder (at the Issuer's expense) a new Security equal in principal amount to the unredeemed portion of the Security surrendered.

ARTICLE 4

COVENANTS

SECTION 4.01. Payment of Securities.

(a) The Issuer shall promptly pay the principal of and interest on the Securities on the dates and in the manner provided in the Securities and in this Indenture. An installment of principal or interest shall be considered paid on the date due if on such date the Trustee or the Paying Agent holds as of 12:00 noon New York City time money sufficient to pay all principal and interest then due and the Trustee or the Paying Agent, as the case may be, is not prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture. The Issuer shall pay, during the continuance of an Event of Default, interest on the outstanding principal amount of the Securities at the rate borne by the Securities plus 4.00% per annum, and the Issuer shall pay interest on overdue installments of interest at the rate borne by the Securities plus 4.00% per annum to the extent lawful. All payments of interest shall be rounded to two decimal places.

(b) On each Payment Date, commencing on September 30, 2021, or on the succeeding Business Day if any such date is not a Business Day, the Issuer shall pay to the Holders an installment of principal of the Securities in accordance with the table below corresponding to the applicable Payment Date, where the applicable percentage is the percentage of (i) the initial aggregate principal amount of Original Securities issued on the Issue Date plus (ii) the initial aggregate principal amount of any First Additional Securities issued on their date of issuance plus (iii) the initial aggregate principal amount of any Second Additional Securities issued on their date of issuance minus (iv) the aggregate principal amount of Securities redeemed or repurchased pursuant to this Indenture prior to such Payment Date:

Payment Date	**Applicable Percentage**
September 30, 2021	2.5%
December 30, 2021	2.5%
March 30, 2022	2.5%
June 30, 2022	2.5%
September 30, 2022	5.0%
December 30, 2022	5.0%
March 30, 2023	5.0%
June 30, 2023	5.0%
September 30, 2023	7.5%
December 30, 2023	7.5%
March 30, 2024	7.5%
June 30, 2024	7.5%
September 30, 2024	10.0%
December 30, 2024	10.0%
March 30, 2025	10.0%
June 30, 2025	All remaining outstanding principal of the Securities at such date

All payments calculated from the principal installment percentages set forth above shall be rounded to two decimal places.

SECTION 4.02. Reports and Other Information.

(a) Annual Financials. The Issuer shall deliver to the Trustee, as soon as available, but in any event within 120 days (or such earlier date on which the Issuer is required to file a Form 10-K under the Exchange Act, if applicable) after the end of each fiscal year of the Issuer, beginning with the fiscal year ending December 31, 2019, a consolidated balance sheet of the Issuer and its Subsidiaries as of the end of such fiscal year, and the related consolidated statements of income, cash flows and stockholders' equity for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all prepared in accordance with GAAP, with such consolidated financial statements to be audited and accompanied by (i) a report and opinion of the Issuer's independent certified public accounting firm of recognized standing in the United States (which report and opinion shall be prepared in accordance with GAAP), stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of the Issuer as of the dates and for the periods specified in accordance with GAAP, and (ii) (if and only if the Issuer is required to comply with the internal control provisions pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 requiring an attestation report of such independent certified public accounting firm) an attestation report of such independent certified public accounting firm as to the Issuer's internal controls pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 attesting that such internal controls meet the requirements of the Sarbanes-Oxley Act of 2002; *provided*, *however*, that the Issuer shall be deemed to have made such delivery of such consolidated financial statements if such consolidated financial statements shall have been made available for free within the time period specified above on the SEC's EDGAR system (or any successor system adopted by the SEC); *provided*, *further*, *however*, that the Trustee shall have no obligation whatsoever to determine whether or not such information, documents or reports have been filed pursuant to EDGAR (or its successor). Such consolidated financial statements shall be certified by a Financial Officer as, to his or her knowledge, fairly presenting, in all material respects, the consolidated financial condition, results of operations and cash flows of the Issuer and its Subsidiaries as of the dates and for the periods specified in accordance with GAAP consistently applied.

(b) Quarterly Financials. The Issuer shall deliver to the Trustee, as soon as available, but in any event within 60 days (or such earlier date on which the Issuer is required to file a Form 10-Q under the Exchange Act, if applicable) after the end of each of the first three fiscal quarters of each fiscal year of the Issuer, beginning with the fiscal quarter ending June 30, 2019, a consolidated balance sheet of the Issuer and its Subsidiaries as of the end of such fiscal quarter, and the related consolidated statements of income, cash flows and stockholders' equity for such fiscal quarter and (in respect of the second and third fiscal quarters of such fiscal year) for the then-elapsed portion of the Issuer's fiscal year, setting forth in each case in comparative form the figures for the comparable period or periods in the previous fiscal year, all prepared in accordance with GAAP; *provided, however*, that the Issuer shall be deemed to have made such delivery of such consolidated financial statements if such consolidated financial statements shall have been made available for free within the time period specified above on the SEC's EDGAR system (or any successor system adopted by the SEC); *provided*, *further*, *however*, that the Trustee shall have no obligation whatsoever to determine whether or not such information, documents or reports have been filed pursuant to EDGAR (or its successor). Such consolidated financial statements shall be certified by a Financial Officer as, to his or her knowledge, fairly presenting, in all material respects, the consolidated financial condition, results of operations and cash flows of the Issuer and its Subsidiaries as of the dates and for the periods specified in accordance with GAAP consistently applied, and on a basis consistent with the audited consolidated financial statements referred to under Section 4.02(a), subject to normal year-end audit adjustments and the absence of footnotes. Notwithstanding the foregoing, if the Issuer or any of its Subsidiaries have made an acquisition, the financial statements with respect to an acquired entity need not be included in the consolidated quarterly financial statements required to be delivered pursuant to this Section 4.02(b) until the first date upon which such quarterly financial statements are required to be so delivered that is at least 90 days after the date such acquisition is consummated.

(c) Compliance with Indenture. The Issuer shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Issuer, commencing with respect to the fiscal year ending December 31, 2019, an Officers' Certificate certifying that to each such Officer's actual knowledge there is no Default or Event of Default that has occurred and is continuing or, if either such Officer does know of any such Default or Event of Default, such Officer shall include in such certificate a description of such Default or Event of Default and its status with particularity.

(d) Information During Event of Default. The Issuer shall deliver to the Trustee and the Holders, promptly, such additional information regarding the business or financial affairs of the Issuer or any of its Subsidiaries, or compliance with the terms of this Indenture, as the Trustee, any Holder or any holder of beneficial interests in the Securities may from time to time reasonably request during the existence of any Event of Default (subject to reasonable requirements of confidentiality, including requirements imposed by law or contract; and *provided* that the Issuer shall not be obligated to disclose any information that is reasonably subject to the assertion of attorney-client privilege).

(e) Information Filed with SEC or Exchanges. The Issuer shall deliver to the Trustee, promptly after the same are available, copies of any periodic and other reports, registration statements and other non-confidential, final materials filed by the Issuer or any of its Subsidiaries with the SEC, any U.S. securities exchange or any securities exchange in any applicable non-U.S. jurisdiction, and in any case not otherwise required to be delivered to the Trustee pursuant to this Indenture; *provided*, *however*, that the Issuer shall be deemed to have made such delivery of such reports or other materials if such reports or other materials shall have been made available for free within the time period specified above on the SEC's EDGAR system (or any successor system adopted by the SEC); *provided*, *further*, *however*, that the Trustee shall have no obligation whatsoever to determine whether or not such reports or other materials have been filed pursuant to EDGAR (or its successor).

(f) Rule 144A Information. So long as the Issuer is not subject to either Section 13 or 15(d) of the Exchange Act, the Issuer shall deliver to the Holders, any holder of beneficial interests in the Securities and any prospective purchaser of the Securities or a beneficial interest therein designated by a Holder or such other Person, promptly upon the request of any such Person, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(g) Communication of Information.

(i) The Issuer shall make available to the Holders (and holders of beneficial interests in the Securities), who shall have executed and delivered a Confidentiality Agreement in accordance with the terms of this Indenture, the information required to be delivered under this Section 4.02 by posting such information on IntraLinks or another similar electronic system, and the Issuer shall administer and maintain IntraLinks or such other similar electronic system for the Holders (and holders of beneficial interests in the Securities). Access by a Holder (or holder of beneficial interests in the Securities) to IntraLinks or such other similar electronic system shall be subject to the condition that such Holder (or such holder of beneficial interests in the Securities) shall have executed and delivered a Confidentiality Agreement in accordance with the terms of this Indenture. The Issuer shall maintain all such information posted on IntraLinks or such other similar electronic system for as long as the Securities are outstanding.

(ii) Delivery of information under this Section 4.02 to the Trustee shall be for informational purposes only, and the Trustee's receipt thereof shall not constitute constructive notice of any information contained therein or determinable from any information contained therein, including compliance by the Issuer or any of its Subsidiaries with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates or certificates or statements delivered to the Trustee pursuant to Section 4.02(c)). Neither the Issuer nor the Guarantors shall be obligated to deliver any confidential reports or other confidential information to any Holder (or any holder of beneficial interests in the Securities) who has not executed a Confidentiality Agreement in accordance with the terms of this Indenture. The Issuer shall provide the Trustee with a list of such Holders (or holders of beneficial interests in the Securities) and shall update such list after the execution and delivery to the Issuer of a Confidentiality Agreement by any Person not already party to such a Confidentiality Agreement with the Issuer. The Trustee shall have no duty to monitor the IntraLinks site.

(h) Late Filings. To the extent any information required to be delivered pursuant to subsection (a) or (b) above is not delivered within the time periods specified therein and such information is subsequently filed or furnished, as applicable, on the SEC's EDGAR system (or any successor system adopted by the SEC), the Issuer will be deemed to have satisfied its obligations with respect thereto at such time and any Default or Event of Default with respect thereto shall be deemed to have been cured unless the Securities have previously been accelerated in accordance with Section 6.02.

SECTION 4.03. Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

(a) The Issuer (i) shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, Incur any Indebtedness (including Acquired Indebtedness) or issue any shares of Disqualified Stock and (ii) shall not permit any of its Restricted Subsidiaries to issue any shares of Preferred Stock; *provided*, *however*, that the Issuer and any Guarantor may Incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, in each case if the Consolidated Leverage Ratio of the Issuer would have been less than or equal to 4.0 to 1.0 determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been Incurred, or the Disqualified Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of the period for which the EBITDA component of the Consolidated Leverage Ratio calculation is being measured.

(b) The limitations set forth in Section 4.03(a) shall not apply to:

(i) the Incurrence by the Issuer or any Guarantor of Indebtedness under a Credit Agreement and the issuance and creation of letters of credit and bankers' acceptances thereunder (with letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof) in the aggregate principal amount outstanding at any one time not to exceed $10,000,000; *provided*, that (A) if such Indebtedness is Secured Indebtedness, such Indebtedness shall be secured only by ABL Collateral, (B) such Credit Agreement shall be with a lender or lenders satisfactory to the Holders in their sole discretion, (C) at each time when such a Credit Agreement is entered into and for so long as any such Credit Agreement remains outstanding, the Issuer (on a consolidated basis) has $75,000,000 of net revenues for the most recently completed twelve calendar month period determined in accordance with GAAP, (D) the Issuer shall deliver an Officers' Certificate to the Trustee (upon entering into such a Credit Agreement and each month thereafter that such Credit Agreement remains outstanding) certifying as to the satisfaction of the foregoing clause (C), (E) advances under any such Credit Agreement shall be subject to a customary borrowing base formula and (F) the Issuer shall only use the proceeds from the borrowings under any such Credit Agreement for short-term working capital requirements and treasury-related activities such as customary hedging activities permitted by this Indenture;

(ii) the Incurrence by any of the Issuer and the Guarantors of Indebtedness represented by the Securities and the Guarantees;

(iii) Indebtedness existing on the Issue Date;

(iv) Indebtedness (including Capitalized Lease Obligations) Incurred by the Issuer or any Guarantor, and Disqualified Stock issued by the Issuer or any Guarantor, to finance (whether prior to or within 270 days after) the acquisition, lease, construction, repair, replacement or improvement of property (real or personal) or equipment (whether through the direct purchase of assets or the Capital Stock of any Person owning such assets) that (A) is without recourse to any property or assets of the Issuer or any Restricted Subsidiary other than the assets so acquired, leased, constructed, repaired, replaced or improved and (B) is in an aggregate principal amount that, when aggregated with the principal amount of all other Indebtedness and Disqualified Stock then outstanding that was Incurred pursuant to this clause (iv), does not exceed $2,000,000;

(v) Indebtedness Incurred by the Issuer or any of its Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit and bank guarantees issued in the ordinary course of business, including letters of credit in respect of workers' compensation claims, health, disability or other benefits to employees or former employees or their families or property, casualty or liability insurance or self-insurance, and letters of credit in connection with the maintenance of, or pursuant to the requirements of, environmental or other permits or licenses from Governmental Authorities, or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims;

(vi) Indebtedness arising from agreements of the Issuer or a Restricted Subsidiary providing for indemnification, adjustment of purchase price or similar obligations (including earn-out obligations or other contingent consideration), in each case, Incurred in connection with any acquisition or Disposition of any business, any assets or a Subsidiary of the Issuer in accordance with the terms of this Indenture, other than guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition;

(vii) Indebtedness of the Issuer to a Restricted Subsidiary; *provided* that any such Indebtedness owed to a Restricted Subsidiary that is not a Guarantor is subordinated in right of payment to the obligations of the Issuer under the Securities; *provided*, *further*, that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Issuer or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) shall be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (vii);

(viii) shares of Preferred Stock of a Restricted Subsidiary issued to the Issuer or a Guarantor; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any Guarantor that holds such shares of Preferred Stock of a Restricted Subsidiary ceasing to be a Guarantor or any other subsequent transfer of any such shares of Preferred Stock (except to the Issuer or a Guarantor) shall be deemed, in each case, to be an issuance of shares of Preferred Stock not permitted by this clause (viii);

(ix) Indebtedness of a Restricted Subsidiary to the Issuer or a Guarantor; *provided*, that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Guarantor holding such Indebtedness ceasing to be a Guarantor or any other subsequent transfer of any such Indebtedness (except to the Issuer or another Guarantor or any pledge of such Indebtedness constituting a Permitted Lien) shall be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (ix);

(x) Hedging Obligations of the Issuer or any Guarantor that are not Incurred for speculative purposes but: (1) for the purpose of fixing or hedging interest rate risk with respect to any Indebtedness that is permitted by the terms of this Indenture to be outstanding; (2) for the purpose of fixing or hedging currency exchange rate risk with respect to any currency exchanges; or (3) for the purpose of fixing or hedging commodity price risk with respect to any commodity purchases or sales;

(xi) obligations (including reimbursement obligations with respect to letters of credit and bank guarantees) in respect of performance, bid, appeal and surety bonds, completion guarantees, worker’s compensation claims, self-insurance obligations, bankers’ acceptances, export or import, indemnities, customs, revenue bonds or other similar instruments provided by the Issuer or any Restricted Subsidiary in the ordinary course of business or consistent with past practice or industry practice;

(xii) Indebtedness or Disqualified Stock of the Issuer or any Guarantor not otherwise permitted under this Indenture in an aggregate principal amount or liquidation preference, which when aggregated with the principal amount or liquidation preference of all other Indebtedness and Disqualified Stock then outstanding and Incurred pursuant to this clause (xii), does not exceed $2,000,000 at any one time outstanding (it being understood that any Indebtedness Incurred pursuant to this clause (xii) shall cease to be deemed Incurred or outstanding for purposes of this clause (xii) but shall be deemed Incurred for purposes of Section 4.03(a) from and after the first date on which the Issuer, or the Guarantor, as the case may be, could have Incurred such Indebtedness under Section 4.03(a) without reliance upon this clause (xii));

(xiii) any guarantee by the Issuer or a Guarantor of Indebtedness or other obligations of the Issuer or any other Guarantor so long as the Incurrence of such Indebtedness Incurred by the Issuer or such other Guarantor is permitted under the terms of this Indenture; *provided* that if such Indebtedness is by its express terms unsecured and subordinated in right of payment to the Securities or the Guarantee of such other Guarantor, as applicable, any such guarantee of such Guarantor with respect to such Indebtedness shall be unsecured and subordinated in right of payment to such Guarantor's Guarantee with respect to the Securities substantially to the same extent as such Indebtedness is subordinated to the Securities or the Guarantee of such other Guarantor, as applicable;

(xiv) the Incurrence by the Issuer or any Guarantor of Indebtedness or Disqualified Stock of a Guarantor that serves to refund, refinance or defease any Indebtedness Incurred or Disqualified Stock issued as permitted under Section 4.03(a) and clauses (ii), (iii), (iv), (xii), (xiv) and (xv) of this Section 4.03(b) or any Indebtedness or Disqualified Stock Incurred to so refund or refinance such Indebtedness or Disqualified Stock, including any additional Indebtedness or Disqualified Stock Incurred to pay premiums (including tender premiums and paid-in-kind interest), fees, expenses and defeasance costs in connection therewith (subject to the following proviso, "Refinancing Indebtedness") prior to its respective maturity; *provided* that such Refinancing Indebtedness:

(1) has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is Incurred that is not less than the remaining Weighted Average Life to Maturity of the Indebtedness or Disqualified Stock being refunded, refinanced or defeased;

(2) has a Stated Maturity that is not earlier than the earlier of (x) the Stated Maturity of the Indebtedness being refunded or refinanced and (y) 91 days following the Stated Maturity of the Securities;

(3) to the extent such Refinancing Indebtedness refunds, refinances or defeases (a) Indebtedness junior in right of payment to the Securities or a Guarantee, as applicable, such Refinancing Indebtedness is junior in right of payment to the Securities or a Guarantee to the same extent as such Indebtedness being refunded, refinanced or defeased, as applicable, or (b) Disqualified Stock, such Refinancing Indebtedness is Disqualified Stock;

(4) is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refunded, refinanced or defeased plus premium (including tender premiums and paid-in-kind interest), fees, expenses and defeasance costs Incurred in connection with such refinancing;

(5) shall not include Indebtedness of the Issuer or a Guarantor that refunds, refinances or defeases Indebtedness of an Unrestricted Subsidiary; and

(6) in the case of any Refinancing Indebtedness Incurred to refund, refinance or defease Indebtedness outstanding under clause (iv) or (xii) of this Section 4.03(b), shall be deemed to have been Incurred and to be outstanding under such clause (iv) or (xii) of this Section 4.03(b), as applicable, and not this clause (xiv) for purposes of determining amounts outstanding under such clause (iv) or (xii) of this Section 4.03(b);

(xv) Indebtedness or Disqualified Stock of (x) the Issuer or any Guarantor Incurred to finance an acquisition of any property or assets or (y) Persons that are acquired by the Issuer or any Guarantor or merged, amalgamated or consolidated with or into the Issuer or a Guarantor in accordance with the terms of this Indenture; *provided* that, in each case, immediately after giving effect to such acquisition or merger, amalgamation or consolidation, the Issuer would be permitted to Incur at least $1.00 of additional Indebtedness pursuant to the Consolidated Leverage Ratio test set forth in Section 4.03(a); *provided*, *further*, that if, with respect to any Indebtedness Incurred under this clause (xv), either (A) the property or assets so acquired are held in a Restricted Subsidiary that is not a Guarantor or (B) the Person so acquired does not become, upon acquisition, a Guarantor, then, in each case, the Issuer and the Guarantors shall not guarantee any such Indebtedness, and such Indebtedness shall have no recourse to any assets or property of the Issuer or the Guarantors;

(xvi) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; *provided* that such Indebtedness is extinguished within five Business Days of receipt by the Issuer or the applicable Restricted Subsidiary of notice of its Incurrence;

(xvii) Indebtedness of the Issuer or any Guarantor supported by a letter of credit or bank guarantee issued pursuant to a Credit Agreement, in a principal amount not in excess of the stated amount of such letter of credit, to the extent such letter of credit or bank guarantee issued pursuant to such Credit Agreement is otherwise permitted by this Section 4.03;

(xviii) Indebtedness of the Issuer or any Restricted Subsidiary consisting of (x) the financing of insurance premiums or (y) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(xix) Indebtedness of the Issuer or any Guarantor issued to (x) any joint venture (regardless of the form of legal entity) that is not a Subsidiary or (y) any Unrestricted Subsidiary, in each case arising in the ordinary course of business in connection with the cash management operations (including with respect to intercompany self-insurance arrangements) of the Issuer or any Guarantor;

(xx) Non-Recourse Debt of a Royalty Subsidiary;

(xxi) Indebtedness related to unfunded pension fund and other employee benefit plan obligations and liabilities to the extent they are permitted to remain unfunded under applicable law; and

(xxii) Indebtedness of the Issuer or any Restricted Subsidiary to the extent the net proceeds thereof are substantially concurrently (i) used to purchase all of the Securities pursuant to a Change of Control Offer, a tender offer or pursuant to Section 3.01 or (ii) deposited to defease all of the Securities as described in Article 8.

(c) For purposes of determining compliance with this Section 4.03, in the event that an item of Indebtedness or Disqualified Stock (or any portion thereof) meets the criteria of more than one of the categories of permitted Indebtedness described in clauses (i) through (xxii) of Section 4.03(b) or is entitled to be Incurred pursuant to Section 4.03(a), the Issuer shall, in its sole discretion, classify or reclassify, or later divide, classify or reclassify, such item of Indebtedness or Disqualified Stock (or any portion thereof) in any manner that complies with this Section 4.03; *provided*, that any Indebtedness outstanding under the Credit Agreement on the Issue Date shall be allocated to Section 4.03(b)(i) and shall not be reallocated.

(d) Accrual of interest, the accretion of accreted value, the payment of interest in the form of additional Indebtedness with the same terms, the payment of dividends on Disqualified Stock or Preferred Stock in the form of additional shares of Disqualified Stock or Preferred Stock of the same class, amortization or accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies shall not be deemed to be an Incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this Section 4.03. Guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness shall not be included in the determination of such amount of Indebtedness; *provided* that the Incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was in compliance with this Section 4.03.

(e) For purposes of determining compliance with any U.S. Dollar-denominated restriction on the Incurrence of Indebtedness, the U.S. Dollar-equivalent principal amount of Indebtedness denominated in a non-U.S. currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term debt, or first committed or first Incurred (whichever yields the higher U.S. Dollar equivalent), in the case of revolving credit debt.

(f) Notwithstanding any other provision of this Section 4.03, the maximum amount of Indebtedness that the Issuer or any Restricted Subsidiary of the Issuer may Incur pursuant to this Section 4.03 shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values following the Incurrence of such Indebtedness.

SECTION 4.04. Limitation on Restricted Payments.

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

(i) declare or pay any dividend or make any distribution on account of the Issuer's or any of its Restricted Subsidiaries' Equity Interests, including any payment made in connection with any merger, amalgamation or consolidation involving the Issuer (other than (A) dividends or distributions by the Issuer payable solely in Equity Interests (other than Disqualified Stock) of the Issuer or (B) dividends or distributions by a Restricted Subsidiary, *provided* that, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly Owned Restricted Subsidiary, the Issuer or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities);

(ii) purchase or otherwise acquire or retire for value any Equity Interests (other than Disqualified Stock) of the Issuer or any direct or indirect parent of the Issuer;

(iii) purchase or otherwise acquire or retire for value any Disqualified Stock of the Issuer or any direct or indirect parent of the Issuer;

(iv) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case prior to any scheduled repayment or scheduled maturity, any Subordinated Indebtedness of the Issuer or any of its Restricted Subsidiaries (other than the payment, redemption, repurchase, defeasance, acquisition or retirement of (A) Subordinated Indebtedness in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement, unless such sinking fund obligation, principal installment or final maturity occurs within one year of the Stated Maturity of the Securities, and (B) Indebtedness permitted under clauses (vii) and (ix) of Section 4.03(b)); or

(v) make any Restricted Investment

(all such payments and other actions set forth in clauses (i) through (v) above being collectively referred to as "Restricted Payments"), unless, at the time of such Restricted Payment (other than a Restricted Payment under clause (iii) above, for which the following exception shall not be applicable):

(1) no Default shall have occurred and be continuing or would occur as a consequence thereof;

(2) immediately after giving effect to such Restricted Payment on a *pro forma* basis, the Issuer could Incur $1.00 of additional Indebtedness under Section 4.03(a); and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Issuer and its Restricted Subsidiaries after the Issue Date (including Restricted Payments permitted by clauses (i), (iv), (v) (to the extent such dividends did not reduce Consolidated Net Income) and (xi) of Section 4.04(b), but excluding all other Restricted Payments permitted by Section 4.04(b)), is less than the amount equal to the Cumulative Credit (with the amount of any Restricted Payment made under this Section 4.04 in any property other than cash being equal to the Fair Market Value (as determined in good faith by the Issuer) of such property at the time such Restricted Payment is made).

(b) The provisions of Section 4.04(a) shall not prohibit:

(i) the payment of any dividend or distribution within 60 days after the date of declaration thereof, if at the date of declaration such payment would have complied with the provisions of this Indenture;

(ii) (A) the redemption, repurchase, retirement or other acquisition of any Equity Interests ("Retired Capital Stock") of the Issuer or any direct or indirect parent of the Issuer or Subordinated Indebtedness of the Issuer, any direct or indirect parent of the Issuer or any Guarantor in exchange for, or out of the proceeds of, the substantially concurrent sale of, Equity Interests of the Issuer or any direct or indirect parent of the Issuer or contributions to the equity capital of the Issuer (other than any Disqualified Stock or any Equity Interests sold to a Subsidiary of the Issuer or to an employee stock ownership plan or any trust established by the Issuer or any of its Subsidiaries) (collectively, including any such contributions, "Refunding Capital Stock"); and (B) the declaration and payment of accrued dividends on the Retired Capital Stock out of the proceeds of the substantially concurrent sale (other than to a Subsidiary of the Issuer or to an employee stock ownership plan or any trust established by the Issuer or any of its Subsidiaries) of Refunding Capital Stock;

(iii) the redemption, repurchase, defeasance or other acquisition or retirement of Subordinated Indebtedness of the Issuer or any Guarantor made by exchange for, or out of the proceeds of the substantially concurrent sale of, (x) Equity Interests of the Issuer or any direct or indirect parent of the Issuer (which Equity Interests shall be deemed to be Refunding Capital Stock) or (y) new Indebtedness of the Issuer or a Guarantor that is Incurred in accordance with Section 4.03 so long as, with respect to this clause (y):

(A) the principal amount (or accreted value, if applicable) of such new Indebtedness does not exceed the principal amount (or accreted value, if applicable), plus any accrued and unpaid interest, of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired for value (plus the amount of any premium required to be paid under the terms of the instrument governing the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired, plus any paid-in-kind interest, any tender premiums or any defeasance costs, fees and expenses Incurred in connection therewith);

(B) such Indebtedness by its terms is subordinated to the Securities or the related Guarantee, as the case may be, in right of payment and either unsecured or secured by a Lien junior as to priority with respect to the Notes Collateral, at least to the same extent as such Subordinated Indebtedness so purchased, exchanged, redeemed, repurchased, defeased, acquired or retired for value;

(C) such Indebtedness has a Stated Maturity and, if applicable, a First Amortization Date equal to or later than the earlier of (x) the Stated Maturity of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired and (y) 91 days following the Stated Maturity of any Securities then outstanding; and

(D) such Indebtedness has a Weighted Average Life to Maturity at the time Incurred that is not less than the remaining Weighted Average Life to Maturity of the Subordinated Indebtedness being so redeemed, repurchased, defeased, acquired or retired;

(iv) the repurchase, retirement or other acquisition (or dividends to any direct or indirect parent of the Issuer to finance any such repurchase, retirement or other acquisition) for value of Equity Interests of the Issuer or any direct or indirect parent of the Issuer held by any future, present or former employee, director or consultant of the Issuer or any direct or indirect parent of the Issuer or any Subsidiary of the Issuer pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement; *provided* that the aggregate amounts paid under this clause (iv) do not exceed $250,000 in any calendar year; *provided*, *further*, that such amount in any calendar year may be increased by an amount not to exceed:

(A) the cash proceeds received by the Issuer or any of its Restricted Subsidiaries from the sale of Equity Interests (other than Disqualified Stock) of the Issuer or any direct or indirect parent of the Issuer (to the extent contributed to the Issuer) to members of management, directors or consultants of the Issuer and its Restricted Subsidiaries or any direct or indirect parent of the Issuer that occurs after the Issue Date (*provided* that the amount of such cash proceeds utilized for any such repurchase, retirement, other acquisition or dividend shall not increase the amount available for Restricted Payments under clause (3) of Section 4.04(a)); plus

(B) the cash proceeds of key man life insurance policies received by the Issuer or any direct or indirect parent of the Issuer (to the extent contributed to the Issuer) or the Issuer's Restricted Subsidiaries after the Issue Date;

provided that the Issuer may elect to apply all or any portion of the aggregate increase contemplated by clauses (A) and (B) above in any one or more calendar years; and *provided*, *further*, that cancellation of Indebtedness owing to the Issuer or any Restricted Subsidiary from any present or former employees, directors, officers or consultants of the Issuer or any Restricted Subsidiary or the direct or indirect parent of the Issuer will not be deemed to constitute a Restricted Payment for purposes of this Section 4.04 or any other provision of this Indenture;

(v) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Stock of the Issuer or any Guarantor Incurred in accordance with Section 4.03;

(vi) payments or distributions to dissenting stockholders or equityholders pursuant to applicable law, pursuant to or in connection with a merger, amalgamation, consolidation or transfer of all or substantially all of the assets of the Issuer and the Restricted Subsidiaries, taken as a whole, that complies with Article 5, *provided* that as a result of such merger, amalgamation, consolidation or transfer of assets, the Issuer shall have made a Change of Control Offer (if required by this Indenture) and that all Securities tendered by Holders in connection with such Change of Control Offer have been repurchased, redeemed or acquired for value;

(vii) other Restricted Payments in an aggregate amount not to exceed $100,000;

(viii) the distribution, as a dividend or otherwise, of (i) shares of Capital Stock of, or (ii) Indebtedness owed to the Issuer or a Restricted Subsidiary of the Issuer by, Unrestricted Subsidiaries (other than Unrestricted Subsidiaries the primary assets of which are Cash Equivalents);

(ix) the repurchase of Equity Interests deemed to occur upon the exercise or vesting of stock options, warrants or phantom stock, in each case, to the extent such Equity Interests (i) represent all or a portion of the exercise price of those stock options, warrants or phantom stock or (ii) are surrendered in connection with satisfying any federal or state tax obligation incurred in connection with such exercise or vesting;

(x) (A) Restricted Payments by the Issuer or any Restricted Subsidiary to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Capital Stock or Indebtedness convertible into the Capital Stock of any such Person (or the direct or indirect parent of the Issuer) (including dividends, splits, combinations and business combinations) or (B) the issuance of Capital Stock upon conversion of Indebtedness convertible into the Capital Stock of the Issuer (or the direct or indirect parent of the Issuer) or the exercise of stock options or warrants (including dividends, splits, combinations and business combinations); and

(xi) the repurchase, redemption or other acquisition or retirement for value of any Subordinated Indebtedness pursuant to provisions similar to those described under Section 4.08; *provided* that all Securities tendered by Holders in connection with a Change of Control Offer have been repurchased, redeemed or acquired for value;

provided, that at the time of, and after giving effect to, any Restricted Payment permitted under clauses (vii), (viii) and (xi) of this Section 4.04(b), no Default shall have occurred and be continuing or would occur as a consequence thereof.

(c) For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by the Issuer and its Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated shall be deemed to be Restricted Payments in an amount determined as set forth in the last sentence of the definition of "Investments". Such designation shall only be permitted if a Restricted Payment or Permitted Investment in such amount would be permitted at such time and if such Subsidiary otherwise meets the definition of "Unrestricted Subsidiary".

(d) For purposes of determining compliance with this Section 4.04, in the event that a Restricted Payment (or any portion thereof) meets the criteria of more than one of the categories described in Section 4.04(b) or is entitled to be made pursuant to Section 4.04(a), the Issuer may, in its sole discretion, classify or reclassify, or later divide, classify or reclassify, such Restricted Payment (or any portion thereof) in any manner that complies with this Section 4.04.

SECTION 4.05. Dividend and Other Payment Restrictions Affecting Subsidiaries

The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:

(a) (i) pay dividends or make any other distributions to the Issuer or any of its Restricted Subsidiaries (1) on its Capital Stock or (2) with respect to any other interest or participation in, or measured by, its profits or (ii) pay any Indebtedness owed to the Issuer or any of its Restricted Subsidiaries;

(b) make loans or advances to the Issuer or any of its Restricted Subsidiaries; or

(c) sell, lease or transfer any of its properties or assets to the Issuer or any of its Restricted Subsidiaries,

except in each case for such encumbrances or restrictions existing under or by reason of:

(1) contractual encumbrances or restrictions in effect on the Issue Date;

(2) this Indenture, the Guarantees, the Securities, the Security Documents or the Intercreditor Agreements;

(3) applicable law or any applicable rule, regulation or order;

(4) any agreement or other instrument relating to Indebtedness of a Person acquired by the Issuer or any Restricted Subsidiary that was in existence at the time of such acquisition (but not created in contemplation thereof or to provide all or any portion of the funds or guarantees utilized to consummate such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired;

(5) contracts or agreements for the sale of assets, including any restriction with respect to a Restricted Subsidiary imposed pursuant to an agreement entered into for the Disposition of the Capital Stock or assets of such Restricted Subsidiary pending the closing of such Disposition;

(6) documents relating to any Secured Indebtedness otherwise permitted to be Incurred pursuant to Sections 4.03 and 4.11, which restrictions are restrictions on the transfer of assets securing such Secured Indebtedness;

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

(8) customary provisions in joint venture agreements, collaboration agreements, intellectual property licenses and other similar agreements entered into in the ordinary course of business;

(9) purchase money obligations for property acquired and Capitalized Lease Obligations in the ordinary course of business;

(10) customary provisions contained in leases, contracts, licenses and other similar agreements entered into in the ordinary course of business (including non-assignment provisions);

(11) other Indebtedness, Disqualified Stock or Preferred Stock (a) of the Issuer or any Restricted Subsidiary of the Issuer that is a Guarantor or (b) of any Restricted Subsidiary that is not a Guarantor so long as such encumbrances and restrictions contained in any agreement or instrument will not materially affect the Issuer's ability to make anticipated principal or interest payments on the Securities (as determined in good faith by the Issuer), *provided* that in the case of each of clauses (a) and (b) above, such Indebtedness, Disqualified Stock or Preferred Stock is permitted to be Incurred subsequent to the Issue Date under Section 4.03;

(12) any Permitted Investment (to the extent such encumbrance or restriction was not made in contemplation of such Permitted Investment and was in existence on the date of such Permitted Investment);

(13) customary provisions imposed on the transfer of copyrighted or patented materials;

(14) any encumbrances or restrictions of the type referred to in clauses (a), (b) and (c) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (13) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Issuer, no more restrictive with respect to such dividend and other payment restrictions than those contained in the dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing; or

(15) any Apomorphine Royalty Disposition to a Royalty Subsidiary.

For purposes of determining compliance with this Section 4.05, (i) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on other Capital Stock shall not be deemed a restriction on the ability to make distributions on Capital Stock and (ii) the subordination of loans or advances made to the Issuer or a Restricted Subsidiary of the Issuer to other Indebtedness Incurred by the Issuer or any such Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

SECTION 4.06. Asset Sales.

(a) General. The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, (i) make a Disposition or (ii) issue or sell Equity Interests (other than directors' qualifying shares and shares issued to foreign nationals or other third parties to the extent required by applicable law) of any Restricted Subsidiary (other than to the Issuer or another Restricted Subsidiary of the Issuer) (whether in a single transaction or a series of related transactions), in each case except for (A) Apomorphine Dispositions that comply with Section 4.06(b) and (B) Permitted Asset Sales.

(b) Apomorphine Dispositions.

(i) Upon the occurrence of any Apomorphine Disposition, each Holder shall have the right to require the Issuer to repurchase all or any part of such Holder's then outstanding Securities at a repurchase price in cash equal to 112.5000% of the principal amount thereof, plus accrued and unpaid interest, if any, thereon to the repurchase date (subject to the right of the Holders of record on the relevant Record Date to receive interest due on the related Payment Date), in accordance with the terms contemplated in this Section 4.06(b); *provided*, *however*, that notwithstanding the occurrence of an Apomorphine Disposition, the Issuer shall not be obligated to repurchase any Securities pursuant to this Section 4.06(b) in the event that it has exercised (x) its unconditional right to redeem such Securities in accordance with Article 3 or (y) its legal defeasance option or covenant defeasance option in accordance with Article 8; *provided*, *further*, that the Issuer shall not repurchase more than $40,000,000 in aggregate principal amount of Securities from the cash proceeds from all such Apomorphine Dispositions (or $50,000,000 in aggregate principal amount of Securities if the First Additional Securities have been issued) (and, in the event that the aggregate principal amount of Securities so requested to be repurchased pursuant to this Section 4.06(b) exceeds $40,000,000 (or $50,000,000 if the First Additional Securities have been issued), then the Issuer shall repurchase the Securities from such Holders on a pro rata basis).

(ii) Within 30 days following any Apomorphine Disposition, except to the extent that the Issuer has exercised (x) its unconditional right to redeem the Securities by delivery of a notice of redemption in accordance with Article 3 or (y) its legal defeasance option or covenant defeasance option in accordance with Article 8, the Issuer shall provide a written notice (an "Apomorphine Asset Sale Offer") to each Holder with a copy to the Trustee stating:

(A) that an Apomorphine Disposition has occurred and that such Holder has the right to require the Issuer to repurchase (subject to the second proviso of Section 4.06(b)(i)) all or any part of such Holder's then outstanding Securities at a repurchase price in cash equal to 112.5000% of the principal amount thereof, plus accrued and unpaid interest, if any, thereon to the repurchase date (subject to the right of the Holders of record on the relevant Record Date to receive interest due on the related Payment Date);

(B) the amount of cash proceeds from such Apomorphine Disposition;

(C) the amount of cash proceeds from any prior Apomorphine Dispositions;

(D) the repurchase date (which shall be no earlier than 30 days nor later than 60 days from the date such written notice is provided); and

(E) the instructions determined by the Issuer, consistent with this Section 4.06(b), that a Holder must follow in order to have its Securities repurchased.

(iii) At any time prior to the Second Additional Securities Triggering Event, to the extent that the aggregate principal amount of Securities repurchased by the Issuer pursuant to this Section 4.06(b), taken together with any prior repurchases by the Issuer pursuant to this Section 4.06(b), is less than $40,000,000 (or $50,000,000 if the First Additional Securities have been issued), the difference between (x) the cash proceeds in respect of all Apomorphine Dispositions, limited to the first $40,000,000 of all such cash proceeds (or $50,000,000 if the First Additional Securities have been issued) and (y) the aggregate principal amount of Securities so repurchased shall be deposited into the Collateral Account.

(iv) Holders electing to have a Security repurchased pursuant to this Section 4.06(b) shall be required to surrender the Security, with an appropriate form duly completed, to the Issuer at the address specified in the Apomorphine Asset Sale Offer (or otherwise in accordance with the applicable procedures of the Depository) at least three Business Days prior to the repurchase date. The Holders shall be entitled to withdraw their election if the Issuer receives not later than one Business Day prior to the repurchase date a facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Security that was delivered for repurchase by the Holder and a statement that such Holder is withdrawing its election to have such Security repurchased. Holders whose Securities are repurchased only in part shall be issued new Securities equal in principal amount to the portion of the Securities surrendered but not repurchased. If the Securities are Global Securities held by the Depository, then the applicable operational procedures of the Depository for tendering and withdrawing securities will apply.

(v) On the repurchase date, all Securities repurchased by the Issuer under this Section 4.06(b) shall be delivered to the Trustee for cancellation, and the Issuer shall pay the repurchase price plus accrued and unpaid interest to the Holders entitled thereto.

(vi) Securities repurchased by the Issuer pursuant to this Section 4.06(b) will have the status of Securities issued but not outstanding or will be retired and canceled at the option of the Issuer.

(vii) At the time the Issuer delivers (or causes to be delivered) Securities to the Trustee that are to be accepted for repurchase, the Issuer shall also deliver an Officers' Certificate stating that such Securities are to be accepted by the Issuer pursuant to and in accordance with the terms of this Section 4.06(b) and confirming whether the Securities will be considered issued but not outstanding or including orders to cancel the repurchased Securities. A Security shall be deemed to have been accepted for repurchase at the time the Trustee, directly or through an agent, provides payment therefor upon receipt from or on behalf of the Issuer to the surrendering Holder.

(viii) Prior to providing written notice to the Holders of any Apomorphine Asset Sale Offer pursuant to Section 4.06(b)(ii), the Issuer shall deliver to the Trustee an Officers' Certificate stating that all conditions precedent contained herein to the right of the Issuer to make such offer have been complied with.

(ix) The Issuer shall comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Securities pursuant to this Section 4.06(b). To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section 4.06(b), the Issuer shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.06(b) by virtue thereof.

(c) Administration of Collateral Account.

(i) The Issuer shall establish and maintain a segregated account held with U.S. Bank National Association (or another segregated account in replacement thereof held with another U.S. federally insured depositary financial institution that is acting as the Trustee or other Paying Agent) in the name of the Trustee or other Paying Agent (acting in either case as an agent for or representative of the Collateral Agent), or in the name of the Issuer, in each case, subject to the Liens established under the Collateral Agreement and the other Security Documents (such account, the "Collateral Account"). The Collateral Account shall be established and maintained so as to create, perfect and establish the priority of the Liens established under the Collateral Agreement and the other Security Documents in such Collateral Account and all funds and other assets or property from time to time deposited therein or credited thereto and otherwise to effectuate the Liens under the Security Documents. The Collateral Account shall bear a designation clearly indicating that the funds and other assets or property deposited therein or credited thereto are held for the benefit of the Holders and the Trustee.

(ii) The Trustee or other Paying Agent, as applicable, shall have sole dominion and control over the Collateral Account (including, among other things, the sole power to direct withdrawals or transfers from the Collateral Account). The Trustee or other Paying Agent, as applicable, shall make withdrawals and transfers from the Collateral Account in accordance with the terms of this Indenture. Each of the Issuer and the Trustee, any other Paying Agent and the Collateral Agent acknowledges and agrees that the Collateral Account is a "securities account" within the meaning of Section 8-501 of the Uniform Commercial Code and that the Trustee or other Paying Agent, as applicable, has "control", for purposes of Section 9-314 of the Uniform Commercial Code, of the Collateral Account that is maintained with the Trustee or other Paying Agent. The Trustee hereby confirms that it has established account number 217428010 in the name of the Issuer for the benefit of the Holders and the Trustee as the Collateral Account. The Issuer and the Trustee, any other Paying Agent and the Collateral Agent further agree that the jurisdiction of the Trustee, such other Paying Agent or the Collateral Agent, as applicable, for purposes of the Uniform Commercial Code shall be the State of New York. The crediting by the Trustee or other Paying Agent, as applicable, to the Collateral Account of any asset or property that is not otherwise a financial asset by virtue of Section 8-102(a)(9)(i) of the Uniform Commercial Code or Section 8-102(a)(9)(ii) of the Uniform Commercial Code, including cash, shall constitute the "express agreement" of the Trustee or such other Paying Agent, as applicable, under Section 8-102(a)(9)(iii) of the Uniform Commercial Code that such property is a financial asset under such Section 8-102(a)(9)(iii) of the Uniform Commercial Code.

(iii) The funds in the Collateral Account shall be released to the Issuer in whole or in part (free and clear of any Liens established under the Collateral Agreement and any other applicable Security Document) only upon (A) the occurrence of the Second Additional Securities Triggering Event and receipt by the Trustee or other applicable Paying Agent of the Second Additional Securities Triggering Event Officers' Certificate or (B) the written consent of the Holders of a majority in principal amount of the Securities. The funds in the Collateral Account may not otherwise be withdrawn except (x) upon the occurrence and during the continuance of an Event of Default at the direction of the Holders of a majority in principal amount of the Securities as further described in Article 6, (y) to the Issuer following the discharge of this Indenture or (z) solely to be used in connection with the Issuer's (A) unconditional right to redeem the Securities in whole in accordance with Article 3 or (B) legal defeasance option or covenant defeasance option in accordance with Article 8. Funds in the Collateral Account may be invested by the Trustee or such Paying Agent in Cash Equivalents available to the Trustee or other Paying Agent, as applicable, at the written direction of the Issuer absent the occurrence and continuance of an Event of Default. Promptly following the occurrence of an Event of Default and during the continuation thereof, the Trustee or other Paying Agent, as applicable (acting as an agent for or representative of the Collateral Agent), shall direct such funds to be invested pursuant to the direction of the Holders of a majority in principal amount of the Securities that are available to the Trustee or other Paying Agent, as applicable. In the absence of written instructions, no investments shall be made using the funds in the Collateral Account.

(iv) The cash proceeds in respect of any Apomorphine Disposition in excess of the first $40,000,000 of cash proceeds from all Apomorphine Dispositions (or $50,000,000 if the First Additional Securities have been issued) may be used by the Issuer for any purpose that is not prohibited by this Indenture. At any time following the Second Additional Securities Triggering Event, after any repurchase of Securities by the Issuer pursuant to Section 4.06(b), any cash proceeds in respect of the related Apomorphine Disposition not used for such repurchase may be used by the Issuer for any purpose that is not prohibited by this Indenture.

SECTION 4.07. Transactions with Affiliates.

(a) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, make any payment to, or lease or Dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Issuer (each of the foregoing, an "Affiliate Transaction") involving aggregate consideration in excess of $250,000, unless:

(i) such Affiliate Transaction is on terms that are not materially less favorable to the Issuer or the relevant Restricted Subsidiary than those that could have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person; and

(ii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $500,000, the Issuer delivers to the Trustee a resolution adopted by the majority of the disinterested members of the Board of Directors of the Issuer, approving such Affiliate Transaction, evidenced by an Officers' Certificate certifying that such Affiliate Transaction complies with clause (i) above.

(b) The provisions of Section 4.07(a) shall not apply to the following:

(i) (A) any transaction or series of transactions between or among any of the Issuer and its Restricted Subsidiaries (or an entity that becomes a Restricted Subsidiary as a result of such transaction), including any payment to, or lease or Disposition of any properties or assets to, or purchase of any property or assets from, or any contract, agreement, amendment, understanding, loan, advance or guarantee with, or for the benefit of, any of the Issuer and its Restricted Subsidiaries (or an entity that becomes a Restricted Subsidiary as a result of such transaction), or (B) any merger, amalgamation or consolidation of the Issuer and any direct parent of the Issuer; *provided* that such parent shall have no material liabilities and no material assets other than cash, Cash Equivalents and the Capital Stock of the Issuer and such merger, amalgamation or consolidation is otherwise not prohibited by the terms of this Indenture and is effected for a bona fide business purpose;

(ii) Restricted Payments permitted by Section 4.04 and Permitted Investments (without giving effect to clause (12) of the definition of "Permitted Investments");

(iii) the payment of reasonable and customary compensation, benefits, fees and reimbursement of expenses paid to, and indemnity, contribution and insurance provided on behalf of, officers, directors, employees, agents or consultants of the Issuer or any Restricted Subsidiary;

(iv) transactions in which the Issuer or any of its Restricted Subsidiaries, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Issuer or such Restricted Subsidiary from a financial point of view or meets the requirements of Section 4.07(a)(i);

(v) payments, advances or loans (or cancellation of loans) to officers, directors, employees or consultants of the Issuer or any of the Restricted Subsidiaries of the Issuer and employment agreements, stock option plans, consulting agreements, restrictive covenant agreements, expense reimbursement arrangements, indemnification agreements, severance and separation agreements and other similar arrangements with such officers, directors, employees, agents or consultants that, in each case, are entered into in the ordinary course of business (including, in each case, payments pursuant thereto);

(vi) any agreement as in effect as of the Issue Date or any amendment thereto (so long as any such agreement together with all amendments thereto, taken as a whole, is not more disadvantageous to the Holders of the Securities in any material respect than the original agreement as in effect on the Issue Date) or any transaction contemplated thereby as determined in good faith by the Issuer;

(vii) the existence of, or the performance by the Issuer or any of its Restricted Subsidiaries of its obligations under the terms of, any stockholders or equityholders agreement (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Issue Date and any amendment thereto or similar transactions, agreements or arrangements that it may enter into thereafter; *provided* that the existence of, or the performance by the Issuer or any of its Restricted Subsidiaries of its obligations under, any future amendment to any such existing transaction, agreement or arrangement or under any similar transaction, agreement or arrangement entered into after the Issue Date shall only be permitted by this clause (vii) to the extent that the terms of any such existing transaction, agreement or arrangement together with all amendments thereto, taken as a whole, or new transaction, agreement or arrangement are not otherwise more disadvantageous to the Holders of the Securities in any material respect than the original transaction, agreement or arrangement as in effect on the Issue Date;

(viii) (A) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Indenture, which are fair to the Issuer and its Restricted Subsidiaries in the reasonable determination of the Board of Directors or the senior management of the Issuer, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party or (B) transactions with joint ventures or Unrestricted Subsidiaries entered into in the ordinary course of business that are not otherwise prohibited by this Indenture;

(ix) the issuance of Equity Interests (other than Disqualified Stock) of the Issuer to any Person;

(x) the issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock option and stock ownership plans or similar employee or director benefit plans approved by the Board of Directors of the Issuer or any direct or indirect parent of the Issuer or of a Restricted Subsidiary of the Issuer, as appropriate, in good faith;

(xi) any contribution to the capital of the Issuer;

(xii) transactions permitted by, and complying with, Article 5;

(xiii) pledges of Equity Interests of Unrestricted Subsidiaries and Royalty Subsidiaries;

(xiv) intercompany transactions undertaken in good faith for the purpose of improving the consolidated tax efficiency of the Issuer and its Restricted Subsidiaries and not for the purpose of circumventing compliance with any covenant set forth in this Indenture;

(xv) the formation and maintenance of any consolidated group or subgroup for tax, accounting or cash pooling or management purposes in the ordinary course of business;

(xvi) any Apomorphine Royalty Disposition to a Royalty Subsidiary; and

(xvii) transactions between the Issuer or any of its Restricted Subsidiaries and any Person, a director of which is also a director of the Issuer or any direct or indirect parent of the Issuer; *provided, however*, that such director abstains from voting as a director of the Issuer or such direct or indirect parent, as the case may be, on any matter involving such other Person.

SECTION 4.08. Change of Control.

(a) Upon a Change of Control, each Holder shall have the right to require the Issuer to repurchase all or any part of such Holder's then outstanding Securities at a repurchase price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, thereon to the repurchase date (subject to the right of the Holders of record on the relevant Record Date to receive interest due on the related Payment Date), in accordance with the terms contemplated in this Section 4.08; *provided*, *however*, that notwithstanding the occurrence of a Change of Control, the Issuer shall not be obligated to repurchase any Securities pursuant to this Section 4.08 in the event that it has exercised (i) its unconditional right to redeem such Securities in accordance with Article 3 or (ii) its legal defeasance option or covenant defeasance option in accordance with Article 8.

(b) Within 30 days following any Change of Control, except to the extent that the Issuer has exercised (x) its unconditional right to redeem the Securities by delivery of a notice of redemption in accordance with Article 3 or (y) its legal defeasance option or covenant defeasance option in accordance with Article 8, the Issuer shall provide a written notice (a "Change of Control Offer") to each Holder with a copy to the Trustee stating:

(i) that a Change of Control has occurred and that such Holder has the right to require the Issuer to repurchase such Holder's then outstanding Securities at a repurchase price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, thereon to the repurchase date (subject to the right of the Holders of record on the relevant Record Date to receive interest due on the related Payment Date);

(ii) the circumstances and relevant facts and financial information regarding such Change of Control (*provided*, that such information may be provided by making reference to such information available for free on the SEC's EDGAR system (or any successor system adopted by the SEC));

(iii) the repurchase date (which shall be no earlier than 30 days nor later than 60 days from the date such written notice is provided, other than as may be required by law); and

(iv) the instructions determined by the Issuer, consistent with this Section 4.08, that a Holder must follow in order to have its Securities repurchased.

(c) Holders electing to have a Security repurchased pursuant to this Section 4.08 shall be required to surrender the Security, with an appropriate form duly completed, to the Issuer at the address specified in the Change of Control Offer (or otherwise in accordance with the applicable procedures of the Depository) at least three Business Days prior to the repurchase date. The Holders shall be entitled to withdraw their election if the Issuer receives not later than one Business Day prior to the repurchase date a facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Security that was delivered for repurchase by the Holder and a statement that such Holder is withdrawing its election to have such Security repurchased. Holders whose Securities are repurchased only in part shall be issued new Securities equal in principal amount to the portion of the Securities surrendered but not repurchased. If the Securities are Global Securities held by the Depository, then the applicable operational procedures of the Depository for tendering and withdrawing securities will apply.

(d) On the repurchase date, all Securities repurchased by the Issuer under this Section 4.08 shall be delivered to the Trustee for cancellation, and the Issuer shall pay the repurchase price plus accrued and unpaid interest to the Holders entitled thereto.

(e) A Change of Control Offer may be made in advance of a Change of Control, and conditioned upon the consummation of such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(f) Notwithstanding the foregoing provisions of this Section 4.08, the Issuer shall not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4.08 applicable to a Change of Control Offer made by the Issuer and purchases all Securities validly tendered and not withdrawn under such Change of Control Offer.

(g) Securities repurchased by the Issuer pursuant to a Change of Control Offer will have the status of Securities issued but not outstanding or will be retired and canceled at the option of the Issuer. Securities purchased by a third party pursuant to Section 4.08(f) will have the status of Securities issued and outstanding.

(h) At the time the Issuer delivers (or causes to be delivered) Securities to the Trustee that are to be accepted for repurchase, the Issuer shall also deliver an Officers' Certificate stating that such Securities are to be accepted by the Issuer pursuant to and in accordance with the terms of this Section 4.08 and confirming whether the Securities will be considered issued but not outstanding or including orders to cancel the repurchased Securities. A Security shall be deemed to have been accepted for repurchase at the time the Trustee, directly or through an agent, provides payment therefor upon receipt from or on behalf of the Issuer to the surrendering Holder.

(i) Prior to providing written notice to the Holders of any Change of Control Offer pursuant to Section 4.08(b), the Issuer shall deliver to the Trustee an Officers' Certificate and an Opinion of Counsel stating that all conditions precedent contained herein to the right of the Issuer to make such offer have been complied with.

(j) The Issuer shall comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Securities pursuant to this Section 4.08. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section 4.08, the Issuer shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.08 by virtue thereof.

(k) In the event that Holders of at least 90% of the aggregate principal amount of the outstanding Securities accept and do not withdraw their acceptance of a Change of Control Offer and the Issuer or a third party purchases all of the Securities held by such Holders, the Issuer will have the right, on not less than 10 nor more than 60 days' prior notice to the Holders (with a copy to the Trustee), and not more than 30 days following the purchase pursuant to such Change of Control Offer, to redeem all of the Securities that remain outstanding following such purchase at a purchase price equal to the Change of Control payment set forth in clause (b)(i) of this Section 4.08 plus, to the extent not included in such Change of Control payment, accrued and unpaid interest, if any, on the Securities that remain outstanding, to such later repurchase date.

SECTION 4.09. Further Instruments and Acts. The Issuer shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

SECTION 4.10. Future Guarantors. The Issuer shall cause each Restricted Subsidiary, within ten Business Days of becoming a Restricted Subsidiary, to execute and deliver to the Trustee a supplemental indenture substantially in the form of Exhibit C pursuant to which such Restricted Subsidiary shall guarantee the Issuer's Obligations under the Securities and this Indenture; *provided*, *however*, that no Immaterial Subsidiary or Royalty Subsidiary shall be required to become a Guarantor; *provided*, *further*, *however*, that if a Restricted Subsidiary ceases to be an Immaterial Subsidiary (and is not at that time a Royalty Subsidiary) or ceases to be a Royalty Subsidiary (and is not at that time an Immaterial Subsidiary), the Issuer shall cause such Restricted Subsidiary, within ten Business Days of ceasing to be an Immaterial Subsidiary or a Royalty Subsidiary, as applicable, to execute and deliver to the Trustee a supplemental indenture substantially in the form of Exhibit C pursuant to which such Restricted Subsidiary shall guarantee the Issuer's Obligations under the Securities and this Indenture.

SECTION 4.11. Liens. The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, Incur or suffer to exist (a) any Lien (except Permitted Liens and Royalty Subsidiary Liens) on any asset or property of the Issuer or such Restricted Subsidiary or (b) any Lien on ABL Collateral securing any First Priority Lien Obligation of the Issuer or any Guarantor without effectively providing that the Securities or the applicable Guarantee, as the case may be, shall be secured by a junior security interest (subject to Permitted Liens) upon the assets or property constituting such ABL Collateral for such First Priority Lien Obligations; *provided*, *however*, that (x) all such Liens on the ABL Collateral shall be subject to the Intercreditor Agreements and (y) no such junior security interest upon any Lockbox Account constituting ABL Collateral shall be required.

Except with respect to clause (viii) and clause (ix) of the definition of "Excluded Asset", no property or asset shall constitute an Excluded Asset to the extent it is pledged to secure any Indebtedness of the Issuer or a Restricted Subsidiary of the Issuer.

For purposes of determining compliance with this Section 4.11, in the event that a Lien securing an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the categories of Liens described in the foregoing paragraph or permitted by clauses (1) through (32) of the definition of "Permitted Liens", then the Issuer shall, in its sole discretion, classify or reclassify, or later divide, classify or reclassify, such Lien securing an item of Indebtedness (or any portion thereof) in any manner that complies with this Section 4.11.

With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the Incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The "Increased Amount" of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the payment of interest or dividends in the form of additional Indebtedness, amortization of original issue discount and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, in each case in respect of such Indebtedness.

SECTION 4.12. Maintenance of Office or Agency.

(a) The Issuer shall maintain an office or agency (which may be an office of the Trustee or an Affiliate of the Trustee or Registrar) where Securities may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Issuer in respect of the Securities and this Indenture may be made. The Issuer shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations and surrenders may be made at the corporate trust place of payment and notices and demands may be made at the Corporate Trust Office of the Trustee as set forth in Section 12.01.

(b) The Issuer may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided*, *however*, that no such designation or rescission shall in any manner relieve the Issuer of its obligation to maintain an office or agency for such purposes. The Issuer shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

(c) The Issuer hereby designates the Corporate Trust Office of the Trustee or its agent as such office or agency of the Issuer in accordance with Section 2.04.

SECTION 4.13. After-Acquired Property. Upon the acquisition by any Issuer or any Guarantor of any assets or property, including any Equity Interests issued by a new Subsidiary of the Issuer or any Guarantor (in each case, other than Excluded Assets) ("After-Acquired Property"), the Issuer or such Guarantor shall promptly execute and deliver such mortgages, deeds of trust, security instruments, pledge agreements, financing statements and certificates and opinions of counsel as shall be reasonably necessary to vest in the Collateral Agent a perfected security interest or other Lien, subject only to Permitted Liens, in such After-Acquired Property and to have such After-Acquired Property (but subject to certain limitations, if applicable, including as described under Article 11) added to the Notes Collateral, and shall promptly deliver such Officers' Certificates and Opinions of Counsel as are customary in secured financing transactions in the relevant jurisdictions or as are reasonably requested by the Trustee or the Collateral Agent (subject to customary assumptions, exceptions and qualifications), and thereupon all provisions of this Indenture relating to the Notes Collateral shall be deemed to relate to such After-Acquired Property to the same extent and with the same force and effect; *provided* that if granting a security interest or Lien in such After-Acquired Property requires the consent of a third party, the Issuer shall use commercially reasonable efforts to obtain such consent with respect to the security interest or Lien for the benefit of the Collateral Agent on behalf of the Holders of the Securities; *provided*, *further*, that if such third party does not consent to the granting of such security interest or Lien after the use of such commercially reasonable efforts, the Issuer or such Guarantor, as the case may be, will not be required to provide such security interest or Lien (so long as no other Person is granted a Lien on such After-Acquired Property securing any Indebtedness following such acquisition or in contemplation thereof); and *provided*, *further*, that with respect to the security interest in After-Acquired Property that constitutes ABL Collateral securing First Priority Lien Obligations, such security interest securing the Securities and the Guarantees shall be subject to the Intercreditor Agreements. Notwithstanding the foregoing, if any property or assets of the Issuer or any Guarantor originally deemed to be an Excluded Asset at any point ceases to be an Excluded Asset pursuant to the definition of "Excluded Asset", all or the applicable portion of such property and assets shall be deemed to be After-Acquired Property and shall be added to the Notes Collateral in accordance with the previous sentence.

SECTION 4.14. Intellectual Property. The Issuer shall, at its sole expense, either directly or by using commercially reasonable efforts to cause any Restricted Subsidiary or any licensee to do so, take any and all commercially reasonable actions to (a) diligently maintain the Intellectual Property owned or otherwise controlled by the Issuer or any Restricted Subsidiary and (b) to the extent the Issuer, any Restricted Subsidiary or any licensee in good faith determines such action to be appropriate, diligently defend or assert the Intellectual Property against infringement or interference by any other Persons and against any claims of invalidity or unenforceability by any other Persons (including by bringing any legal action for infringement or defending any counterclaim of invalidity or action for declaratory judgment of non-infringement) in each case where the failure to so act, prepare, execute, deliver or file would reasonably be expected to have a material adverse effect on the Intellectual Property or the results of operations or financial condition of the Issuer and its Restricted Subsidiaries, in each case, taken as a whole. The Issuer shall not, and shall use its commercially reasonable efforts to cause any Restricted Subsidiary or any licensee not to, disclaim or abandon, or fail to take any action the Issuer in good faith determines appropriate to prevent the disclaimer or abandonment of, the Intellectual Property, in each case where such disclaimer, abandonment or failure to take any such action would reasonably be expected to have a material adverse effect on the Intellectual Property or the results of operations or financial condition of the Issuer and its Restricted Subsidiaries.

SECTION 4.15. Line of Business. The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, principally engage in any line of business other than those businesses engaged in on the Issue Date and businesses reasonably related thereto, including in other aspects of the pharmaceutical and biotechnology businesses.

SECTION 4.16. Use of Proceeds. The Issuer shall use, or will cause its Restricted Subsidiaries to use, the net proceeds from the issuance and sale of the Securities and the related warrants issued and sold concurrently therewith to repay all outstanding obligations under that certain Credit Agreement and Guaranty dated as of August 16, 2016, as amended to date, among the Issuer (formerly MonoSol Rx, LLC), the subsidiary guarantors from time to time party thereto, the lenders from time to time party thereto and Perceptive Credit Holdings, LP, as administrative agent and collateral agent, to finance the Issuer’s strategic pipeline programs, to pay fees, costs and expenses arising in connection with the issuance of the Securities and such warrants and for general corporate purposes.

SECTION 4.17. Tax Matters. The Issuer shall (a) timely file all material tax returns and reports as required by applicable law and such returns and reports shall be true and correct in all material respects, (b) pay all material taxes, assessments or other governmental charges when due and payable, (c) not file any tax return or report under any name other than its exact legal name and (d) use commercially reasonable efforts to file any form (or comply with any administrative formalities) required for an exemption from or a reduction of any withholding tax for which it is eligible with respect to any payments received or receivable by the Issuer.

SECTION 4.18. Existence. Subject to Article 5, each of the Issuer and each Guarantor will do or cause to be done all things necessary to preserve and keep in full force and effect its respective corporate existence, rights (charter and statutory), license and franchises in accordance with its respective organizational documents (as the same may be amended from time to time); *provided* that this provision shall not require the Issuer to maintain any right, license or franchise or to preserve the corporate existence of any Guarantor if the Issuer or such Guarantor determines in good faith that the maintenance or preservation thereof is no longer necessary or desirable in the conduct of its business, taken as a whole; *provided*, *further*, that any such failure to maintain any right, license or franchise or to preserve the corporate existence of any Guarantor shall not adversely affect the value of the Notes Collateral in any material respect.

SECTION 4.19. Right of First Offer. Upon each proposed issuance, if any, of First Additional Securities or Second Additional Securities, the Issuer will grant to the initial purchasers of the Original Securities the right to purchase an aggregate amount of such First Additional Securities or Second Additional Securities, as applicable, in an amount equal to the same proportion that the principal amount of Original Securities each such purchaser initially purchased bears to the aggregate principal amount of Original Securities issued on the Issue Date and at a purchase price specified by the Issuer (which purchase price shall not be more than the purchase price being offered to other investors), with such right to purchase being exercised by each such purchaser by written notice to the Issuer no later than 15 days after being notified of such proposed issuance by the Issuer. To the extent that any of the initial purchasers of the Original Securities decline to exercise their right to purchase any First Additional Securities or Second Additional Securities, as applicable (in whole or in part), the Issuer will promptly notify the other initial purchasers of the Original Securities that have exercised such right in full, in which case such other initial purchasers will have the right to purchase such remaining First Additional Securities or Second Additional Securities, as applicable (subject to proportional reduction to the extent of the relative initial principal amount of First Additional Securities or Second Additional Securities, as applicable, purchased by other initial purchasers exercising the same right), on the same terms as any First Additional Securities or Second Additional Securities, as applicable, it previously exercised the right to purchase pursuant to the preceding sentence, with such right to purchase being exercised by each such purchaser by written notice to the Issuer no later than two days after being notified of the opportunity to purchase such remaining First Additional Securities or Second Additional Securities, as applicable, by the Issuer.

ARTICLE 5

SUCCESSOR COMPANY

SECTION 5.01. When Issuer May Merge or Transfer Assets.

(a) The Issuer shall not, directly or indirectly, merge, amalgamate or consolidate with or into or wind up or convert into (whether or not the Issuer is the surviving Person), or lease or Dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(i) (x) the Issuer is the surviving Person or the Person formed by or surviving any such merger, amalgamation, consolidation, winding up or conversion (if other than the Issuer) or to which such lease or Disposition shall have been made is a corporation, partnership or limited liability company organized or existing under the laws of the United States, any state thereof or the District of Columbia (the Issuer or such Person, as the case may be, being herein called the "Successor Company"); and (y) the Successor Company (if other than the Issuer) expressly assumes all the obligations of the Issuer under this Indenture, the Securities, the Intercreditor Agreements and the Security Documents pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;

(ii) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any of its Restricted Subsidiaries as a result of such transaction as having been Incurred by the Successor Company or such Restricted Subsidiary at the time of such transaction) no Default shall have occurred and be continuing;

(iii) immediately after giving *pro forma* effect to such transaction, as if such transaction had occurred at the beginning of the applicable four-quarter period (and treating any Indebtedness that becomes an obligation of the Successor Company or any of its Restricted Subsidiaries as a result of such transaction as having been Incurred by the Successor Company or such Restricted Subsidiary at the time of such transaction), the Successor Company would be permitted to Incur at least $1.00 of additional Indebtedness pursuant to Section 4.03(a);

(iv) each Guarantor, unless it is the other party to the transactions described above, shall have by supplemental indenture confirmed that its Guarantee shall apply to such Person's obligations under this Indenture and the Securities; and

(v) the Successor Company shall have delivered to the Trustee (A) an Officers' Certificate and an Opinion or Opinions of Counsel, each stating (to the extent applicable with respect to such Opinion or Opinions of Counsel) that such transaction and such supplemental indentures (if any) comply with this Indenture and the obligations of the Issuer under this Indenture, the Securities, the Intercreditor Agreements and the Security Documents remain obligations of the Successor Company and confirming the necessary actions to continue the perfection and priority of the Collateral Agent's Lien in the Notes Collateral and of the preservation of its rights therein and (B) an Officers' Certificate stating that such necessary actions have been taken (together with evidence thereof) promptly and in any event no later than 30 days following such transaction.

(b) The Successor Company (if other than the Issuer) shall succeed to, and be substituted for, the Issuer under this Indenture, the Securities, the Intercreditor Agreements and the Security Documents, and in such event the Issuer will automatically be released and discharged from its obligations under this Indenture, the Securities and the Security Documents. Notwithstanding the foregoing clauses (ii) and (iii) of Section 5.01(a), any Guarantor may merge, amalgamate or consolidate with or transfer all or substantially all of its properties and assets to the Issuer.

SECTION 5.02. When Guarantors May Merge or Transfer Assets.

(a) Subject to the provisions of Section 10.03 (which govern the release of a Guarantee upon the Disposition or exchange of the Capital Stock of a Guarantor), none of the Guarantors shall, and the Issuer shall not permit any Guarantor to, directly or indirectly, merge, amalgamate or consolidate with or into or wind up or convert into (whether or not such Guarantor is the surviving Person), or lease or Dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(i) either (A) such Guarantor is the surviving Person or the Person formed by or surviving any such merger, amalgamation, consolidation, winding up or conversion (if other than such Guarantor) or to which such lease or Disposition shall have been made is a corporation, partnership or limited liability company organized or existing under the laws of the jurisdiction of its formation (such Guarantor or such Person, as the case may be, being herein called the "Successor Guarantor") and the Successor Guarantor (if other than such Guarantor) expressly assumes all the obligations of such Guarantor under this Indenture and, if applicable, such Guarantors' Guarantee and the Security Documents pursuant to a supplemental indenture or other documents or instruments in form reasonably satisfactory to the Trustee or (B) (x) such Disposition or merger, amalgamation or consolidation is made to a Person that is not the Issuer or a Restricted Subsidiary and is not in violation of Section 4.06 and (y) after giving effect to such Disposition, such Guarantor is no longer a Restricted Subsidiary; and

(ii) the Successor Guarantor (if other than such Guarantor) or the Issuer shall have delivered or caused to be delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such merger, amalgamation, consolidation, winding up, conversion, lease or Disposition and such supplemental indenture (if any) comply with this Indenture.

(b) Except as otherwise provided in this Indenture, the Successor Guarantor (if other than such Guarantor) will succeed to, and be substituted for, such Guarantor under this Indenture, such Guarantor's Guarantee and the Security Documents, and in such event such Guarantor will automatically be released and discharged from its obligations under this Indenture, such Guarantor's Guarantee and the Security Documents.

(c) Notwithstanding the foregoing, any Guarantor may merge, amalgamate or consolidate with or into or wind up or convert into, or lease or Dispose of all or substantially all of its properties or assets to, the Issuer or any other Guarantor.

ARTICLE 6

DEFAULTS AND REMEDIES

SECTION 6.01. Events of Default. An "Event of Default" occurs if:

(a) there is a default in any payment of interest on any Security when the same becomes due and payable, and such default continues for a period of 30 days;

(b) there is a default in the payment of principal of or premium, if any, on any Security when due at its Stated Maturity, upon scheduled payment thereof, upon optional redemption, upon required repurchase, upon declaration of acceleration or otherwise (including pursuant to Section 4.01(b));

(c) the Issuer or any Guarantor fails to comply with any of its agreements in the Securities or this Indenture (other than those referred to in clause (a) or (b) above) and such failure continues for 30 days after the notice specified below;

(d) the Issuer or any Restricted Subsidiary fails to pay any Indebtedness within any applicable grace period after such payment is due and payable (including at final maturity) or the acceleration of any such Indebtedness by the holders thereof occurs because of a default, in each case, if the total principal amount of such Indebtedness unpaid or accelerated exceeds $1,000,000 or its non-U.S. currency equivalent;

(e) the Issuer or any Restricted 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 any substantial part of its property; or

(iv) makes a general assignment for the benefit of its creditors or takes any comparable action under any non-U.S. laws relating to insolvency;

(f) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Issuer or any Restricted Subsidiary of the Issuer in an involuntary case;

(ii) appoints a Custodian of the Issuer or any Restricted Subsidiary of the Issuer or for any substantial part of its property; or

(iii) orders the winding up or liquidation of the Issuer or any Restricted Subsidiary of the Issuer;

or any similar relief is granted under any non-U.S. laws and the order or decree remains unstayed and in effect for 60 days;

(g) the Issuer or any Restricted Subsidiary submits to any extrajudicial restructuring or similar proceeding;

(h) the Issuer or any Restricted Subsidiary fails to pay final judgments entered against the Issuer or such Restricted Subsidiaries to the extent aggregating in excess of $1,000,000 or its non-U.S. currency equivalent (net of any amounts that are covered by enforceable insurance policies issued by solvent carriers or indemnities or payable from any escrow arrangement that is available to the Issuer or such Restricted Subsidiaries for payment of such liabilities), which judgments are not discharged, waived or stayed for a period of 60 days following the entry thereof;

(i) any representation or warranty made in writing by or on behalf of the Issuer or any Guarantor in connection with the issuance and sale of the Securities or made in writing by or on behalf of the Issuer or any Guarantor furnished in connection with the transactions contemplated by this Indenture and the Security Documents proves to have been false or incorrect in any material respect on the date as of which made (or, if such representation or warranty is given as of a specific time, as of such time);

(j) the Collateral Agent fails to have a perfected security interest in any portion of the Notes Collateral with a value greater than $1,000,000, except (i) as contemplated by this Indenture and the Security Documents or (ii) due to the failure on the part of the Collateral Agent to maintain custody of the Notes Collateral within its control;

(k) any Guarantee ceases to be in full force and effect (except as contemplated by the terms thereof in accordance with this Indenture) or any Guarantor denies or disaffirms in writing its obligations under this Indenture or any Guarantee and such Default continues for 10 days;

(l) unless all of the Notes Collateral has been released from the Liens in accordance with the provisions of the Security Documents with respect to the Securities, the Issuer shall assert or any Guarantor shall assert, in any pleading in any court of competent jurisdiction, that any such security interest is invalid or unenforceable;

(m) the Issuer or any Guarantor fails to comply for 30 days after notice with its obligations contained in the Security Documents, except for a failure with respect to assets or property with an aggregate value of less than $1,000,000; or

(n) the occurrence of (i) any material adverse change, or any development that would be expected to result in a material adverse change, in or affecting the business, condition (financial or otherwise), operations, performance, property or prospects of the Issuer and its Subsidiaries taken as a whole since the Issue Date or (ii) any event that results in, or is reasonably expected to result in, a material adverse effect on the ability of each of the Issuer and each Guarantor to perform its obligations (including its payment obligations) under the Securities and this Indenture.

The foregoing shall constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

The term “Bankruptcy Law” means Title 11, United States Code, or any similar U.S. federal or state law for the relief of debtors (or their non-U.S. equivalents). The term “Custodian” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

A Default under clause (c) or (m) above shall not constitute an Event of Default until the Trustee or the Holders of at least 25% in principal amount of the outstanding Securities notify the Issuer (and also the Trustee if given by the Holders) of the Default and the Issuer does not cure such Default within the time specified in such clause (c) or (m) after receipt of such notice or after such date, as applicable. Such notice must specify the Default, demand that it be remedied and state that such notice is a “Notice of Default”. The Issuer shall deliver to the Trustee, within 30 days after the occurrence thereof, written notice in the form of an Officers’ Certificate of any event that is, or with the giving of notice or the lapse of time or both would become, an Event of Default, its status and what action the Issuer is taking or proposes to take in respect thereof.

SECTION 6.02. Acceleration. If an Event of Default (other than an Event of Default specified in Section 6.01(e), 6.01(f) or 6.01(g)) occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of outstanding Securities by written notice to the Issuer may, and if such notice is given by the Holders such notice shall be given to the Issuer and the Trustee, declare that the principal of, and the premium and accrued but unpaid interest on, all the Securities is due and payable. Upon such a declaration, such principal, premium and interest shall be due and payable immediately. If an Event of Default specified in Section 6.01(e), 6.01(f) or 6.01(g) occurs, the principal of, and the premium and accrued but unpaid interest on, all the Securities shall *ipso facto* become and be immediately due and payable, without any declaration or other act on the part of the Trustee or any Holders. The Holders of a majority in principal amount of the outstanding Securities by notice to the Trustee may rescind an acceleration and its consequences with respect to all outstanding Securities if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been (or are concurrently with such rescission) cured or waived.

If the principal of, or premium or accrued and unpaid interest on, the Securities becomes due and payable as provided above (an “Acceleration”), the principal of, and the premium and accrued but unpaid interest on, the Securities that becomes due and payable shall equal the optional redemption price in effect on the date of such declaration (or the date set forth in the third sentence of this Section 6.02), as if such Acceleration were an optional redemption of the Securities effected thereby on such date of declaration (or the date set forth in the third sentence of this Section 6.02). The amounts described in the preceding sentence are intended to be liquidated damages and not unmatured interest or a penalty, and the Issuer agrees that such liquidated damages are reasonable under the circumstances. THE ISSUER EXPRESSLY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION, INCLUDING IN CONNECTION WITH ANY VOLUNTARY OR INVOLUNTARY ACCELERATION OF THE OBLIGATIONS PURSUANT TO ANY PROCEEDING PURSUANT TO ANY BANKRUPTCY LAW OR PURSUANT TO A PLAN OF REORGANIZATION. The Issuer expressly agrees that: (a) such premium is reasonable and is the product of an arm’s-length transaction between sophisticated business people, ably represented by counsel; (b) such premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (c) there has been a course of conduct between the Holders and the Issuer giving specific consideration in this transaction for such agreement to pay such premium; and (d) the Issuer shall be estopped hereafter from claiming differently than as agreed to in this paragraph. The Issuer expressly acknowledges that its agreement to pay such premium to the Holders described in this Section 6.02 is a material inducement to the Holders to purchase the Securities.

In the event of any Event of Default specified in Section 6.01(d), such Event of Default and all consequences thereof (excluding, however, any resulting payment default) shall be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders of the Securities, if within 20 days after such Event of Default arose the Issuer delivers an Officers' Certificate to the Trustee stating that (x) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged, (y) the Holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default or (z) the default that is the basis for such Event of Default has been cured, it being understood that in no event shall an acceleration of the principal amount of the Securities as described above be annulled, waived or rescinded upon the happening of any such events.

SECTION 6.03. Other Remedies. If an Event of Default occurs and is continuing, the Trustee or the Collateral Agent, as applicable, may, but only, in the case of the Trustee, at the written direction of Holders of a majority in principal amount of the then outstanding Securities, pursue any available remedy at law or in equity to collect the payment of principal of or interest or premium on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee or the Collateral Agent, as applicable, 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 the Collateral Agent, as applicable, or any Holder 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. To the extent required by law, all available remedies are cumulative.

SECTION 6.04. Waiver of Existing Defaults. Provided the Securities are not then due and payable by reason of a declaration of acceleration, the Holders of a majority in principal amount of the then outstanding Securities by written notice to the Trustee may waive an existing Default or Event of Default and its consequences except (a) an uncured Default in the payment of the principal of or interest on a Security, (b) a Default arising from the failure to redeem or purchase any Security when required pursuant to the terms of this Indenture or (c) a Default in respect of a provision that under Section 9.02 cannot be amended without the consent of each Holder affected. When a Default or Event of Default is waived, it is deemed cured and the Issuer, the Trustee and the Holders will be restored to their former positions and rights under this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any consequent right.

SECTION 6.05. Control by Majority. The Holders of a majority in principal amount of the then outstanding Securities may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, subject to Section 7.01, that the Trustee determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability. Prior to taking any action under this Indenture, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

SECTION 6.06. Limitation on Suits.

(a) Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Holder may pursue any remedy with respect to this Indenture or the Securities unless:

(i) the Holder gives the Trustee written notice stating that an Event of Default is continuing;

(ii) the Holders of at least 25% in principal amount of the then outstanding Securities make a written request to the Trustee to pursue the remedy;

(iii) such Holder or Holders offer to the Trustee security or indemnity satisfactory to it against any loss, liability or expense;

(iv) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of security or indemnity; and

(v) the Holders of a majority in principal amount of the then outstanding Securities do not give the Trustee a direction inconsistent with the request during such 60-day period.

(b) A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

SECTION 6.07. Rights of the 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 the Securities held by such Holder, on or after the respective due dates expressed or provided for in this Indenture or in the Securities, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

SECTION 6.08. Collection Suit by Trustee. If an Event of Default specified in Section 6.01(a) or Section 6.01(b) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuer or any other obligor on the Securities for the whole amount then due and owing (together with interest on overdue principal and (to the extent lawful) on any unpaid interest at the rate provided for in the Securities) and the amounts provided for in Section 7.06.

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 reasonable compensation, expenses disbursements and advances of the Trustee (including counsel, accountants, experts or such other professionals as the Trustee deems necessary, advisable or appropriate)) and the Holders allowed in any judicial proceedings relative to the Issuer or any Guarantor, their creditors or their property, shall be entitled to participate as a member, voting or otherwise, of any official committee of creditors appointed in such matters and, unless prohibited by law or applicable regulations, may vote on behalf of the Holders in any election of a trustee in bankruptcy or other Person performing similar functions and be a member of a creditors' or other similar committee, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel, and any other amounts due the Trustee under Section 7.06.

SECTION 6.10. Priorities. If the Trustee collects any money or property pursuant to this Article 6 or any Security Document, the Trustee (after giving effect to Section 5.3 of the Collateral Agreement) shall pay out the money or property in the following order:

FIRST: to the Trustee for amounts then due and payable under Section 7.06;

SECOND: to the Holders for amounts due and unpaid on the Securities for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts then due and payable on the Securities for principal, premium, if any, and interest, respectively; and

THIRD: to the Issuer or, to the extent the Trustee collects any amount for any Guarantor, to such Guarantor.

The Trustee may fix a record date and payment date for any payment to the Holders pursuant to this Section 6.10. At least 15 days before such record date, the Trustee shall provide to each Holder and the Issuer a written notice that states the record date, the payment date and amount to be paid.

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 and documented attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in principal amount of the Securities.

SECTION 6.12. Waiver of Stay or Extension Laws. Neither the Issuer nor any Guarantor (to the extent it may lawfully do so) shall at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Issuer and each Guarantor (to the extent that it may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and shall not hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

SECTION 6.13. Holder Request. At the written request of the Issuer or any Holder (or any holder of beneficial interests in the Securities that certifies to the Trustee that it is a holder of such beneficial interests or is actually known by the Trustee to be such a holder of beneficial interests as evidenced by a Confidentiality Agreement that has previously been delivered to the Trustee), the Trustee shall, as soon as practicable after receipt of such request and at the Issuer's sole cost and expense, (a) contact each Holder or each other Holder (and each other holder of beneficial interests in the Securities) to request each such other Holder or other Holder (and each such other holder of beneficial interests in the Securities) to provide its written permission to being identified to the Issuer or the requesting Holder (or holder of beneficial interests in the Securities) by the Trustee, to the extent the Trustee has actual knowledge of the identity of such Holder or other Holder (or other holder of beneficial interests in the Securities), including pursuant to Section 4.02(g) and (b) disclose to the Issuer or the requesting Holder (or other holder of beneficial interests in the Securities) the identity of any such Holder or other Holder (and any such other holder of beneficial interests in the Securities) who provides such written permission to the Trustee. The Trustee shall have no liability if it contacts any Person that it believes to be a beneficial holder of the Securities that is not a beneficial holder of the Securities.

ARTICLE 7

TRUSTEE

SECTION 7.01. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs, except with respect to the obligation to exercise rights and remedies following an Event of Default, which right and remedies shall be performed by the Trustee acting solely upon the direction of Holders of a majority in principal amount of the Securities in accordance with Section 6.03 and Section 6.05.

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

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee (it being agreed that the permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty); and

(ii) 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 shall be under no duty to make any investigation as to any statement contained in any such instance, but may accept the same as conclusive evidence of the truth and accuracy of such statement or the correctness of such opinions. However, in the case of certificates or opinions required by any provision hereof to be provided to it, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

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

(i) this paragraph does not limit the effect of Section 7.01(b);

(ii) 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;

(iii) 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; and

(iv) no provision of 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 hereunder or in the exercise of any of its rights or powers.

(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 7.01.

(e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer.

(f) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) The Trustee shall not be liable to any Person for special, punitive, indirect, consequential or incidental loss or damage of any kind whatsoever (including lost profits), even if the Trustee has been advised of the likelihood of such loss or damage.

(h) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 7.01 and, to the extent made expressly applicable by the terms of this Indenture, to the provisions of the TIA.

SECTION 7.02. Rights of Trustee.

(a) The Trustee may conclusively rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officers' Certificate or Opinion of Counsel.

(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 it takes or omits to take in good faith that it believes to be authorized or within its rights or powers; *provided*, *however*, that the Trustee's conduct does not constitute willful misconduct or negligence.

(e) The Trustee may consult with counsel of its own selection and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Securities or any Opinion of Counsel shall be full and complete authorization and protection from liability 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 or Opinion of Counsel.

(f) 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, consent, order, approval, bond, debenture, note or other paper or document unless requested in writing to do so by the Holders of a majority in principal amount of the Securities at the time outstanding, 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 Issuer, personally or by agent or attorney, at the expense of the Issuer and shall incur no liability of any kind by reason of such inquiry or investigation.

(g) 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 satisfactory to the Trustee in its sole discretion against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(h) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be compensated, reimbursed and indemnified as provided in Section 7.06, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder (including as Collateral Agent), and each agent, custodian and other Person employed to act hereunder.

(i) The Trustee shall not be liable for any action taken or omitted by it in good faith at the direction of the Holders of a majority in principal amount of the Securities as to the time, method and place of conducting any proceedings for any remedy available to the Trustee or the exercising of any power conferred by this Indenture.

(j) Any action taken, or omitted to be taken, by the Trustee in good faith pursuant to this Indenture upon the request or authority or consent of any person who, at the time of making such request or giving such authority or consent, is the Holder of any Security shall be conclusive and binding upon future Holders of Securities and upon Securities executed and delivered in exchange therefor or in place thereof.

(k) 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 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 that 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 Issuer or its Affiliates with the same rights it would have if it were not Trustee. The Trustee and its Affiliates have engaged, currently are engaged and may in the future engage in financial or other transactions with the Issuer and its Affiliates in the ordinary course of their respective businesses, subject to the TIA (to the extent this Indenture has been qualified thereunder). Any Paying Agent or Registrar may do the same with like rights. However, the Trustee must comply with Sections 7.09 and 7.10.

SECTION 7.04. Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture, any Guarantee, the Securities or any Security Documents, it shall not be accountable for the Issuer's use of the proceeds from the Securities, and it shall not be responsible for any statement of the Issuer or any Guarantor in this Indenture or in any document issued in connection with the sale of the Securities or in the Securities other than the Trustee's certificate of authentication. The Trustee shall not be charged with knowledge of any Default or Event of Default under Section 6.01(c), 6.01(d), 6.01(e), 6.01(f), 6.01(g), 6.01(h), 6.01(i), 6.01(j), 6.01(k), 6.01(l), 6.01(m) or 6.01(n) unless either (a) a Trust Officer shall have actual knowledge thereof or (b) the Trustee shall have received written notice thereof in accordance with Section 12.01 from the Issuer, any Guarantor or any Holder.

SECTION 7.05. Notice of Defaults. If a Default occurs and is continuing and if it is actually known to the Trustee, the Trustee shall provide to each Holder written notice of the Default within 30 days after it is actually known to a Trust Officer or written notice referring to this Indenture, describing such Default or Event of Default and stating that such notice is a "notice of default", is received by the Trustee in accordance with Section 12.01. Except in the case of a Default in the payment of principal of or premium (if any) or interest on any Security, the Trustee may withhold the notice if and so long as a committee of its Trust Officers in good faith determines that withholding the notice is in the interests of the Holders.

SECTION 7.06. Compensation and Indemnity. The Issuer shall pay to the Trustee from time to time reasonable compensation for its services, as agreed between the Issuer and the Trustee. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuer shall reimburse the Trustee upon request for all reasonable and documented out-of-pocket expenses incurred or made by it, including costs of collection, in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts. The Issuer and each Guarantor, jointly and severally, shall indemnify the Trustee against any and all loss, liability, claim, damage or expense (including reasonable and documented attorneys' fees and expenses) incurred by or in connection with the acceptance or administration of this trust and the performance of its duties hereunder, including the costs and expenses of enforcing this Indenture or a Guarantee against the Issuer or a Guarantor (including this Section 7.06) and defending itself against or investigating any claim (whether asserted by the Issuer, any Guarantor, any Holder or any other Person). The obligation to pay such amounts shall survive the discharge of this Indenture, the payment in full or defeasance of the Securities or the removal or resignation of the Trustee. The Trustee shall notify the Issuer of any claim for which it may seek indemnity promptly upon obtaining actual knowledge thereof; *provided*, *however*, that any failure so to notify the Issuer shall not relieve the Issuer or any Guarantor of its indemnity obligations hereunder. The Issuer shall have the opportunity to assume the defense of the claim and the indemnified party shall provide reasonable cooperation at the Issuer's expense in the defense. Such indemnified parties may have separate counsel and the Issuer and the Guarantors, as applicable, shall pay the reasonable and documented fees and expenses of such counsel; *provided*, *however*, that the Issuer shall not be required to pay such fees and expenses if it assumes such indemnified parties' defense and, in such indemnified parties' reasonable judgment, there is no conflict of interest between the Issuer and the Guarantors, as applicable, and such parties in connection with such defense. The Issuer need not reimburse any expense or indemnify against any loss, liability or expense Incurred by an indemnified party through such party's own willful misconduct or gross negligence (as determined by a final, non-appealable order of a court of competent jurisdiction), or with respect to any settlement made without its consent.

To secure the Issuer's and the Guarantors' payment obligations in this Section 7.06, the Trustee shall have a Lien prior to the Securities on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of, and premium, if any, and interest on, particular Securities.

The Issuer's and the Guarantors' payment obligations pursuant to this Section 7.06 shall survive the satisfaction or discharge of this Indenture, any rejection or termination of this Indenture under any bankruptcy law or the resignation or removal of the Trustee. Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses after the occurrence of a Default specified in Section 6.01(e), Section 6.01(f) or Section 6.01(g), the expenses are intended to constitute expenses of administration under the Bankruptcy Law.

No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if repayment of such funds or adequate indemnity against such risk or liability is not assured to its satisfaction.

SECTION 7.07. Replacement of Trustee.

(a) A resignation or removal of the Trustee and appointment of a successor Trustee will become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.07.

(b) The Trustee may resign in writing at any time upon 30 days' prior written notice to the Issuer by so notifying the Issuer. The Holders of a majority in aggregate principal amount of the then outstanding Securities may remove the Trustee upon 30 days' written notice to the Trustee and the Issuer and may appoint a successor Trustee. The Issuer may remove the Trustee if upon 30 days' written notice:

(i) the Trustee fails to comply with Section 7.09;

(ii) the Trustee is adjudged bankrupt or insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(iii) a receiver or other public officer takes charge of the Trustee or its property; or

(iv) the Trustee otherwise becomes incapable of acting.

(c) If the Trustee resigns or is removed by the Issuer or by the Holders of a majority in aggregate principal amount of the then outstanding Securities and such Holders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Issuer shall, as promptly as practicable, appoint a successor Trustee.

(d) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Thereupon 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. The successor Trustee shall provide a written notice of its succession to the Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the Lien provided for in Section 7.06.

(e) If a successor Trustee does not take office within 60 days after the retiring Trustee is notified that it is to be removed or has notified the Issuer that it wishes to resign, in each case, in accordance with paragraph (b) above, the retiring Trustee, the Issuer or the Holders of at least 10% in aggregate principal amount of the then outstanding Securities, at the expense of the Issuer, may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) If the Trustee fails to comply with Section 7.09, unless the Trustee's duty to resign is stayed as provided in Section 310(b) of the TIA, any Holder who has been a bona fide holder of a Security for at least six months may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(g) Notwithstanding the replacement of the Trustee pursuant to this Section 7.07, the obligations of the Issuer and the Guarantors under Section 7.06 shall continue for the benefit of the retiring Trustee.

SECTION 7.08. Successor Trustee by Merger. If the Trustee merges, amalgamates or consolidates with or into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation or banking association without any further act shall be the successor Trustee.

In case at the time such successor or successors by merger, amalgamation or consolidation to the Trustee shall succeed to the trusts created by this Indenture any of the Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Securities so authenticated; and in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force that it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have.

SECTION 7.09. Eligibility; Disqualification. The Trustee shall at all times satisfy the requirements of Section 310(a) of the TIA. The Trustee shall have a combined capital and surplus of at least $100,000,000 as set forth in its most recent published annual report of condition. The Trustee shall comply with Section 310(b) of the TIA, subject to its right to apply for a stay of its duty to resign under the penultimate paragraph of Section 310(b) of the TIA; *provided*, *however*, that there shall be excluded from the operation of Section 310(b)(1) of the TIA any series of securities issued under this Indenture and any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Issuer is outstanding if the requirements for such exclusion set forth in Section 310(b)(1) of the TIA are met.

SECTION 7.10. Preferential Collection of Claims Against the Issuer. The Trustee shall comply with Section 311(a) of the TIA, excluding any creditor relationship listed in Section 311(b) of the TIA. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the TIA to the extent indicated.

SECTION 7.11. Confidential Information. The Trustee, in its individual capacity and as Trustee, agrees and acknowledges that all confidential information ("Confidential Information") provided to the Trustee by the Issuer or any Subsidiary (or any direct or indirect equityholder of the Issuer or such Subsidiary) or any Holder (or holder of a beneficial interest in the Securities) may be considered to be proprietary and confidential information. The Trustee agrees to take reasonable precautions to keep Confidential Information confidential, which precautions shall be no less stringent than those that the Trustee employs to protect its own confidential information. The Trustee shall not disclose to any third party other than as set forth herein, and shall not use for any purpose other than the exercise of the Trustee's rights and the performance of its obligations under this Indenture, any Confidential Information without the prior written consent of the Issuer or such Holder (or such holder of a beneficial interest in the Securities), as applicable. The Trustee shall limit access to Confidential Information received hereunder to (a) its directors, officers, managers and employees and (b) its legal advisors, to each of whom disclosure of Confidential Information is necessary for the purposes described above; *provided*, *however*, that in each case such party has expressly agreed to maintain such information in confidence under terms and conditions substantially identical to the terms of this Section 7.11.

The Trustee agrees that the Issuer or any Holder (or any holder of a beneficial interest in the Securities), as applicable, does not have any responsibility whatsoever for any reliance on Confidential Information by the Trustee or by any Person to whom such information is disclosed in connection with this Indenture, whether related to the purposes described above or otherwise. Without limiting the generality of the foregoing, the Trustee agrees that the Issuer or any Holder (or any holder of a beneficial interest in the Securities), as applicable, makes no representation or warranty whatsoever to it with respect to Confidential Information or its suitability for such purposes. The Trustee further agrees that it shall not acquire any rights against the Issuer or any of its Subsidiaries or any employee, officer, director, manager, representative or agent of the Issuer or any of its Subsidiaries or any Holder (or any holder of a beneficial interest in the Securities), as applicable (together with the Issuer, "Confidential Parties") as a result of the disclosure of Confidential Information to the Trustee and that no Confidential Party has any duty, responsibility, liability or obligation to any Person as a result of any such disclosure.

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

Each of the Paying Agent and the Registrar agrees to be bound by this Section 7.11 to the same extent as the Trustee.

ARTICLE 8

DISCHARGE OF INDENTURE; DEFEASANCE

SECTION 8.01. Discharge of Liability on Securities; Defeasance.

(a) This Indenture shall be discharged and shall cease to be of further effect (except as to surviving rights of registration of transfer or exchange of Securities, as expressly provided for in this Indenture) as to all outstanding Securities when:

(i) either (1) all the Securities theretofore authenticated and delivered (other than Securities pursuant to Section 2.08 that have been replaced or paid and Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid by the Issuer or discharged from such trust) have been delivered to the Trustee for cancellation or (2) all of the Securities (x) have become due and payable, (y) will become due and payable at their Stated Maturity within one year or (z) if redeemable at the option of the Issuer, 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 Issuer, and the Issuer has irrevocably deposited or caused to be deposited with the Trustee funds in an amount sufficient to pay and discharge the entire Indebtedness on the Securities not theretofore delivered to the Trustee for cancellation, for principal of, and premium, if any, and interest on, the Securities to the date of deposit, together with irrevocable instructions from the Issuer directing the Trustee to apply such funds to the payment thereof at maturity or redemption, as the case may be;

(ii) the Issuer or the Guarantors have paid all other sums payable under this Indenture; and

(iii) the Issuer has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel stating that all conditions precedent under this Indenture relating to the satisfaction and discharge of this Indenture have been complied with.

(b) Notwithstanding clauses (a)(i) and (a)(ii) above, the Issuer's obligations in Sections 2.04, 2.05, 2.06, 2.07, 2.08, 2.09, 6.07, 7.06 and 7.07 and in this Article 8 shall survive until the Securities have been paid in full. Thereafter, the Issuer's obligations in Sections 7.06, 8.05 and 8.06 shall survive such satisfaction and discharge.

(c) Subject to Section 8.01(b) and Section 8.02, the Issuer at any time may terminate (i) all its obligations under the Securities and this Indenture (with respect to such Securities) ("legal defeasance option") or (ii) its obligations under Sections 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.10, 4.11, 4.13, 4.14, 4.15, 4.16, 4.17, 4.18 and 4.19 and the operation of Sections 4.06 and 4.08, Article 5 and Sections 6.01(c), 6.01(d), 6.01(e) (with respect to Restricted Subsidiaries of the Issuer only), 6.01(f) (with respect to Restricted Subsidiaries of the Issuer only), 6.01(g) (with respect to Restricted Subsidiaries of the Issuer only), 6.01(h), 6.01(i), 6.01(j), 6.01(k), 6.01(l), 6.01(m) or 6.01(n) ("covenant defeasance option"). The Issuer may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option. In the event that the Issuer terminates all of its obligations under the Securities and this Indenture (with respect to such Securities) by exercising its legal defeasance option or its covenant defeasance option, the obligations of each Guarantor under its Guarantee of such Securities and the Security Documents shall be terminated simultaneously with the termination of such obligations.

If the Issuer exercises its legal defeasance option, payment of the Securities so defeased may not be accelerated because of an Event of Default. If the Issuer exercises its covenant defeasance option, payment of the Securities so defeased may not be accelerated because of an Event of Default specified in Section 6.01(c), 6.01(d), 6.01(e) (to the extent such Section 6.01(e) applies to Restricted Subsidiaries), 6.01(f) (to the extent such Section 6.01(f) applies to Restricted Subsidiaries), 6.01(g) (to the extent such Section 6.01(g) applies to Restricted Subsidiaries), 6.01(h), 6.01(i), 6.01(j), 6.01(k), 6.01(l), 6.01(m) or 6.01(n) or because of the failure of the Issuer to comply with Article 5.

Upon satisfaction of the conditions set forth herein and upon request of the Issuer, the Trustee shall acknowledge in writing the discharge of those obligations that the Issuer terminates.

SECTION 8.02. Conditions to Defeasance.

(a) The Issuer may exercise its legal defeasance option or its covenant defeasance option only if:

(i) the Issuer irrevocably deposits in trust with the Trustee cash in U.S. Dollars, U.S. Government Obligations or a combination thereof in an amount sufficient, or U.S. Government Obligations, the principal of and the interest on which will be sufficient, or a combination thereof sufficient, to pay the principal of and premium (if any) and interest on the Securities when due at maturity or redemption, as the case may be, including interest thereon to maturity or such redemption date;

(ii) the Issuer delivers to the Trustee a certificate from a firm of independent accountants expressing its opinion that the payments of principal and interest when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal, premium, if any, and interest when due on all the Securities to maturity or redemption, as the case may be;

(iii) 123 days pass after the deposit is made and during the 123-day period no Default specified in Section 6.01(e), Section 6.01(f) or Section 6.01(g) occurs that is continuing at the end of the period;

(iv) the deposit does not constitute a default under any other agreement binding on the Issuer;

(v) in the case of the legal defeasance option, the Issuer shall have delivered to the Trustee an opinion of tax counsel of recognized standing in the United States stating that (1) the Issuer has received from, or there has been published by, the IRS a ruling, or (2) since the date of this Indenture there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such opinion of tax counsel of recognized standing in the United States shall confirm that, the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred;

(vi) in the case of the covenant defeasance option, the Issuer shall have delivered to the Trustee an opinion of tax counsel of recognized standing in the United States to the effect that the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred;

(vii) the right of any Holder to receive payment of principal of, and premium, if any, and interest on, such Holder's Securities on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Securities shall not be impaired; and

(viii) the Issuer delivers to the Trustee an Officers' Certificate and an Opinion of Counsel (which may be subject to customary assumptions and exclusions), each stating that all conditions precedent to the defeasance and discharge of the Securities to be so defeased and discharged as contemplated by this Article 8 have been complied with.

(b) Before or after a deposit, the Issuer may make arrangements satisfactory to the Trustee for the redemption of such Securities at a future date in accordance with Article 3.

SECTION 8.03. Application of Trust Money. The Trustee shall hold in trust money or U.S. Government Obligations (including proceeds thereof) deposited with it pursuant to this Article 8. It shall apply the deposited money and the money from U.S. Government Obligations through each Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Securities so discharged or defeased.

SECTION 8.04. Repayment to Issuer. Each of the Trustee and each Paying Agent shall promptly turn over to the Issuer upon request any money or U.S. Government Obligations held by it as provided in this Article 8 that, in the written opinion of a firm of independent public accountants recognized in the United States delivered to the Trustee (which delivery shall only be required if U.S. Government Obligations have been so deposited), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent discharge or defeasance in accordance with this Article 8.

Subject to any applicable abandoned property law, the Trustee and each Paying Agent shall pay to the Issuer 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 Issuer for payment as general creditors, and the Trustee and each Paying Agent shall have no further liability with respect to such monies.

SECTION 8.05. Indemnity for Government Obligations. The Issuer shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

SECTION 8.06. Reinstatement. If the Trustee or any Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article 8 by reason of any legal proceeding or by reason of any order or judgment of any Governmental Authority enjoining, restraining or otherwise prohibiting such application, the Issuer's obligations under this Indenture and the Securities so discharged or defeased shall be revived and reinstated as though no deposit had occurred pursuant to this Article 8 until such time as the Trustee or any Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article 8; *provided*, *however*, that, if the Issuer has made any payment of principal of or interest on any such Securities because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or U.S. Government Obligations held by the Trustee or any Paying Agent.

ARTICLE 9

AMENDMENTS AND WAIVERS

SECTION 9.01. Without Consent of the Holders. Notwithstanding Section 9.02, the Issuer, the Collateral Agent, the Guarantors and the Trustee may amend or supplement this Indenture, the Securities, the Security Documents or the Intercreditor Agreements, and may waive any provision thereof, without notice to or consent of any Holder:

(i) to cure any ambiguity, omission, mistake, defect or inconsistency;

(ii) to provide for the assumption by a Successor Company of the obligations of the Issuer under this Indenture and the Securities in accordance with the terms of this Indenture;

(iii) to provide for the assumption by a Successor Guarantor of the obligations of a Guarantor under this Indenture and its Guarantee;

(iv) to provide for uncertificated Securities in addition to or in place of certificated Securities; *provided*, *however*, that the uncertificated Securities are issued in registered form for purposes of Sections 871(h)(2)(B) and 881(c)(2)(B) of the Code and United States Treasury Regulation Section 5f.103-1(c);

(v) to add additional Guarantees or co-obligors with respect to the Securities in accordance with the terms of this Indenture;

(vi) to add to the covenants of the Issuer for the benefit of the Holders or to surrender any right or power conferred herein upon the Issuer in accordance with the terms of this Indenture;

(vii) to comply with any requirement of the SEC in connection with qualifying or maintaining the qualification of this Indenture under the TIA (to the extent any such qualification is required);

(viii) to make any change that does not adversely affect the rights of any Holder;

(ix) to add additional assets as Notes Collateral to secure the Securities;

(x) to provide for or confirm the issuance of Second Additional Securities;

(xi) to release a Guarantor in accordance with the provisions of this Indenture, the Security Documents and the Intercreditor Agreement or to release Notes Collateral from the Lien pursuant to this Indenture, the Security Documents and the Intercreditor Agreements when permitted or required by this Indenture, the Security Documents or the Intercreditor Agreements; or

(xii) to modify the Security Documents or the Intercreditor Agreements (a) to secure additional extensions of credit and add additional secured creditors holding First Priority Lien Obligations so long as the Incurrence of such First Priority Lien Obligations and related Liens are not prohibited by the provisions of this Indenture, (b) as provided for in provisions comparable to Section 2.11(b) of the form of Intercreditor Agreement attached as Exhibit D, (c) to add the Issuer or any Guarantor as a party to any Intercreditor Agreement to the extent such party Incurs any Secured Indebtedness that constitutes First Priority Lien Obligations in accordance with the terms of this Indenture or to remove the Issuer or any Guarantor as a party to any Intercreditor Agreement to the extent such party ceases to be bound by any and all First Priority Lien Obligations or (d) to accommodate and implement the Liens permitted by clause (19)(z) of the definition of "Permitted Liens".

Upon the request of the Issuer, and upon receipt by the Trustee of the documents described in Section 9.05, the Trustee shall join with the Issuer in the execution of any amended or supplemental Indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into such modified or amended indenture that affects its own rights, duties or immunities under this Indenture or otherwise. After an amendment under this Section 9.01 becomes effective, the Issuer shall provide to the Holders a written notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.01.

SECTION 9.02. With Consent of the Holders.

(a) The Issuer, the Collateral Agent, the Guarantors and the Trustee may amend or supplement this Indenture, the Securities, the Security Documents and the Intercreditor Agreements, and may waive any provision thereof (including the provisions of Section 4.08), with the written consent of the Holders of a majority in principal amount of the Securities then outstanding voting as a single class (including consents obtained in connection with a tender offer or exchange offer for the Securities). However, without the consent of each Holder of an outstanding Security affected, an amendment, supplement or waiver may not:

(i) reduce the amount of Securities whose Holders must consent to an amendment;

(ii) reduce the rate of or extend the time for payment of interest on any Security;

(iii) reduce the principal of or change the Stated Maturity of any Security (or reduce the amount of any payment of any installment of principal or change the due date in respect of the payment of any installment of principal);

(iv) reduce the premium payable upon the redemption or repurchase of any Security or change the time at which any Security may be redeemed or repurchased in accordance with Article 3, Section 4.06 or Section 4.08;

(v) make any Security payable in currency other than that stated in such Security;

(vi) expressly subordinate the Securities or any Guarantees in right of payment to any other Indebtedness of the Issuer or any Guarantor or adversely affect the priority of any Liens securing the Securities and the Guarantees, except as provided in the Intercreditor Agreements;

(vii) impair the right of any Holder to receive payment of principal of or premium, if any, and interest on such Holder's Securities on or after the due dates (or the due date in respect of the payment of any installment of principal) therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Securities;

(viii) make any change in Section 6.04 or the second sentence of this Section 9.02;

(ix) modify any Guarantees in any manner adverse to the Holders; or

(x) make any change in the provisions in this Indenture or the Intercreditor Agreements dealing with the application of proceeds of Notes Collateral that would adversely affect the non-consenting Holders of the Securities.

Without the consent of the Holders of at least two-thirds in aggregate principal amount of the Securities then outstanding or as otherwise provided in the Intercreditor Agreements, no amendment, supplement or waiver may release all or substantially all of the Notes Collateral from the Lien of this Indenture and the Security Documents with respect to the Securities.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver if such consent approves the substance thereof.

(b) Upon the request of the Issuer, and upon receipt by the Trustee of the documents described in Section 9.05, the Trustee shall join with the Issuer in the execution of any amended or supplemental Indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into such modified or amended indenture that affects its own rights, duties or immunities under this Indenture or otherwise. After an amendment under this Section 9.02 becomes effective, the Issuer shall provide to the Holders a written notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.02.

SECTION 9.03. Revocation and Effect of Consents and Waivers.

(a) A consent to an amendment, supplement or a waiver by a Holder of a Security shall bind the Holder and every subsequent Holder of that Security or portion of the Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent, supplement or waiver is not made on the Security. However, any such Holder or subsequent Holder may revoke the consent, supplement or waiver as to such Holder's Security or portion of the Security if the Trustee receives the notice of revocation before the date on which the Trustee receives an Officers' Certificate from the Issuer certifying that the requisite principal amount of Securities have consented. After an amendment, supplement or waiver becomes effective, it shall bind every Holder. An amendment, supplement or waiver becomes effective upon the (i) receipt by the Issuer or the Trustee of consents by the Holders of the requisite principal amount of Securities, (ii) satisfaction of conditions to effectiveness as set forth in this Indenture and any indenture supplemental hereto containing such amendment, supplement or waiver, (iii) execution of such amendment or waiver (or supplemental indenture) by the Issuer and the Trustee and (iv) delivery to the Trustee of the Officers' Certificate and Opinion of Counsel required under Article 12.

(b) The Issuer may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding Section 9.03(a), those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date.

(c) Upon the execution of any amended or supplemental indenture pursuant to the provisions hereof, this Indenture and the Securities subject thereto shall be and shall be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Issuer and the Holders of Securities shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 9.04. Notation on or Exchange of Securities. If an amendment, supplement or waiver changes the terms of a Security, the Issuer may require the Holder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security regarding the changed terms and return it to the Holder. Alternatively, if the Issuer or the Trustee so determines, the Issuer in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms. Failure to make the appropriate notation or to issue a new Security shall not affect the validity of such amendment, supplement or waiver.

SECTION 9.05. Trustee to Sign Amendments. The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article 9 if the amendment 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 such amendment, the Trustee shall be entitled to receive indemnity satisfactory to it and shall be provided with, and (subject to Section 7.01) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that such amendment, supplement or waiver is authorized or permitted by this Indenture and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Issuer and the Guarantors, enforceable against them in accordance with its terms, subject to customary exceptions, and complies with the provisions hereof (including Section 9.03).

SECTION 9.06. Payment for Consent. Neither the Issuer nor any Affiliate of the Issuer shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Securities unless such consideration is offered to be paid to all Holders that so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement.

SECTION 9.07. Additional Voting Terms; Calculation of Principal Amount. All Securities issued under this Indenture shall vote and consent together on all matters (as to which any of such Securities may vote) as one class. Determinations as to whether Holders of the requisite aggregate principal amount of Securities have concurred in any direction, waiver or consent shall be made in accordance with this Article 9 and Section 2.14.

ARTICLE 10

GUARANTEES

SECTION 10.01. Guarantees.

(a) Subject to the provisions of this Article 10, each Guarantor hereby jointly and severally with each other Guarantor irrevocably and unconditionally guarantees as a primary obligor and not merely as a surety on a senior basis to each Holder, the Trustee, the Collateral Agent and their respective successors and assigns (i) the full and punctual payment when due, whether at Stated Maturity, by acceleration, by redemption or otherwise, of all Obligations of the Issuer under this Indenture (including obligations to the Trustee) and the Securities, whether for payment of principal of, or premium or interest on, the Securities and all other monetary obligations of the Issuer under this Indenture and the Securities, and (ii) the full and punctual performance within applicable grace periods of all other obligations of the Issuer, whether for fees, expenses, indemnification or otherwise under this Indenture and the Securities, on the terms set forth in this Indenture by becoming a party to this Indenture (all the foregoing being hereinafter collectively called the "Guaranteed Obligations").

(b) Each Guarantor further agrees that (to the extent permitted by law) the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from each such Guarantor, and that each such Guarantor shall remain bound under this Article 10 notwithstanding any extension or renewal of any Guaranteed Obligation. The Guaranteed Obligations of a Guarantor will be secured by security interests (subject to Permitted Liens) in the Notes Collateral owned by such Guarantor to the extent provided for in the Security Documents and as required pursuant to Sections 4.11 and 4.13.

(c) Each Guarantor waives presentation to, demand of payment from and protest to the Issuer of any of the Guaranteed Obligations and also waives notice of protest for nonpayment. Each Guarantor waives notice of any default under the Securities or the Guaranteed Obligations. The obligations of each Guarantor hereunder shall not be affected by (i) the failure of any Holder, the Trustee or the Collateral Agent to assert any claim or demand or to enforce any right or remedy against the Issuer or any other Person under this Indenture, the Securities, any Security Document, or any other agreement or otherwise; (ii) any extension or renewal of this Indenture, the Securities, any Security Document or any other agreement; (iii) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Securities, any Security Document or any other agreement; (iv) the release of any security held by any Holder, the Trustee or the Collateral Agent for the Guaranteed Obligations or any Guarantor; (v) the failure of any Holder, the Trustee or the Collateral Agent to exercise any right or remedy against any other guarantor of the Guaranteed Obligations; or (vi) any change in the ownership of such Guarantor, except as provided in Section 10.03.

(d) Each Guarantor hereby waives any right to which it may be entitled to (i) have its obligations hereunder divided among the Guarantors, such that such Guarantor's obligations would be less than the full amount claimed, (ii) have the assets of the Issuer or any other Guarantor first be used and depleted as payment of the Issuer's or such Guarantor's obligations hereunder prior to any amounts being claimed from or paid by such Guarantor hereunder and (iii) require that the Issuer be sued prior to an action being initiated against such Guarantor.

(e) Each Guarantor further agrees that its Guarantee herein constitutes a guarantee of payment, performance and compliance when due (and not a guarantee of collection) and waives any right to require that any resort be had by any Holder, the Trustee or the Collateral Agent to any security held for payment of the Guaranteed Obligations.

(f) Except as expressly set forth in Sections 8.01, 10.02, 10.03 and 10.06, the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Guarantor herein shall not be discharged or impaired or otherwise affected by (i) the failure of any Holder, the Trustee or the Collateral Agent to assert any claim or demand or to enforce any remedy under this Indenture, the Securities, any Security Document or any other agreement, (ii) any waiver or modification of any thereof, (iii) any default, failure or delay, willful or otherwise, in the performance of the obligations or (iv) any other act or thing or omission or delay to do any other act or thing that may or might in any manner or to any extent vary the risk of any Guarantor or would otherwise operate as a discharge of any Guarantor as a matter of law or equity.

(g) Except as expressly set forth in Sections 8.01 and 10.03, each Guarantor agrees that its Guarantee shall remain in full force and effect until payment in full of its Guaranteed Obligations. Except as expressly set forth in Sections 8.01 and 10.03, each Guarantor further agrees that its Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest on any Guaranteed Obligation is rescinded or must otherwise be restored by any Holder or the Trustee upon the bankruptcy or reorganization of the Issuer or otherwise.

(h) In furtherance of the foregoing and not in limitation of any other right that any Holder, the Trustee or the Collateral Agent has at law or in equity against any Guarantor by virtue hereof, upon the failure of the Issuer to pay the principal of or interest on any Guaranteed Obligation when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, or to perform or comply with any other Guaranteed Obligation, each Guarantor hereby promises to and shall, upon receipt of written demand by the Trustee in accordance with this Indenture, forthwith pay, or cause to be paid, in cash, to the Holders, the Trustee or the Collateral Agent an amount equal to the sum of (i) the unpaid principal amount of such Guaranteed Obligations, (ii) accrued and unpaid interest on such Guaranteed Obligations (but only to the extent not prohibited by applicable law) and (iii) all other monetary obligations of the Issuer then due to the Holders, the Trustee and the Collateral Agent in respect of the Guaranteed Obligations.

(i) Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any Guaranteed Obligations guaranteed hereby until payment in full of all Guaranteed Obligations. Each Guarantor further agrees that, as between it, on the one hand, and the Holders, the Trustee and the Collateral Agent, on the other hand, (i) the maturity of the Guaranteed Obligations guaranteed hereby may be accelerated as provided in Article 6 for the purposes of any Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such Guaranteed Obligations as provided in Article 6, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by such Guarantor for the purposes of this Section 10.01.

(j) Each Guarantor also agrees to pay any and all costs and expenses (including reasonable and documented attorneys' fees and expenses) incurred by the Trustee, the Collateral Agent or any Holder in enforcing any rights under this Section 10.01.

(k) Each Guarantor shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

SECTION 10.02. Limitation on Liability. Each Guarantor hereby confirms that it is its intention that the Guarantee of such Guarantor does not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar U.S. federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that, any term or provision of this Indenture to the contrary notwithstanding, the maximum aggregate amount of the Guaranteed Obligations guaranteed hereunder by any Guarantor shall not exceed the maximum amount that, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Guarantee or pursuant to its contribution obligations under this Indenture, can be guaranteed hereby without rendering the Guarantee, as it relates to such Guarantor, void or voidable under applicable laws relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally. Each Guarantor that makes a payment under its Guarantee shall be entitled upon payment in full of all Guaranteed Obligations under this Indenture to a contribution from each other Guarantor in an amount equal to such other Guarantor's pro rata portion of such payment based on the respective maximum liability of all the Guarantors at the time of such payment.

SECTION 10.03. Releases. A Guarantee as to any Guarantor shall terminate and be of no further force or effect and such Guarantor shall be deemed to be automatically released from all obligations under this Article 10 upon:

(a) the Disposition or exchange (including through merger, amalgamation, consolidation or otherwise) of the Capital Stock of the applicable Guarantor if (i) such Disposition or exchange is made to a Person that is not the Issuer or a Restricted Subsidiary in a manner not in violation of this Indenture and (ii) after giving effect to such Disposition or exchange, such Guarantor is no longer a Restricted Subsidiary;

(b) the Issuer designating such Guarantor to be an Unrestricted Subsidiary in accordance with the provisions set forth in Section 4.04 and the definition of "Unrestricted Subsidiary";

(c) the merger, amalgamation or consolidation of any Guarantor with and into the Issuer or another Guarantor that is the surviving Person in such merger, amalgamation or consolidation or upon the liquidation of such Guarantor following the Disposition of all of its assets to the Issuer or another Guarantor; or

(d) the Issuer's exercise of the Issuer's legal defeasance option or covenant defeasance option in accordance with Section 8.01 or if the obligations of the Issuer and such Guarantor under this Indenture are discharged in accordance with the terms of this Indenture.

Notwithstanding the foregoing, neither the consent nor the acknowledgement of the Trustee, the Collateral Agent or the Holders (or any of them) shall be necessary to effect any such release. None of the Trustee, the Issuer or any Guarantor will be required to make a notation on the Securities or any Guarantee to reflect any such release, termination or discharge. Upon request of the Issuer and delivery by the Issuer to the Trustee of an Officers' Certificate to the effect that one of the foregoing requirements has been satisfied and the conditions to the release of a Guarantor under this Section 10.03 has been met, the Trustee will execute any documents reasonably requested by the Issuer or such Guarantor in order to evidence the release of a Guarantor from its obligations under its Guarantee hereunder.

SECTION 10.04. Successors and Assigns. This Article 10 shall be binding upon each Guarantor and its successors and assigns and shall inure to the benefit of the Trustee, the Collateral Agent and the Holders and their successors and assigns and, in the event of any transfer or assignment of rights by any Holder, the Collateral Agent or the Trustee, the rights and privileges conferred upon that party in this Indenture and in the Securities shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions of this Indenture.

SECTION 10.05. No Waiver. Neither a failure nor a delay on the part of the Trustee, the Collateral Agent or the Holders in exercising any right, power or privilege under this Article 10 shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights, remedies and benefits of the Trustee, the Collateral Agent and the Holders herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits that any of them may have under this Article 10 at law, in equity, by statute or otherwise.

SECTION 10.06. Modification. No modification, amendment or waiver of any provision of this Article 10, nor the consent to any departure by any Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Trustee, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on any Guarantor in any case shall entitle such Guarantor to any other or further notice or demand in the same, similar or other circumstances.

SECTION 10.07. Execution of Supplemental Indenture for Future Guarantors. Each Person that is required to become a Guarantor after the Issue Date pursuant to Section 4.10 shall promptly execute and deliver to the Trustee a supplemental indenture in the form of Exhibit C pursuant to which such Person shall become a Guarantor under this Article 10 and shall guarantee the Guaranteed Obligations. Concurrently with the execution and delivery of such supplemental indenture, the Issuer shall deliver to the Trustee an Opinion of Counsel and an Officers' Certificate to the effect that such supplemental indenture has been duly authorized, executed and delivered by such Person and that, subject to the application of Bankruptcy Laws relating to creditors' rights generally and to the principles of equity, whether considered in a proceeding at law or in equity, the Guarantee of such Guarantor is a legal, valid and binding obligation of such Guarantor, enforceable against such Guarantor in accordance with its terms or to such other matters as the Trustee may reasonably request.

SECTION 10.08. No Impairment. The failure to endorse a Guarantee on any Security shall not affect or impair the validity thereof. If an Officer whose signature is on this Indenture or the notation of Guarantee no longer holds that office at the time the Trustee authenticates the Securities, the Guarantee shall be valid nevertheless.

SECTION 10.09. Benefits Acknowledged. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the guarantee and waivers made by it pursuant to its Guarantee are knowingly made in contemplation of such benefits.

ARTICLE 11

SECURITY DOCUMENTS

SECTION 11.01. Collateral and Security Documents. The due and punctual payment of the principal of and interest on the Securities when and as the same shall be due and payable, whether on an Payment Date, at Stated Maturity, or by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of and interest on the Securities and performance of all other Guaranteed Obligations of the Issuer and the Guarantors to the Holders, the Trustee or the Collateral Agent under this Indenture, the Securities, the Intercreditor Agreements and the Security Documents, according to the terms hereunder or thereunder, shall be secured as provided in the Security Documents, which define the terms of the Liens that secure the Guaranteed Obligations, subject to the terms of the Intercreditor Agreements. The Trustee and the Issuer hereby acknowledge and agree that the Collateral Agent holds the Notes Collateral in trust for the benefit of the Trustee and the Holders, in each case pursuant to the terms of the Security Documents and the Intercreditor Agreements. Each Holder, by accepting a Security, appoints U.S. Bank National Association as Collateral Agent and consents and agrees to the terms of the Security Documents (including the provisions providing for the possession, use, release and foreclosure of Notes Collateral) and the Intercreditor Agreements as the same may be in effect or may be amended from time to time in accordance with their respective terms and this Indenture, and authorizes and directs the Trustee to enter into the Security Documents and the Intercreditor Agreements and to bind the Holders to the terms thereof and to perform its obligations and exercise its rights thereunder in accordance therewith. The Issuer shall deliver to the Trustee (if it is not then also appointed and serving as Collateral Agent) copies of all documents delivered to the Collateral Agent pursuant to the Security Documents, and will do or cause to be done all such acts and things as may be reasonably required by the next sentence of this Section 11.01, to assure and confirm to the Trustee and the Collateral Agent the Liens on the Notes Collateral contemplated hereby, by the Security Documents or by any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Securities secured hereby, according to the intent and purposes herein expressed. The Issuer shall take, and shall cause the Guarantors to take, any and all actions reasonably required to cause the Security Documents to create and maintain at all times, as security for the Obligations of the Issuer and the Guarantors hereunder, a valid and enforceable perfected Lien on all of the Notes Collateral (subject to the terms of the Security Documents and the Intercreditor Agreements), in favor of the Collateral Agent for the benefit of the Trustee and the Holders under the Security Documents. Notwithstanding anything to the contrary in this Indenture or any Security Document, in no event shall the Collateral Agent be responsible for, or have any duty or obligation with respect to, the recording, filing, registering, perfection, protection or maintenance of the security interests or other Liens intended to be created by this Indenture or the Security Documents (including the filing or continuation of any Uniform Commercial Code financing or continuation statements or similar documents or instruments), nor shall the Collateral Agent be responsible for, and the Collateral Agent makes no representation regarding, the validity, effectiveness or priority of any of the Security Documents or the security interests or other Liens intended to be created thereby.

SECTION 11.02. {Reserved}.

SECTION 11.03. Release of Collateral.

(a) Subject to Sections 11.03(b) and 11.04, the Notes Collateral may be released from the Lien and security interest created by the Security Documents at any time or from time to time in accordance with the provisions of the Security Documents or the Intercreditor Agreements or as provided hereby. The Issuer and the Guarantors will be entitled to a release of assets included in the Notes Collateral from the Liens securing the Securities, and the Trustee shall release, or instruct the Collateral Agent to release, as applicable, the same from such Liens at the Issuer's sole cost and expense, in accordance with Section 4.06(c) or under one or more of the following circumstances:

(1) to enable the Issuer or any Restricted Subsidiary to exchange or Dispose of any of the Notes Collateral to any Person other than the Issuer or any Guarantor (but excluding any transaction subject to Article 5 where the recipient is required to become the obligor on the Securities or a Guarantee) to the extent not prohibited by this Indenture, including Section 4.06, and only to the extent that such exchange or Disposal results in a legal transfer of title of such Notes Collateral (except in connection with an Apomorphine Disposition that complies with Section 4.06(b));

(2) in the case of a Guarantor that is released from its Guarantee with respect to the Securities in accordance with this Indenture, the release of the Notes Collateral owned by such Guarantor;

(3) in respect of the Notes Collateral owned by a Guarantor, upon the designation of such Guarantor to be an Unrestricted Subsidiary in accordance with Section 4.04 and the definition of "Unrestricted Subsidiary";

(4) in respect of the ABL Collateral (x) to the extent any first-priority liens on such ABL Collateral are released by the First Lien Agent in connection with a Disposition of ABL Collateral to the extent not prohibited under Section 4.06 (except with respect to any proceeds of such Disposition that remain after satisfaction in full of the First Priority Lien Obligations secured by such ABL Collateral) or (y) in accordance with an Intercreditor Agreement;

(5) pursuant to an amendment, supplement or waiver in accordance with Article 9; or

(6) if the Securities have been defeased pursuant to Section 8.01 or if this Indenture is discharged pursuant to Section 8.01.

Notwithstanding the existence of any Event of Default, the junior lien on the ABL Collateral securing the Securities shall terminate and be released automatically to the extent the first-priority liens on the ABL Collateral are released by the First Lien Agent in connection with a Disposition of ABL Collateral that is either not prohibited under this Indenture or occurs in connection with the foreclosure of, or other exercise of remedies with respect to, such ABL Collateral by the First Lien Agent (except with respect to any proceeds of such Disposition that remain after satisfaction in full of the First Priority Lien Obligations).

Upon receipt of an Officers' Certificate certifying that all conditions precedent under this Indenture and the Security Documents, if any, to such release have been met and any necessary or proper (as determined by the Issuer) instruments of termination, satisfaction or release have been prepared by the Issuer, the Collateral Agent shall execute, deliver or acknowledge (at the Issuer's expense) such instruments or releases to evidence the release of any Notes Collateral permitted to be released pursuant to this Indenture or the Security Documents or the Intercreditor Agreements.

(b) At any time when a Default or Event of Default has occurred and is continuing and the maturity of the Securities has been accelerated (whether by declaration or otherwise) and the Trustee (if not then also appointed and serving as Collateral Agent) has delivered a notice of acceleration to the Collateral Agent, no release of Notes Collateral pursuant to the provisions of this Indenture or the Security Documents will be effective as against the Holders, except as otherwise provided in the Intercreditor Agreements.

SECTION 11.04. Permitted Releases Not To Impair Lien. The release of any Notes Collateral from the terms hereof and of the Security Documents or the release of, in whole or in part, the Liens created by the Security Documents, will not be deemed to impair the security under this Indenture in contravention of the provisions hereof if and to the extent the Notes Collateral or Liens are released pursuant to (x) the applicable Security Documents and the terms of this Article 11 or (y) the Intercreditor Agreements. Each of the Holders acknowledges that a release of Notes Collateral or a Lien in accordance with the terms of the Security Documents and the Intercreditor Agreements and of this Article 11 will not be deemed for any purpose to be in contravention of the terms of this Indenture.

SECTION 11.05. Suits To Protect the Collateral. Subject to the provisions of Article 7 and the Intercreditor Agreements, the Trustee in its sole discretion and without the consent of the Holders, on behalf of the Holders, may or may direct the Collateral Agent to take all actions it deems necessary or appropriate in order to:

(a) enforce any of the terms of the Security Documents; and

(b) collect and receive any and all amounts payable in respect of the Guaranteed Obligations of the Issuer hereunder.

Subject to the provisions of the Security Documents and the Intercreditor Agreements, the Trustee shall have the power (but not the obligation) to institute and to maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Notes Collateral by any acts that may be unlawful or in violation of any of the Security Documents or this Indenture, and such suits and proceedings as the Trustee, in its sole discretion, may deem expedient to preserve or protect its interests and the interests of the Holders in the Notes Collateral (including the power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the Lien on the Notes Collateral or be prejudicial to the interests of the Holders or the Trustee).

SECTION 11.06. Authorization of Receipt of Funds by the Trustee Under the Security Documents. Subject to the provisions of the Intercreditor Agreements, the Trustee is authorized (a) to receive any funds for the benefit of the Holders distributed under the Security Documents and (b) to make further distributions of such funds to the Holders according to the provisions of this Indenture.

SECTION 11.07. Purchaser Protected. In no event shall any purchaser in good faith of any property purported to be released hereunder be bound to ascertain the authority of the Collateral Agent or the Trustee to execute the release or to inquire as to the satisfaction of any conditions required by the provisions hereof for the exercise of such authority or to see to the application of any consideration given by such purchaser or other transferee; nor shall any purchaser or other transferee of any property or rights permitted by this Article 11 to be sold be under any obligation to ascertain or inquire into the authority of the Issuer or the applicable Guarantor to make any such sale or other transfer.

SECTION 11.08. Powers Exercisable by Receiver or Trustee. In case the Notes Collateral shall be in the possession of a receiver or trustee, lawfully appointed, the powers conferred in this Article 11 upon the Issuer or a Guarantor with respect to the release or Disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Issuer or a Guarantor or of any officer or officers thereof required by the provisions of this Article 11; and if the Trustee shall be in the possession of the Notes Collateral under any provision of this Indenture, then such powers may be exercised by the Trustee.

SECTION 11.09. Release Upon Termination of the Issuer's Obligations.

In the event that the Issuer delivers to the Trustee an Officers' Certificate certifying that (i) payment in full of the principal of, together with premium, if any, and accrued and unpaid interest on, the Securities and all other Obligations with respect to the Securities under this Indenture, the Guarantees and the Security Documents that are due and payable at or prior to the time such principal, together with premium, if any, and accrued and unpaid interest (including additional interest, if any), are paid, (ii) all the Obligations under this Indenture, the Securities and the Security Documents have been satisfied and discharged by complying with the provisions of Article 8 or (iii) the Issuer shall have exercised its legal defeasance option or its covenant defeasance option, in each case in compliance with the provisions of Article 8, the Trustee shall deliver to the Issuer and the Collateral Agent a notice stating that the Trustee, on behalf of the Holders, disclaims and gives up any and all rights it has in or to the Notes Collateral (other than with respect to funds held by the Trustee pursuant to Article 8), and any rights it has under the Security Documents, and upon receipt by the Collateral Agent of such notice, the Collateral Agent shall be deemed not to hold a Lien in the Notes Collateral on behalf of the Trustee and shall do or cause to be done all acts reasonably requested by the Issuer to release such Lien as soon as is reasonably practicable.

SECTION 11.10. Collateral Agent.

(a) U.S. Bank National Association shall initially act as Collateral Agent and shall be authorized to appoint co-Collateral Agents as necessary in its sole discretion. Except as otherwise explicitly provided herein or in the Security Documents or the Intercreditor Agreements, neither the Collateral Agent nor any of its officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Notes Collateral or for any delay in doing so or shall be under any obligation to Dispose of any Notes Collateral upon the request of any other Person or to take any other action whatsoever with regard to the Notes Collateral or any part thereof. Notwithstanding any provision to the contrary contained elsewhere in this Indenture, the Intercreditor Agreements or the Security Documents, the duties of the Collateral Agent shall be ministerial and administrative in nature, and the Collateral Agent shall not have any duties or responsibilities, except those expressly set forth in this Indenture, in the Intercreditor Agreements and in the Security Documents to which the Collateral Agent is a party, nor shall the Collateral Agent have or be deemed to have any trust or other fiduciary relationship with the Trustee, any Holder, the Issuer or any Guarantor, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Indenture, the Intercreditor Agreements or the Security Documents or shall otherwise exist against the Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" or "Agent" in this Indenture, the Intercreditor Agreements and the Security Documents with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom and is intended to create or reflect only an administrative relationship between independent contracting parties. The Collateral Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither the Collateral Agent nor any of its officers, directors, employees or agents shall be responsible for any act or failure to act hereunder, except for its own willful misconduct or gross negligence (as determined by a final, non-appealable order of a court of competent jurisdiction).

(b) The Collateral Agent is authorized and directed to (i) enter into the Security Documents, (ii) enter into the Intercreditor Agreements, (iii) bind the Holders on the terms as set forth in the Security Documents and the Intercreditor Agreements and (iv) perform and observe its obligations under the Security Documents and the Intercreditor Agreements.

(c) If the Issuer or any Guarantors Incur any obligations in respect of any First Priority Lien Obligations at any time when no intercreditor agreement with respect thereto is in effect or at any time when Indebtedness constituting First Priority Lien Obligations entitled to the benefit of an existing intercreditor agreement is concurrently retired, the Issuer shall deliver to the Collateral Agent an Officers' Certificate so stating and requesting the Collateral Agent to enter into an Intercreditor Agreement in favor of a designated agent or representative for the holders of the First Priority Lien Obligations so Incurred, and the Trustee and the Collateral Agent shall (and are hereby authorized and directed to) enter into such Intercreditor Agreement, bind the Holders on the terms set forth therein and perform and observe their obligations thereunder.

(d) The Collateral Agent shall act pursuant to the instructions of the Holders and the Trustee with respect to the Security Documents and the Notes Collateral. For the avoidance of doubt, the Collateral Agent shall have no discretion under this Indenture, the Intercreditor Agreements or the Security Documents and shall not be required to make or give any determination, consent, approval, request or direction without the written direction of the requisite Holders or the Trustee, as applicable. After the occurrence of an Event of Default, the Trustee may direct the Collateral Agent in connection with any action required or permitted by this Indenture, the Security Documents or the Intercreditor Agreements.

(e) The Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless the Collateral Agent shall have received written notice from the Trustee, a Holder or the Issuer referring to this Indenture, describing such Default or Event of Default and stating that such notice is a "notice of default". The Collateral Agent shall take such action with respect to such Default or Event of Default as may be requested by the Trustee or the Holders of a majority in aggregate principal amount of the Securities subject to this Article 11.

(f) No provision of this Indenture or any Security Document shall require the Collateral Agent (or the Trustee) to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or thereunder or to take or omit to take any action hereunder or thereunder or take any action at the request or direction of Holders (or the Trustee in the case of the Collateral Agent) if it shall have reasonable grounds for believing that repayment of such funds is not assured to it. Notwithstanding anything to the contrary contained in this Indenture, the Intercreditor Agreements or the Security Documents, in the event the Collateral Agent is entitled or required to commence an action to foreclose or otherwise exercise its remedies to acquire control or possession of the Notes Collateral, the Collateral Agent shall not be required to commence any such action, exercise any remedy, inspect or conduct any studies of any property or take any such other action if the Collateral Agent has determined that the Collateral Agent may incur personal liability as a result of the presence at, or release on or from, the Notes Collateral or such property of any hazardous substances unless the Collateral Agent has received security or indemnity from the Holders in an amount and in a form all satisfactory to the Collateral Agent in its sole discretion, protecting the Collateral Agent from all such liability. The Collateral Agent shall at any time be entitled to cease taking any action described in this Section 11.10(f) if it no longer reasonably deems any indemnity, security or undertaking from the Issuer or the Holders to be sufficient.

(g) The Collateral Agent shall not be responsible in any manner to any of the Trustee or any Holder for the validity, effectiveness, genuineness, enforceability or sufficiency of this Indenture, the Security Documents or the Intercreditor Agreements or for any failure of the Issuer, any Guarantor or any other party to this Indenture, the Security Documents or the Intercreditor Agreements to perform its obligations hereunder or thereunder. The Collateral Agent shall not be under any obligation to the Trustee or any Holder to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Indenture, the Security Documents or the Intercreditor Agreements or to inspect the properties, books or records of the Issuer or the Guarantors.

(h) The parties hereto and the Holders hereby agree and acknowledge that the Collateral Agent shall not assume, be responsible for or otherwise be obligated for any liabilities, claims, causes of action, suits, losses, allegations, requests, demands, penalties, fines, settlements, damages (including foreseeable and unforeseeable), judgments, expenses and costs (including any remediation, corrective action, response, removal or remedial action, or investigation, operations and maintenance or monitoring costs, for personal injury or property damages, real or personal) of any kind whatsoever, pursuant to any environmental law as a result of this Indenture, the Intercreditor Agreements or the Security Documents or any actions taken pursuant hereto or thereto. Further, the parties hereto and the Holders hereby agree and acknowledge that, in the exercise of its rights under this Indenture, the Intercreditor Agreements and the Security Documents, the Collateral Agent may hold or obtain indicia of ownership primarily to protect the security interest of the Collateral Agent in the Notes Collateral and that any such actions taken by the Collateral Agent shall not be construed as or otherwise constitute any participation in the management of such Notes Collateral.

(i) Upon the receipt by the Collateral Agent of a written request of the Issuer signed by two Officers pursuant to this Section 11.10(i) (a “Security Document Order”), the Collateral Agent is hereby authorized to execute and enter into, and shall execute and enter into, without the further consent of any Holder or the Trustee, any Security Document to be executed after the Issue Date. Such Security Document Order shall (i) state that it is being delivered to the Collateral Agent pursuant to, and is a Security Document Order referred to in, this Section 11.10(i) and (ii) instruct the Collateral Agent to execute and enter into such Security Document. Any such execution of a Security Document shall be at the direction and expense of the Issuer, upon delivery to the Collateral Agent of an Officers’ Certificate and an Opinion of Counsel stating that all conditions precedent to the execution and delivery of such Security Document have been satisfied. The Holders, by their acceptance of the Securities, hereby authorize and direct the Collateral Agent to execute such Security Documents.

(j) The Collateral Agent's resignation or removal shall be governed by provisions equivalent to Section 7.07(b), Section 7.07(c), Section 7.07(d), Section 7.07(e) and Section 7.07(g).

(k) The Collateral Agent shall be entitled to all of the protections, immunities, indemnities, rights and privileges of the Trustee set forth in this Indenture, and all such protections, immunities, indemnities, rights and privileges shall apply to the Collateral Agent in its roles under any Security Document or the Intercreditor Agreements, whether or not expressly stated therein.

ARTICLE 12

MISCELLANEOUS

SECTION 12.01. Notices.

(a) Any notice or communication required or permitted hereunder shall be in writing and delivered in person, via facsimile, via electronic mail, via overnight courier or via first-class mail addressed as follows:

if to the Issuer or a Guarantor:

Aquestive Therapeutics, Inc.
30 Technology Drive
Warren, New Jersey 07059
Attention: Chief Financial Officer & General Counsel
Facsimile: 908-561-1209

if to the Trustee or to the Collateral Agent:

U.S. Bank National Association
Corporate Trust Services
One Federal Street, 3rd Floor
Boston, Massachusetts 02110
Attention: Alison Nadeau (Aquestive Indenture)
Facsimile: 617-603-6683

The Issuer or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications. Any notice, direction, request or demand hereunder to or upon the Trustee or the Collateral Agent shall be deemed to have been sufficiently given or made, for all purposes, upon actual receipt by the Trustee or the Collateral Agent if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to the Corporate Trust Office or sent electronically in PDF format.

(b) Any notice or communication mailed to a Holder shall be mailed, first-class mail, to the Holder at the Holder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed. Any notice or communication to be delivered to a Holder of Global Securities shall be delivered in accordance with the applicable procedures of the Depository and shall be sufficiently given to such Holder if so delivered to the Depository within the time prescribed.

(c) Failure to provide a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given and provided, whether or not the addressee receives it, except that notices to the Trustee are effective only if received.

(d) Notwithstanding any other provision of this Indenture or any Security, where this Indenture or any Security provides for notice of any event (including any notice of repurchase) to a Holder (whether by mail or otherwise), such notice shall be sufficiently given (in the case of a Global Security) if given to the Depository (or its designee) pursuant to the standing instructions from the Depository or its designee, including by electronic mail in accordance with accepted practices or procedures at the Depository.

SECTION 12.02. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Issuer to the Trustee to take or refrain from taking any action under this Indenture, the Issuer shall furnish to the Trustee at the request of the Trustee:

(a) an Officers' Certificate to the Trustee 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

(b) an Opinion of Counsel to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 12.03. Statements Required in Certificate or Opinion. Each Officers' Certificate or Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture (other than pursuant to Section 4.02(c)) shall include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with (and, in the case of an Opinion of Counsel, may be limited to reliance on an Officers' Certificate as to matters of fact); and

(d) a statement as to whether or not, in the opinion of such Person, such covenant or condition has been complied with; *provided*, *however*, that with respect to matters of fact an Opinion of Counsel may rely on an Officers' Certificate or certificates of public officials.

SECTION 12.04. When Securities Disregarded. In determining whether the Holders of the required principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by the Issuer, any Guarantor or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuer or any Guarantor shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities that the Trustee knows are so owned shall be so disregarded. Subject to the foregoing, only Securities outstanding at the time shall be considered in any such determination. Notwithstanding the foregoing, if any such Person or Persons owns 100% of the Securities, such Securities shall not be so disregarded as aforesaid.

SECTION 12.05. Rules by Trustee, Paying Agent and Registrar. The Trustee may make reasonable rules for action by or a meeting of the Holders. The Registrar and a Paying Agent may make reasonable rules for their functions.

SECTION 12.06. Legal Holidays. If a Payment Date is not a Business Day, payment shall be made on the next succeeding day that is a Business Day, and no interest shall accrue on any amount that would have been otherwise payable on such Payment Date if it were a Business Day for the intervening period. If a Record Date is not a Business Day, the Record Date shall not be affected.

SECTION 12.07. **GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF IMMUNITY. THIS INDENTURE, THE SECURITIES, THE SECURITY DOCUMENTS AND THE INTERCREDITOR AGREEMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW) EXCEPT TO THE EXTENT THAT LOCAL LAW GOVERNS THE CREATION, PERFECTION, PRIORITY OR ENFORCEMENT OF SECURITY INTERESTS.** The Issuer, the Guarantors, the Trustee and, by its acceptance of a Security, each Holder (and holder of beneficial interests in a Security) hereby submit to the non-exclusive jurisdiction of the federal and state courts of competent jurisdiction in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Indenture or the transactions contemplated hereby. To the extent that the Issuer or any Guarantor may in any jurisdiction claim for itself or its assets immunity (to the extent such immunity may now or hereafter exist, whether on the grounds of sovereign immunity or otherwise) from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process (whether through service of notice or otherwise), and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), such Issuer or Guarantor, as applicable, irrevocably agrees with respect to any matter arising under this Indenture for the benefit of the Holders not to claim, and irrevocably waives, such immunity to the full extent permitted by the laws of such jurisdiction.

SECTION 12.08. No Recourse Against Others. No director, officer, employee, manager, incorporator or holder of any Equity Interests in the Issuer or in any Guarantor, as such, shall have any liability for any obligations of the Issuer or the Guarantors under the Securities, this Indenture or the Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Securities by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities.

SECTION 12.09. Successors. All agreements of the Issuer and each Guarantor in this Indenture and the Securities shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors.

SECTION 12.10. Multiple 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. One signed copy is enough to prove this Indenture. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

SECTION 12.11. Table of Contents; Headings. The table of contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

SECTION 12.12. Indenture Controls. If and to the extent that any provision of the Securities limits, qualifies or conflicts with a provision of this Indenture, such provision of this Indenture shall control.

SECTION 12.13. Severability. In case any provision in this Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

SECTION 12.14. Currency of Account; Conversion of Currency; Currency Exchange Restrictions.

(a) U.S. Dollars are the sole currency of account and payment for all sums payable by the Issuer and the Guarantors under or in connection with the Securities, the Guarantees and this Indenture, including damages related thereto. Any amount received or recovered in a currency other than U.S. Dollars by a Holder (whether as a result of, or as a result of the enforcement of, a judgment or order of a court of any jurisdiction, in the winding-up or dissolution of the Issuer or otherwise) in respect of any sum expressed to be due to it from the Issuer or a Guarantor shall only constitute a discharge to the Issuer or any such Guarantor to the extent of the U.S. Dollar amount, which the recipient is able to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so). If that U.S. Dollar amount is less than the U.S. Dollar amount expressed to be due to the recipient under the applicable Securities, the Issuer and the Guarantors shall indemnify it against any loss sustained by it as a result as set forth in Section 12.14(b). In any event, the Issuer and the Guarantors shall indemnify the recipient against the cost of making any such purchase. For the purposes of this Section 12.14, it will be sufficient for the Holder of a Security to certify in a satisfactory manner (indicating sources of information used) that it would have suffered a loss had an actual purchase of U.S. Dollars been made with the amount so received in that other currency on the date of receipt or recovery (or, if a purchase of U.S. Dollars on such date had not been practicable, on the first date on which it would have been practicable, it being required that the need for a change of date be certified in the manner mentioned above).

(b) The Issuer and the Guarantors, jointly and severally, covenant and agree that the following provisions shall apply to conversion of currency in the case of the Securities, the Guarantees and this Indenture:

(i) if for the purpose of obtaining judgment in, or enforcing the judgment of, any court in any country, it becomes necessary to convert into a currency (the "Judgment Currency") an amount due in any other currency (the "Base Currency"), then the conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which the judgment is given or the order of enforcement is made, as the case may be (unless a court shall otherwise determine);

(ii) if there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given or an order of enforcement is made, as the case may be (or such other date as a court shall determine), and the date of receipt of the amount due, the Issuer and the Guarantors will pay such additional (or, as the case may be, such lesser) amount, if any, as may be necessary so that the amount paid in the Judgment Currency when converted at the rate of exchange prevailing on the date of receipt will produce the amount in the Base Currency originally due; and

(iii) in the event of the winding-up of the Issuer or any Guarantor at any time while any amount or damages owing under the Securities, the Guarantees and this Indenture, or any judgment or order rendered in respect thereof, shall remain outstanding, the Issuer and the Guarantors shall indemnify and hold the Holders and the Trustee harmless against any deficiency arising or resulting from any variation in rates of exchange between (A) the date as of which the non-U.S. currency equivalent of the amount due or contingently due under the Securities, the Guarantees and this Indenture (other than under this subsection (b)(iii)) is calculated for the purposes of such winding-up and (B) the final date for the filing of proofs of claim in such winding-up (which shall be the date fixed by the liquidator or otherwise in accordance with the relevant provisions of applicable law as being the latest practicable date as at which liabilities of the Issuer or such Guarantor may be ascertained for such winding-up prior to payment by the liquidator or otherwise in respect thereof).

(c) The obligations contained in this Section 12.14 shall constitute separate and independent obligations from the other obligations of the Issuer and the Guarantors under this Indenture, shall give rise to separate and independent causes of action against the Issuer and the Guarantors, shall apply irrespective of any waiver or extension granted by any Holder or the Trustee or either of them from time to time and shall continue in full force and effect notwithstanding any judgment or order or the filing of any proof of claim in the winding-up of the Issuer or any Guarantor for a liquidated sum in respect of amounts due hereunder (other than under subsection (b)(iii) above) or under any such judgment or order. Any such deficiency as aforesaid shall be deemed to constitute a loss suffered by the Holders or the Trustee, as the case may be, and no proof or evidence of any actual loss shall be required by the Issuer or any Guarantor or the liquidator or otherwise or any of them. In the case of subsection (b)(iii) above, the amount of such deficiency shall not be deemed to be reduced by any variation in rates of exchange occurring between the said final date and the date of any liquidating distribution.

(d) For purposes of this Section 12.14, the term "rate(s) of exchange" shall mean the rate of exchange quoted by Reuters at 10:00 a.m. (New York City time) for spot purchases of the Base Currency with the Judgment Currency other than the Base Currency and includes any premiums and costs of exchange payable.

SECTION 12.15. Intercreditor Agreement Governs.

(a) The terms of this Indenture are subject to the Intercreditor Agreements. Each Holder, by its acceptance of a Security, (i) consents to the subordination of Liens provided for in the Intercreditor Agreements, (ii) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreements and (iii) authorizes and instructs the Trustee to enter into the Intercreditor Agreements and the Collateral Agent to enter into the Intercreditor Agreements as Noteholder Collateral Agent (as defined therein) and to bind such Holder to the terms thereof, and, in each case, on behalf of such Holder. The foregoing provisions are intended as an inducement to the other lenders to the Issuer or any Guarantors acting as a secured party under the Intercreditor Agreements to extend credit and such lenders are intended third party beneficiaries of such provisions and the provisions of the Intercreditor Agreements. Pursuant to the authorization of each Holder, the Trustee and the Collateral Agent hereby agree to enter into Intercreditor Agreements substantially in the form of Exhibit D from time to time upon the request of the Issuer, when accompanied by an Officers' Certificate and Opinion of Counsel confirming compliance with all conditions precedent set forth herein. To the extent the provisions of this Indenture conflict or are inconsistent with the Intercreditor Agreements, each Holder (by accepting a Security), the Trustee and the Collateral Agent consents and agrees that the Intercreditor Agreements will control.

(b) Notwithstanding anything to the contrary herein, in this Indenture or in any Security Document or any ABL Document (as such term is defined in the Intercreditor Agreements), the Issuer and the Guarantors shall not be required to act or refrain from acting (i) pursuant to this Indenture or any Security Document solely with respect to any ABL Collateral in any manner that would cause a default under any ABL Document, or (ii) pursuant to any ABL Document solely with respect to any Noteholder First Lien Collateral in any manner that would cause a default under this Indenture or any Security Document. For avoidance of doubt, and for the purposes of this paragraph only, the terms Security Document and ABL Document do not include the Intercreditor Agreements.

SECTION 12.16. Tax Matters.

(a) The Issuer has entered into this Indenture, and the Securities will be issued, with the intention that, for all tax purposes, the Securities will qualify as indebtedness. The Issuer, by entering into this Indenture, and each Holder and beneficial owner of Securities, agree to treat the Securities as indebtedness for all tax purposes.

(b) Each Holder or beneficial holder of Securities, by reason of its purchase of Securities, is deemed to have acknowledged (x) that, for U.S. federal income tax purposes, the Securities will be treated as indebtedness subject to the U.S. Treasury Regulations governing contingent payment debt instruments, (y) that such Holder or beneficial holder will report original issue discount and interest on the Securities in accordance with the Issuer's determination of both the "comparable yield" and "projected payment schedule" for the Securities and (z) to be bound by the Issuer's application of the U.S. Treasury Regulations that govern contingent payment debt instruments. For this purpose, the "comparable yield" and "projected payment schedule" for the Securities may be obtained by contacting the Issuer at the address set forth in Section 12.01. The Issuer shall file with the Trustee no later than the end of each calendar year (i) a written notice specifying the "comparable yield" and "projected payment schedule" for the Securities as of the end of such calendar year and (ii) such other specific information as may then be relevant under the Code. Upon the request of a Holder or beneficial holder of Securities, the Issuer shall inform such Holder or beneficial holder of the issue price of the Securities.

(c) The Issuer shall not be obligated to pay any additional amounts to the Holders or beneficial holder of Securities as a result of any withholding or deduction for, or on account of, any present or future taxes imposed on payments in respect of the Securities. The Issuer shall (or shall direct the Trustee in writing to) request the Securities to be coded as eligible for the "portfolio interest exemption". Unless otherwise required by applicable law, if Definitive Securities are issued, so long as a Person shall have delivered to the Issuer a properly completed IRS Form W-9 or IRS Form W-8BEN, IRS Form W-8BEN-E, IRS Form W-8ECI or other applicable IRS form, claiming an exemption from withholding under FATCA and, in the case of a Person claiming the exemption from U.S. federal withholding tax under Section 871(h) of the Code or Section 881(c) of the Code with respect to payments of "portfolio interest", the appropriate properly completed IRS form together with a certificate substantially in the form of Exhibit G, neither the Issuer nor the Trustee shall withhold taxes on payments of interest made to any such Person. Any such IRS Form W-8BEN or IRS Form W-8BEN-E shall specify whether the Holder or beneficial holder of Securities to whom the form relates is entitled to the benefits of any applicable income tax treaty.

(d) If Definitive Securities are issued, (i) if any withholding tax is imposed on the Issuer's payment under the Securities to any Holder or beneficial holder of Securities, such tax shall reduce the amount otherwise distributable to such Holder or beneficial holder, as the case may be, (ii) the Trustee is hereby authorized and directed to retain from amounts otherwise distributable to any Holder or beneficial holder of Securities sufficient funds for the payment of any withholding tax that is legally owed by the Issuer (but such authorization shall not prevent the Trustee from contesting any such withholding tax in appropriate proceedings and withholding payment of such tax, if permitted by applicable law, pending the outcome of such proceedings) and (iii) the amount of any withholding tax imposed with respect to any Holder or beneficial holder of Securities shall be treated as cash distributed to such Holder or beneficial holder, as the case may be, at the time it is withheld by the Trustee and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a payment under the Securities, the Trustee may (but shall have no obligation to) withhold such amounts in accordance with this Section 12.16. Nothing herein shall impose an obligation on the part of the Trustee to determine the amount of any tax or withholding obligation on the part of the Issuer or in respect of the Securities.

SECTION 12.17. USA PATRIOT Act. The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify and record information that identifies each Person that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

SECTION 12.18. WAIVER OF TRIAL BY JURY. EACH OF THE ISSUER, EACH GUARANTOR, THE TRUSTEE AND THE COLLATERAL AGENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTION CONTEMPLATED HEREBY.

SECTION 12.19. Limited Incorporation of the TIA. This Indenture is not subject to the mandatory provisions of the TIA. The provisions of the TIA are not incorporated by reference in or made part of this Indenture unless specifically provided herein.

{Remainder of page intentionally left blank}

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

AQUESTIVE THERAPEUTICS, INC.

By: /s/ John Maxwell
Name: John Maxwell
Title: CFO

{Signature Page to the Indenture}

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: /s/ Allison D.B. Nadeau
Name: Allison D.B. Nadeau
Title: Vice President

U.S. BANK NATIONAL ASSOCIATION,
as Collateral Agent

By: /s/ Allison D.B. Nadeau
Name: Allison D.B. Nadeau
Title: Vice President

PROVISIONS RELATING TO SECURITIES

1. Definitions.

1.1 Definitions.

For the purposes of this Appendix A, the following terms shall have the meanings indicated below (and if not defined in this Appendix A, capitalized terms used herein shall have the meaning set forth in this Indenture):

"Accredited Investor" means an "accredited investor" as defined in subclause (1), (2), (3) or (7) of Rule 501 that is not (i) a QIB or (ii) a Person other than a U.S. Person that acquires Securities in reliance on Regulation S.

"Clearstream" means Clearstream Banking, S.A.

"Definitive Security" means a certificated Security (bearing the Restricted Securities Legend if the transfer of such Security is restricted by applicable law) that does not include the Global Securities Legend.

"Depository" means The Depository Trust Company, its nominees and their respective successors.

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

"Global Securities Legend" means the legend set forth in Section 2.2(f)(i)(B) herein.

"Global Security" means a certificated Security (bearing the Restricted Securities Legend if the transfer of such Security is restricted by applicable law) that includes the Global Securities Legend. The term "Global Securities" includes Rule 144A Global Securities and Regulation S Global Securities.

"Purchase Agreement" means each Purchase Agreement dated July 15, 2019, between the Issuer and the purchaser(s) party thereto.

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

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

"Regulation S Securities" means all Securities offered and sold outside the United States in reliance on Regulation S.

"Restricted Period", with respect to any Regulation S Securities, means the period of 40 consecutive days beginning on and including the later of (a) the day on which such Securities are first offered to persons other than distributors (as defined in Regulation S) in reliance on Regulation S, notice of which day shall be promptly given by the Issuer to the Trustee, and (b) the date of issuance of such Securities.

"Restricted Securities Legend" means the legend set forth in Section 2.2(f)(i)(A) herein.

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

"Rule 144A Securities" means all Securities privately placed with QIBs.

"Rule 501" means Rule 501(a) under the Securities Act.

"Rule 506" means Rule 506 under the Securities Act.

"Securities Custodian" means the custodian with respect to a Global Security (as appointed by the Depository) or any successor person thereto, who shall initially be the Trustee.

"Transfer Restricted Definitive Securities" means Definitive Securities that bear or are required to bear or are subject to the Restricted Securities Legend.

"Transfer Restricted Global Securities" means Global Securities that bear or are required to bear or are subject to the Restricted Securities Legend.

"Unrestricted Definitive Securities" means Definitive Securities that are not required to bear, and are not subject to, the Restricted Securities Legend.

"Unrestricted Global Securities" means Global Securities that are not required to bear, and are not subject to, the Restricted Securities Legend.

"U.S. Person" means a "U.S. person" as defined in Regulation S.

1.2 Other Definitions.

Term:	Defined in Section:
Agent Members	2.1(b)
Regulation S Global Securities	2.1(b)
Rule 144A Global Securities	2.1(b)

2. The Securities.

2.1 Form and Dating; Global Securities.

(a) Issuance and Transfers. The Securities issued by the Issuer will be (i) privately placed by the Issuer pursuant to the Purchase Agreement and (ii) sold initially only to (1) QIBs, (2) Persons other than U.S. Persons in reliance on Regulation S and (3) Accredited Investors. Such Securities may thereafter be transferred to, among others, QIBs, purchasers in reliance on Regulation S and Accredited Investors.

(b) Global Securities. (i) Except as provided in clause (c) below, Rule 144A Securities initially shall be represented by one or more Securities in definitive, fully registered, global form without interest coupons (collectively, the "Rule 144A Global Securities").

Regulation S Securities initially shall be represented by one or more Securities in fully registered, global form without interest coupons (collectively, the "Regulation S Global Securities"), which shall be registered in the name of the Depository for the accounts of designated agents holding on behalf of Euroclear or Clearstream.

The provisions of the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" and the "General Terms and Conditions of Clearstream Banking" and "Customer Handbook" of Clearstream shall be applicable to transfers of beneficial interests in the Regulation S Global Securities that are held through Euroclear or Clearstream.

The Global Securities shall bear the Global Securities Legend. The Global Securities initially shall (i) be registered in the name of the Depository, in each case for credit to an account of an Agent Member, (ii) be delivered to the Securities Custodian and (iii) bear the Restricted Securities Legend.

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

The Registrar shall retain copies of all letters, notices, Confidentiality Agreements and other written communications received pursuant to this Section 2.1 or Section 2.2 herein. The Issuer, at its sole cost and expense, shall have the right to inspect and make copies of all such letters, notices, Confidentiality Agreements or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar.

(ii) Transfers of Global Securities shall be limited to transfer in whole, but not in part, to the Depository. Interests of beneficial owners in the Global Securities may be transferred or exchanged for Definitive Securities only in accordance with the applicable rules and procedures of the Depository and the provisions of Section 2.2 herein. In addition, a Global Security shall be exchangeable for Definitive Securities if (x) the Depository (1) notifies the Issuer that it is unwilling or unable to continue as depository for such Global Security and the Issuer thereupon fails to appoint a successor depository or (2) has ceased to be a clearing agency registered under the Exchange Act or (y) there shall have occurred and be continuing an Event of Default with respect to such Global Security. In all cases, Definitive Securities delivered in exchange for any Global Security or beneficial interests therein shall be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depository in accordance with its customary procedures.

(iii) In connection with the transfer of a Global Security as an entirety to beneficial owners pursuant to Section 2.1(b)(ii) herein, such Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Issuer shall execute, and the Trustee shall authenticate and make available for delivery, to each beneficial owner identified by the Depository in writing in exchange for its beneficial interest in such Global Security, an equal aggregate principal amount of Definitive Securities of authorized denominations.

(iv) Any Transfer Restricted Definitive Security delivered in exchange for an interest in a Global Security pursuant to Section 2.2 herein shall, except as otherwise provided in Section 2.2 herein, bear the Restricted Securities Legend.

(v) Notwithstanding the foregoing, through the Restricted Period, a beneficial interest in a Regulation S Global Security may be held only through Euroclear or Clearstream unless delivery is made in accordance with the applicable provisions of Section 2.2 herein.

(vi) 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 that a Holder is entitled to take under this Indenture or the Securities.

(c) Definitive Securities. To the extent that the purchaser of a Security is an Accredited Investor or otherwise cannot or opts not to hold a beneficial interest in a Global Security, then such Security shall be represented by one or more Definitive Securities.

2.2 Transfer and Exchange.

(a) Transfer and Exchange of Global Securities. A Global Security may not be transferred as a whole except as set forth in Section 2.1(b) herein. Global Securities will not be exchanged by the Issuer for Definitive Securities except under the circumstances described in Section 2.1(b)(ii) herein. Global Securities also may be exchanged or replaced, in whole or in part, as provided in Sections 2.08 and 2.10 of this Indenture. Beneficial interests in a Global Security may be transferred and exchanged as provided in Section 2.2(b) herein or Section 2.2(g) herein.

(b) Transfer and Exchange of Beneficial Interests in Global Securities. The transfer and exchange of beneficial interests in the Global Securities shall be effected through the Depository, in accordance with the provisions of this Indenture and the applicable rules and procedures of the Depository. Beneficial interests in Transfer Restricted Global Securities shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers and exchanges of beneficial interests in the Global Securities also shall require compliance with either subparagraph (i) or (ii) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(i) Transfer of Beneficial Interests in the Same Global Security. Beneficial interests in any Transfer Restricted Global Security may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Transfer Restricted Global Security in accordance with the transfer restrictions set forth in the Restricted Securities Legend; *provided, however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in a Regulation S Global Security may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than to a QIB in reliance on Rule 144A). A beneficial interest in an Unrestricted Global Security may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Security. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.2(b)(i).

(ii) All Other Transfers and Exchanges of Beneficial Interests in Global Securities. In connection with all transfers and exchanges of beneficial interests in any Global Security that is not subject to Section 2.2(b)(i) herein, the transferor of such beneficial interest must deliver to the Registrar (1) a written order from an Agent Member given to the Depository in accordance with the applicable rules and procedures of the Depository directing the Depository to credit or cause to be credited a beneficial interest in another Global Security in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the applicable rules and procedures of the Depository containing information regarding the Agent Member account to be credited with such increase. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Securities contained in this Indenture and the Securities or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Security pursuant to Section 2.2(g) herein.

(iii) Transfer of Beneficial Interests to Another Transfer Restricted Global Security. A beneficial interest in a Transfer Restricted Global Security may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Transfer Restricted Global Security if the transfer complies with the requirements of Section 2.2(b)(ii) herein and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in a Rule 144A Global Security, then the transferor must deliver a certificate in the form attached to the applicable Security; and

(B) if the transferee will take delivery in the form of a beneficial interest in a Regulation S Global Security, then the transferor must deliver a certificate in the form attached to the applicable Security.

(iv) Transfer and Exchange of Beneficial Interests in a Transfer Restricted Global Security for Beneficial Interests in an Unrestricted Global Security. A beneficial interest in a Transfer Restricted Global Security may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Security or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Security if the exchange or transfer complies with the requirements of Section 2.2(b)(ii) herein and the Registrar receives the following:

(A) if the holder of such beneficial interest in a Transfer Restricted Global Security proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Security, a certificate from such holder in the form attached to the applicable Security; or

(B) if the holder of such beneficial interest in a Transfer Restricted Global Security proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Security, a certificate from such holder in the form attached to the applicable Security,

and, in each such case, if the Issuer or the Registrar so requests or if the applicable rules and procedures of the Depository so require, an Opinion of Counsel in form reasonably acceptable to the Issuer and the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Securities Legend are no longer required in order to maintain compliance with the Securities Act. If any such transfer or exchange is effected pursuant to this subparagraph (iv) at a time when an Unrestricted Global Security has not yet been issued, the Issuer shall issue and, upon receipt of a written order of the Issuer in the form of an Officers' Certificate, the Trustee shall authenticate one or more Unrestricted Global Securities in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred or exchanged pursuant to this subparagraph (iv).

(v) Transfer and Exchange of Beneficial Interests in an Unrestricted Global Security for Beneficial Interests in a Transfer Restricted Global Security. Beneficial interests in an Unrestricted Global Security cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Transfer Restricted Global Security.

(c) Transfer and Exchange of Beneficial Interests in Global Securities for Definitive Securities. A beneficial interest in a Global Security may not be exchanged for a Definitive Security except under the circumstances described in Section 2.1(b)(ii) herein. A beneficial interest in a Global Security may not be transferred to a Person who takes delivery thereof in the form of a Definitive Security except under the circumstances described in Section 2.1(b)(ii) herein or Section 2.1(c) herein.

(d) Transfer and Exchange of Definitive Securities for Beneficial Interests in Global Securities. Transfers and exchanges of Definitive Securities for beneficial interests in Global Securities also shall require compliance with either subparagraph (i), (ii), (iii) or (iv) below, as applicable:

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

(A) if the Holder of such Transfer Restricted Definitive Security proposes to exchange such Transfer Restricted Definitive Security for a beneficial interest in a Transfer Restricted Global Security, a certificate from such Holder in the form attached to the applicable Security;

(B) if such Transfer Restricted Definitive Security is being transferred to a QIB in accordance with Rule 144A, a certificate from such Holder in the form attached to the applicable Security;

(C) if such Transfer Restricted Definitive Security is being transferred to a Person that is not a U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate from such Holder in the form attached to the applicable Security;

(D) if such Transfer Restricted Definitive Security is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144 under the Securities Act, a certificate from such Holder in the form attached to the applicable Security; and

(E) if such Transfer Restricted Definitive Security is being transferred to the Issuer or a Subsidiary thereof, a certificate from such Holder in the form attached to the applicable Security;

the Trustee shall cancel the Transfer Restricted Definitive Security, and increase or cause to be increased the aggregate principal amount of the appropriate Transfer Restricted Global Security.

(ii) Transfer Restricted Definitive Securities to Beneficial Interests in Unrestricted Global Securities. A Holder of a Transfer Restricted Definitive Security may exchange such Transfer Restricted Definitive Security for a beneficial interest in an Unrestricted Global Security or transfer such Transfer Restricted Definitive Security to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Security only if the Registrar receives the following:

(A) if the Holder of such Transfer Restricted Definitive Security proposes to exchange such Transfer Restricted Definitive Security for a beneficial interest in an Unrestricted Global Security, a certificate from such Holder in the form attached to the applicable Security; or

(B) if the Holder of such Transfer Restricted Definitive Security proposes to transfer such Transfer Restricted Definitive Security to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Security, a certificate from such Holder in the form attached to the applicable Security,

and, in each such case, if the Issuer or the Registrar so requests or if the applicable rules and procedures of the Depository so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Securities Legend are no longer required in order to maintain compliance with the Securities Act. Upon satisfaction of the conditions of this subparagraph (ii), the Trustee shall cancel the Transfer Restricted Definitive Securities and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Security. If any such transfer or exchange is effected pursuant to this subparagraph (ii) at a time when an Unrestricted Global Security has not yet been issued, the Issuer shall issue and, upon receipt of an written order of the Issuer in the form of an Officers' Certificate, the Trustee shall authenticate one or more Unrestricted Global Securities in an aggregate principal amount equal to the aggregate principal amount of Transfer Restricted Definitive Securities transferred or exchanged pursuant to this subparagraph (ii).

(iii) Unrestricted Definitive Securities to Beneficial Interests in Unrestricted Global Securities. A Holder of an Unrestricted Definitive Security may exchange such Unrestricted Definitive Security for a beneficial interest in an Unrestricted Global Security or transfer such Unrestricted Definitive Security to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Security at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Definitive Security and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Securities. If any such transfer or exchange is effected pursuant to this subparagraph (iii) at a time when an Unrestricted Global Security has not yet been issued, the Issuer shall issue and, upon receipt of a written order of the Issuer in the form of an Officers' Certificate, the Trustee shall authenticate one or more Unrestricted Global Securities in an aggregate principal amount equal to the aggregate principal amount of Unrestricted Definitive Securities transferred or exchanged pursuant to this subparagraph (iii).

(iv) Unrestricted Definitive Securities to Beneficial Interests in Transfer Restricted Global Securities. An Unrestricted Definitive Security cannot be exchanged for, or transferred to a Person who takes delivery thereof in the form of, a beneficial interest in a Transfer Restricted Global Security.

(e) Transfer and Exchange of Definitive Securities for Definitive Securities. Upon request by a Holder of Definitive Securities and such Holder's compliance with the provisions of this Section 2.2(e), the Registrar shall register the transfer or exchange of Definitive Securities. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Securities duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.2(e):

(i) Transfer Restricted Definitive Securities to Transfer Restricted Definitive Securities. A Transfer Restricted Definitive Security may be transferred to and registered in the name of a Person who takes delivery thereof in the form of a Transfer Restricted Definitive Security if the Registrar receives the following:

(A) if the transfer will be made pursuant to Rule 144A, a certificate in the form attached to the applicable Security;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904 under the Securities Act, a certificate in the form attached to the applicable Security;

(C) if the transfer will be made pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144 under the Securities Act, a certificate in the form attached to the applicable Security;

(D) if the transfer will be made to an Accredited Investor in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (A) through (C) above, a certificate in the form attached to the applicable Security and a Transferee Letter of Representation in the form of Exhibit B to this Indenture; and

(E) if such transfer will be made to the Issuer or a Subsidiary thereof, a certificate in the form attached to the applicable Security.

(ii) Transfer Restricted Definitive Securities to Unrestricted Definitive Securities. Any Transfer Restricted Definitive Security may be exchanged by the Holder thereof for an Unrestricted Definitive Security or transferred to a Person who takes delivery thereof in the form of an Unrestricted Definitive Security if the Registrar receives the following:

(1) if the Holder of such Transfer Restricted Definitive Security proposes to exchange such Transfer Restricted Definitive Security for an Unrestricted Definitive Security, a certificate from such Holder in the form attached to the applicable Security; or

(2) if the Holder of such Transfer Restricted Definitive Security proposes to transfer such Transfer Restricted Definitive Security to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Security, a certificate from such Holder in the form attached to the applicable Security,

and, in each such case, if the Registrar so requests, an Opinion of Counsel in form reasonably acceptable to the Issuer to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Securities Legend are no longer required in order to maintain compliance with the Securities Act.

(iii) Unrestricted Definitive Securities to Unrestricted Definitive Securities. A Holder of an Unrestricted Definitive Security may transfer such Unrestricted Definitive Security to a Person who takes delivery thereof in the form of an Unrestricted Definitive Security at any time. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Securities pursuant to the instructions from the Holder thereof.

(iv) Unrestricted Definitive Securities to Transfer Restricted Definitive Securities. An Unrestricted Definitive Security cannot be exchanged for, or transferred to a Person who takes delivery thereof in the form of, a Transfer Restricted Definitive Security.

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

(f) Legends.

(i) (A) Each Security certificate evidencing the Global Securities and the Definitive Securities (and all Securities issued in exchange therefor or in substitution thereof) shall bear a legend in substantially the following form (each defined term in the legend being defined as such for purposes of the legend only):

NEITHER THIS NOTE NOR ANY INTEREST HEREIN HAS BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), THE SECURITIES LAWS OF ANY STATE OR THE SECURITIES LAWS OF ANY OTHER JURISDICTION, NOR IS SUCH REGISTRATION CONTEMPLATED. NEITHER THIS NOTE NOR ANY INTEREST HEREIN MAY BE ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED, SOLD OR OFFERED FOR SALE OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EXEMPTION FROM SUCH REGISTRATION THEREUNDER AND ANY OTHER APPLICABLE SECURITIES LAW REGISTRATION REQUIREMENTS. EACH PERSON OR ENTITY THAT ACQUIRES OR ACCEPTS THIS NOTE OR AN INTEREST HEREIN BY SUCH ACQUISITION OR ACCEPTANCE (1) REPRESENTS THAT (A) IT IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) AND, IF SUBSEQUENT TO THE INITIAL ACQUISITION HEREOF, IS PURCHASING THIS NOTE IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT, (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS NOTE IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 903 OR 904 OF REGULATION S UNDER THE SECURITIES ACT OR (C) IT IS AN ACCREDITED INVESTOR AS DEFINED IN SUBPARAGRAPH (a)(1), (a)(2), (a)(3) or (a)(7) OF RULE 501 UNDER THE SECURITIES ACT (AN "ACCREDITED INVESTOR"), HAS SUFFICIENT KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS TO BE CAPABLE OF EVALUATING THE MERITS AND RISKS OF THE PURCHASE OF THIS NOTE AND IS ABLE AND PREPARED TO BEAR THE ECONOMIC RISK OF INVESTING IN AND HOLDING THIS NOTE, (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THIS NOTE OR AN INTEREST HEREIN, EXCEPT (A) TO THE ISSUER OR A SUBSIDIARY THEREOF, (B) FOR SO LONG AS THIS NOTE IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO AN ENTITY IT REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER, TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A UNDER THE SECURITIES ACT, (C) TO PERSONS OR ENTITIES OTHER THAN U.S. PERSONS, INCLUDING DEALERS OR OTHER PROFESSIONAL FIDUCIARIES IN THE UNITED STATES ACTING ON A DISCRETIONARY BASIS FOR NON-U.S. BENEFICIAL OWNERS (OTHER THAN AN ESTATE OR TRUST), IN OFFSHORE TRANSACTIONS IN RELIANCE UPON, AND IN ACCORDANCE WITH, REGULATION S UNDER THE SECURITIES ACT OR (D) TO AN ACCREDITED INVESTOR THAT IS PURCHASING THIS NOTE OR AN INTEREST HEREIN, AS THE CASE MAY BE, FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF SUCH AN ACCREDITED INVESTOR FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON OR ENTITY TO WHOM THIS NOTE OR AN INTEREST HEREIN IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND; PROVIDED, THAT THE ISSUER AND THE TRUSTEE SHALL HAVE THE RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (2)(D) OF THIS PARAGRAPH TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THE TERMS "OFFSHORE TRANSACTION", "UNITED STATES" AND "U.S. PERSON" HAVE THE RESPECTIVE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT. THE INDENTURE REFERRED TO HEREINAFTER CONTAINS A PROVISION REQUIRING THE REGISTRAR APPOINTED THEREUNDER TO REFUSE TO REGISTER ANY TRANSFER OF THIS NOTE IN VIOLATION OF THE FOREGOING RESTRICTIONS.

THIS NOTE IS ISSUED WITH ORIGINAL ISSUE DISCOUNT UNDER SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, AND IS SUBJECT TO THE RULES FOR DEBT INSTRUMENTS WITH CONTINGENT PAYMENTS UNDER TREASURY REGULATION SECTION 1.1275-4(b). FOR INFORMATION REGARDING THE ISSUE PRICE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, THE ISSUE DATE, THE YIELD TO MATURITY, THE COMPARABLE YIELD AND THE PROJECTED PAYMENT SCHEDULE FOR THIS NOTE, YOU SHOULD SUBMIT A WRITTEN REQUEST TO AQUESTIVE THERAPEUTICS, INC., 30 TECHNOLOGY DRIVE, WARREN, NEW JERSEY 07059, ATTENTION: CHIEF FINANCIAL OFFICER & GENERAL COUNSEL.

THIS NOTE MAY NOT BE RESOLD OR TRANSFERRED EXCEPT AS SET FORTH IN THE INDENTURE REFERRED TO HEREINAFTER, AND, IN ADDITION, EACH PERSON OR ENTITY THAT ACQUIRES OR ACCEPTS THIS NOTE OR AN INTEREST HEREIN BY SUCH ACQUISITION OR ACCEPTANCE AGREES TO COMPLY WITH THE TRANSFER RESTRICTIONS SET FORTH IN SUCH INDENTURE, AND FURTHER ACKNOWLEDGES AND AGREES TO THE PROVISIONS SET FORTH IN SUCH INDENTURE.

(B) Each Global Security shall bear the following legend:

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

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

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

(h) Obligations with Respect to Transfers and Exchanges of Securities.

(i) To permit registrations of transfers and exchanges, the Issuer shall execute, and the Trustee shall authenticate, Definitive Securities and Global Securities at the Registrar's request.

(ii) No service charge shall be made for any registration of transfer or exchange, but the Issuer may require payment of a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or similar governmental charge payable upon exchanges pursuant to Sections 3.06, 4.06, 4.08 and 9.04 of this Indenture).

(iii) Prior to the due presentation for registration of transfer of any Security, the Issuer, the Trustee, a Paying Agent or the Registrar may deem and treat the Person in whose name a Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and interest on such Security and for all other purposes whatsoever, whether or not such Security is overdue, and none of the Issuer, the Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

(iv) All Securities issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Securities surrendered upon such transfer or exchange.

(i) No Obligation of the Trustee.

(i) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Security, a member of, or a participant in, the Depository or any other Person with respect to the accuracy of the records of the Depository or of any participant or member thereof, with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption or repurchase) or the payment of any amount, under or with respect to such Securities. All notices and communications to be given to the Holders and all payments to be made to the Holders under the Securities shall be given or made to the registered Holders (which shall be the Depository in the case of a Global Security). Except as may be otherwise permitted pursuant to Section 2.14 of the Indenture, the rights of beneficial owners in any Global Security shall be exercised only through the Depository subject to the applicable rules and procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, its participants and any beneficial owners.

(ii) 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 Depository participants, members or beneficial owners 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.

{FORM OF SECURITY}

NEITHER THIS NOTE NOR ANY INTEREST HEREIN HAS BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), THE SECURITIES LAWS OF ANY STATE OR THE SECURITIES LAWS OF ANY OTHER JURISDICTION, NOR IS SUCH REGISTRATION CONTEMPLATED. NEITHER THIS NOTE NOR ANY INTEREST HEREIN MAY BE ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED, SOLD OR OFFERED FOR SALE OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EXEMPTION FROM SUCH REGISTRATION THEREUNDER AND ANY OTHER APPLICABLE SECURITIES LAW REGISTRATION REQUIREMENTS. EACH PERSON OR ENTITY THAT ACQUIRES OR ACCEPTS THIS NOTE OR AN INTEREST HEREIN BY SUCH ACQUISITION OR ACCEPTANCE (1) REPRESENTS THAT (A) IT IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) AND, IF SUBSEQUENT TO THE INITIAL ACQUISITION HEREOF, IS PURCHASING THIS NOTE IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT, (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS NOTE IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 903 OR 904 OF REGULATION S UNDER THE SECURITIES ACT OR (C) IT IS AN ACCREDITED INVESTOR AS DEFINED IN SUBPARAGRAPH (a)(1), (a)(2), (a)(3) or (a)(7) OF RULE 501 UNDER THE SECURITIES ACT (AN "ACCREDITED INVESTOR"), HAS SUFFICIENT KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS TO BE CAPABLE OF EVALUATING THE MERITS AND RISKS OF THE PURCHASE OF THIS NOTE AND IS ABLE AND PREPARED TO BEAR THE ECONOMIC RISK OF INVESTING IN AND HOLDING THIS NOTE, (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THIS NOTE OR AN INTEREST HEREIN, EXCEPT (A) TO THE ISSUER OR A SUBSIDIARY THEREOF, (B) FOR SO LONG AS THIS NOTE IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO AN ENTITY IT REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER, TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A UNDER THE SECURITIES ACT, (C) TO PERSONS OR ENTITIES OTHER THAN U.S. PERSONS, INCLUDING DEALERS OR OTHER PROFESSIONAL FIDUCIARIES IN THE UNITED STATES ACTING ON A DISCRETIONARY BASIS FOR NON-U.S. BENEFICIAL OWNERS (OTHER THAN AN ESTATE OR TRUST), IN OFFSHORE TRANSACTIONS IN RELIANCE UPON, AND IN ACCORDANCE WITH, REGULATION S UNDER THE SECURITIES ACT OR (D) TO AN ACCREDITED INVESTOR THAT IS PURCHASING THIS NOTE OR AN INTEREST HEREIN, AS THE CASE MAY BE, FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF SUCH AN ACCREDITED INVESTOR FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON OR ENTITY TO WHOM THIS NOTE OR AN INTEREST HEREIN IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND; PROVIDED, THAT THE ISSUER AND THE TRUSTEE SHALL HAVE THE RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (2)(D) OF THIS PARAGRAPH TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THE TERMS "OFFSHORE TRANSACTION", "UNITED STATES" AND "U.S. PERSON" HAVE THE RESPECTIVE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT. THE INDENTURE REFERRED TO HEREINAFTER CONTAINS A PROVISION REQUIRING THE REGISTRAR APPOINTED THEREUNDER TO REFUSE TO REGISTER ANY TRANSFER OF THIS NOTE IN VIOLATION OF THE FOREGOING RESTRICTIONS.

THIS NOTE IS ISSUED WITH ORIGINAL ISSUE DISCOUNT UNDER SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, AND IS SUBJECT TO THE RULES FOR DEBT INSTRUMENTS WITH CONTINGENT PAYMENTS UNDER TREASURY REGULATION SECTION 1.1275-4(b). FOR INFORMATION REGARDING THE ISSUE PRICE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, THE ISSUE DATE, THE YIELD TO MATURITY, THE COMPARABLE YIELD AND THE PROJECTED PAYMENT SCHEDULE FOR THIS NOTE, YOU SHOULD SUBMIT A WRITTEN REQUEST TO AQUESTIVE THERAPEUTICS, INC., 30 TECHNOLOGY DRIVE, WARREN, NEW JERSEY 07059, ATTENTION: CHIEF FINANCIAL OFFICER & GENERAL COUNSEL.

THIS NOTE MAY NOT BE RESOLD OR TRANSFERRED EXCEPT AS SET FORTH IN THE INDENTURE REFERRED TO HEREINAFTER, AND, IN ADDITION, EACH PERSON OR ENTITY THAT ACQUIRES OR ACCEPTS THIS NOTE OR AN INTEREST HEREIN BY SUCH ACQUISITION OR ACCEPTANCE AGREES TO COMPLY WITH THE TRANSFER RESTRICTIONS SET FORTH IN SUCH INDENTURE, AND FURTHER ACKNOWLEDGES AND AGREES TO THE PROVISIONS SET FORTH IN SUCH INDENTURE.

{Global Securities Legend}

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

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

{FORM OF SECURITY}

No.____ $_____

12.5% Senior Secured Note due 2025

CUSIP No._____
ISIN No._____

Aquestive Therapeutics, Inc., a Delaware corporation (the "Issuer"), promises to pay to {Cede & Co.} {_____}, or its registered assigns, the principal sum {of $_____ Dollars} {listed on the Schedule of Increases or Decreases in Global Security attached hereto}[1] on or before June 30, 2025 as set forth in this Security.

Payment Dates: March 30, June 30, September 30 and December 30 (each, a "Payment Date")

Record Dates: March 15, June 15, September 15 and December 15 (each, a "Record Date")

Additional provisions of this Security are set forth on the following pages of this Security.

[1] Use the Schedule of Increases or Decreases language if Security is in Global Form.

IN WITNESS WHEREOF, the undersigned has caused this Instrument to be duly executed.

AQUESTIVE THERAPEUTICS, INC.

By: _____

Name:
Title:

TRUSTEE'S CERTIFICATE OF
AUTHENTICATION

U.S. BANK NATIONAL ASSOCIATION,
as Trustee, certifies that this is
one of the Securities
referred to in the within-mentioned Indenture.

By: _____
Authorized Signatory

Date: _____

1. Interest and Payments of Principal

(a) Aquestive Therapeutics, Inc., a Delaware corporation (the "Issuer"), shall pay interest on the outstanding principal amount of this Security at the rate per annum shown above.

(b) The Issuer shall pay interest quarterly in arrears on each Payment Date, commencing on {September 30, 2019}, or on the succeeding Business Day if any such date is not a Business Day. Interest on this Security shall accrue on the outstanding principal amount thereof from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from {July 15, 2019} until the principal hereof is paid or duly provided for. Interest shall be computed on the basis of a 360-day year of twelve 30-day months. The Issuer shall pay, during the continuance of an Event of Default, interest on the outstanding principal amount of the Securities at the rate borne by the Securities plus 4.00% per annum, and the Issuer shall pay interest on overdue installments of interest at the rate borne by the Securities plus 4.00% per annum to the extent lawful. All payments of interest shall be rounded to two decimal places.

(c) The Securities will mature on June 30, 2025.

(d) On each Payment Date, commencing on September 30, 2021, or on the succeeding Business Day if any such date is not a Business Day, the Issuer shall pay to the Holders an installment of principal of the Securities in accordance with the table below corresponding to the applicable Payment Date, where the applicable percentage is the percentage of (i) the initial aggregate principal amount of Original Securities issued on the Issue Date plus (ii) the initial aggregate principal amount of any First Additional Securities issued on their date of issuance plus (iii) the initial aggregate principal amount of any Second Additional Securities issued on their date of issuance minus (iv) the aggregate principal amount of Securities redeemed or repurchased pursuant to the Indenture prior to such Payment Date:

Payment Date	**Applicable Percentage**
September 30, 2021	2.5%
December 30, 2021	2.5%
March 30, 2022	2.5%
June 30, 2022	2.5%
September 30, 2022	5.0%
December 30, 2022	5.0%
March 30, 2023	5.0%
June 30, 2023	5.0%
September 30, 2023	7.5%
December 30, 2023	7.5%
March 30, 2024	7.5%
June 30, 2024	7.5%
September 30, 2024	10.0%
December 30, 2024	10.0%
March 30, 2025	10.0%
June 30, 2025	All remaining outstanding principal of the Securities at such date

All payments calculated from the principal installment percentages set forth above shall be rounded to two decimal places.

2. Method of Payment

The Issuer shall pay interest on the Securities (except defaulted interest) and payments of installments of principal to the Persons who are registered Holders at the close of business on the Record Date immediately preceding the related Payment Date even if Securities are canceled after such Record Date and on or before such Payment Date (whether or not a Business Day). Holders must surrender Securities to the Paying Agent to collect principal payments (other than payments of installments of principal). The Issuer shall pay principal, premium, if any, and interest in money of the United States of America that at the time of payment is legal tender for payment of public and private debts. {Payments in respect of the Securities (including principal, premium, if any, and interest) shall be made by wire transfer of immediately available funds to the accounts specified by The Depository Trust Company or any successor depositary.}[1] {The Issuer shall make all payments in respect of the Securities (including principal, premium, if any, and interest) at the office of the Paying Agent, except that, at the option of the Issuer, payment of interest may be made by mailing a check to the registered address of each Holder thereof; *provided*, *however*, that payments on the Securities may also be made, in the case of a Holder of at least $1,000,000 aggregate principal amount of Securities, by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or Paying Agent to such effect designating such account no later than 30 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept in its discretion).}[2]

3. Paying Agent and Registrar

Initially, U.S. Bank National Association (the "Trustee") will act as Paying Agent and Registrar. The Issuer or any of its domestically organized Wholly Owned Restricted Subsidiaries may act as Paying Agent or Registrar.

4. Indenture

The Issuer issued the Securities under the Indenture dated as of July 15, 2019 (the "Indenture") among the Issuer, the guarantors that may be party thereto from time to time, the Trustee and the Collateral Agent. The terms of the Securities include those stated in the Indenture. Terms defined in the Indenture and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all terms and provisions of the Indenture, and the Holders are referred to the Indenture and the TIA for a statement of such terms and provisions. If and to the extent that any provision of the Securities limits, qualifies or conflicts with a provision of the Indenture, such provision of the Indenture shall control.

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[1] Include in a Global Security.

[2] Include in a Definitive Security.

The Securities are senior secured obligations of the Issuer. This Security is one of the Securities referred to in the Indenture. The Securities are treated as a single class of securities under the Indenture. The Indenture imposes certain limitations on the ability of the Issuer and its Restricted Subsidiaries to, among other things, make certain Investments and other Restricted Payments, pay dividends and other distributions, incur Indebtedness, enter into consensual restrictions upon the payment of certain dividends and distributions by such Restricted Subsidiaries, issue or sell shares of capital stock of the Issuer and such Restricted Subsidiaries, enter into or permit certain transactions with Affiliates, create or incur Liens and Dispose of assets. The Indenture also imposes limitations on the ability of the Issuer and each Guarantor to merge, amalgamate or consolidate with or into any other Person or convey, transfer or lease all or substantially all of their property.

To guarantee the due and punctual payment of the principal of and interest on the Securities and all other amounts payable by the Issuer under the Indenture and the Securities when and as the same shall be due and payable, whether at maturity, by acceleration or otherwise, according to the terms of the Securities and the Indenture, the Guarantors have, jointly and severally, irrevocably and unconditionally guaranteed the Guaranteed Obligations on a senior secured basis pursuant to the terms of the Indenture.

5. Optional Redemption

The Issuer may redeem the Securities at its option, in whole at any time or in part from time to time, on any Business Day specified by the Issuer prior to July 15, 2021 (the “First Call Date”), on not less than 30 days’ nor more than 60 days’ prior written notice delivered to each Holder, at a redemption price equal to 100% of the principal amount of the Securities being redeemed plus the Applicable Premium, plus accrued and unpaid interest, if any, to the redemption date (subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Payment Date).

The Issuer may redeem the Securities at its option, in whole at any time or in part from time to time, on any Business Day specified by the Issuer on or after the First Call Date, on not less than 30 days’ nor more than 60 days’ prior written notice delivered to each Holder, at the following redemption prices (expressed as a percentage of outstanding principal amount of the Securities being redeemed), plus accrued and unpaid interest to the redemption date (subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Payment Date), for the following periods:

Period	Redemption Price
From and including the First Call Date to and including July 14, 2022	112.5000%
From and including July 15, 2022 to and including July 14, 2023	106.2500%
From and including July 15, 2023 to and including July 14, 2024	103.1250%
From and including July 15, 2024 and thereafter	101.5625%

"Applicable Premium" means, with respect to any Security (or portion thereof) to be redeemed on any redemption date, the greater of (i) 1.0% of the amount of principal of such Security to be redeemed and (ii) the amount, if any, by which (a) the present value at such redemption date of (1) the redemption price of the amount of principal of such Security to be redeemed on the First Call Date (as stated in the table above) plus (2) all required interest payments due on the amount of principal of such Security to be redeemed through the First Call Date (excluding accrued but unpaid interest, if any, to the redemption date), computed using a discount rate equal to the Treasury Rate in respect of such redemption date plus 100 basis points, exceeds (b) the amount of principal of such Security to be redeemed. The Trustee shall have no duty to calculate or verify the calculation of the Applicable Premium.

"Treasury Rate" means, in respect of any redemption date, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 that has become publicly available at least two Business Days prior to such redemption date (or, if such Federal Reserve Statistical Release H.15 is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such redemption date to the First Call Date; *provided*, that if the period from such redemption date to the First Call Date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

Notice of any redemption may, at the Issuer's discretion, be revocable and be subject to one or more conditions precedent, including the receipt by the Trustee, on or prior to the redemption date, of money sufficient to pay the principal of, and premium, if any, and interest on, the Securities being redeemed.

6. Notice of Redemption

Written notice of redemption pursuant to paragraph 5 will be provided at least 30 days but not more than 60 days before the redemption date to each Holder of Securities to be redeemed. Securities in denominations larger than $1,000 may be redeemed in part but only in whole multiples of $1,000. If money sufficient to pay the redemption price of and accrued and unpaid interest on all Securities (or portions thereof) to be redeemed on the redemption date is deposited with a Paying Agent on or before the redemption date and certain other conditions are satisfied, on and after such date, interest ceases to accrue on such Securities (or such portions thereof) called for redemption.

7. Sinking Fund

The Securities are not subject to any sinking fund.

8. Repurchase of Securities at the Option of the Holders upon Apomorphine Disposition

Upon the occurrence of any Apomorphine Disposition, each Holder shall have the right, subject to certain conditions specified in the Indenture, to require the Issuer to repurchase all or any part of such Holder's then outstanding Securities at a repurchase price in cash equal to 112.5000% of the principal amount thereof, plus accrued and unpaid interest, if any, thereon to the repurchase date (subject to the right of the Holders of record on the relevant Record Date to receive interest due on the related Payment Date), as provided in, and subject to the terms of, the Indenture.

9. Repurchase of Securities at the Option of the Holders upon Change of Control

Upon the occurrence of a Change of Control, each Holder shall have the right, subject to certain conditions specified in the Indenture, to cause the Issuer to repurchase all or any part of such Holder's Securities at a repurchase price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to the repurchase date (subject to the right of the Holders of record on the relevant Record Date to receive interest due on the related Payment Date), as provided in, and subject to the terms of, the Indenture.

10. Security

The Securities will be secured by the Notes Collateral on the terms and subject to the conditions set forth in the Indenture and the Security Documents. The Collateral Agent holds the Notes Collateral in trust for the benefit of the Trustee and the Holders, in each case pursuant to the Security Documents and the Intercreditor Agreements. Each Holder, by accepting this Security, consents and agrees to the terms of the Security Documents (including the provisions providing for the foreclosure and release of Notes Collateral) and the Intercreditor Agreements as the same may be in effect or may be amended from time to time in accordance with their terms and the Indenture and authorizes and directs each of the Trustee and the Collateral Agent to enter into the Security Documents and the Intercreditor Agreements, and to perform its obligations and exercise its rights thereunder in accordance therewith.

11. Denominations; Transfer; Exchange

The Securities are in registered form, without coupons, in denominations of $250,000 and any integral multiple of $1,000 in excess thereof. The registration of transfer of or exchange of Securities shall be done in accordance with the Indenture. Upon any registration of transfer or exchange, the Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of the Security not to be redeemed) or to transfer or exchange any Securities for a period of 15 days prior to a selection of Securities to be redeemed.

12. Persons Deemed Owners

Subject to Section 2.14 of the Indenture, the registered Holder of this Security shall be treated as the owner of it for all purposes.

13. Unclaimed Money

If money for the payment of principal or interest remains unclaimed for two years, the Trustee and a Paying Agent shall pay the money back to the Issuer at its written request unless an abandoned property law designates another Person. After any such payment, the Holders entitled to the money must look to the Issuer for payment as general creditors and the Trustee and Paying Agent shall have no further liability with respect to such monies.

14. Discharge and Defeasance

Subject to certain conditions set forth in the Indenture, the Issuer at any time may terminate some of or all its obligations under the Securities and the Indenture if the Issuer deposits with the Trustee money or U.S. Government Obligations for the payment of principal and interest on the Securities to redemption or maturity, as the case may be.

15. Amendment; Waiver

Subject to certain exceptions set forth in the Indenture, the Indenture, the Securities, any Security Document or any Intercreditor Agreement may be amended with the written consent of the Holders of a majority in principal amount of the Securities then outstanding (voting as a single class). Subject to certain exceptions set forth in the Indenture, without the consent of any Holder, the Issuer, the Collateral Agent, the Guarantors and the Trustee may amend the Indenture, the Securities, any Security Document or any Intercreditor Agreement (i) to cure any ambiguity, omission, mistake, defect or inconsistency; (ii) to provide for the assumption by a Successor Company of the obligations of the Issuer under the Indenture and the Securities in accordance with the terms of the Indenture; (iii) to provide for the assumption by a Successor Guarantor of the obligations of a Guarantor under the Indenture and its Guarantee; (iv) to provide for uncertificated Securities in addition to or in place of certificated Securities; *provided*, *however*, that the uncertificated Securities are issued in registered form for purposes of Sections 871(h)(2)(B) and 881(c)(2)(B) of the Code and United States Treasury Regulation Section 5f.103-1(c); (v) to add additional Guarantees or co-obligors with respect to the Securities in accordance with the terms of the Indenture; (vi) to add to the covenants of the Issuer for the benefit of the Holders or to surrender any right or power conferred in the Indenture upon the Issuer in accordance with the terms of the Indenture; (vii) to comply with any requirement of the SEC in connection with qualifying or maintaining the qualification of the Indenture under the TIA (to the extent any such qualification is required); (viii) to make any change that does not adversely affect the rights of any Holder; (ix) to add additional assets as Notes Collateral to secure the Securities; (x) to provide for or confirm the issuance of Second Additional Securities; (xi) to release a Guarantor in accordance with the provisions of the Indenture, the Security Documents and the Intercreditor Agreement or to release Notes Collateral from the Lien pursuant to the Indenture, the Security Documents and the Intercreditor Agreements when permitted or required by the Indenture, the Security Documents or the Intercreditor Agreements; or (xii) to modify the Security Documents or the Intercreditor Agreements (a) to secure additional extensions of credit and add additional secured creditors holding First Priority Lien Obligations so long as the Incurrence of such First Priority Lien Obligations and related Liens are not prohibited by the provisions of the Indenture, (b) as provided for in provisions comparable to Section 2.11(b) of the form of Intercreditor Agreement attached as Exhibit D to the Indenture, (c) to add the Issuer or any Guarantor as a party to any Intercreditor Agreement to the extent such party Incurs any Secured Indebtedness that constitutes First Priority Lien Obligations in accordance with the terms of the Indenture or to remove the Issuer or any Guarantor as a party to any Intercreditor Agreement to the extent such party ceases to be bound by any and all First Priority Lien Obligations or (d) to accommodate and implement the Liens permitted by clause (19)(z) of the definition of “Permitted Liens”.

16. Defaults and Remedies

If an Event of Default (other than an Event of Default relating to certain events of bankruptcy, insolvency or reorganization) occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of outstanding Securities by notice to the Issuer may, and if such notice is given by the Holders such notice shall be given to the Issuer and the Trustee, declare that the principal of, and the premium, if any, and accrued but unpaid interest on, all the Securities is due and payable. Upon such a declaration, such principal and interest shall be due and payable immediately. If an Event of Default relating to certain events of bankruptcy, insolvency or reorganization occurs, the principal of, and the premium, if any, and accrued but unpaid interest on, all the Securities shall *ipso facto* become and be immediately due and payable, without any declaration or other act on the part of the Trustee or any Holders. Under certain circumstances, the Holders of a majority in principal amount of the Securities may rescind any such acceleration with respect to the Securities and its consequences.

Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Holder may pursue any remedy with respect to the Indenture or the Securities unless (i) such Holder gives the Trustee written notice stating that an Event of Default is continuing, (ii) the Holders of at least 25% in principal amount of the then outstanding Securities make a written request to the Trustee to pursue the remedy, (iii) such Holder or Holders offer to the Trustee security or indemnity satisfactory to it against any loss, liability or expense, (iv) the Trustee does not comply with such request within 60 days after the receipt of the request and the offer of security or indemnity and (v) the Holders of a majority in principal amount of the then outstanding Securities do not give the Trustee a direction inconsistent with such request during such 60-day period. Subject to certain restrictions set forth in the Indenture, the Holders of a majority in principal amount of the Securities may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee, however, may refuse to follow any direction that conflicts with law or the Indenture or, subject to the Indenture, that the Trustee determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability. Prior to taking any action under the Indenture, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

17. Trustee Dealings with the Issuer

Subject to certain limitations imposed by the Indenture, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer or its Affiliates with the same rights it would have if it were not Trustee.

18. No Recourse Against Others

No director, officer, employee, manager, incorporator or holder of any Equity Interests in the Issuer or in any Guarantor, as such, shall have any liability for any obligations of the Issuer or the Guarantors 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 of Securities by accepting a Security waives and releases all such liability.

19. Authentication

This Security shall not be valid until an authorized signatory of the Trustee (or an authenticating agent) manually signs the certificate of authentication on this Security.

20. 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 rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

21. Governing Law

THIS SECURITY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

22. CUSIP Numbers; ISINs

The Issuer has caused CUSIP numbers and ISINs to be printed on the Securities and has directed the Trustee to use CUSIP numbers and ISINs in notices (including notices of redemption) as a convenience to the Holders. No representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice and reliance may be placed only on the other identification numbers placed thereon.

The Issuer will furnish to any Holder of Securities upon written request and without charge to the Holder a copy of the Indenture, which has in it the text of this Security.

ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to:

_____

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

_____

(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint _____ agent to transfer this Security on the books of the Issuer. The agent may substitute another to act for him or her.

Date: _____ Your Signature: _____

Sign exactly as your name appears on this Security.

Signature Guarantee: _____

Date: _____ _____

Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor program reasonably acceptable to the Trustee

Signature of Signature Guarantee

CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR
REGISTRATION OF TRANSFER OF RESTRICTED SECURITIES

This certificate relates to $_____ principal amount of Securities held in (check applicable space) ____ book-entry or _____ definitive form by the undersigned.

The undersigned (check one box below):

☐ has requested the Trustee by written order to deliver in exchange for its beneficial interest in the Global Security held by the Depository a Security or Securities in definitive, registered form of authorized denominations and an aggregate principal amount equal to its beneficial interest in such Global Security (or the portion thereof indicated above);

☐ has requested the Trustee by written order to exchange or register the transfer of a Security or Securities.

In connection with any transfer of any of the Securities evidenced by this certificate occurring prior to the expiration of the period referred to in Rule 144(d)(1) under the Securities Act, the undersigned confirms that such Securities are being transferred in accordance with its terms:

CHECK ONE BOX BELOW

(1) ☐ to the Issuer or a Subsidiary thereof; or

(2) ☐ to the Registrar for registration in the name of the Holder, without transfer; or

(3) ☐ pursuant to an effective registration statement under the Securities Act of 1933; or

(4) ☐ inside the United States to a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act of 1933) that purchases for its own account or for the account of a qualified institutional buyer to whom notice is given that such transfer is being made in reliance on such Rule 144A, in each case pursuant to and in compliance with Rule 144A under the Securities Act of 1933; or

(5) ☐ outside the United States in an offshore transaction within the meaning of Regulation S under the Securities Act in compliance with Rule 904 under the Securities Act of 1933 and such Security shall be held immediately after the transfer through Euroclear or Clearstream until the expiration of the Restricted Period; or

(6) ☐ to an "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933) that has furnished to the Trustee a signed letter containing certain representations and agreements and, if applicable, an Opinion of Counsel; or

(7) ☐ pursuant to another available exemption from registration provided by Rule 144 under the Securities Act of 1933.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Securities evidenced by this certificate in the name of any Person other than the registered Holder thereof; *provided*, *however*, that if box (5), (6) or (7) is checked, the Issuer or the Trustee may require, prior to registering any such transfer of the Securities, such legal opinions, certifications and other information as the Issuer or the Trustee have reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933.

Date: _____ Your Signature: _____

Signature Guarantee: _____

Date: _____ _____

Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor program reasonably acceptable to the Trustee

Signature of Signature Guarantee

TO BE COMPLETED BY PURCHASER IF (4) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, and is aware that the sale to it is being made in reliance on such Rule 144A and acknowledges that it has received such information regarding the Issuer as the undersigned has requested pursuant to such Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by such Rule 144A.

Dated: _____

NOTICE: To be executed by an executive officer

{TO BE ATTACHED TO GLOBAL SECURITIES}

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL SECURITY

The initial principal amount of this Global Security is $_____. The following increases or decreases in this Global Security have been made:

Date	Amount of decrease in Principal Amount of this Global Security	Amount of increase in Principal Amount of this Global Security	Principal amount of this Global Security following such decrease or increase	Signature of authorized signatory of Trustee or Securities Custodian

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Security repurchased by the Issuer pursuant to Section 4.06 (Asset Sales) or Section 4.08 (Change of Control) of the Indenture, check the appropriate box:

Apomorphine Asset Sale Offer ☐ **Change of Control Offer** ☐

If you want to elect to have only part of this Security repurchased by the Issuer pursuant to Section 4.06 (Asset Sales) or Section 4.08 (Change of Control) of the Indenture, state the amount ($1,000 or any integral multiple of $1,000 in excess thereof): $_____

Date: _____ **Your Signature:** _____

(Sign exactly as your name appears on this Security)

Signature Guarantee: _____

Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor program reasonably acceptable to the Trustee

Exhibit 4.2

THIS COMMON STOCK PURCHASE WARRANT AND THE SHARES THAT MAY BE PURCHASED HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER APPLICABLE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. THIS COMMON STOCK PURCHASE WARRANT AND THE SHARES THAT MAY BE PURCHASED HEREUNDER MAY NOT BE SOLD OR OFFERED FOR SALE IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 AND REGISTRATION OR QUALIFICATION UNDER ANY OTHER SECURITIES LAWS OF ANY APPLICABLE STATE OR OTHER JURISDICTION OR (B) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.

AQUESTIVE THERAPEUTICS, INC.

COMMON STOCK PURCHASE WARRANT

WHEREAS, capitalized terms used herein shall have the meanings ascribed to such terms in Section 9 hereof;

WHEREAS, the Company and the Holder have entered into that certain Purchase Agreement (as amended, modified or supplemented, the "Purchase Agreement") pursuant to which the Company will issue to the Holder the Company's 12.5% Senior Secured Notes due 2025 (the "Senior Notes");

WHEREAS, in connection with the issuance of the Senior Notes to the Holder, the Company also wishes to issue this Warrant to the Holder; and

WHEREAS, the Company and the Holder desire to set forth herein the rights and obligations of the Company and the Holder both prior to and following the exercise of this Warrant;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company hereby issues this Warrant to the Holder, and the Company and the Holder hereby agree as follows:

Issue Date: July 15, 2019 Certificate No. [●]

THIS IS TO CERTIFY that [●] and its permitted transferees, successors and assigns (the "Holder") is the holder of this Warrant (this "Warrant") entitling the Holder to purchase from Aquestive Therapeutics, Inc., a Delaware corporation (the "Company"), at the price of $4.25 per share (the "Exercise Price"), at any time after the date hereof (the "Issue Date") and expiring on June 30, 2025 (the "Expiration Date"), up to [●] shares of the fully paid and non-assessable common stock, par value $0.001 per share, of the Company. The maximum number of shares of Common Stock that may be purchased pursuant to this Warrant is referred to herein as the "Aggregate Number". The Aggregate Number and Exercise Price set forth above shall also be adjusted under certain conditions specified in Section 5 hereof.

SECTION 1. This Warrant; Transfer and Exchange.

(a) This Warrant. This Warrant and the rights and privileges of the Holder under this Warrant may be exercised by the Holder in whole or in part as provided herein, shall survive any termination of the Purchase Agreement and, as more fully set forth in Section 1(b) hereof and Section 6 hereof, may, subject to the terms of this Warrant, be transferred by the Holder to any other Person or Persons who meet the requirements set forth herein at any time or from time to time, in whole or in part, regardless of whether the Holder retains any or all rights under the Purchase Agreement.

(b) Transfer and Exchanges. The Company shall initially record this Warrant on a register to be maintained by the Company and, subject to Section 6 hereof, from time to time thereafter shall reflect the transfer of this Warrant on such register when surrendered for transfer in accordance with the terms of this Warrant and properly endorsed, accompanied by appropriate instructions, and further accompanied by payment in cash or by check, bank draft or money order payable to the order of the Company, in United States currency, of an amount equal to any stamp or other tax or governmental charge or fee required to be paid by the Company in connection with the transfer of this Warrant. Upon any such transfer, a new warrant or warrants shall be issued to the transferee (and to the Holder for the balance of the Aggregate Number in the event this Warrant is only partially transferred), and the surrendered warrant shall be cancelled. This Warrant may be exchanged at the option of the Holder, when surrendered at the Principal Office, for another warrant or other warrants of like tenor and representing in the aggregate the right to purchase a like number of shares of Common Stock. Any attempt to transfer this Warrant in violation of the provisions of this Section 1(b) shall be null and void and the Company shall not register or effect any such transfer.

SECTION 2. Exercise.

(a) Right to Exercise. At any time after the Issue Date and on or before the Expiration Date, the Holder, in accordance with the terms hereof, may exercise this Warrant, in whole at any time or in part from time to time, by delivering this Warrant to the Company during normal business hours on any Business Day at the Principal Office, together with the notice of exercise in the form attached hereto as Exhibit A and made a part hereof (the "Notice of Exercise"), duly executed, and payment of the Exercise Price per share for each share purchased, as specified in the Notice of Exercise. The aggregate amount (the "Aggregate Exercise Price") to be paid for the shares to be purchased (the "Exercise Amount") shall equal the product of (i) the Exercise Amount multiplied by (ii) the Exercise Price. If the Expiration Date is not a Business Day, then this Warrant may be exercised on the next succeeding Business Day.

(b) Payment of the Aggregate Exercise Price. Payment of the Aggregate Exercise Price shall be made to the Company in cash or other immediately available funds or as provided in Section 2(c) hereof or a combination thereof. In the case of payment of all or a portion of the Aggregate Exercise Price pursuant to Section 2(c) hereof, the direction by the Holder to make a "Cashless Exercise" shall serve as accompanying payment for that portion of the Aggregate Exercise Price.

(c) Cashless Exercise. If the Company shall receive written notice from the Holder at the time of exercise of this Warrant that the Holder elects to make a "Cashless Exercise" of this Warrant, the Company shall deliver to the Holder (without payment by the Holder of any Exercise Price in cash) that number of Warrant Shares computed using the following formula:

$$X = \frac{Y(A - B)}{A}$$

where

X = the number of Warrant Shares to be issued to the Holder;

Y = the number of Warrant Shares purchasable under this Warrant (at the date of such calculation) or, if only a portion of this Warrant is being exercised, the number of Warrant Shares purchasable under the portion of this Warrant being exercised (at the date of such calculation);

A = the Fair Market Value Per Share; and

B = the Exercise Price (as adjusted to the date of such calculation).

(d) Issuance of Shares of Common Stock. Upon receipt by the Company of this Warrant at the Principal Office in proper form for exercise, and accompanied by the Notice of Exercise and payment of the Aggregate Exercise Price as aforesaid, the Holder shall be deemed to be the holder of record of the shares of Common Stock issuable upon such exercise, notwithstanding that certificates representing such shares of Common Stock may not then be actually delivered. Within 10 Business Days after such surrender of this Warrant, delivery of the Notice of Exercise and payment of the Aggregate Exercise Price as aforesaid, the Company shall cause its transfer agent to issue the Warrant Shares so purchased to the Holder in book-entry form. Any reference in this Warrant to the issuance of a certificate or certificates representing the Warrant Shares shall also be deemed a reference to the book-entry issuance of such Warrant Shares.

(e) Fractional Shares. The Company may, but shall not be required to, deliver fractions of shares of Common Stock upon exercise of this Warrant. If any fraction of a share of Common Stock would be deliverable upon an exercise of this Warrant, the Company may, in lieu of delivering such fraction of a share of Common Stock, make a cash payment to the Holder in an amount equal to the same fraction of the Fair Market Value Per Share.

(f) Partial Exercise. In the event of a partial exercise of this Warrant, the Company shall issue to the Holder a Warrant in like form for the unexercised portion thereof that has not expired.

(g) Deemed Automatic Exercise. If, on the Expiration Date, this Warrant remains unexercised (in whole or in part) and the Fair Market Value Per Share is greater than the Exercise Price, then this Warrant shall (automatically and without any action on the part of the Holder) be deemed exercised in full in a "Cashless Exercise" in accordance with Section 2(a) hereof, Section 2(b) hereof and Section 2(c) hereof.

SECTION 3. **Payment of Taxes.** The Company shall pay all stamp taxes attributable to the initial issuance of shares or other securities issuable upon the exercise of this Warrant or pursuant to Section 5 hereof, excluding any tax or taxes that may be payable because of a transfer involved in the issuance or delivery of any certificates for shares or other securities issued or delivered upon exercise of this Warrant in a name other than that of the Holder. The Company shall not be required to issue or deliver Warrant Shares to any Person or Persons other than the Holder unless and until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of any such tax or shall have established to the satisfaction of the Company that any such tax has been paid.

SECTION 4. **Replacement Warrant.** Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft or destruction, of an affidavit of loss and indemnity undertaking by the Holder to the Company in customary form, and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall issue and deliver in exchange and substitution for and upon cancellation of the mutilated Warrant, or in lieu of and in substitution for the Warrant lost, stolen or destroyed, a new Warrant of like tenor and representing an equivalent right or interest.

SECTION 5. **Adjustments to the Aggregate Number and the Exercise Price.**

(a) The Exercise Price shall be subject to adjustment from time to time as provided in this Section 5 (without duplication, but in each case after taking into consideration any prior adjustments pursuant to this Section 5) upon the occurrence of any of the following events:

(i) The issuance of Common Stock as a dividend or distribution to all holders of Common Stock, or a subdivision, combination, split, reverse split or reclassification of the outstanding Common Stock into a greater or smaller number of shares of Common Stock, in which event the Exercise Price shall be adjusted based on the following formula:

$$E_1 = E_0 \times \frac{N_0}{N_1}$$

where:

E_1 = the Exercise Price in effect immediately after (i) in the case of a dividend or distribution, the start of business on the first date on which the Common Stock can be traded without the right to receive such dividend or distribution (the "Ex-Date"), or (ii) the consummation of the transaction in the case of a subdivision, combination, split, reverse split or reclassification;

E_0 = the Exercise Price in effect immediately prior to (i) the start of business on the Ex-Date in the case of a dividend or distribution or (ii) the consummation of the transaction in the case of a subdivision, combination, split, reverse split or reclassification;

N_0 = the number of outstanding shares of Common Stock (including any shares issuable on exercise or conversion of outstanding options, warrants and convertible securities, but excluding any shares held by the Company or any of its subsidiaries) (together, "Common Stock Deemed Outstanding") immediately prior to (i) the start of business on the record date in the case of a dividend or distribution or (ii) the consummation of the transaction in the case of a subdivision, combination, split, reverse split or reclassification; and

N_1 = the number of shares of Common Stock equal to (i) in the case of a dividend or distribution, the sum of the Common Stock Deemed Outstanding immediately prior to the start of business on the record date for such dividend or distribution plus the total number of shares of Common Stock issued pursuant to such dividend or distribution, or (ii) in the case of a subdivision, combination, split, reverse split or reclassification, the shares of Common Stock Deemed Outstanding immediately after such subdivision, combination, split, reverse split or reclassification.

Such adjustment shall become effective immediately after (i) the start of business on the Ex-Date in the case of a dividend or distribution or (ii) the consummation of the transaction in the case of a subdivision, combination, split, reverse split or reclassification. If any dividend or distribution or subdivision, combination, split, reverse split or reclassification of the type described in this Section 5(a) is declared or announced but not so paid or made, the Exercise Prices shall again be adjusted to the applicable Exercise Prices that would then be in effect if such dividend or distribution or subdivision, combination, split, reverse split or reclassification had not been declared or announced, as the case may be.

(ii) The issuance as a dividend or distribution to all holders of Common Stock of evidences of indebtedness, securities (including convertible securities) of the Company or any other Person (other than Common Stock), cash or other property (excluding any dividend or distribution covered by clause (i) above), in which event the Exercise Price will be adjusted based on the following formula:

$$E_1 = E_0 \times \frac{P\text{-}FMV}{P}$$

where:

E_1 = the Exercise Price in effect immediately after the start of business on the Ex-Date for such dividend or distribution;

E_0 = the Exercise Price in effect immediately prior to the start of business on the Ex-Date for such dividend or distribution;

P = the Fair Market Value Per Share as of immediately prior to the start of business on the second Business Day preceding the Ex-Date for such dividend or distribution;

FMV = the Fair Value of the portion of such dividend or distribution applicable to one share of Common Stock as of the start of business on the date of such dividend or distribution.

Such decrease shall become effective immediately after the start of business on the Ex-Date for such dividend or distribution. In the event that such dividend or distribution is declared or announced but not so paid or made, the Exercise Price shall again be adjusted to be the Exercise Price which would then be in effect if such dividend or distribution had not been declared or announced.

(iii) The payment in respect of any tender offer or exchange offer by the Company for shares of Common Stock, where the cash and Fair Value of any other consideration included in the payment per share of Common Stock exceeds the Fair Market Value Per Share as of the start of business on the second Business Day preceding the expiration date of the tender or exchange offer (the "Offer Expiration Date"), in which event the Exercise Price will be adjusted based on the following formula:

$$E_1 = E_0 \times \frac{(N_0 \times P) - A}{(P \times N_1)}$$

where:

E_1 = the Exercise Price in effect immediately after the start of business on the Offer Expiration Date;

E_0 = the Exercise Price in effect immediately prior to the start of business on the Offer Expiration Date;

N_0 = the number of shares of Common Stock Deemed Outstanding immediately prior to the expiration of the tender or exchange offer (prior to giving effect to the purchase or exchange of Common Stock);

N_1 = the number of shares of Common Stock Deemed Outstanding immediately after the expiration of the tender or exchange offer (prior to giving effect to the purchase or exchange of Common Stock);

A= the aggregate cash and Fair Value of any other consideration payable for the shares of Common Stock purchased in such tender offer or exchange offer; and

P = the Fair Market Value Per Share as of the start of business on the second Business Day preceding the Offer Expiration Date.

An adjustment, if any, to the Exercise Price pursuant to this clause (iii) shall become effective immediately after the close of business on the Offer Expiration Date. In the event that the Company or a subsidiary of the Company is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company or such subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Exercise Price shall again be adjusted to be the Exercise Price which would then be in effect if such tender offer or exchange offer had not been made. Except as set forth in the preceding sentence, if the application of this clause (iii) to any tender offer or exchange offer would result in an increase in the Exercise Price, no adjustment shall be made for such tender offer or exchange offer under this clause (iii).

(iv) If any single action would require adjustment of the Exercise Price pursuant to more than one subsection of this Section 5(a), only one adjustment shall be made and such adjustment shall be the amount of adjustment that has the highest absolute value relative to the rights and interests of the Holder.

(v) Notwithstanding this Section 5(a) or any other provision of this Warrant, if an Exercise Price adjustment becomes effective on any Ex-Date, and a Warrant has been exercised on or after such Ex-Date and on or prior to the related record date resulting in the Person issued Common Stock being treated as the record holder of such Common Stock on or prior to the record date, then, notwithstanding the Exercise Price adjustment provisions in this Section 5(a), the Exercise Price adjustment relating to such Ex-Date will not be made. Instead, such Person will be treated as if it were the record owner of such Common Stock on an un-adjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

(b) Adjustments to Aggregate Number. Concurrently with any adjustment to the Exercise Price under Section 5(a), the Aggregate Number will be adjusted such that the Aggregate Number in effect immediately following the effectiveness of such adjustment will be equal to the Aggregate Number in effect immediately prior to such adjustment, multiplied by a fraction, (i) the numerator of which is the Exercise Price in effect immediately prior to such adjustment and (ii) the denominator of which is the Exercise Price in effect immediately following such adjustment.

(c) Certain Distributions of Rights and Warrants.

(i) Rights or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase the Company's securities (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events (a "Trigger Event"):

(1) are deemed to be transferred with such Common Stock;

(2) are not exercisable; and

(3) are also issued in respect of future issuances of Common Stock,

shall be deemed not to have been distributed for purposes of this Section 5 (and no adjustment to the Exercise Price or the Aggregate Number under this Section 5 will be made) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Exercise Price and the Aggregate Number shall be made under this Section 5 (subject in all respects to Section 5(d) below).

(ii) If any such right or warrant is subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and record date with respect to new rights or warrants with such rights (subject in all respects to Section 5(d) below).

(iii) In addition, except as set forth in Section 5(d), in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in clause (ii) above) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Exercise Price and the Aggregate Number under this Section 5 was made (including any adjustment contemplated in Section 5(d)):

(1) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by the holders thereof, the Exercise Price and the Aggregate Number shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a distribution under Section 5(a)(ii), equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase; and

(2) in the case of such rights or warrants that shall have expired or been terminated without exercise by the holders thereof, the Exercise Price and the Aggregate Number shall be readjusted as if such rights and warrants had not been issued or distributed.

(d) Stockholder Rights Plans. If the Company has a stockholder rights plan in effect with respect to the Common Stock, upon exercise of the Warrant the Holder shall be entitled to receive, in addition to the Common Stock, the rights associated therewith under such stockholder rights plan, unless, prior to such exercise, such rights have separated from the Common Stock.

(e) Restrictions on Adjustments.

(i) Except in accordance with Sections 5(a) and 5(b), the Exercise Price and the Aggregate Number will not be adjusted for the issuance of Common Stock or other securities of the Company.

(ii) For the avoidance of doubt, except as otherwise provided in Sections 5(a) and 5(b), neither the Exercise Price nor the Aggregate Number will be adjusted:

(1) upon the issuance of any shares of Common Stock or other securities or any payments pursuant to any equity incentive plan of the Company;

(2) upon any issuance of any shares of Common Stock pursuant to the exercise of the Warrant;

(3) upon the offer and sale of shares of Common Stock by the Company in a primary offering;

(4) upon the issuance of shares of Common Stock or other securities of the Company in connection with a business acquisition transaction; or

(5) upon the issuance of any shares of Common Stock or other securities of the Company in any financing transaction with a third party.

(iii) No adjustment shall be made to the Exercise Price or the Aggregate Number for any of the transactions described in Section 5(a) if the Company makes provisions for participation in any such transaction with respect to the Holder of this Warrant without exercise of the Warrant on the same basis as with respect to the shares of Common Stock issuable hereunder with notice that the Company's board of directors determines in good faith to be fair and appropriate

(f) Certificate as to Adjustment. As promptly as reasonably practicable following (i) any adjustment of the Exercise Price or the Aggregate Number or (ii) the receipt by the Company of a written request by the Holder, but in each case in any event not later than ten Business Days thereafter, the Company shall furnish to the Holder a certificate of an executive officer certifying the Exercise Price then in effect and the Aggregate Number or the amount, if any, of other shares of stock or other securities or assets then issuable upon exercise of the Warrant, which certificate shall, in the case of clause (i) above, set forth in reasonable detail any adjustment and the facts upon which it is based.

(g) Treatment of Warrant upon a Cash Change of Control. In the event of a Change of Control in which the consideration to be received by the Company's stockholders consists solely of cash (a "Cash Change of Control"), if this Warrant is outstanding immediately prior to such Cash Change of Control, then (i) if the Fair Market Value Per Share is greater than the then applicable Exercise Price, this Warrant shall be automatically exchanged without exercise for the same amount of cash as the Holder would have been entitled to receive upon the occurrence of such Cash Change of Control if this Warrant had been exercised in full pursuant to Section 2(c) hereof immediately prior to such Cash Change of Control, and (ii) if the Fair Market Value Per Share is less than or equal to the then applicable Exercise Price, this Warrant will expire immediately prior to the consummation of such Change of Control. If this Warrant is exchanged in accordance with clause (i) above, the Company shall pay or deliver to the Holder the cash so contemplated promptly following the consummation of the Cash Change of Control.

(h) Treatment of Warrant upon Any Other Change of Control. If, at any time while this Warrant is outstanding, the Company consummates a Change of Control that is not a Cash Change of Control, then:

(1) if the cash consideration (if any) per Warrant Share is greater than the then applicable Exercise Price, this Warrant shall be automatically exchanged without exercise for the same amount and kind of cash, securities or other property as the Holder would have been entitled to receive upon the occurrence of such Change of Control if this Warrant had been exercised in full pursuant to Section 2(c) hereof immediately prior to such Change of Control, it being understood that if this Warrant is exchanged in accordance with this subclause (1) above, the Company shall pay or deliver to the Holder the cash, securities or other property so contemplated promptly following the consummation of the Change of Control; or

(2) if the cash consideration (if any) per Warrant Share is less than or equal to the then applicable Exercise Price, the Holder shall have the right thereafter to receive, upon exercise of this Warrant (in whole at any time or in part from time to time), the same amount and kind of securities, cash or property as the Holder would have been entitled to receive upon the occurrence of such Change of Control if it had been, immediately prior to such Change of Control, a holder of the number of Warrant Shares then issuable upon such exercise of this Warrant (the "Alternate Consideration"); in such case, appropriate adjustment (in form and substance reasonably satisfactory to the Holder) shall be made with respect to the Holder's rights under this Warrant to insure that the provisions of this Section 5 hereof shall thereafter be applicable, as nearly as possible, to this Warrant in relation to any securities, cash or property thereafter acquirable upon exercise of this Warrant (including, in the case of any Change of Control, an immediate adjustment in the Exercise Price to the value per share for the Common Stock reflected by the terms of such Change of Control transaction, and a corresponding immediate adjustment to the number of Warrant Shares exercisable upon exercise of this Warrant, if the value so reflected is less than the Exercise Price in effect immediately prior to Change of Control). If this subclause (2) shall be applicable, the Company shall not effect any such Change of Control unless, prior to or simultaneously with the consummation thereof, any successor to the Company, any surviving entity or the Person purchasing or otherwise acquiring such assets or other appropriate Person shall assume the obligation to deliver to the Holder such Alternate Consideration as, in accordance with the foregoing provisions, the Holder may be entitled to receive and the other obligations under this Warrant.

SECTION 6. Transfers of this Warrant and the Warrant Shares.

(a) Generally. Subject to compliance with applicable U.S. federal and state securities Laws and the restrictions set forth in this Section 6, the Holder may transfer this Warrant and the Warrant Shares in whole or in part to any Person, and, upon the reasonable request of the Holder, the Company agrees that it shall use commercially reasonable efforts to promptly assist the Holder in making any such transfer in compliance with any applicable U.S. federal and state securities Laws. This Warrant has not been, and the Warrant Shares at the time of their issuance may not be, registered under the Securities Act. For a transfer of this Warrant as an entirety by the Holder, upon surrender of this Warrant to the Company, together with the notice of assignment in the form attached hereto as Exhibit B duly completed and executed on behalf of the Holder, the Company shall issue a new Warrant of the same denomination to the assignee. For a transfer of this Warrant with respect to a portion of the Warrant Shares purchasable hereunder, upon surrender of this Warrant to the Company, together with the notice of assignment in the form attached hereto as Exhibit B duly completed and executed on behalf of the Holder, the Company shall issue a new Warrant to the assignee, in such denomination as shall be requested by the Holder, and shall issue to the Holder a new Warrant covering the number of Warrant Shares in respect of which this Warrant shall not have been transferred.

(b) Representations by the Holder. The Holder, by its acceptance of this Warrant, represents and warrants to the Company as follows:

(i) this Warrant has been acquired by the Holder, and any Warrant Shares to be acquired by the Holder will be acquired, for the account of the Holder for investment purposes for its own account and not with a view to or for sale in connection with any distribution or reselling thereof in a transaction that would violate the Securities Act or the securities laws of any state of the United States or any other applicable jurisdiction;

(ii) the Holder is an “accredited investor” within the meaning of Rule 501(a) of Regulation D under the Securities Act;

(iii) the Holder is experienced in evaluating and investing in companies engaged in businesses similar to that of the Company;

(iv) the Holder understands that investment in this Warrant (and any Warrant Shares that the Holder acquires) involves substantial risks;

(v) the Holder has such knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in this Warrant (and any Warrant Shares that the Holder acquires) and is able to bear the economic risk of that investment; and

(vi) the Holder understands that this Warrant is, and the Warrant Shares may be, characterized as "restricted securities" under the U.S. federal securities Laws inasmuch as they are being (or may be) acquired from the Company in a transaction not involving a public offering and that under such Laws this Warrant and the Warrant Shares may be resold without registration under the Securities Act only in certain limited circumstances and, accordingly, the Holder represents that it is familiar with Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act.

(c) Transfer Restrictions Regarding This Warrant. This Warrant (or any warrants represented hereby) may only be sold, in whole or in part, (i) pursuant to an effective registration statement covering the resale by the Holder of this Warrant under the Securities Act or (ii) pursuant to an exemption from registration under the Securities Act and, if reasonably required by the Company, upon delivery to the Company of a customary opinion of legal counsel (which may rely on customary certificates and representations), certifications or other evidence to establish that such registration is not required under the Securities Act.

(d) Transfer Restrictions Regarding Warrant Shares. If the Warrant Shares are not registered at the time of issuance, then any Warrant Shares may only be sold (i) pursuant to an effective registration statement under the Securities Act or (ii) pursuant to an exemption from registration under the Securities Act and upon delivery to the Company of a customary opinion of legal counsel (which may rely on customary certificates and representations), certifications or other evidence as may reasonably be required by the Company in order to determine that such registration is not required under the Securities Act. The Holder acknowledges that the Company may place a restrictive legend on any Warrant Shares issued upon exercise in order to comply with applicable securities Laws, unless such Warrant Shares are sold pursuant to an effective registration statement or are otherwise freely tradable under Rule 144.

SECTION 7. Covenants. Until the later of (i) the Expiration Date and (ii) the date as of which this Warrant has been exercised in full, the Company hereby covenants to the Holder as set forth in this Section 7.

(a) Validly Issued Shares. All shares of Common Stock that may be issued upon exercise of this Warrant, assuming full payment of the Aggregate Exercise Price, shall, upon delivery by the Company, be duly authorized and validly issued, fully paid and non-assessable, free from all stamp taxes, liens and charges with respect to the issue or delivery thereof and otherwise free of all other security interests, encumbrances and claims (other than security interests, encumbrances and claims to which the Holder is subject prior to or upon the issuance of the applicable Warrant Shares, restrictions under applicable U.S. federal and/or state securities Laws and other transfer restrictions described herein).

(b) Reservation of Shares. The Company shall at all times reserve and keep available out of the aggregate of its authorized but unissued Common Stock or its authorized and issued Common Stock held in its treasury, free of preemptive rights, such number of its duly authorized shares of Common Stock as shall be sufficient to enable the Company to issue the shares of Common Stock issuable upon exercise in full of this Warrant.

(c) Affirmative Actions to Permit Exercise and Realization of Benefits. If any shares of Common Stock reserved or to be reserved for the purpose of the exercise of this Warrant, or any shares or other securities reserved or to be reserved for the purpose of issuance pursuant to Section 5 hereof, require registration with or approval of any Governmental Authority under any U.S. federal or state Law (other than securities Laws) before such shares or other securities may be validly delivered upon exercise of this Warrant, then the Company covenants that it will, at its sole expense, secure such registration or approval, as the case may be (including, without limitation, approvals or expirations of waiting periods required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended).

(d) Integration. The Company shall not, and shall use its commercially reasonable efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of this Warrant in a manner that would require the registration under the Securities Act of the sale of this Warrant to the Holder or any assignee of the Holder.

SECTION 8. Registration Rights

(a) Registration of Warrant Shares.

(i) No later than sixty (60) days after the Issue Date, the Company shall prepare and file with the Commission one registration statement on Form S-3 (or, if the Company is not then eligible to use Form S-3 to register the resale of the Warrant Shares, on such form of registration statement as is then available to effect a registration therefor) (the "Registration Statement") covering the resale of the Warrant Shares. The Holder shall not be named as an "underwriter" in the Registration Statement without the Holder's prior written consent. Such Registration Statement also shall cover, to the extent allowable under the Securities Act and the rules promulgated thereunder (including Rule 416), such indeterminate number of additional shares of Common Stock resulting from stock splits, stock dividends or similar transactions with respect to the Warrant Shares. Such Registration Statement shall not include any shares of Common Stock or other securities for the account of any holder other than the Holder without the prior written consent of the Holder; provided that the Registration Statement may include securities to be registered pursuant to (i) that certain Registration Rights Agreement, dated as of June 24, 2018, among the Company, Aquestive Partners, LLC, and the other parties named therein (as such agreement is in effect on the date hereof) (the "Bratton RRA"), and (ii) the shares of Common Stock issued or issuable upon exercise of the other warrants dated the date hereof, each by and between the Company and each other holder party thereto. The Registration Statement (and each amendment or supplement thereto, and each request for acceleration of effectiveness thereof) shall be provided to the Holder and its counsel prior to its filing or other submission.

(ii) The Company shall use reasonable best efforts to have the Registration Statement declared effective within ninety (90) days after the Issue Date. The Company shall notify the Holder by facsimile or e-mail as promptly as practicable, and in any event, within twenty-four (24) hours, after the Registration Statement is declared effective, and shall simultaneously provide the Holder with a number of copies of any related prospectus reasonably requested to be used in connection with the sale or other disposition of the securities covered thereby.

(iii) For not more than thirty (30) consecutive days, and for not more than an aggregate of sixty (60) days in any twelve (12) month period, the Company may suspend the use of any prospectus included in the Registration Statement contemplated by this Section in the event that the Company determines in good faith that such suspension is necessary (A) to delay the disclosure of material non-public information concerning the Company, the disclosure of which at the time would be, in the good faith opinion of the Company, materially detrimental to the Company, or (B) to amend or supplement the affected Registration Statement or the related prospectus so that such Registration Statement or prospectus shall 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, in the case of the prospectus in light of the circumstances under which they were made, not misleading (an "Allowed Delay"); *provided* that the Company shall promptly (x) notify the Holder in writing of the commencement of and the reasons for an Allowed Delay, but shall not (without the prior written consent of the Holder) disclose to the Holder any material non-public information giving rise to an Allowed Delay; (y) advise the Holder in writing (including via e-mail) to cease all sales under the Registration Statement until the end of the Allowed Delay; and (z) use commercially reasonable best efforts to terminate an Allowed Delay as promptly as practicable.

(b) Piggyback Rights. Without limiting Section 8(a), the Company agrees that it shall notify the Holder in writing at least 10 days prior to the filing of any registration statement under the Securities Act for purposes of a public offering of Common Stock of the Company (including, without limitation, registration statements relating to secondary offerings of securities of the Company, but excluding any Special Registration Statement) that would be filed at any time during which this Warrant is still outstanding and/or the Holder continues to hold any Warrant Shares, and the Company will afford the Holder an opportunity to include in such registration statement all or part of the Warrant Shares subject to the provisions hereof (such registration statement, the "Piggyback Registration Statement"). If the Holder desires to include in any such Piggyback Registration Statement all or any part of the Warrant Shares held by it, the Holder shall, within seven days after the above-described notice from the Company, so notify the Company in writing and shall thereafter furnish the Company with such information as the Company reasonably requires to effect the registration of such Warrant Shares. The Company will use its commercially reasonable efforts to cause such Warrant Shares as to which inclusion shall have been so requested to be included in the Piggyback Registration Statement. The Holder shall be entitled to sell the Warrant Shares included in a Piggyback Registration Statement in accordance with the method of distribution requested by it; *provided* that, if the Piggyback Registration Statement relates to an underwritten offering, then (i) the Company shall be entitled to select the underwriters in its sole discretion and (ii) the Holder must sell all Warrant Shares included on the Piggyback Registration Statement in such underwritten offering pursuant to an underwriting agreement containing terms and conditions that are customary for secondary offerings. The Company may withdraw a Piggyback Registration Statement prior to its being declared effective without incurring any liability to the Holder and shall not be required to keep a Piggyback Registration Statement effective for longer than the period contemplated by the intended manner of distribution for the securities of the Company to be sold by the Company as described in the prospectus included in the Piggyback Registration Statement. The piggyback registration rights provided for in this Section 8(b) shall not apply to securities which may be sold pursuant to Rule 144 under the Securities Act without volume or manner-of-sale restrictions and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144(c)(1).

(c) Underwriter Cutback. In the event the managing underwriter shall be of the opinion that the number of such securities, when taken together with the Warrant Shares requested to be included in an offering pursuant to Section 8(a) or (b), alone or taken together with the equity securities of the Company to be included therein, would adversely affect the marketing of such offering (including the price at which the securities of the Company may be sold), then the number of securities to be included in such underwritten offering will be reduced (an "Underwriter Cutback"), with the securities to be included in such offering based on the following priority: (w) first, in the case of a registration under Section 8(b), the number of securities that the Company seeks to include in the offering, up to the number that, in the opinion of the managing underwriter, would not adversely affect the marketing of the offering (including the price at which such securities of the Company may be sold); (x) second, if such underwritten offering is a Demand Registration (as defined in the Bratton RRA), to the Demand Holders (as defined in the Bratton RRA) and Other Priority Holders (as defined in the Bratton RRA) as set forth in the Bratton RRA; (y) third, the number of the securities of the Company requested to be included by the Holder and any other Person(s) who has (have) elected to include securities pursuant to written agreements with the Company, in each case, up to the number that, in the opinion of the managing underwriter, would not adversely affect the marketing of the offering (including the price at which the securities (including the Warrant Shares) may be sold); and (z) fourth, the number of securities of the Company requested to be included by (1) the Company, in the case of a registration pursuant to Section 8(a) and (2) any other Person(s) in the offering with the permission of the Company, up to the number that, in the opinion of the managing underwriter, would not adversely affect the marketing of the offering (including the price at which the securities of the Company may be sold). The Underwriter Cutbacks described in the immediately preceding clause (y) shall be allocated pro rata among the participating Persons, including the Holder, on the basis of the number of securities requested to be included in such registration by such Persons.

(d) Expenses. The expenses of any such registration under Section 8(a) or (b) above (other than any underwriting discounts, selling commissions and stock transfer taxes applicable to the sale of Warrant Shares, and the fees and disbursements of counsel for the selling security holders, other than one special counsel for the selling security holders in any offering) shall be borne by the Company. If the Holder decides not to include all of its Warrant Shares in any registration statement thereafter filed by the Company, the Holder shall nevertheless continue to have the right to include any Warrant Shares in any subsequent Piggyback Registration Statement or Piggyback Registration Statements as may be filed by the Company with respect to offerings of its securities, all upon the terms and conditions set forth herein.

(e) Incorporation of Other Provisions. To the extent not duplicative of or inconsistent with the terms hereof, the provisions of Sections 4, 6, 7 and (to the extent necessary to permit interpretation) 8 of the Bratton RRA shall apply to the registration rights provisions and related obligations in this Section 8, *mutatis mutandis*.

(f) Listing of the Warrant Shares. To the extent applicable, the Company shall promptly secure the listing of the Warrant Shares on whichever market is at the time the principal trading exchange or market for the Common Stock, based upon share volume, after such time as the Warrant Shares are no longer required to contain the legend referred to in Section 6 hereof, and the Company shall provide to the Holder evidence of such listing.

(g) Compliance with Rule 144. The Company shall timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act. As long as the Holder owns any Warrant Shares, if the Company is not required to file reports pursuant to such laws, the Company will prepare and furnish to the Holder and make publicly available in accordance with Rule 144 such information as is required for the Holder to sell Warrant Shares under Rule 144. So long as the Warrant Shares are not registered under an effective registration statement, the Company further covenants that it will take such further action as the Holder may reasonably request and is within the Company's control, all to the extent required from time to time to enable the Holder to sell such Warrant Shares without registration under the Securities Act within the limits of the exemptions provided by Rule 144.

SECTION 9. Definitions. As used herein, the following terms shall have the following meanings.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified.

"Aggregate Exercise Price" has the meaning set forth in Section 2(a) hereof.

"Aggregate Number" has the meaning set forth in the preamble hereto.

"Allowed Delay" has the meaning set forth in Section 8(a) hereof.

"Alternate Consideration" has the meaning set forth in Section 5(h) hereof.

"Bloomberg" means Bloomberg Financial Markets (or a comparable reporting service of national reputation selected by the Company and reasonably acceptable to the Holder if Bloomberg Financial Markets is not then reporting sales prices of the Common Stock).

"Bratton RRA" has the meaning set forth in Section 8(a)(i) hereof.

"Business Day" means a day (other than a Saturday or Sunday) on which commercial banks are not authorized or required to close in New York City.

"Cash Change of Control" has the meaning set forth in Section 5(g) hereof.

"Change of Control" means any of the following, whether directly or indirectly and whether in one or a series of related transactions: (i) the sale, assignment, transfer, conveyance or other disposal of all or substantially all of the assets or all or a majority of the outstanding voting shares of capital stock of the Company, other than to any of the Permitted Holders, (ii) a purchase, tender or exchange offer accepted by the holders of a majority of the outstanding voting shares of capital stock of the Company or (iii) a "person" or "group" (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act) is or shall become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), other than to any of the Permitted Holders, directly or indirectly, of a majority of the voting power of the capital stock of the Company including pursuant to any merger, consolidation or other business combination, other than any of the Permitted Holders; provided that for purposes of Section 5(g) any of the foregoing references to "a majority" of the voting power of the capital stock of the Company or "a majority" of the outstanding voting shares of capital stock of the Company shall be deemed to refer to "100% of" such voting power or voting shares, as the case may be.

"Commission" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Common Stock" means (i) the Company's common stock, par value $0.001 per share, and (ii) any other capital stock into which such common stock is reclassified or reconstituted.

"Common Stock Deemed Outstanding" has the meaning set forth in Section 5(a)(i) hereof.

"Company" has the meaning set forth in the preamble hereto.

"Ex-Date" has the meaning set forth in Section 5(a)(i) hereof.

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

"Exercise Amount" has the meaning set forth in Section 2(a) hereof.

"Exercise Price" has the meaning set forth in the preamble hereto.

"Expiration Date" has the meaning set forth in the preamble hereto.

"Fair Market Value Per Share" means as of any date: (i) the last reported sale price or, if there are no sales, the last reported bid price of the Common Stock on the Business Day immediately prior to such date on the New York Stock Exchange, the NYSE American LLC, the NASDAQ Global Market, the NASDAQ Global Select Market or the Nasdaq Capital Market (or any of their respective successors) as reported by Bloomberg; (ii) if clause (i) above does not apply, the last sales price of the Common Stock in the over-the-counter market on the pink sheets or bulletin board for such security on the Business Day immediately prior to such date as reported by Bloomberg or, if there are no sales, the last reported bid price of the Common Stock on the Business Day immediately prior to the date of exercise as reported by Bloomberg; or (iii) if fair market value cannot be calculated as of such date on the basis of either clause (i) or clause (ii) above, the price determined in good faith by the Company's board of directors or upon the advice of an independent investment banking, financial advisory or valuation firm or appraiser as selected by the Company's board of directors.

"Fair Value" means the fair value of any securities or other distributed property determined as follows:

(i) in the case of securities listed on any United States national or regional securities exchange, the volume weighted average price ("VWAP") of a single unit of such security in composite trading for the principal exchange on which such securities are listed for the 20 trading days ending on, but excluding, the date of valuation (or if the security has been listed for fewer than 20 trading days, the VWAP for such lesser period of time); or

(ii) in all other cases, the fair value as of a date not earlier than 10 Business Days preceding the specified date as determined in good faith by the Company's board of directors or upon the advice of an independent investment banking, financial advisory or valuation firm or appraiser as selected by the Company's board of directors;

provided, however, that notwithstanding the foregoing, if the Company's board of directors determines in good faith that the application of clause (i) of this definition would result in a VWAP based on the trading prices of a thinly-traded security such that the price resulting therefrom may not represent an accurate measurement of the fair value of such security, the board of directors at its election may apply the provisions of clause (ii) of this definition in lieu of clause (i) with respect to the determination of the fair value of such security.

"Governmental Authority" means any nation, government, branch of power (whether executive, legislative or judicial), state, province or municipality or other political subdivision thereof or any entity exercising executive, legislative, judicial, monetary, regulatory or administrative functions of or pertaining to government, including, without limitation, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, courts, bodies, boards, tribunals and dispute settlement panels, and other law-making, rule-making or regulation-making organizations or entities of any state, territory, county, city or other political subdivision of the United States.

"Holder" has the meaning set forth in the preamble hereto.

"Issue Date" has the meaning set forth in the preamble hereto.

"Laws" means, collectively, all international, foreign, federal, state, provincial, territorial, municipal and local statutes, treaties, rules, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"Notice of Exercise" has the meaning set forth in Section 2(a) hereof.

"Offer Expiration Date" has the meaning set forth in Section 5(a)(iii) hereof.

"Permitted Holders" means, at any time, each of Mr. Douglas Bratton, Bratton Capital Management L.P., MRX Partners, LLC, Monoline R.X., L.P., Monoline II R.X., L.P. and Monoline III R.X., L.P.

"Person" means any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or Governmental Authority or other entity of whatever nature.

"Piggyback Registration Statement" has the meaning set forth in Section 8(b) hereof.

"Principal Office" means the Company's principal office as set forth in Section 14 hereof or such other principal office of the Company in the United States of America the address of which first shall have been set forth in a notice to the Holder.

"Purchase Agreement" has the meaning set forth in the recitals hereto.

"Registration Statement" has the meaning set forth in Section 8(a) hereof.

"Rule 144" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule 144 may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule 144.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Senior Notes" has the meaning set forth in the recitals hereto.

"Special Registration Statement" means (i) a registration statement relating to any employee benefit plan; (ii) with respect to any corporate reorganization or transaction under Rule 145 promulgated under the Securities Act, any registration statement related solely to the issuance or resale of securities issued in such a transaction; (iii) a registration statement related solely to stock issued upon conversion of debt securities; (iv) any registration statement filed under Rule 462(b) promulgated under the Securities Act; or (v) any registration statement on Form S-4 or Form S-8 not contemplated by clauses (i) – (iv) hereof.

"Trigger Event" has the meaning set forth in Section 5(c)(i) hereof.

"Underwriter Cutback" has the meaning set forth in Section 8(c) hereof.

"Warrant" has the meaning set forth in the preamble hereto.

"Warrant Securities" means, collectively, this Warrant and the Warrant Shares.

"Warrant Shares" means (i) the shares of Common Stock issued or issuable upon exercise of this Warrant in accordance with its terms and (ii) all other shares of the Company's capital stock issued with respect to such shares by way of stock dividend, stock split or other reclassification or in connection with any merger, consolidation, recapitalization or other reorganization affecting the Company's capital stock.

SECTION 10. Survival of Provisions. Upon the full exercise by the Holder of its rights to purchase Common Stock under this Warrant, all of the provisions of this Warrant shall terminate, other than the provisions of Sections 6-21 hereof, which shall expressly survive such exercise until the later of (a) the Expiration Date and (b) the time when the Holder no longer holds any Warrant Shares.

SECTION 11. Delays, Omissions and Indulgences. It is agreed that no delay or omission to exercise any right, power or remedy accruing to the Holder upon any breach or default of the Company under this Warrant shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach or default, or any acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on the Holder's part of any breach or default under this Warrant, or any waiver on the Holder's part of any provisions or conditions of this Warrant, must be in writing and that all remedies under this Warrant, by Law or otherwise afforded to the Holder shall be cumulative and not alternative.

SECTION 12. Rights of Transferees. Subject to Section 6 hereof, the rights granted under this Warrant to the Holder shall pass to and inure to the benefit of all subsequent transferees of all or any portion of this Warrant (*provided*, that the Holder and any transferee shall hold such rights in proportion to their respective ownership of this Warrant and the Warrant Shares) until extinguished pursuant to the terms hereof.

SECTION 13. Captions. The section headings and other captions appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Warrant.

SECTION 14. Notices. All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Warrant) shall be given or made in writing delivered to the applicable addresses specified below or at such other address as shall be designated by the Company or the Holder, as applicable, in a notice to the other. Except as otherwise provided in this Warrant, all such communications shall be deemed to have been duly given upon receipt of a legible copy thereof, in each case given or addressed as aforesaid.

(a) If to the Company:

Aquestive Therapeutics, Inc.
30 Technology Drive
Warren, New Jersey 07059
Attention: Chief Financial Officer & General Counsel
Facsimile: 908-561-1209

with a copy to:

Dechert LLP
1095 Avenue of the Americas
New York, New York 10036
Attention: David Rosenthal
Facsimile: 212-698-3599

(b) if to the Holder:

[●]
[●]
Attention: [●]
Facsimile: [●]

with a copy to:

Pillsbury Winthrop Shaw Pittman LLP
31 W. 52nd Street
New York, New York 10019
Attention: Jeffrey Delaney
Facsimile: 212-858-1500

SECTION 15. Successors and Assigns. This Warrant shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, *provided*, that the Company shall have no right to assign its rights, or to delegate its obligations, hereunder without the prior written consent of the Holder. The Company shall not require the Holder to provide an opinion of counsel if any transfer by the Holder is to an Affiliate of the Holder; *provided*, that any such transferee is an "accredited investor" as defined in Regulation D promulgated under the Securities Act and the Holder and such transferee each complies in all respects with the applicable transfer procedures set forth in Section 6 hereof.

SECTION 16. Amendments. Neither this Warrant nor any term hereof may be amended, changed, waived, discharged or terminated without the prior written consent of the Holder and the Company to such action.

SECTION 17. Severability. If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by applicable Law the parties hereto agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof.

SECTION 18. **Governing Law.** This Warrant and the rights and obligations of the Holder and the Company hereunder shall be governed by, and construed in accordance with, the Law of the State of New York, without regard to principles of conflicts of laws that would result in the application of the Laws of any other jurisdiction; *provided*, that Section 5-1401 of the New York General Obligations Law shall apply.

SECTION 19. **Entire Agreement.** This Warrant, together with the Purchase Agreement and the other documents contemplated thereby, are intended by the parties as a final expression of their agreement and are intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein.

SECTION 20. **Rules of Construction.** Unless the context otherwise requires, "or" is not exclusive, and references to sections or subsections refer to sections or subsections of this Warrant. All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the context may require.

SECTION 21. **No Effect Upon Lending Relationship.** Notwithstanding anything herein to the contrary, nothing contained in this Warrant shall affect, limit or impair the rights and remedies of the Holder or any of its Affiliates in its capacity as a lender to the Company pursuant to any agreement under which the Company has borrowed money from the Holder or any of its Affiliates, including, without limitation, the Purchase Agreement and the Senior Notes. Without limiting the generality of the foregoing, neither the Holder nor any Affiliate of the Holder, in exercising its rights as a lender, including making its decision on whether to foreclose on any collateral security, will have any duty to consider (a) its status or the status of any of its Affiliates as a direct or indirect equity holder of the Company, (b) the equity of the Company or (c) any duty it may have to any other direct or indirect equity holder of the Company, except as may be required by commercial Law applicable to creditors generally.

{Remainder of Page Intentionally Left Blank}

IN WITNESS WHEREOF, the Company has caused this Warrant to be issued and executed in its corporate name by a duly authorized officer as of the date first written above.

AQUESTIVE THERAPEUTICS, INC.

By: _____
Name:
Title:

Accepted and agreed:

[HOLDER]

By: _____
Name:
Title:

{Signature Page to Warrant}

Form of
NOTICE OF EXERCISE

To: Aquestive Therapeutics, Inc.
30 Technology Drive
Warren, New Jersey 07059
Attention: Chief Financial Officer & General Counsel
Facsimile: 908-561-1209

1. The undersigned, pursuant to the provisions of the attached Warrant, hereby elects to exercise this Warrant with respect to _____ shares of Common Stock (the "Exercise Amount"). Capitalized terms used but not otherwise defined herein have the meanings ascribed thereto in the attached Warrant.

2. The undersigned herewith tenders payment for such shares in the following manner (please check type, or types, of payment and indicate the portion of the Exercise Price to be paid by each type of payment):

_____ Exercise for Cash
_____ Cashless Exercise

3. Please issue a certificate or certificates representing the shares issuable in respect hereof under the terms of the attached Warrant, as follows:

_____
(Name of Record Holder/Transferee)

and deliver such certificate or certificates to the following address:

_____
(Address of Record Holder/Transferee)

4. The undersigned represents that the aforesaid shares are being acquired for the account of the undersigned for investment purposes and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or reselling such shares.

5. If the Exercise Amount is less than all of the shares of Common Stock purchasable under the attached Warrant, please issue a new warrant representing the remaining balance of such shares, as follows:

_____
(Name of Record Holder/Transferee)

and deliver such warrant to the following address:

_____
(Address of Record Holder/Transferee)

_____
(Signature)

_____
(Date)

Form of
NOTICE OF ASSIGNMENT

FOR VALUE RECEIVED, the Holder (the "Assignor") hereby sells, assigns and transfers all of the rights of the undersigned Assignor under the attached Warrant with respect to the number of shares of common stock of Aquestive Therapeutics, Inc. (the "Company") covered thereby set forth below, to the following "Assignee" and, in connection with such transfer, represents and warrants to the Company that the transfer is in compliance with Section 6 of the Warrant and applicable U.S. federal and state securities laws:

_____
(Name of Assignee)

_____
(Address of Assignee)

_____
(Number of Shares)

_____
(Dated)

_____
(Signature)

ASSIGNEE ACKNOWLEDGMENT

The undersigned Assignee acknowledges that it has reviewed the attached Warrant and by its signature below it hereby represents and warrants that it is an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended, and agrees to be bound by the terms and conditions of the Warrant as of the date hereof, including Section 6 thereof.

By: _____
Name:
Title:
Address:

Exhibit 10.1

PURCHASE AGREEMENT

dated July 15, 2019

between

AQUESTIVE THERAPEUTICS, INC.

and

THE PURCHASER NAMED HEREIN

$70,000,000 12.5% SENIOR SECURED NOTES DUE 2025
AND
WARRANTS FOR 2,000,000 SHARES OF COMMON STOCK

Table of Contents

PURCHASE AGREEMENT

July 15, 2019

To the Purchaser named in Schedule 1

Ladies and Gentlemen:

Aquestive Therapeutics, Inc., a Delaware corporation (the "Issuer"), hereby covenants and agrees with you as follows:

ARTICLE I
INTRODUCTORY

Section 1.1 Introductory. The Issuer proposes, subject to the terms and conditions stated herein, to issue and sell to the purchaser named in Schedule 1 (the "Purchaser") and to the Other Purchasers $70,000,000 in aggregate principal amount of the Issuer's 12.5% Senior Secured Notes due 2025 and the Warrants. The principal amount of Notes to be purchased by the Purchaser pursuant to this Purchase Agreement, and the number of shares of the Issuer's Common Stock that may be purchased pursuant to the related Warrants, are set forth opposite the Purchaser's name in Schedule 1. The Notes to be sold to the Purchaser and the Other Purchasers are to be issued on the Closing Date pursuant to, and subject to the terms and conditions of, the Indenture.

The Notes and the Warrants will be offered and sold to the Purchaser and the Other Purchasers (collectively, the "Purchasers") in transactions exempt from the registration requirements of the Securities Act.

ARTICLE II
RULES OF CONSTRUCTION AND DEFINED TERMS

Section 2.1 Rules of Construction and Defined Terms. The rules of construction set forth in Annex A shall apply to this Purchase Agreement and are hereby incorporated by reference into this Purchase Agreement as if set forth fully in this Purchase Agreement. Capitalized terms used but not otherwise defined in this Purchase Agreement shall have the respective meanings given to such terms in Annex A, which is hereby incorporated by reference into this Purchase Agreement as if set forth fully in this Purchase Agreement.

ARTICLE III
SALE AND PURCHASE OF NOTES AND WARRANTS; CLOSING; ALLOCATION OF PURCHASE PRICE

Section 3.1 Sale and Purchase of Notes and Warrants; Closing.

(a) On the basis of the representations and warranties contained in, and subject to the terms and conditions of, this Purchase Agreement and the Indenture, the Issuer will issue and sell to the Purchaser, and the Purchaser will purchase, on the Closing Date, the principal amount of Notes, and a Warrant to purchase the number of shares of Common Stock of the Issuer, set forth opposite the Purchaser's name in Schedule 1.

(b) The Purchaser will purchase the principal amount of Notes, and a Warrant to purchase the number of shares of Common Stock of the Issuer, set forth in Schedule 1 on the Closing Date at a purchase price equal to 100% of the principal amount of such Notes (the "Price"). Contemporaneously with entering into this Purchase Agreement, the Issuer is entering into separate purchase agreements (the "Other Agreements") substantially identical to this Purchase Agreement with other purchasers (the "Other Purchasers"), providing for the sale on the Closing Date to each of the Other Purchasers of the Notes in the principal amount specified opposite its name in Schedule 1 to such Other Agreement, and Warrants to purchase the number of shares of Common Stock of the Issuer specified opposite its name in Schedule 1 to such Other Agreement, at a purchase price equal to 100% of the principal amount of such Notes (the purchase prices to be paid pursuant to such Other Agreements are collectively referred to, together with the Price, as the "Purchase Price"). The Issuer shall not be obligated to deliver, and the Purchaser shall not be required to purchase, any of the Notes or the Warrants except upon delivery of and payment for all the Notes and the Warrants to be purchased by the Other Purchasers under the Purchase Agreements on the Closing Date and subject to the satisfaction or waiver of the respective terms and conditions hereunder and thereunder.

(c) On the Closing Date, the Issuer will deliver one or more Global Securities for the account of DTC, as well as any Definitive Securities to the relevant Purchasers, evidencing the aggregate principal amount of Notes to be acquired by all Purchasers pursuant to the Purchase Agreements on the Closing Date against payment by each such Purchaser of its respective portion of the aggregate Purchase Price for its beneficial interest therein by wire transfer of immediately available funds to the Trustee Closing Account. On the Closing Date, the Issuer will deliver to each Purchaser a Warrant dated the Closing Date and registered in the name of such Purchaser, evidencing the right of such Purchaser to purchase the number of shares of the Issuer's Common Stock set forth opposite such Purchaser's name in Schedule 1. The Issuer shall cause the Trustee to hold all such funds received in the Trustee Closing Account in trust for the Purchasers pending completion of the closing of the transactions contemplated by the Purchase Agreements. Upon receipt by the Trustee of the Purchase Price and the satisfaction of the conditions to closing set forth in Article VI, the Issuer shall cause the Trustee to disburse the Purchase Price in accordance with written instructions provided by the Issuer to the Trustee.

(d) If the aggregate Purchase Price shall not have been received by the Trustee by 3:30 p.m. (New York City time) on the Closing Date, or if the closing of the transactions contemplated by the Purchase Agreements shall not otherwise be capable of being consummated by 3:30 p.m. (New York City time) on the Closing Date, then each Purchaser that has paid its respective portion of the aggregate Purchase Price shall have the right to instruct the Trustee in writing at or after 3:30 p.m. (New York City time) on the Closing Date to return, and the Issuer shall cause the Trustee to return, such portion of the Purchase Price to the Purchaser prior to the close of business on the Closing Date or as soon thereafter as reasonably practicable, in which case the Purchaser shall, at its election, be relieved of all obligations (other than confidentiality obligations) under this Purchase Agreement.

Section 3.2 Allocation of Purchase Price. The Issuer and the Purchaser hereby acknowledge and agree that the Notes and the Warrant to be issued by the Issuer to the Purchaser on the Closing Date will constitute an "investment unit" for purposes of Section 1273(c)(2) of the Code. In accordance with Section 1273(b)(2) of the Code and Section 1273(c)(2)(A) of the Code, the issue price of the investment unit will be 100% of the principal amount of such Notes. Allocating that issue price among such Notes and such Warrant based on their relative fair market values, as required by Section 1273(c)(2)(B) of the Code and U.S. Treasury Regulations Section 1.1273-2(h)(1), results in (a) such Notes having an issue price of 90.56% of the principal amount of such Notes and (b) such Warrant having an issue price of 9.44% of the principal amount of such Notes. The Issuer and the Purchaser agree to prepare their respective U.S. federal income tax returns, including statements and reports related thereto, as the case may be, in a manner consistent with the foregoing agreement, to the extent such returns, statements and reports are required to be filed.

ARTICLE IV
REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF PURCHASER

The Purchaser agrees and acknowledges that (a) the Issuer and counsel to the Issuer may rely upon the accuracy of and performance of obligations under the representations, warranties and agreements of the Purchaser contained in this Article IV and (b) the Placement Agent may rely upon the accuracy of and performance of obligations under the representations, warranties and agreements of the Purchaser contained in Sections 4.1, 4.2 and 4.4.

Section 4.1 Purchase for Investment and Restrictions on Resales. The Purchaser:

(a) acknowledges that (i) none of the Notes or the Warrant have been or will be registered under the Securities Act or the Laws of any U.S. state or other jurisdiction relating to securities matters and (ii) neither the Notes nor the Warrant may be offered, sold, pledged or otherwise transferred except as set forth in the Transaction Documents and the legend regarding transfers on the Notes;

(b) agrees that, if it should resell or otherwise transfer the Notes or the Warrant, in whole or in part, it will do so only pursuant to an exemption from, or in a transaction not subject to, registration under the Securities Act, the Laws of any applicable state or other jurisdiction relating to securities matters and in accordance with the restrictions and requirements of the provisions of the Transaction Documents and the legend regarding transfers on the Notes and only to a Person whom it reasonably believes, at the time any buy order for such Notes or Warrant is originated, is (i) the Issuer or a Subsidiary of the Issuer, (ii) for so long as such Notes or Warrant are eligible for resale pursuant to Rule 144A, a QIB that purchases for its own account or for the account of a QIB, to which notice is given that the transfer is being made in reliance on Rule 144A, (iii) a Person outside the United States in an offshore transaction in compliance with Rule 903 or 904 of Regulation S (if available) or (iv) an Accredited Investor that is purchasing such Notes or Warrant for its own account or for the account of such an Accredited Investor for investment purposes and not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act, in each case unless consented to by the Issuer in writing;

(c) acknowledges and agrees that, as a condition to the transfer of any Notes or the Warrant, each transferee of such Notes or Warrant shall be deemed to have given, and may be required expressly to give, the assurances set forth in Section 4.3 as to itself;

(d) acknowledges the restrictions and requirements contained in the Transaction Documents applicable to transfers of the Notes and the Warrant and the legend regarding transfers on the Notes and agrees that it will only offer or sell the Notes and the Warrant in accordance with such restrictions and requirements; and

(e) represents that it is purchasing the Notes and the Warrant for investment purposes and not with a view toward resale or distribution thereof in contravention of the requirements of the Securities Act; provided, however, that the Purchaser reserves the right to resell or otherwise transfer the Notes and the Warrant at any time in compliance with this Section 4.1 and in accordance with its investment objectives.

Section 4.2 Purchaser Status. The Purchaser represents and warrants that, as of the date hereof, (a) if it is purchasing a Rule 144A Global Security or would purchase a Rule 144A Global Security except that it cannot or opts not to hold a beneficial interest in a Global Security, it is a QIB and is purchasing the Notes and the Warrant for its own account or for the account of a QIB, (b) if it is purchasing a Regulation S Global Security or would purchase a Regulation S Global Security except that it cannot or opts not to hold a beneficial interest in a Global Security, it is a Person outside the United States purchasing the Notes and the Warrant in an offshore transaction in compliance with Regulation S or (c) if neither clause (a) nor clause (b) is applicable, it is an Accredited Investor.

Section 4.3 Source of Funds; ERISA Matters.

(a) The Purchaser represents, warrants and covenants that at least one of the following statements is an accurate representation as to each source of funds (a "Source") to be used by the Purchaser to pay the purchase price of any Note or Warrant to be purchased by the Purchaser under the Transaction Documents and with respect to its holding of such Note or such Warrant:

(i) the Source either (A) does not and will not include Plan Assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA, or (B) includes and will include only assets that are not considered Plan Assets by reason of being held in a separate account of an insurance company that is maintained solely in connection with fixed contractual obligations of the insurance company under which the amounts payable, or credited, to the plan and to any participant or beneficiary of the plan (including an annuitant) are not affected in any manner by the investment performance of the separate account;

(ii) the Source is a governmental plan; or

(iii) the Source does include Plan Assets of an employee benefit plan subject to ERISA, but the use of such Plan Assets to purchase and hold one or more Notes or Warrants will not constitute a non-exempt prohibited transaction within the meaning of Section 406 or 407 of ERISA or Section 4975 of the Code, and one of the following applies:

(w) (A) the Source is an "insurance company general account" within the meaning of PTE 95-60 (issued July 12, 1995, as subsequently amended), (B) there is no employee benefit plan, treating as a single plan all plans maintained by the same employer or employee organization, with respect to which the amount of the general account reserves and liabilities for all contracts held by or on behalf of such plan exceeds ten percent (10%) of the total reserves and liabilities of such general account (exclusive of separate account liabilities) plus surplus, as set forth in the NAIC Annual Statement filed with the Purchaser's state of domicile, and (C) the purchase and holding of Notes or Warrants is exempt under the provisions of PTE 95-60;

(x) (A) the Source is either (1) an insurance company pooled separate account, within the meaning of PTE 90-1 (issued January 29, 1990), or (2) a bank collective investment fund, within the meaning of PTE 91-38 (issued July 12, 1991, as subsequently amended), (B) no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than ten percent (10%) of all assets allocated to such pooled separate account or collective investment fund and (C) the purchase and holding of Notes or Warrants is covered by either PTE 90-1 or PTE 91-38, as applicable;

(y) the Source constitutes assets of an "investment fund" (within the meaning of Part VI of the QPAM Exemption) managed by a "qualified professional asset manager" or "QPAM" (within the meaning of Part VI of the QPAM Exemption), and the conditions of Part I of the QPAM Exemption are satisfied; or

(z) the Source constitutes assets of a "plan(s)" (within the meaning of Part IV of PTE 96-23) managed by an "in-house asset manager" or "INHAM" (within the meaning of Part IV of PTE 96-23), and the conditions of Part I of PTE 96-23 are satisfied.

As used in this Section 4.3(a), the terms "employee benefit plan", "governmental plan" and "separate account" shall have the respective meanings assigned to such terms in Section 3 of ERISA.

(b) The Purchaser represents, warrants and covenants that, if any Source to be used by the Purchaser to pay the purchase price of any Note or Warrant under the Transaction Documents consists of assets of a benefit plan that is not subject to ERISA, either (i) such benefit plan is not a governmental plan, non-U.S. plan (as described in Section 4(b) of ERISA), church plan or other plan subject to Law that is substantially similar to Section 406 or 407 of ERISA or Section 4975 of the Code ("Similar Law") or (ii) its purchase and holding of Notes and the Warrant do not and will not constitute a violation of Similar Law.

Section 4.4 Due Diligence. The Purchaser acknowledges that, prior to the date of this Purchase Agreement, (a) it has made, either alone or together with its advisors, such separate and independent investigation of the Issuer and its business, financial condition, prospects and management as the Purchaser deems to be, or such advisors have advised to be, necessary or advisable in connection with the purchase of the Notes and the Warrant pursuant to the transactions contemplated by this Purchase Agreement, (b) it and its advisors have received all information and data that it and such advisors believe to be necessary in order to reach an informed decision as to the advisability of the purchase of the Notes and the Warrant pursuant to the transactions contemplated by this Purchase Agreement, (c) it understands the nature of the potential risks and potential rewards of the purchase of the Notes and the Warrant, (d) it is a sophisticated investor with investment experience and has the ability to bear complete loss of its investment, whether as a result of an Event of Default on the Notes or any insolvency, liquidation or winding up of the Issuer or otherwise, and (e) it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of purchasing the Notes and the Warrant and can bear the economic risks of investing in the Notes and the Warrant for an indefinite period of time, including the complete loss of its investment. The Purchaser acknowledges that it has obtained its own attorneys, business advisors and tax advisors as to legal, business and tax advice (or has decided not to obtain such advice) and has not relied in any respect on the Issuer or the Placement Agent for such advice. The Purchaser has had a reasonable time prior to the date of this Purchase Agreement to ask questions and receive answers concerning the Issuer and its business and the terms and conditions of the offering of the Notes and the Warrant and the transactions contemplated hereby and to obtain any additional information that the Issuer possesses or could acquire without unreasonable effort or expense, and has generally such knowledge and experience in business and financial matters and with respect to investments in securities as to enable the Purchaser to understand and evaluate the risks of such investment and form an investment decision with respect thereto. Except for (i) the representations, warranties and covenants made by the Issuer in the Transaction Documents and (ii) the legal opinions provided to the Purchaser in connection with the transactions contemplated by the Transaction Documents, the Purchaser is relying on its own investigation and analysis in entering into the transactions contemplated hereby.

Section 4.5 Enforceability of this Purchase Agreement. This Purchase Agreement has been duly authorized, executed and delivered by the Purchaser and constitutes the valid, legally binding and enforceable obligation of the Purchaser, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity.

Section 4.6 Tax Matters.

(a) Except as otherwise required by Law, the Purchaser agrees to treat, and shall treat, the Notes as indebtedness of the Issuer for U.S. federal income tax purposes.

(b) The Purchaser understands and acknowledges that, if Definitive Securities are issued, the Purchaser must provide the Issuer, the Trustee or any Paying Agent with the applicable U.S. federal income tax certifications (generally, on IRS Form W-9 (or successor applicable form) in the case of a Person that is a United States person (for purposes of this Section 4.6(b), within the meaning of Section 7701(a)(30) of the Code) or on an appropriate IRS Form W-8 (or successor applicable form) in the case of a Person that is not a United States person).

(c) The Purchaser represents and warrants that (i) it has not relied upon the Issuer or the Placement Agent for any tax advice or disclosure of tax consequences arising from the purchase, ownership or disposition of the Notes and the Warrant and (ii) it has relied upon its own tax counsel or advisors with respect to any tax consequences arising from the purchase, ownership or disposition of the Notes and the Warrant.

Section 4.7 Reliance for Opinions. The Purchaser acknowledges and agrees that the Issuer and, for purposes of the opinions to be delivered to the Purchaser pursuant to Sections 6.1 and 6.2, counsel for the Issuer and counsel for the Purchasers, respectively, may rely, without any independent verification thereof, upon the accuracy of the representations and warranties of the Purchaser, and compliance by the Purchaser with its agreements, contained in Sections 4.1, 4.2 and 4.3, and the Purchaser hereby consents to such reliance.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF THE ISSUER

The Issuer represents and warrants to the Purchaser as of the date hereof as follows:

Section 5.1 Securities Laws.

(a) No securities of the same class (within the meaning of Rule 144A(d)(3)(i) under the Securities Act) as the Notes or the Warrants have been issued and sold by the Issuer within the six-month period immediately prior to the date hereof.

(b) Assuming the accuracy of the representations and warranties of the Purchasers in each of the Purchase Agreements and assuming the accuracy of the statements in the certificate to be delivered by the Placement Agent pursuant to Section 6.5, neither the Issuer nor any affiliate (as defined in Rule 144 under the Securities Act) of the Issuer has directly, or through any agent, (i) sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of any security (as defined in the Securities Act) that is or will be integrated with the sale of the Notes or the Warrants in a manner that would require the registration under the Securities Act of the Notes or the Warrants, (ii) engaged in any form of general solicitation or general advertising in connection with the offering of the Notes or the Warrants (as those terms are used in Regulation D under the Securities Act), or in any manner involving a public offering within the meaning of Section 4(a)(2) of the Securities Act, including publication or release of articles, notices or other communications published in any newspaper, magazine or similar medium or broadcast over television, radio or internet, or any seminar or meeting whose attendees have been invited by any general solicitation or general advertising, or (iii) engaged in any directed selling efforts within the meaning of Rule 902(c) of Regulation S.

(c) Assuming the accuracy of the representations and warranties of the Purchasers in each of the Purchase Agreements and assuming the accuracy of the statements in the certificate to be delivered by the Placement Agent pursuant to Section 6.5, (i) the Indenture is not required to be qualified under the U.S. Trust Indenture Act of 1939, as amended, and (ii) no registration under the Securities Act of the Notes or the Warrants is required in connection with the sale thereof to the Purchasers as contemplated by the Transaction Documents.

Section 5.2 Investment Company Act Matters. After giving effect to the offering and sale of the Notes and the Warrants, the Issuer will not be required to register as an "investment company" or "controlled" by an "investment company" within the meaning of the U.S. Investment Company Act of 1940, as amended.

Section 5.3 Use of Proceeds; Margin Regulations. No part of the proceeds from the sale of the Notes or the Warrants under the Transaction Documents will be used, directly or indirectly, for the purpose of purchasing or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of purchasing or carrying or trading in any securities under such circumstances as to involve the Issuer in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). The Issuer is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221). As used in this Section 5.3, the terms "margin stock" and "purpose of purchasing or carrying" shall have the meanings ascribed to them in said Regulation U.

Section 5.4 Exchange Act Documents. The documents filed by the Issuer with the Commission pursuant to the Exchange Act since December 31, 2018 (excluding any documents or portions thereof furnished to, rather than filed with, the Commission) (such documents, the "Exchange Act Documents"), when they were filed with the Commission, conformed as to form in all material respects with the requirements of the Exchange Act, and none of such documents 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.

Section 5.5 Financial Statements. The financial statements included in the Exchange Act Documents, together with the related notes and schedules, present fairly in all material respects the consolidated financial position of the Issuer as of the respective dates indicated and the consolidated results of operations, cash flows and changes in shareholders' equity of the Issuer for the respective periods specified and have been prepared in all material respects in compliance with the requirements of the Exchange Act and in conformity with GAAP applied on a consistent basis during the periods covered thereby, except as may be expressly stated in the related notes thereto and, in the case of unaudited financial statements, subject to normal and recurring year-end adjustments that, if presented, would not differ materially from that included in the audited financial statements. The other financial and accounting data of the Issuer contained in the Exchange Act Documents are accurately and fairly presented and prepared on a basis consistent with the financial statements or the books and records of the Issuer in all material respects.

Section 5.6 Organization; Power; Authorization; Enforceability. The Issuer has been duly organized, is legally existing and is in good standing under the Laws of the State of Delaware. The Issuer does not have any Subsidiaries except the following Immaterial Subsidiaries: Midasol Therapeutics, GP; and Midasol Therapeutics, LP. MSRX US, LLC has had its existence as a Delaware limited liability company canceled, and such entity did not at any point have any material assets, liabilities or operations. The Issuer is duly qualified as a foreign corporation (or other equivalent entity) in all jurisdictions in which the nature of its business or location of its properties require such qualifications, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect. The Issuer has the requisite corporate power and authority to own, lease or operate the properties and assets it purports to own, lease or operate, to carry on its business as presently conducted and to execute, deliver and perform its obligations under each Transaction Document except where the failure to have such power and authority to own, lease or operate such properties and assets and carry on such business would not reasonably be expected to have a Material Adverse Effect. Each Transaction Document entered into as of the date hereof has been duly authorized, executed and delivered by the Issuer and constitutes the valid, legally binding and, assuming due authorization, execution and delivery by all other parties thereto, enforceable obligation of the Issuer (subject, in each case, to general equitable principles, insolvency, liquidation, reorganization and other Laws of general application relating to creditors' rights). Each Transaction Document to be entered into after the date hereof will be duly authorized, executed and delivered by the Issuer and will constitute the valid, legally binding and, assuming due authorization, execution and delivery by all other parties thereto, enforceable obligation of the Issuer (subject, in each case, to general equitable principles, insolvency, liquidation, reorganization and other Laws of general application relating to creditors' rights).

Section 5.7 Organizational Information and Equity Interests. The Issuer's principal place of business is Warren, New Jersey. The Issuer's U.S. taxpayer identification number is 82-3827296. All of the outstanding Equity Interests in the Issuer have been duly authorized and validly issued and, to the extent applicable, are fully paid and non-assessable, free and clear of all Liens except Permitted Liens and the Liens created by the Security Documents.

Section 5.8 Common Stock. The shares of Common Stock of the Issuer to be issued upon the exercise of the Warrants have been reserved by the Issuer and, upon exercise of the Warrants in accordance with their terms, will be validly issued, fully paid and non-assessable.

Section 5.9 Dilutive Securities. Except as set forth in Schedule 5.9, (i) there are no outstanding rights (including pre-emptive rights), warrants or options to acquire, or instruments convertible into or exchangeable for, any shares of Capital Stock in the Issuer or any of its Subsidiaries and (ii) there is no contract, commitment, agreement, understanding or arrangement of any kind relating to the issuance of (A) any Capital Stock of the Issuer or any such Subsidiary, (B) any such convertible or exchangeable securities or (C) any such rights, warrants or options.

Section 5.10 Governmental and Third Party Authorizations. No consent, approval, authorization, license, registration, qualification or order of, or filing or declaration with, any Governmental Authority, any self-regulatory organization or any other non-governmental regulatory authority (including the Nasdaq Stock Market LLC) or approval of the shareholders of the Issuer or any other Person is required in connection with (a) the execution or delivery by the Issuer of any Transaction Document or the performance of obligations by the Issuer under any Transaction Document (including the issuance and sale of the Notes and the Warrants), (b) the transactions contemplated by the Transaction Documents, (c) the grant by the Issuer of the Liens granted or purported to be granted by it pursuant to the Security Documents or (d) the perfection of the Liens created under the Security Documents, other than (i) such consents, approvals, authorizations, licenses, registrations, qualifications, orders, filings, declarations and other actions as shall have been taken, given, made or obtained and are in full force and effect as of the Closing Date, in each case, as set forth in Schedule 5.10, (ii) any necessary filings under the securities or blue sky Laws of the various jurisdictions in which the Notes and the Warrants are being offered, (iii) the filing of financing statements under the UCC and recordings with the PTO and the filing of any other recordings (including in any applicable non-U.S. jurisdiction) required to perfect a security interest in the Notes Collateral and (iv) such consents, approvals, authorizations, licenses, registrations, qualifications, orders, filings, declarations and other actions, the failure of which to take, give, make or obtain would not reasonably be expected to have a Material Adverse Effect.

Section 5.11 No Conflicts. The execution, delivery and performance of each Transaction Document by the Issuer, the issuance and sale of the Notes and the Warrants and the consummation of the transactions contemplated by the Transaction Documents will not conflict with, result in any breach or violation of or constitute a default under (nor constitute any event that, with notice, lapse of time or both, would result in any breach or violation of, constitute a default under or give the holder of any indebtedness (or a Person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a part of such indebtedness under) (or result in the creation or imposition of a Lien on any property or assets of the Issuer pursuant to) (a) the certificate of incorporation or bylaws of the Issuer, (b) any indenture, mortgage, deed of trust, bank loan, credit agreement, other evidence of indebtedness, license, lease, contract or other agreement or instrument to which the Issuer is a party or by which it or its properties may be bound or affected, (c) any Law or (d) any rule or regulation of any self-regulatory organization or other non-governmental regulatory authority (including the rules and regulations of the Nasdaq Stock Market LLC), except, in the case of clause (b), (c) or (d), where such conflict, breach, violation, default, event, right or Lien would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 5.12 No Violation or Default. The Issuer is not in breach or violation of or in default under (nor has any event occurred that, with notice, lapse of time or both, would result in any breach or violation of, constitute a default under or give the holder of any indebtedness (or a Person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a part of such indebtedness under) (a) its certificate of incorporation or bylaws, (b) any indenture, mortgage, deed of trust, bank loan, credit agreement, other evidence of indebtedness, license, lease, contract or other agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected, (c) any Law or (d) any rule or regulation of any self-regulatory organization or other non-governmental regulatory authority (including the rules and regulations of the Nasdaq Stock Market LLC), except, in the case of clause (b), (c) or (d), where such breach, violation, default, event or right would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. On the Closing Date, no Event of Default on the Notes exists.

Section 5.13 No Material Adverse Change. Except as disclosed in the Exchange Act Documents, subsequent to the respective dates as of which information is given in the Exchange Act Documents, (a) there has not been any material change in the Capital Stock or long-term debt of the Issuer or any material adverse change, or any development that would be expected to result in a material adverse change, in or affecting the business, condition (financial or otherwise), results of operations, earnings, properties or prospects of the Issuer and its Subsidiaries taken as a whole, (b) the Issuer has not incurred any material liabilities or obligations, direct or contingent, nor has it entered into any material transactions not in the ordinary course of business, other than pursuant to the Transaction Documents and the transactions referred to herein and therein, (c) the Issuer has not and will not have paid or declared any dividends or other distributions of any kind on any class of its Capital Stock, (d) the Issuer has not sustained any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any Governmental Authority and (e) the Issuer has not altered its method of accounting.

Section 5.14 Compliance with ERISA. The Issuer has not maintained or contributed to a defined benefit plan as defined in Section 3(35) of ERISA. No plan maintained or contributed to by the Issuer that is subject to ERISA (an "ERISA Plan") (or any trust created thereunder) has engaged in a "prohibited transaction" within the meaning of Section 406 of ERISA or Section 4975 of the Code that could subject the Issuer to any material tax penalty on prohibited transactions and that has not adequately been corrected. Each ERISA Plan is in compliance in all material respects with all reporting, disclosure and other requirements of the Code and ERISA as they relate to such ERISA Plan, except for any noncompliance that would not result in the imposition of a material tax or monetary penalty. With respect to each ERISA Plan that is intended to be "qualified" within the meaning of Section 401(a) of the Code, either (a) a determination letter has been issued by the IRS stating that such ERISA Plan and the attendant trust are qualified thereunder or (b) the remedial amendment period under Section 401(b) of the Code with respect to the establishment of such ERISA Plan has not ended and a determination letter application will be filed with respect to such ERISA Plan prior to the end of such remedial amendment period. The Issuer has never completely or partially withdrawn from a "multiemployer plan", as defined in Section 3(37) of ERISA.

Section 5.15 Tax Matters. The Issuer has filed all income and franchise tax returns and all other material tax returns required to be filed by it and has paid all taxes required to be paid by it and, if due and payable, any related or similar assessment, fine or penalty levied against it (except for any such taxes, assessments, fines or penalties currently being contested in good faith and for which adequate reserves in accordance with GAAP are being maintained or in any case in which the failure to file or pay, individually or collectively, would not reasonably be expected to have a Material Adverse Effect). The Issuer has made adequate charges, accruals and reserves in the applicable financial statements referred to in Section 5.5 in respect of all material federal, state and foreign income and franchise taxes for all periods as to which the tax liability of the Issuer has not been finally determined. The Issuer is not aware of any material claims against it by any taxing authority in relation to the filing of tax returns or the payment of required taxes, assessments, fines or penalties.

Section 5.16 Legal Proceedings. Except as disclosed in the Exchange Act Documents, there are no actions, suits or proceedings pending or, to the Issuer's knowledge, threatened against or affecting, the Issuer or any of its officers in their capacity as such before or by any Governmental Authority or the Financial Industry Regulatory Authority, Inc. or the Nasdaq Stock Market LLC, wherein an unfavorable ruling, decision or finding could reasonably be expected to result in a Material Adverse Effect. Except as set forth in the Exchange Act Documents, the Issuer has not received any written notice of proceedings relating to the revocation or modification of any authorization, approval, order, license, certificate, franchise or permit, where such revocation or modification would reasonably be expected to result in a Material Adverse Effect. There are no pending investigations known to the Issuer involving the Issuer by any Governmental Authority having jurisdiction over the Issuer or its business or operations that would reasonably be expected to result in a Material Adverse Effect.

Section 5.17 Solvency. No step has been taken or is currently intended by the Issuer or, to the knowledge of the Issuer, any other Person for the winding-up, liquidation, dissolution or administration or for the appointment of a receiver or administrator of the Issuer for all or any of its properties or assets. Immediately after the issuance and sale of the Notes and the Warrants and the consummation of the other transactions contemplated by the Transaction Documents on the Closing Date, the Issuer will not be rendered insolvent within the meaning of 11 U.S.C. 101(32) or any other applicable insolvency Laws or, taken as a whole, be unable to pay its debts as they mature.

Section 5.18 Existing Indebtedness. The Exchange Act Documents disclose all of the following types of material third-party outstanding indebtedness of the Issuer as of the Closing Date: (a) indebtedness in respect of borrowed money; (b) any other obligation of the Issuer to be liable for, or to pay, as obligor, guarantor or otherwise, on the indebtedness for borrowed money of another Person (other than by endorsement of negotiable instruments for collection in the ordinary course of business); and (c) to the extent not otherwise included, indebtedness for borrowed money of another Person secured by a Lien on any asset owned by such Person (whether or not such indebtedness for borrowed money is assumed by such Person).

Section 5.19 Material Contracts. There is no document or agreement of a character required to be described in the Exchange Act Documents or to be filed as an exhibit to the Exchange Act Documents that is not described or filed as required. All Material Contracts are in full force and effect and constitute the valid, legally binding and (subject to general equitable principles and insolvency, liquidation, reorganization and other Laws of general application relating to creditors' rights) enforceable obligation of the Issuer and, to the knowledge of the Issuer, all other parties thereto, except in each case as would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Issuer, there are no oral waivers or modifications (or pending requests therefor) in respect of any Material Contract except as would not reasonably be expected to have a Material Adverse Effect. The Issuer is not in breach or default under or with respect to any Material Contract binding on it except where such breaches or defaults would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Issuer, no other Person party to any Material Contract is in default thereunder except where such default would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Issuer, no party to any Material Contract has given any notice of termination or breach of any Material Contract.

Section 5.20 Properties. The Issuer has good and marketable title to all properties and assets described in the Exchange Act Documents as being owned by it, free and clear of all Liens or restrictions other than Permitted Liens and the Liens created by the Security Documents, except as set forth in the Exchange Act Documents or those where the failure to have such title would not, individually or in the aggregate, have a Material Adverse Effect. To the knowledge of the Issuer, the Issuer has valid, subsisting and (subject to general equitable principles and insolvency, liquidation, reorganization and other Laws of general application relating to creditors' rights) enforceable leases for the properties described in the Exchange Act Documents as leased by it, with such exceptions as are not material and do not materially interfere with the use made and proposed to be made of such properties by the Issuer.

Section 5.21 Intellectual Property.

(a) Except as disclosed in the Exchange Act Documents, the Issuer owns, has valid and enforceable licenses for or otherwise has adequate rights to use all technology (including patented, patentable and unpatented inventions and unpatentable proprietary or confidential information, systems or procedures), designs, processes, patents, trademarks, service marks, trade secrets, trade names, know how, copyrights and other works of authorship, computer programs, technical data and information and all similar intellectual property or proprietary rights (including all registrations and applications for registration of, and all goodwill associated with, any of the foregoing, as applicable) (collectively, "Intellectual Property") that are material to its business as currently conducted or as proposed to be conducted, including the development, manufacture, operation and sale of any of the Issuer's products or product candidates, as described in the Exchange Act Documents, except where the failure to own, license or otherwise have rights to such Intellectual Property would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as disclosed in the Exchange Act Documents, the Intellectual Property of the Issuer has not been adjudged by a Governmental Authority of competent jurisdiction invalid or unenforceable in whole or in part, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as disclosed in the Exchange Act Documents: (i) to the knowledge of the Issuer, there are no third parties who have, or will be able to establish, rights to any Intellectual Property owned by or licensed to the Issuer, except for, and to the extent of, the rights of any third parties that are licensors or licensees of such Intellectual Property as set forth in Schedule 5.21; (ii) to the Issuer's knowledge, there is no infringement, misappropriation or other violation by third parties of any Intellectual Property owned by, or licensed to, the Issuer; (iii) there is no pending or, to the knowledge of the Issuer, threatened action, suit, proceeding or claim by others against the Issuer challenging the Issuer's rights in or to any Intellectual Property owned by, or licensed to, the Issuer, and the Issuer is unaware of any facts that could form a reasonable basis for any such action, suit, proceeding or claim; (iv) there is no pending or, to the knowledge of the Issuer, threatened action, suit, proceeding or claim by others against the Issuer challenging the validity, enforceability or scope of any Intellectual Property owned by, or licensed to, the Issuer, and the Issuer is unaware of any facts that could form a reasonable basis for any such action, suit, proceeding or claim; (v) there is no pending or, to the knowledge of the Issuer, threatened action, suit, proceeding or claim by others against the Issuer that (nor has the Issuer received any written claim from a third party that) the Issuer infringed, misappropriated or otherwise violated, or is infringing, misappropriating or otherwise violating, any intellectual property rights of others, and the Issuer is unaware of any facts that could form a reasonable basis for any such action, suit, proceeding or claim; and (vi) the Issuer has complied with and there has been no breach or default by the Issuer under the terms of each agreement pursuant to which Intellectual Property has been licensed to the Issuer, and all such agreements are in full force and effect, except, in each case of clauses (i) through (vi), as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth in the Exchange Act Documents, the Issuer is not obligated or under any liability whatsoever to make any material payment by way of royalties, fees or otherwise to any owner or licensee of, or other claimant to, any Intellectual Property, with respect to the use thereof in connection with the conduct of its business or otherwise. No Immaterial Subsidiary owns or licenses any material Intellectual Property.

(b) The Issuer owns, licenses or otherwise has the full exclusive right to use all material trademarks and trade names that are used in or reasonably necessary for the conduct of its business as described in the Exchange Act Documents, except where the failure to own, license or otherwise have rights to such trademarks and tradenames would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Issuer has not received any written notice of infringement of or conflict with asserted rights of others with respect to any such trademarks or trade names or challenging or questioning the validity or effectiveness of any such trademark or trade name. To the Issuer's knowledge, the use of such trademarks and trade names in connection with the business and operations of the Issuer does not materially infringe on the rights of any Person. Except as set forth in the Exchange Act Documents, the Issuer is not obligated or under any liability whatsoever to make any material payment by way of royalties, fees or otherwise to any owner or licensee of, or other claimant to, any trademark, service mark or trade name with respect to the use thereof in connection with the conduct of its business or otherwise.

(c) The Issuer has taken reasonable security measures to protect the secrecy, confidentiality and value of all its Intellectual Property in all material aspects, including complying with all material duty of disclosure requirements before the PTO and any other non-U.S. patent offices, as appropriate.

(d) Schedule 5.21 contains a complete list of (i) all registered trademarks, copyrights and Patents that are owned by the Issuer, in each case that are reasonably necessary for the operation of the business of the Issuer as presently conducted, and (ii) all Patent license agreements granting exclusive rights to the Issuer to such licensed Patents.

(e) The Issuer is the owner or holder of each new drug application or abbreviated new drug application set forth opposite its name in Schedule 5.21. Except as set forth in Schedule 5.21, the Issuer has not granted, assigned or licensed to any Person, directly or indirectly, any rights under any such new drug application or abbreviated new drug application. Schedule 5.21 sets forth the product that pertains to each such new drug application and abbreviated new drug application (and whether or not approval of any such drug application has been granted in any jurisdiction, and, if so, in which jurisdictions such approvals have been granted).

Section 5.22 Environmental Matters. Except in each case as would not individually or in the aggregate reasonably be expected to result in a Material Adverse Effect, (a) the Issuer is and has been in compliance with, and is not subject to any pending or, to the knowledge of the Issuer, threatened costs or liability under, any and all applicable Laws (including common law), and applicable and binding judicial or administrative decisions or orders, relating to pollution, the generation, use, handling, transportation, treatment, storage, discharge, disposal or release of Hazardous Substances, the protection or restoration of the environment, human health and safety, noise or the protection of natural resources, including wildlife, migratory birds, eagles or endangered or threatened species or habitats (collectively, "Environmental Laws") and, to the knowledge of the Issuer, no facts or circumstances currently exist that would reasonably be expected to result in such non-compliance, cost or liability, (b) to the knowledge of the Issuer, the Issuer does not own, occupy, operate, lease or use any real property contaminated with Hazardous Substances in violation of Environmental Laws and that would reasonably be expected to result in the Issuer incurring any liability, (c) the Issuer is not conducting or funding any investigation, remediation, remedial action or monitoring of actual or suspected Hazardous Substances in the environment, (d) to the knowledge of the Issuer, the Issuer is not subject to any pending or threatened liability for any release or threatened release of Hazardous Substances, including at any off-site treatment, storage or disposal site, (e) the Issuer is not subject to any written claim, action, suit, order, demand or notice by any Governmental Authority or Person alleging liability or violation relating to Environmental Laws or Hazardous Substances, (f) the Issuer has received and is in compliance with all, and has received no written claim of liability under any, permits, licenses, authorizations, identification numbers or other approvals required under applicable Environmental Laws to conduct its business, as currently conducted, and (g) to the knowledge of the Issuer, there are no new requirements applicable to the conduct of the Issuer's business, as currently conducted, proposed for adoption or implementation under any Environmental Law. Except as set forth in the Exchange Act Documents, there are no judicial or administrative proceedings that are pending, or known to be contemplated, against the Issuer pursuant to any Environmental Laws by a Governmental Authority, other than such proceedings for which it is reasonably believed no monetary sanctions of $100,000 or more will be imposed. Except as set forth in the Exchange Act Documents, the Issuer has not incurred, and does not currently anticipate incurring, any costs or expenditures (including capital expenditures) required under or pursuant to Environmental Laws that would reasonably be expected to have a material effect on the capital expenditures, earnings or competitive position of the Issuer.

Section 5.23 Labor Matters. The Issuer is not involved in any labor dispute except where the dispute would not, individually or in the aggregate, have a Material Adverse Effect, nor, to the knowledge of the Issuer, is any such dispute threatened. The Issuer is currently in compliance with all applicable Laws relating to employment and labor, including those related to wages, hours, collective bargaining and the payment and withholding of Taxes.

Section 5.24 Insurance. The Issuer carries, or is covered by, insurance in such amounts and covering such risks as the Issuer believes are adequate for the conduct of its business and the value of its properties and is customary for companies engaged in similar industries, and all such insurance is in full force and effect. The Issuer has no reason to believe that it will not be able to (a) renew its existing insurance coverage as and when such policies expire or (b) obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as currently conducted or proposed to be conducted and at a cost that would not, individually or in the aggregate, result in a Material Adverse Effect. The Issuer has not been denied any insurance coverage that it has sought or for which it has applied.

Section 5.25 No Unlawful Payments. None of the Issuer, any of its directors or officers or, to the Issuer's knowledge, any agent, employee or representative of the Issuer or its Affiliates or other Person associated with or acting on behalf of the Issuer has (a) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (b) made or taken an act in furtherance of an offer, promise or authorization of any direct or indirect unlawful payment of corporate funds or benefit to any government or regulatory official or employee, including of any government-owned or controlled entity or of a public international organization, or any Person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office, (c) taken any action, directly or indirectly, that would result in a violation of any provision of the FCPA, the U.K. Bribery Act 2010, or any applicable Law implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or committed an offense under any other applicable anti-bribery or anti-corruption Laws, or (d) made, offered, agreed to, requested or taken an act in furtherance of any unlawful bribe or other unlawful benefit, including any rebate, payoff, influence payment, kickback or other unlawful or improper payment or benefit. The Issuer and, to the knowledge of the Issuer, its Affiliates have conducted their businesses in compliance with the FCPA and have instituted, maintained and enforced, and will continue to maintain and enforce, policies and procedures designed to promote and ensure compliance with all applicable anti-bribery and anti-corruption Laws.

Section 5.26 Compliance with Anti-Money Laundering Laws. The operations of the Issuer are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements, including those of the Currency and Foreign Transactions Reporting Act of 1970, as amended, those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering Laws of all jurisdictions in which the Issuer conducts business (collectively, the "Anti-Money Laundering Laws"), and no action, suit or proceeding by or before any Governmental Authority involving the Issuer with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Issuer, threatened.

Section 5.27 Sanctions. None of the Issuer or any director or officer of the Issuer or, to the knowledge of the Issuer, any agent, employee or representative of the Issuer or any Affiliate or other Person associated with or acting on behalf of the Issuer is currently the subject or target of any sanctions administered or enforced by the U.S. government (including the Office of Foreign Assets Control of the U.S. Treasury Department or the U.S. Department of State and including the designation as a "specially designated national" or "blocked person"), the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority (collectively, "Sanctions"), nor is the Issuer located, organized or resident in a country or territory that is the subject or the target of Sanctions, including Cuba, Iran, North Korea, the Crimean region and Syria (each, a "Sanctioned Country"). The Issuer will not directly or indirectly use the proceeds of the offering of the Notes and the Warrants, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, (a) to fund or facilitate any activities of or business with any Person that, at the time of such funding or facilitation, is the subject or the target of Sanctions, (b) to fund or facilitate any activities of or business in any Sanctioned Country or (c) in any other manner that will result in a violation by any Person (including any Person participating in the transaction contemplated hereby, whether as underwriter, advisor, investor or otherwise) of Sanctions. For the past five years, the Issuer has not knowingly engaged in, is not now knowingly engaged in, and will not engage in, any dealings or transactions with any Person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.

Section 5.28 Disclosure Controls. The Issuer has established and maintains disclosure controls and procedures (as such term is defined in Rules 13a-15 and 15d-15 under the Exchange Act) that (a) are designed to ensure that material information relating to the Issuer is made known to the Issuer's principal executive officer and principal financial officer by others within the Issuer, particularly during the periods in which the periodic reports required under the Exchange Act are being prepared, (b) provide for the periodic evaluation of the effectiveness of such disclosure controls and procedures as of the end of the period covered by the Issuer's most recent annual or quarterly report filed with the Commission and (c) are effective in all material respects to perform the functions for which they were established.

Section 5.29 Accounting Controls.

(a) The Issuer maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(b) Since the end of the Issuer's most recent audited fiscal year, there has been (i) no material weakness (as defined in Rule 1-02 of Regulation S-X of the Commission) in the Issuer's internal control over financial reporting (whether or not remediated) and (ii) no change in the Issuer's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Issuer's internal control over financial reporting. The Issuer is not aware of (x) any significant deficiency in the design or operation of its internal control over financial reporting that is reasonably likely to adversely affect the Issuer's ability to record, process, summarize and report financial data or any material weaknesses in its internal controls, except as disclosed in the Exchange Act Documents, since the end of the Issuer's most recent audited fiscal year or (y) any fraud, whether or not material, that involves management or other employees who have a significant role in the Issuer's internal controls.

Section 5.30 Licenses and Permits. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (a) the Issuer holds, and is operating in compliance with, such permits, licenses, franchises, registrations, exemptions, approvals, authorizations and clearances of any Governmental Authorities (including the FDA) required for the conduct of its business as currently conducted (collectively, the "Permits"), and all such Permits are in full force and effect, and (b) the Issuer has fulfilled and performed all of its obligations with respect to the Permits, and, to the Issuer's knowledge, no event has occurred that allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other impairment of the rights of the holder of any Permit, other than, in each case, the Permits set forth in Schedule 5.30. All applications, notifications, submissions, information, claims, reports and statistics, and other data and conclusions derived therefrom, utilized as the basis for any and all requests for a Permit from the FDA or other Governmental Authority relating to the Issuer, its business and its products, when submitted to the FDA or other Governmental Authority by or on behalf of the Issuer, were true, complete and correct in all material respects. Any necessary or required updates, changes, corrections or modifications to such applications, notifications, submissions, information, claims, reports and statistics and other data have been submitted to the FDA or other Governmental Authority, other than, in each case, the Permits set forth in Schedule 5.30. The Issuer has not received any written notification, correspondence or other written communication, including notification of any pending or, to the Issuer's knowledge, threatened claim, suit, proceeding, hearing, enforcement, investigation, arbitration or other action, from any Governmental Authority, including the FDA or the DEA, of potential or actual non-compliance by, or liability of, the Issuer under any Permits except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Issuer's knowledge, no facts or circumstances currently exist that would reasonably be expected to give rise to any liability of the Issuer under any Permits except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.31 Clinical Trials. The pre-clinical studies and clinical trials conducted by or, to the knowledge of the Issuer, on behalf of or sponsored by the Issuer, or in which the Issuer has participated, that are described in, or the results of which are referred to in, the Exchange Act Documents were and, if still pending, are being conducted in accordance with protocols filed with the appropriate regulatory authorities for each such study or trial, as the case may be, and with standard medical and scientific research standards and procedures, all applicable Laws (including those of the FDA and comparable regulatory agencies outside of the United States) to which they are subject and Good Clinical Practices and Good Laboratory Practices, except to the extent where failure to conduct such pre-clinical studies and clinical trials in such manner would not have a Material Adverse Effect. Each description of the results of such studies and trials contained in the Exchange Act Documents is accurate and complete in all material respects and fairly presents the data derived from such studies and trials, and the Issuer has no knowledge of any other studies or trials the results of which are inconsistent with, or otherwise call into question, the results described or referred to in the Exchange Act Documents. The Issuer has not received any written notices, correspondence or other written communications from the FDA or any committee thereof or from any other U.S. or non-U.S. government or drug or medical device regulatory agency (collectively, the "Regulatory Agencies") requiring or, to the Issuer's knowledge, threatening the termination, suspension or modification of any clinical trials that are described or referred to in the Exchange Act Documents. The Issuer has operated at all times and currently is in compliance with all applicable Laws of the Regulatory Agencies except where such failure to operate or non-compliance would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.32 Regulatory Filings. The Issuer has not failed to file with the Regulatory Agencies any required material filing, declaration, listing, registration, report or submission with respect to any products or product candidates that are described or referred to in the Exchange Act Documents or any other material filing required by any other applicable Regulatory Agency or other Governmental Authority. All such filings, declarations, listings, registrations, reports or submissions were in material compliance with applicable Laws when filed. All such filings, declarations, listings, registrations, reports or submissions were timely, complete, accurate and not misleading on the date filed in all material respects (or were corrected or supplemented by subsequent submission). No material deficiencies regarding compliance with applicable Law have been asserted in writing by any applicable regulatory authority with respect to any such filings, declarations, listings, registrations, reports or submissions.

Section 5.33 Compliance with Certain Regulatory Matters. The Issuer, its directors and officers and, to the Issuer's knowledge, its employees and agents have operated and currently are in compliance in all material respects with applicable Laws administered or enforced by the FDA, the DEA or any other Governmental Authority, including the Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), the Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)), the civil False Claims Act (31 U.S.C. §3729 et seq.), the False Statements Law (42 U.S.C. § 1320a-7b(a)), the Civil Monetary Penalties Law (42 U.S.C. §1320a-7a), all criminal Laws relating to health care fraud and abuse, including 18 U.S.C. §§ 286 and 287, the exclusions law (42 U.S.C. § 1320a-7), the Laws of Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act) and all other government funded or sponsored healthcare programs, and the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.), as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (42 U.S.C. §17921 et seq.). The Issuer is not a party to, and does not have any ongoing reporting obligations pursuant to, any corporate integrity agreement, deferred prosecution agreement, monitoring agreement, consent decree, settlement order, plan of correction or similar agreement imposed by any Governmental Authority. Neither the Issuer nor, to the knowledge of the Issuer, any of its directors, officers, employees or agents has been debarred, excluded or suspended from participation in or receiving payment from any U.S. federal, state or local government health care program or is subject to an audit, investigation, proceeding or other similar action by any Governmental Authority that could reasonably be expected to result in debarment, suspension or exclusion.

Section 5.34 Absence of Certain Regulatory Actions. Except as described in the Exchange Act Documents or as would not, individually or in the aggregate, have a Material Adverse Effect, the Issuer has not (a) had any product or manufacturing site (whether Issuer-owned or that of a contract manufacturer for Issuer products or product candidates) subject to a Governmental Authority (including the FDA) shutdown or import or export prohibition or (b) received any FDA Form 483 or other Governmental Authority notice of inspectional observations, "warning letters", "untitled letters", requests to make changes to the Issuer products, processes or operations, or similar written correspondence or notice from the FDA or other Governmental Authority alleging or asserting material noncompliance with any applicable Laws. To the Issuer's knowledge, neither the FDA nor any other Governmental Authority has threatened such action. The Issuer has not received written notice of any claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any Regulatory Agency or other Governmental Authority alleging that any product operation or activity is in violation of any health care Laws, and, to the Issuer's knowledge, no such claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action is threatened, except where such claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.35 Collateral Agreement. The representations and warranties of the Issuer in Article III of that certain collateral agreement, dated as of the Closing Date, among the Issuer, the other subsidiary parties from time to time party thereto, the Trustee and the Collateral Agent are true and correct in all material respects (except to the extent qualified by materiality, in which case such representation or warranty shall be true and correct in all respects).

ARTICLE VI
CONDITIONS TO CLOSING

The obligations of the Purchaser hereunder on the Closing Date are subject to the accuracy in all material respects (except for such representations qualified by materiality or Material Adverse Effect, which shall be accurate in all respects) of the representations and warranties of the Issuer contained herein as of the Closing Date, to the accuracy of the statements of the Issuer and its officers made in any certificates delivered pursuant hereto on the Closing Date, to the performance by the Issuer of its obligations hereunder as of the Closing Date and to the satisfaction or waiver by the Purchaser of each of the following additional terms and conditions applicable on the Closing Date:

Section 6.1 Issuer's Counsel Opinion. Dechert LLP, counsel to the Issuer, shall have furnished to the Purchasers their opinion, addressed to the Purchasers and dated the Closing Date, in form and substance reasonably satisfactory to the Purchasers.

Section 6.2 Purchasers' Counsel Opinion. Pillsbury Winthrop Shaw Pittman LLP, special counsel to the Purchasers, shall have furnished to the Purchasers their opinion, addressed to the Purchasers and dated the Closing Date, in form and substance reasonably satisfactory to the Purchasers.

Section 6.3 Certification as to Purchase Agreement. The Issuer shall have furnished to the Purchasers a certificate, dated the Closing Date, of a Responsible Officer, stating that, as of the Closing Date, the representations and warranties of the Issuer in this Purchase Agreement are true and correct in all material respects (except for such representations qualified by materiality or Material Adverse Effect, which are true and correct in all respects) and the Issuer has complied in all material respects with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied hereunder on or before the Closing Date.

Section 6.4 Authorizations. The Issuer shall have furnished to the Purchasers (a) a copy of the resolutions, consents or other documents, certified by a Responsible Officer of the Issuer, as of the Closing Date, duly authorizing the execution and delivery of, and performance of obligations under, the Transaction Documents and any other documents to be executed on or prior to the Closing Date by or on behalf of the Issuer in connection with the transactions contemplated hereby and thereby and the issuance and sale of the Notes and Warrants, and a certification that such resolutions, consents or other documents have not been modified, rescinded or amended and are in full force and effect, (b) certified copies of its organizational documents, (c) a certification by a Responsible Officer, as of the Closing Date, as to the incumbency and specimen signatures of each officer executing any Transaction Document or any other document delivered in connection herewith or therewith on behalf of the Issuer (together with a certification of another Responsible Officer as to incumbency and specimen signature of the first-mentioned Responsible Officer) and (d) a certificate of good standing of the Issuer as of a recent date from the Secretary of State of the State of Delaware.

Section 6.5 Offering of Notes and Warrants. The Placement Agent shall have delivered to the Issuer a certificate, dated on or about the Closing Date, as to the manner of the offering of the Notes and the Warrants and the number and character of the offerees contacted, which certificate shall state that the Placement Agent (a) did not solicit offers for, or offer, the Notes or the Warrants by means of any form of general solicitation or general advertising (as those terms are used in Regulation D under the Securities Act) or in any manner involving a public offering within the meaning of Section 4(a)(2) of the Securities Act, including publication or release of articles, notices or other communications published in any newspaper, magazine or similar medium or broadcast over television, radio or internet, or any seminar or meeting whose attendees have been invited by any general solicitation or general advertising, and did not engage in any directed selling efforts within the meaning of Rule 902(c) of Regulation S and (b) solicited offers for the Notes and the Warrants only from, and offered the Notes and the Warrants only to, (i) Persons that it reasonably believed were QIBs or, if any such Person was buying for one or more institutional accounts for which such Person was acting as fiduciary or agent, only when such Person reasonably believed that each such account was a QIB, (ii) to Persons that are not U.S. persons (as defined in Regulation S) in accordance with Rule 903 of Regulation S if such offers were outside the United States and (iii) Accredited Investors, and shall further state that counsel to the Issuer and to the Purchasers may rely thereon in rendering their respective opinions to be delivered hereunder.

Section 6.6 CUSIP Numbers. S&P Global Market Intelligence's CUSIP Global Services, as agent for the National Association of Insurance Commissioners, shall have issued CUSIP numbers and ISIN numbers for the Notes.

Section 6.7 Further Information. On or prior to the Closing Date, the Issuer shall have furnished to the Purchaser such further information, certificates and documents as the Purchaser may reasonably request in connection with this Purchase Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby (including written evidence of the repayment in full of all indebtedness and any other obligations under that certain Credit Agreement and Guaranty dated as of August 16, 2016, as amended to date, between the Issuer (formerly MonoSol Rx, LLC), the subsidiary guarantors from time to time party thereto, the lenders from time to time party thereto and Perceptive Credit Holdings, LP, as administrative agent and collateral agent, the termination of any guarantees of such indebtedness and other obligations and the release of all Liens securing such indebtedness and other obligations, as applicable).

Section 6.8 Consummation of Transactions. All of the transactions contemplated by the Transaction Documents to be completed on or before the Closing Date shall have been consummated or shall be consummated concurrently with the transactions contemplated hereby, and the Purchaser shall have received executed copies of the Transaction Documents (which shall be in full force and effect).

Section 6.9 No Actions. No action shall have been taken and no Law shall have been enacted, adopted or issued by any Governmental Authority that would, as of the Closing Date, prevent the issuance or sale of the Notes or the Warrants, and no injunction, restraining order or order of any other nature by any Governmental Authority of competent jurisdiction shall have been issued as of the Closing Date that would prevent the issuance or sale of the Notes or the Warrants.

Section 6.10 Consents. The Purchasers shall have received copies of all consents, approvals, authorizations, orders, registrations and qualifications set forth in Schedule 5.10.

Section 6.11 Notes Collateral Requirements. The Collateral Agent shall have received:

(a) to the extent required to be delivered under the Security Documents, all certificates, agreements or instruments representing or evidencing the Equity Interests of the Subsidiaries of the Issuer referred to in the Security Documents accompanied by instruments of transfer and stock powers undated and endorsed in blank;

(b) all other certificates, agreements or instruments necessary to perfect the Collateral Agent's security interest in all chattel paper, all instruments, all deposit accounts and all investment property of the Issuer (to the extent required by any Transaction Document);

(c) evidence of the filing of financing statements under the UCC, recordings with the PTO and other recordings (including in any applicable non-U.S. jurisdiction) required, necessary, appropriate or reasonably requested to be made to perfect a security interest in the Notes Collateral, including those specified in the Security Documents; and

(d) certified copies of UCC, PTO, United States Copyright Office, tax, judgment lien, bankruptcy and pending lawsuit searches or equivalent reports or searches, each as of a recent date and listing all effective financing statements, lien notices or comparable documents that name the Issuer as debtor and that are filed in the jurisdiction in which the Issuer is organized or maintains its principal place of business and such other searches deemed necessary or appropriate, none of which encumber the Notes Collateral covered or intended to be covered in the Security Documents (except to the extent contemplated by the Security Documents).

Section 6.12 Insurance. The Collateral Agent shall have received evidence that all insurance required to be maintained pursuant to the Transaction Documents by the Issuer has been obtained and is in effect together with the certificates of insurance, naming the Collateral Agent, on behalf of the Noteholders, as an additional insured, loss payee and/or mortgagee, as the case may be, under all insurance policies maintained with respect to the properties and assets that constitute Notes Collateral.

Section 6.13 Warrants. On the Closing Date, the Issuer shall issue a Warrant to the Purchaser in the form attached as Exhibit A in respect of the number of shares of Common Stock of the Issuer set forth opposite the Purchaser's name in Schedule 1.

ARTICLE VII
ADDITIONAL COVENANTS

Section 7.1 DTC. The Issuer will use reasonable best efforts to comply with the agreements set forth in the representation letter of the Issuer to DTC relating to the approval of the Notes by DTC for "book-entry" transfer.

Section 7.2 Expenses. The Issuer agrees to pay or cause to be paid from the proceeds of the issuance of the Notes and the Warrants all reasonable, documented fees and expenses of Pillsbury Winthrop Shaw Pittman LLP, acting as special counsel to the Purchasers (the amount of any such payment of the reasonable, documented fees and expenses of Pillsbury Winthrop Shaw Pittman LLP (excluding such fees and expenses related to intellectual property work and opinions) not to exceed in the aggregate the amount set forth in paragraph 2 of the letter agreement dated February 25, 2019 between the Issuer and the Placement Agent (unless otherwise agreed to by the Issuer)), as well as up to $100,000 of the lead Purchaser's expenses in respect of work performed by its outside legal counsel and in respect of intellectual property work performed by Pillsbury Winthrop Shaw Pittman LLP, acting as special counsel to the Purchasers, it being understood that the Issuer will not reimburse any other expenses of any Purchasers (including expenses of any other counsel).

Section 7.3 Confidentiality; Public Announcement.

(a) Except as otherwise required by Law or judicial or administrative proceedings (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation demand or similar process) or the rules and regulations of any securities exchange or trading system or any Governmental Authority or pursuant to requests from regulatory agencies having oversight over the Issuer and except as otherwise set forth in this Section 7.3, the Issuer will, and will cause each of its Affiliates, directors, officers, employees, agents, representatives and similarly situated Persons who receive such information to, treat and hold as confidential and not disclose to any Person any and all Confidential Information furnished to it by the Purchaser, as well as the information in Schedule 1, and to use any such Confidential Information and other information only in connection with this Purchase Agreement and any other Transaction Document and the transactions contemplated hereby and thereby. Notwithstanding the foregoing, the Issuer may disclose such information solely on a need-to-know basis and solely to its directors, employees, officers, agents, brokers, advisors, lawyers, bankers, trustees, representatives, investors, co-investors, insurers, insurance brokers, underwriters and financing parties; provided, however, that such Persons shall be informed of the confidential nature of such information and shall be obligated to keep such Confidential Information and other information confidential pursuant to obligations of confidentiality no less onerous than those set forth herein.

(b) The Purchaser acknowledges that it will not, after the execution of this Purchase Agreement, make a public announcement or filing with respect to the transactions contemplated by the Transaction Documents or reference or describe such transactions in a public announcement or filing, without the Issuer's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned). Except as required by applicable Law or judicial or administrative proceedings (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation demand or similar process) or the rules and regulations of any securities exchange or trading system or any Governmental Authority or pursuant to requests from regulatory agencies having oversight over the Issuer, in no event shall the Purchaser's name (in any variation) be used in any public announcement or filing, or in any type of mail or electronic distribution intended for an audience that is not solely limited to the Affiliates of the Issuer, without the Purchaser's written consent.

(c) Except as required by applicable Law or judicial or administrative proceedings (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation demand or similar process) or the rules and regulations of any securities exchange or trading system or any Governmental Authority or pursuant to requests from regulatory agencies having oversight over the Issuer, neither the Issuer nor any of its Affiliates shall disclose to any Person, or use or include in any public announcement or any public filing, the identity of any shareholders, members, directors or Affiliates of the Purchaser, without the prior written consent of such shareholder, member, director or Affiliate.

Section 7.4 Right of First Offer. Upon each proposed issuance, if any, of Additional Securities, the Issuer will grant to the Purchaser the right to purchase an aggregate amount of such Additional Securities in an amount equal to the same proportion that the principal amount of Notes the Purchaser has purchased as set forth opposite its name in Schedule 1 bears to the aggregate principal amount of Notes issued on the Closing Date to the Purchaser and the Other Purchasers and at a purchase price specified by the Issuer (which purchase price shall not be more than the purchase price per Note being offered to other investors), with such right to purchase being exercised by the Purchaser by written notice to the Issuer no later than 15 days after being notified of such proposed issuance by the Issuer. To the extent that the Other Purchasers decline to exercise their right to purchase any Additional Securities (in whole or in part) pursuant to the Other Agreements, the Issuer will promptly notify the Purchaser (only if the Purchaser previously exercised its right to purchase previously available Additional Securities in full pursuant to the preceding sentence), in which case the Purchaser will have the right to purchase such remaining Additional Securities (subject to proportional reduction to the extent of the relative initial principal amount of Additional Securities purchased by Other Purchasers exercising the same right pursuant to the Other Agreements) on the same terms as any Additional Securities it previously exercised the right to purchase pursuant to the preceding sentence, with such right to purchase being exercised by the Purchaser by written notice to the Issuer no later than two days after being notified of the opportunity to purchase such remaining Additional Securities by the Issuer.

ARTICLE VIII
SURVIVAL OF CERTAIN PROVISIONS

Section 8.1 Survival of Certain Provisions. The representations, warranties, covenants and agreements contained in this Purchase Agreement shall survive (a) the execution and delivery of this Purchase Agreement, the Notes and the Warrant and (b) the sale or transfer by any Purchaser of any Note or any Warrant or portion thereof or interest therein. All such provisions are binding upon and may be relied upon by any subsequent holder or beneficial owner of a Note or a Warrant, regardless of any investigation made at any time by or on behalf of any Purchaser or any other holder or beneficial owner of a Note or a Warrant. All statements contained in any certificate or other instrument delivered by or on behalf of either party hereto pursuant to this Purchase Agreement shall be deemed to have been relied upon by the other party hereto and shall survive the consummation of the transactions contemplated hereby regardless of any investigation made by or on behalf of either such party. The Transaction Documents embody the entire agreement and understanding between the parties hereto and supersede all prior agreements and understandings relating to the subject matter hereof. Notwithstanding anything to the contrary elsewhere in this Purchase Agreement, neither party hereto shall, in any event, be liable to any other Person for any consequential, incidental, indirect, special or punitive damages of such other Person, including loss of revenue, income or profits, diminution of value or loss of business reputation or opportunity relating to the breach or alleged breach hereof (provided, that such limitation with respect to lost profits or otherwise shall not limit the Issuer’s right to recover contract damages in connection with the Purchaser’s failure to close in violation of this Purchase Agreement).

ARTICLE IX
NOTICES

Section 9.1 Notices. All statements, requests, notices and agreements hereunder shall be in writing and delivered by hand, mail, overnight courier or telefax as follows:

(a) if to the Purchaser, in accordance with Schedule 1; and

(b) if to the Issuer, in accordance with Section 12.01 of the Indenture.

ARTICLE X
SUCCESSORS AND ASSIGNS

Section 10.1 Successors and Assigns. This Purchase Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors, permitted assignees and permitted transferees. So long as any of the Notes or the Warrant are outstanding, the Issuer may not assign any of its rights or obligations hereunder or any interest herein without the prior written consent of the Purchaser except as permitted in accordance with the Indenture and the Warrant, as applicable.

ARTICLE XI
SEVERABILITY

Section 11.1 Severability. Any provision of this Purchase Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by Law) not invalidate or render unenforceable such provision in any other jurisdiction.

ARTICLE XII
WAIVER OF JURY TRIAL

Section 12.1 WAIVER OF JURY TRIAL. THE PURCHASER AND THE ISSUER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION BROUGHT ON OR WITH RESPECT TO THIS PURCHASE AGREEMENT.

ARTICLE XIII
GOVERNING LAW; CONSENT TO JURISDICTION

Section 13.1 Governing Law; Consent to Jurisdiction. THIS PURCHASE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL SUBSTANTIVE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO THE RULES THEREOF RELATING TO CONFLICTS OF LAW OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS. The parties hereto hereby submit to the non-exclusive jurisdiction of the U.S. federal and state courts of competent jurisdiction in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Purchase Agreement or the transactions contemplated hereby.

ARTICLE XIV
COUNTERPARTS

Section 14.1 Counterparts. This Purchase 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 Purchase Agreement. Any counterpart may be executed by facsimile or other electronic transmission, and such facsimile or other electronic transmission shall be deemed an original.

ARTICLE XV
TABLE OF CONTENTS AND HEADINGS

Section 15.1 Table of Contents and Headings. The Table of Contents and headings of the Articles and Sections of this Purchase Agreement have been inserted for convenience of reference only, are not to be considered a part hereof and shall in no way modify or restrict any of the terms or provisions hereof.

ARTICLE XVI
TAX DISCLOSURE

Section 16.1 Tax Disclosure. Notwithstanding anything expressed or implied to the contrary herein, the Purchaser, on the one hand, and the Issuer, on the other hand, and its respective employees, representatives and agents may disclose to any and all Persons, without limitation of any kind, the tax treatment and the tax structure of the transactions contemplated by this Purchase Agreement and the agreements and instruments referred to herein and all materials of any kind (including opinions or other tax analyses) that are provided to such Person relating to such tax treatment and tax structure; provided, however, that neither such Person nor any employee, representative or other agent thereof shall disclose any other information that is not relevant to understanding the tax treatment and tax structure of such transactions (including the identity of any party and any information that could lead another to determine the identity of any party) or any other information to the extent that such disclosure could reasonably result in a violation of any Law relating to U.S. federal or state securities matters. For these purposes, the tax treatment of the transactions contemplated by this Purchase Agreement and the agreements and instruments referred to herein means the purported or claimed U.S. federal or state tax treatment of such transactions. Moreover, the tax structure of the transactions contemplated by this Purchase Agreement and the agreements and instruments referred to herein includes any fact that may be relevant to understanding the purported or claimed U.S. federal or state tax treatment of such transactions.

{SIGNATURE PAGE FOLLOWS}

If the foregoing is in accordance with your understanding of this Purchase Agreement, kindly sign and return to us one of the counterparts hereof, whereupon it will become a binding agreement between us and you in accordance with its terms.

Very truly yours,

AQUESTIVE THERAPEUTICS, INC.

By: _____
Name:
Title:

{*Signature Page to the Purchase Agreement*}

[PURCHASER SIGNATURE PAGE]

{*Signature Page to the Purchase Agreement*}

ANNEX A
RULES OF CONSTRUCTION AND DEFINED TERMS

Unless the context otherwise requires, in this Annex A and each Transaction Document (or other document) to which this Annex A is attached:

(a) A term has the meaning assigned to it and an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP, unless any Transaction Document (or other document) otherwise provides.

(b) Where any payment is to be made, any funds are to be applied or any calculation is to be made under any Transaction Document (or other document) on a day that is not a Business Day, unless any Transaction Document (or other document) otherwise provides, such payment shall be made, such funds shall be applied and such calculation shall be made on the succeeding Business Day, and payments shall be adjusted accordingly, including interest unless otherwise specified.

(c) Words of the masculine, feminine or neuter gender shall mean and include the correlative words of other genders.

(d) The definitions of terms shall apply equally to the singular and plural forms of the terms defined.

(e) The terms “include”, “including” and similar terms shall be construed as if followed by the phrase “without limitation”.

(f) Unless otherwise specified, references to an agreement or other document include references to such agreement or document as from time to time amended, restated, reformed, supplemented or otherwise modified in accordance with the terms thereof (subject to any restrictions on such amendments, restatements, reformations, supplements or modifications set forth in this Annex A or any Transaction Document (or other document)) and include any Annexes, Exhibits and Schedules attached thereto.

(g) References to any Law shall include such Law as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor.

(h) References to any Person shall be construed to include such Person’s successors and permitted assigns (subject to any restrictions on assignment, transfer or delegation set forth in this Annex A or any Transaction Document (or other document)), and any reference to a Person in a particular capacity excludes such Person in other capacities.

(i) The word “will” shall be construed to have the same meaning and effect as the word “shall”.

(j) The words “hereof”, “herein”, “hereunder” and similar terms when used in this Annex A or any Transaction Document (or other document) shall refer to this Annex A or such Transaction Document (or other document) as a whole and not to any particular provision hereof or thereof, and Article, Section, Annex, Schedule and Exhibit references herein and therein are references to Articles and Sections of, and Annexes, Schedules and Exhibits to, the relevant Transaction Document (or other document) unless otherwise specified.

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

(l) References to any action, remedy or method of judicial proceeding for the enforcement of the rights of creditors or of security shall be deemed to include, in respect of any jurisdiction other than the State of New York, references to such action, remedy or method of judicial proceeding for the enforcement of the rights of creditors or of security available or appropriate in such jurisdiction as shall most nearly approximate such action, remedy or method of judicial proceeding described or referred to in the relevant Transaction Document (or other document).

"$" means lawful money of the United States.

"Accredited Investor" means an "accredited investor" as defined in Rule 501(a)(1), (a)(2), (a)(3) or (a)(7) under the Securities Act that is not (i) a QIB or (ii) a Person other than a U.S. person (as defined in Regulation S) that acquires Notes or Warrants in reliance on Regulation S.

"Additional Securities" means the First Additional Securities and the Second Additional Securities (each as defined in the Indenture as of the date of the Purchase Agreements).

"Affiliate" means, with respect to any specified Person, another Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the specified Person. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of the Capital Stock of such Person that is at the time entitled to vote in the election of the board of directors (or equivalent) of such Person, by contract or otherwise, and "controlled" has a meaning correlative thereto.

"Anti-Money Laundering Laws" has the meaning set forth in Section 5.26 of the Purchase Agreements.

"Business Day" means any day other than a Saturday, a Sunday or any other day on which banking institutions are authorized or required by Law to close in New York City or the city in which the Trustee's corporate trust office is located.

"Capital Stock" means (a) in the case of a corporation, corporate stock or shares, (b) in the case of an association or business entity, any and all 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 membership rights, 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 distributions of assets of, the issuing Person, in each case to the extent treated as equity in accordance with GAAP, but excluding from all of the foregoing any debt securities convertible into or exchangeable for Capital Stock whether or not such debt securities include any right of participation with Capital Stock.

"Closing Date" means the date hereof.

"Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Collateral Agent" means U.S. Bank National Association in its capacity as "Collateral Agent" under the Indenture and under the Security Documents and any successor thereto in such capacity.

"Commission" means the U.S. Securities and Exchange Commission or any successor thereto.

"Common Stock" means (i) the common stock, par value $0.001 per share, of the Issuer and (ii) any other Capital Stock into which such common stock is reclassified or reconstituted.

"Confidential Information" means, as it relates to the Purchaser (or its Affiliates), all information (whether written or oral, or in electronic or other form) furnished before or after the date of this Purchase Agreement concerning the Purchaser or its Affiliates (including any of its equityholders), including any and all information regarding any aspect of the Purchaser's business, including its owners, funds, strategy, market views, structure, investors or potential investors. Such Confidential Information includes any IRS Form W-9 or W-8BEN (or any similar type of form) provided by the Purchaser (or its Affiliates) to the Issuer or its Affiliates. Notwithstanding the foregoing definition, "Confidential Information" shall not include information that is (v) independently developed or discovered by the Issuer without use of or access to any information described in the second preceding sentence, as demonstrated by documentary evidence, (w) already in the public domain at the time the information is disclosed or has become part of the public domain after such disclosure through no breach of this Purchase Agreement, (x) lawfully obtainable from other sources, (y) required to be disclosed in any document to be filed with any Governmental Authority or otherwise required to be disclosed under applicable Law or judicial or administrative proceedings (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation demand or similar process) or pursuant to requests from regulatory agencies having oversight over the Issuer or (z) required to be disclosed by court or administrative order or under securities Laws applicable to any party to this Purchase Agreement or pursuant to the rules and regulations of any stock exchange or stock market on which securities of the Issuer or its Affiliates or the Purchaser or its Affiliates may be listed for trading.

"DEA" means the U.S. Drug Enforcement Administration or any successor thereto.

"Definitive Security" has the meaning set forth in Appendix A to the Indenture as of the date of the Purchase Agreements.

"DTC" means The Depository Trust Company (including its nominees).

"Environmental Laws" has the meaning set forth in Section 5.22 of the Purchase Agreements.

"Equity Interests" means, with respect to any Person, all of the shares of Capital Stock of (or other ownership, distribution or profit interests or participations in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of Capital Stock of (or other ownership, distribution or profit interests or participations in) such Person and all of the other ownership, distribution or profit interests or participations in such Person (including partnership, membership or trust interests therein), whether voting or non-voting, and whether or not such shares, warrants, options, rights or other interests or participations are outstanding on any date of determination.

"ERISA" means the U.S. Employee Retirement Income Security Act of 1974, as amended.

"ERISA Plan" has the meaning set forth in Section 5.14 of the Purchase Agreements.

"Event of Default" has the meaning set forth in the Indenture as of the date of the Purchase Agreements.

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

"Exchange Act Documents" has the meaning set forth in Section 5.4 of the Purchase Agreements.

"FCPA" means the U.S. Foreign Corrupt Practices Act of 1977, as amended.

"FDA" means the U.S. Food and Drug Administration or any successor thereto.

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

"Global Security" has the meaning set forth in Appendix A to the Indenture as of the date of the Purchase Agreements.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, arbitrator, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Hazardous Substances" means (a) petroleum and petroleum products, by-products or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls and mold and (b) any other chemical, material or substance defined as toxic or hazardous or as a pollutant, contaminant or waste or words of similar import, or regulated or that can form the basis for liability, under Environmental Laws.

"Immaterial Subsidiaries" has the meaning set forth in the Indenture as of the date of the Purchase Agreements.

"Indenture" means that certain indenture for the Notes, dated as of the Closing Date, by and among the Issuer, the other subsidiary parties from time to time party thereto, the Trustee and the Collateral Agent.

"Intellectual Property" has the meaning set forth in Section 5.21(a) of the Purchase Agreements.

"IRS" means the U.S. Internal Revenue Service.

"Issuer" has the meaning set forth in the preamble to the Purchase Agreements.

"Laws" means, collectively, all applicable international, foreign, federal, state and local laws, statutes, treaties, rules, regulations, ordinances, judgments, orders, writs, injunctions, decrees, codes and administrative or judicial precedents or authorities, including the binding and enforceable interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, licenses, authorizations and permits of, and binding and enforceable agreements with, any Governmental Authority.

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable Law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the UCC (or equivalent Laws) of any jurisdiction); provided, that in no event shall an operating lease be deemed to constitute a Lien.

"Material Adverse Effect" means a material adverse effect (a) in or affecting the business, condition (financial or otherwise), results of operations, earnings, properties or prospects of the Issuer and its Subsidiaries taken as a whole or (b) on the ability of the Issuer to perform its obligations under the Transaction Documents.

"Material Contract" means a contract or other agreement that is required to be filed by the Issuer with the Commission pursuant to Item 601(b)(4), Item 601(b)(10) or Item 601(b)(99) of Regulation S-K as an exhibit to the Exchange Act Documents.

"Notes" means the 12.5% Senior Secured Notes due 2025 of the Issuer in the initial outstanding principal balance of $70,000,000 that are issued on the Closing Date pursuant to Section 2.01(b) of the Indenture and Section 3.1 of the Purchase Agreements.

"Notes Collateral" means all property subject, or purported to be subject from time to time, to a Lien under any Security Documents.

"Other Agreements" has the meaning set forth in Section 3.1(b) of the Purchase Agreements.

"Other Purchasers" has the meaning set forth in Section 3.1(b) of the Purchase Agreements.

"Patents" means (i) an issued patent or a patent application, (ii) all registrations and recordings thereof, (iii) all continuations and continuations-in-part to an issued patent or patent application, (iv) all divisions, patents of addition, reissues, renewals and extensions of any patent, patent application, continuation or continuation-in-part and (v) all counterparts of any of the above in any jurisdiction.

"Paying Agent" means an office or agency where Notes may be presented for payment, maintained by the Issuer in accordance with Section 2.04(a) of the Indenture.

"Permits" has the meaning set forth in Section 5.30 of the Purchase Agreements.

"Permitted Lien" has the meaning set forth in the Indenture as of the date of the Purchase Agreements.

"Person" means an individual, corporation, partnership, association, limited liability company, unincorporated organization, trust, joint stock company or joint venture, a Governmental Authority or any other entity.

"Placement Agent" means Morgan Stanley & Co. LLC.

"Plan Assets" has the meaning given to such term by Section 3(42) of ERISA and regulations issued by the U.S. Department of Labor.

"Price" has the meaning set forth in Section 3.1(b) of the Purchase Agreements.

"PTE" means the United States Department of Labor Prohibited Transaction Exemption.

"PTO" means the U.S. Patent and Trademark Office or any successor thereto.

"Purchase Agreement" means this purchase agreement.

"Purchase Agreements" means, collectively, each Purchase Agreement and the Other Agreements.

"Purchase Price" has the meaning set forth in Section 3.1(b) of the Purchase Agreements.

"Purchaser" has the meaning set forth in Section 1.1 of the Purchase Agreements.

"Purchasers" has the meaning set forth in Section 1.1 of the Purchase Agreements.

"QIB" means a qualified institutional buyer within the meaning of Rule 144A.

"QPAM Exemption" means PTE 84-14 (issued December 21, 1982, as subsequently amended).

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

"Regulation S Global Security" has the meaning set forth in Appendix A to the Indenture as of the date of the Purchase Agreements.

"Regulatory Agencies" has the meaning set forth in Section 5.31 of the Purchase Agreements.

"Responsible Officer" means, with respect to the Issuer, any director or officer of the Issuer.

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

"Rule 144A Global Security" has the meaning set forth in Appendix A to the Indenture as of the date of the Purchase Agreements.

"Sanctioned Country" has the meaning set forth in Section 5.27 of the Purchase Agreements.

"Sanctions" has the meaning set forth in Section 5.27 of the Purchase Agreements.

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

"Security Documents" means the security agreements, pledge agreements, mortgages, collateral assignments and related agreements, as amended, supplemented, restated, renewed, refunded, replaced, restructured, repaid, refinanced or otherwise modified from time to time, creating, perfecting or otherwise evidencing the security interests in the Notes Collateral as contemplated by the Indenture.

"Similar Law" has the meaning set forth in Section 4.3(b) of the Purchase Agreements.

"Source" has the meaning set forth in Section 4.3(a) of the Purchase Agreements.

"Subsidiary" means, with respect to any Person, (a) any corporation, association or other business entity (other than a partnership, joint venture or limited liability company) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, and (b) any partnership, joint venture or limited liability company of which (x) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general and limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, whether in the form of membership, general, special or limited partnership interests or otherwise, or (y) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity. For purposes of clarity, a Subsidiary of a Person shall not include any Person that is under common control with the first Person solely by virtue of having directors, managers or trustees in common and shall not include any Person that is solely under common control with the first Person (i.e., a sister company with a common parent).

"Taxes" means any present or future tax, fee, duty, levy, tariff, impost, assessment or other charge imposed by a Governmental Authority (including penalties, interest and additions to tax applicable thereto).

"Transaction Documents" means the Indenture, the Notes, the Warrants, the Security Documents, the Purchase Agreements, any intercreditor agreement in the form of Exhibit D to the Indenture, and each other agreement pursuant to which the Collateral Agent (or its agent) is granted a Lien to secure the obligations under the Indenture or the Notes.

"Trustee" means U.S. Bank National Association, as trustee under the Indenture.

"Trustee Closing Account" means the account maintained with the Trustee at U.S. Bank National Association, ABA No. 091000022, Account No. 1731 0332 1092, Ref. Aquestive Senior Secured Notes, Attention: Alison D.B. Nadeau.

"UCC" means the Uniform Commercial Code as in effect in the State of New York; provided, that, if perfection, the effect of perfection or non-perfection or the priority of any security interest in any Notes Collateral is governed by the Uniform Commercial Code (or equivalent Law) as in effect in a jurisdiction other than the State of New York, then "UCC" means the Uniform Commercial Code (or equivalent Law) as in effect from time to time in such other jurisdiction for purposes of the provisions relating to such perfection, effect of perfection or non-perfection or priority.

"U.S." or "United States" means the United States of America, its 50 states, each territory thereof and the District of Columbia.

"Warrants" means that certain warrant or warrants, dated the Closing Date, executed by the Issuer and acknowledged by the Purchaser named therein, in the form attached as Exhibit A.

Exhibit 10.2

COLLATERAL AGREEMENT

DATED AS OF JULY 15, 2019

AMONG

AQUESTIVE THERAPEUTICS, INC.,
as Issuer,

THE OTHER GRANTORS FROM TIME TO TIME PARTY HERETO,

U.S. BANK NATIONAL ASSOCIATION,
as Trustee,

and

U.S. BANK NATIONAL ASSOCIATION,
as Collateral Agent

TABLE OF CONTENTS

COLLATERAL AGREEMENT

This COLLATERAL AGREEMENT is entered into as of July 15, 2019 (as more fully defined in Section 1.2 below, this "Agreement") by and among AQUESTIVE THERAPEUTICS, INC., a Delaware corporation with an address at 30 Technology Drive, Warren, New Jersey 07059 (the "Issuer" and a Grantor as defined below), any other GRANTOR from time to time party hereto, U.S. BANK NATIONAL ASSOCIATION, in its capacity as trustee (and its successors under the Indenture (as defined below), in such capacity, the "Trustee"), and U.S. BANK NATIONAL ASSOCIATION, in its capacity as collateral agent for the Secured Parties (as defined below) (and its successors under the Indenture, in such capacity, the "Collateral Agent").

PRELIMINARY STATEMENT

WHEREAS, pursuant to the terms, conditions and provisions of (a) the Indenture dated as of the date hereof (as more fully defined in Section 1.2 below, the "Indenture") among the Issuer, the Guarantors (as defined below) from time to time party thereto, the Trustee and the Collateral Agent, and (b) each Purchase Agreement dated the date hereof (collectively, and as amended, extended, renewed, restated, supplemented, waived or otherwise modified from time to time, the "Purchase Agreements") between the Issuer and each purchaser party thereto (collectively, the "Purchasers"), the Issuer is issuing the Securities (as defined below), which are senior secured obligations of the Issuer;

WHEREAS, the initial aggregate principal amount of the Securities is $70,000,000;

WHEREAS, additional Securities in an aggregate principal amount not to exceed $30,000,000 may be issued pursuant to the terms of the Indenture and subject to the conditions therein and in the Purchase Agreements;

WHEREAS, the Indenture permits the Issuer and the other Grantors to grant a Lien (as defined below) on the Intercreditor Collateral (as defined below) to one or more ABL Collateral Agents (as defined below) and holders of ABL Obligations (as defined below);

WHEREAS, the Issuer, the other Grantors, the Collateral Agent, the Co-Collateral Agent (as defined below) (if applicable), the Trustee and the other parties thereto may enter into one or more Intercreditor Agreements (as defined below), which will govern the Liens on the Intercreditor Collateral granted by this Agreement and the Liens granted by the ABL Documents (as defined below);

WHEREAS, the Issuer is executing and delivering this Agreement, pursuant to the terms of the Purchase Agreements, to induce the Trustee to enter into the Indenture and to induce the Purchasers to purchase the Securities; and

WHEREAS, the Issuer has duly authorized its execution and delivery of, and its performance of its obligations under, this Agreement.

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants herein contained, and in order to induce the Trustee to enter into the Indenture and the Purchasers to purchase the Securities, each of the Issuer, each other Grantor that becomes bound hereby, the Trustee and the Collateral Agent, on behalf of itself and each Secured Party (and each of their respective successors or assigns), hereby agrees as follows:

ARTICLE I
DEFINITIONS; RULES OF CONSTRUCTION

Section 1.1 Terms Defined Elsewhere. Terms defined in the Indenture that are not otherwise defined in this Agreement are used herein with the respective definitions assigned to such terms in the Indenture. Terms defined in the UCC (as defined below) that are not otherwise defined in this Agreement are used herein as defined in the UCC. In the event that any term used in this Agreement and not otherwise defined in this Agreement is defined in both Indenture and the UCC, the definition in the Indenture shall control.

Section 1.2 Definitions of Certain Terms Used Herein. As used in this Agreement, the following terms have the following meanings:

"ABL Collateral Agent" has the meaning assigned to such term in the applicable Intercreditor Agreement.

"ABL Documents" has the meaning assigned to such term in the applicable Intercreditor Agreement or, if no such Intercreditor Agreement is then in effect, the Indenture.

"ABL Liens" has the meaning assigned to such term in the applicable Intercreditor Agreement or, if no such Intercreditor Agreement is then in effect, the Indenture.

"ABL Obligations" has the meaning assigned to such term in the applicable Intercreditor Agreement or, if no such Intercreditor Agreement is then in effect, the Indenture.

"ABL Secured Parties" has the meaning assigned to such term in the applicable Intercreditor Agreement.

"ABL Security Documents" has the meaning assigned to such term in the applicable Intercreditor Agreement.

"Account" means, with respect to a Person, any of such Person's now owned or hereafter acquired or arising "accounts" (as defined in the UCC), including any rights to payment for the sale of goods or rendering of services, whether or not such rights have been earned by performance, and "Accounts" means, with respect to any such Person, all of the foregoing.

"Account Control Agreement" means any account control agreement, account pledge, charge over accounts or similar agreement, among a Grantor, the Collateral Agent and the depository or other financial institution at which such Grantor maintains an account, which, in each case, is in form and substance reasonably satisfactory to the Collateral Agent acting at the direction of the Majority Holders (it being agreed that any agreement that shall require the Collateral Agent to indemnify any institution in its individual capacity (but not in its limited capacity as a Collateral Agent) shall not be reasonably satisfactory to the Collateral Agent).

"Account Debtor" means each Person obligated on an Account, Chattel Paper or General Intangible.

"Affiliate" has the meaning assigned to such term in the Indenture.

"After-Acquired Property" has the meaning assigned to such term in the Indenture.

"Agreement" has the meaning assigned to such term in the preamble, as amended, extended, renewed, restated, supplemented, waived or otherwise modified from time to time.

"Amendment" has the meaning assigned to such term in Section 4.2(a).

"Bankruptcy Proceeding" means, with respect to any Person, a general assignment by such Person for the benefit of its creditors, or the institution by or against such Person of any proceeding seeking relief as debtor, or seeking to adjudicate such Person as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment or composition of such Person or its debts, under any law or regulation relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its property.

"Base Currency" has the meaning assigned to such term in Section 8.19(b)(i).

"Cash Equivalents" has the meaning assigned to such term in the Indenture.

"Chattel Paper" means any "chattel paper", as such term is defined in the UCC, now owned or hereafter acquired by any Person and, in any event, shall include all Electronic Chattel Paper and Tangible Chattel Paper.

"Co-Collateral Agent" means a financial institution appointed by the Collateral Agent in accordance with Section 7.7(a) and Section 7.8 to act as co-collateral agent for the Secured Parties.

"Collateral" has the meaning assigned to such term in Section 2.1.

"Collateral Agent" has the meaning assigned to such term in the preamble.

"Collateral Agent's Liens" means the Liens on the Collateral granted to the Collateral Agent (or any Co-Collateral Agent), for the benefit of the Secured Parties, pursuant to this Agreement and the other Indenture Documents.

"Collateral Account" has the meaning assigned to such term in the Indenture.

"Commercial Tort Claims" means, with respect to a Person, all of such Person's now owned or hereafter acquired "commercial tort claims", as defined by the UCC, including those commercial tort claims identified on Schedule 12 to any Perfection Certificate and as specifically identified hereinafter, and, in any event, shall include any claim now owned or hereafter acquired by any Person, arising in tort, with respect to which: (a) the claimant is an organization; or (b) the claimant is an individual and the claim (i) arose in the course of the claimant's business or profession and (ii) does not include damages arising out of personal injury to or the death of an individual.

"Confidential Information" has the meaning assigned to such term in Section 7.3(b).

"Confidential Parties" has the meaning assigned to such term in Section 7.3(c).

"Control" has the meaning assigned to such term in Article 8 of the UCC or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of the UCC.

"Copyright, Patent and Trademark Agreements" means each copyright security agreement, patent collateral agreement and trademark collateral agreement executed (and, if necessary, notarized and legalized) and delivered by any Grantor to the Collateral Agent to evidence or perfect the Collateral Agent's security interest in and Lien on such Grantor's present and future copyrights, patents, trademarks and related licenses and rights for the benefit of the Secured Parties.

"Default" has the meaning assigned to such term in the Indenture.

"Effective Date" means the date of this Agreement.

"Electronic Chattel Paper" means any "electronic chattel paper", as such term is defined in the UCC, now owned or hereafter acquired by any Person.

"Equipment" means, with respect to a Person, all of such Person's now owned and hereafter acquired "equipment" (as defined in the UCC), machinery, furniture, furnishings, fixtures and other tangible personal property (except Inventory), including rolling stock with respect to which a certificate of title has been issued, aircraft, dies, tools, jigs and office equipment, as well as all of such types of property leased by such Person and all of such Person's rights and interests with respect thereto under such leases (including options to purchase), together with all present and future additions and accessions thereto, replacements therefor, component and auxiliary parts and supplies used or to be used in connection therewith, and all substitutes for any of the foregoing, and all manuals, drawings, instructions, warranties and rights with respect thereto, wherever any of the foregoing is located.

"Equity Interests" has the meaning assigned to such term in the Indenture.

"Event of Default" has the meaning assigned to such term in the Indenture.

"Excluded Assets" has the meaning assigned to such term in the Indenture.

"Fair Market Value" has the meaning assigned to such term in the Indenture.

"Filing Office" means, with respect to each Grantor, the office specified on Schedule 1.2 and, if applicable, any other appropriate office of the state or other jurisdiction where such Grantor is "located" (as such term is used in Section 9-307 of the UCC).

"Financial Assets" means any "financial asset", as such term is defined in the UCC, now owned or hereafter acquired by any Person.

"General Intangibles" means, with respect to a Person, all of such Person's now owned or hereafter acquired "general intangibles", as defined in the UCC, including payment intangibles, choses in action and causes of action and all other intangible personal property of such Person of every kind and nature (other than Accounts), including all contract rights, Proprietary Rights, corporate or other business records, inventions, designs, blueprints, plans, specifications, patents, patent applications, trademarks, service marks, trade names, trade secrets, goodwill, copyrights, computer software, customer lists, registrations, licenses, franchises, tax refund claims, any funds that may become due to such Person in connection with the termination of any employee benefit plan or any rights thereto and any other amounts payable to such Person from any employee benefit plan, rights and claims against carriers and shippers, rights to indemnification, business interruption insurance and proceeds thereof, property, casualty or any similar type of insurance and any proceeds thereof, proceeds of insurance covering the lives of key employees on which such Person is beneficiary, rights to receive dividends, distributions, cash, instruments and other property in respect of or in exchange for pledged Equity Interests or Investment Property, and any letter of credit, guarantee, claim, security interest or other security held by or granted to such Person.

"Governmental Authority" has the meaning assigned to such term in the Indenture.

"Grantors" means the Issuer and any other Person that becomes a party to this Agreement as a Grantor after the Effective Date.

"Guarantor" has the meaning assigned to such term in the Indenture.

"Holder" has the meaning assigned to such term in the Indenture.

"Indebtedness" has the meaning assigned to such term in the Indenture.

"Indemnified Liabilities" has the meaning assigned to such term in Section 8.17.

"Indemnified Person" has the meaning assigned to such term in Section 8.17.

"Indenture" has the meaning assigned to such term in the Preliminary Statement, as amended, restated or supplemented from time to time.

"Indenture Documents" means (a) the Indenture, (b) the Securities, (c) each Intercreditor Agreement, (d) each other Security Document, including this Agreement, and (e) any other related documents or instruments executed and delivered pursuant to or in connection with any of the foregoing documents, in each case, as such agreements may be amended, extended, renewed, restated, supplemented, waived or otherwise modified from time to time.

"Intercompany Obligations" means, collectively, all indebtedness, obligations and other amounts at any time owing to any Grantor from any of such Grantor's Subsidiaries or Affiliates and all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such indebtedness, obligations or other amounts.

"Intercreditor Agreement" means each Lien Subordination and Intercreditor Agreement substantially in the form attached as Exhibit D to the Indenture entered into by one or more Grantors, the Collateral Agent and one or more ABL Collateral Agents (as such agreement may be amended, extended, renewed, restated, supplemented, waived or otherwise modified from time to time).

"Intercreditor Collateral" has the meaning assigned to such term in the applicable Intercreditor Agreement or, if no such Intercreditor Agreement is then in effect, the Indenture.

"Inventory" means, with respect to a Person, all of such Person's now owned and hereafter acquired "inventory", as defined in the UCC, goods and merchandise, wherever located, in each case to be furnished under any contract of service or held for sale or lease, all returned goods, raw materials, work-in-process, finished goods (including embedded software), other materials and supplies of any kind, nature or description that are used or consumed in such Person's business or used in connection with the packing, shipping, advertising, selling or finishing of such goods, merchandise and other property, and all documents of title or other documents representing them.

"Investment Property" means, with respect to a Person, all of such Person's right, title and interest in and to any and all "investment property", as defined in the UCC, including all (a) securities, whether certificated or uncertificated, (b) securities entitlements, (c) securities accounts, (d) commodity contracts, (e) commodity accounts and (f) Equity Interests, together with all other units, shares, partnership interests, membership interests, membership rights, Equity Interests, rights or other equivalent evidences of ownership (howsoever designated) issued by any Person.

"Investment Property Issuer" has the meaning assigned to such term in Section 4.2(d).

"Issuer" has the meaning assigned to such term in the preamble.

"Judgment Currency" has the meaning assigned to such term in Section 8.19(b)(i).

"Lien" has the meaning assigned to such term in the Indenture.

"Majority Holders" means, at any time, the Holders or beneficial owners of a majority of the aggregate principal amount of the Securities then outstanding.

"Material Adverse Effect" has the meaning assigned to such term in the Purchase Agreements.

"Mortgaged Properties" means the owned and leased real properties and real property interests, including improvements thereto, of any Grantor specified on Schedule 13 to any Perfection Certificate of such Grantor with respect to which a Mortgage is granted pursuant to Section 4.12(b).

"Mortgages" means the mortgages, deeds of trust, assignments of leases and rents, modifications and other security documents in favor of the Collateral Agent, for the benefit of itself and the other Secured Parties, by which the Grantors have granted to the Collateral Agent, as security for the Obligations, a Lien upon Real Estate.

"Noteholder First Lien Collateral" has the meaning assigned to such term in the applicable Intercreditor Agreement or, if no such Intercreditor Agreement is then in effect, the Indenture.

"Obligations" has the meaning assigned to the term "Noteholder Obligations" in the Indenture.

"Officer" has the meaning assigned to such term in the Indenture.

"Officers' Certificate" has the meaning assigned to such term in the Indenture.

"Opinion of Counsel" has the meaning assigned to such term in the Indenture.

"Perfection Certificate" means a certificate substantially in the form of Exhibit A, completed and supplemented with the schedules and attachments contemplated thereby, delivered by any Grantor, including as amended by any certificate subsequently delivered pursuant to Section 4.1(e) or Section 4.12(a).

"Permitted Liens" has the meaning assigned to such term in the Indenture.

"Permit Rights" means, with respect to a Person, all of such Person's now owned and hereafter arising or acquired new drug applications, abbreviated new drug applications and similar filings, registrations, notices or the like to manufacture, use, store, import, export, transport, market, promote, sell or place on market any pharmaceutical product or device (or equivalent non-U.S. applications), including the foregoing set forth on Schedule 7 of the applicable Perfection Certificate, and any licenses, franchises and permits related to the conduct of such Person's business.

"Person" has the meaning assigned to such term in the Indenture.

"Pledged Collateral" has the meaning assigned to such term in Section 4.5(c).

"Proprietary Rights" means, with respect to a Person, all of such Person's patents, patent rights, copyrights, works that are the subject matter of copyrights (including software), trademarks, service marks, trade names, trade styles, patent, trademark and service mark applications, and all licenses and rights related to any of the foregoing, including those patents, copyrights and trademarks set forth on Schedule 6 of the applicable Perfection Certificate, and all other rights under any of the foregoing, all extensions, renewals, reissues, divisions, continuations and continuations in part of any of the foregoing, and all rights to sue for past, present and future infringement of any of the foregoing.

"Purchase Agreements" has the meaning assigned to such term in the Preliminary Statement.

"Purchasers" has the meaning assigned to such term in the Preliminary Statement.

"Real Estate" means, with respect to any Person, all of such Person's now or hereafter owned or leased estates in real property, including all fees, leaseholds and future interests, together with all of such Person's now and hereafter owned or leased interests in the improvements thereon, the fixtures attached thereto and the easements appurtenant thereto.

"Related Person" means, with respect to any specified Person, such Person's Affiliates and the respective officers, directors, employees, agents, advisors and attorneys-in-fact of such Person and its Affiliates.

"Requirement of Law" means, as to any Person, any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject.

"Restricted Subsidiary" has the meaning assigned to such term in the Indenture.

"Secured Parties" means (a) the Collateral Agent (including any Co-Collateral Agent), (b) each Holder of Securities, (c) the beneficiaries of each indemnification obligation undertaken by any Grantor under any Indenture Document, (d) the Trustee and (e) the successors and permitted assigns of each of the foregoing.

"Securities" has the meaning assigned to such term in the Indenture.

"Security Documents" has the meaning assigned to such term in the Indenture.

"Subsidiary" has the meaning assigned to such term in the Indenture.

"Tangible Chattel Paper" means any "tangible chattel paper" (as defined in the UCC), now owned or hereafter acquired by any Person.

"Trustee" has the meaning assigned to such term in the preamble.

"UCC" means the Uniform Commercial Code (or any successor statute), as in effect from time to time, of the State of New York or of any other state the laws of which are required as a result thereof to be applied in connection with the creation or perfection of security interests.

Section 1.3 Rules of Construction. Unless the context otherwise requires:

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

(b) the word "or" is not exclusive;

(c) the word "including" means including without limitation, and any item or list of items set forth following the word "including", "include" or "includes" in this Agreement is set forth only for the purpose of indicating that, regardless of whatever other items are in the category in which such item or items are "included", such item or items are in such category and shall not be construed as indicating the items in the category in which such item or items are "included" are limited to such item or items similar to such items;

(d) all references in this Agreement to any designated "Article", "Section", "Exhibit", "Schedule", definition and other subdivision are to the designated Article, Section, Exhibit, Schedule, definition and other subdivision, respectively, of this Agreement;

(e) all references in this Agreement to (i) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Schedule, Exhibit and other subdivision, respectively, and (ii) the term "this Agreement" means this Agreement as a whole, including the Schedules and the Exhibits;

(f) words in the singular include the plural and words in the plural include the singular;

(g) "$" and "U.S. Dollars" each refers to United States dollars, or such other money of the United States of America that at the time of payment is legal tender for payment of public and private debts;

(h) the words "asset" or "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights;

(i) unless otherwise specified, all references to an agreement or other document include references to such agreement or document as from time to time amended, restated, reformed, supplemented or otherwise modified in accordance with the terms thereof (subject to any restrictions on such amendments, restatements, reformations, supplements or modifications set forth in the Indenture Documents);

(j) all references to any Person shall be construed to include such Person's successors and permitted assigns (subject to any restrictions on assignment, transfer or delegation set forth in the Indenture Documents), and any reference to a Person in a particular capacity excludes such Person in other capacities; and

(k) the word "will" shall be construed to have the same meaning and effect as the word "shall".

ARTICLE II
GRANT OF SECURITY INTEREST

Section 2.1 Grant of Security Interest. As security for the Obligations, each Grantor hereby grants to the Collateral Agent, for the benefit of the Secured Parties, a continuing security interest in and lien on such Grantor's right, title and interest in and to all of the following property and assets of such Grantor, whether now owned or existing or hereafter acquired or arising, regardless of where located:

(a) all Accounts (including any credit enhancement therefor) and Intercompany Obligations;

(b) all Chattel Paper;

(c) all Commercial Tort Claims;

(d) all contract rights, leases, letters of credit, letter-of-credit rights, instruments, promissory notes, documents and documents of title;

(e) all Financial Assets;

(f) all Equipment;

(g) all General Intangibles, including all Proprietary Rights and all Permit Rights;

(h) all Investment Property, including the Equity Interests of each Subsidiary;

(i) all Inventory;

(j) all money, cash, cash equivalents, securities and other property of any kind;

(k) all deposit accounts, securities accounts, commodity accounts, credits and balances with, and other claims against, any bank, financial institution, depositary institution, broker, securities intermediary, commodity intermediary or other Person with which such Grantor maintains deposits, including the Collateral Account;

(l) all books, records and other property related to or referring to any of the foregoing, including books, records, account ledgers, data processing records, computer software and other property, and General Intangibles at any time evidencing or relating to any of the foregoing;

(m) all supporting obligations in respect of any of the foregoing;

(n) all other items, kinds and types of personal property, tangible or intangible, of whatever nature, and regardless of whether the creation or perfection or effect of perfection or non-perfection of a security interest therein is governed by the UCC of any particular jurisdiction or by another applicable treaty, convention, statute, law or regulation of any applicable jurisdiction; and

(o) all accessions to, substitutions for and replacements, products and proceeds of any of the foregoing, including After-Acquired Property, proceeds of any insurance policies, claims against third parties, and condemnation or requisition payments with respect to all or any of the foregoing.

All of the foregoing, and all other property of each Grantor in which a Secured Party may at any time be granted a Lien to secure the Obligations, are herein collectively referred to as the "Collateral"; provided, however, that, notwithstanding anything herein to the contrary, the Collateral (which, for the avoidance of doubt, includes references to the defined terms used within the definition of Collateral) shall not include, and the security interest shall not attach to, any and all Excluded Assets.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

Each Grantor, jointly and severally, represents and warrants to the Collateral Agent, for the benefit of the Secured Parties, as of the Effective Date and as of each date after the Effective Date on which Securities are issued pursuant to the Indenture, as follows:

Section 3.1 Validity and Priority of Security Interest.

(a) This Agreement creates in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral, including the Permit Rights, and the proceeds thereof and (i) when the Pledged Collateral is delivered to the Collateral Agent, the Lien created under this Agreement and the other applicable Security Documents shall constitute a fully perfected Lien on and in all right, title and interest of the Grantors in such Pledged Collateral, in each case prior and superior in right to any other Person, subject to Permitted Liens of the type set forth in clause (3) of the definition thereof in the Indenture, which may be prior to the Lien of the Collateral Agent, and (ii) when financing statements in appropriate form are filed in the Filing Offices, the Lien created under this Agreement and the other applicable Security Documents will constitute a fully perfected Lien on and in all right, title and interest of the Grantors in such Collateral in which a security interest can be perfected by filing a financing statement in the United States, including with respect to the Permit Rights, in each case prior and superior in right to any other Person, subject to Permitted Liens.

(b) Each Grantor agrees and consents to the recordation of the Copyright, Patent and Trademark Agreements with the United States Patent and Trademark Office or the United States Copyright Office (and any other applicable jurisdiction's copyright, patent or trademark office), as applicable, together with the financing statements in appropriate form filed in the Filing Offices. Upon filing in the Filing Offices and, with respect to any Proprietary Rights specified in the applicable Grantor's Perfection Certificate, the United States Patent and Trademark Office and/or the United States Copyright Office, as applicable, the Lien created shall constitute a fully perfected Lien on and in all right, title and interest of such Grantor in the U.S. Proprietary Rights in which a security interest may be perfected by filing in the United States and its territories and possessions, in each case prior and superior in right to any other Person, subject to Permitted Liens.

(c) Upon the entry by any Grantor in any Account Control Agreement the Lien granted hereunder on the Collateral subject to such Account Control Agreement shall constitute a fully perfected, first priority Lien on all right, title and interest of the Grantors in the Collateral covered thereby and the proceeds thereof, in each case prior and superior in right to any Person, subject to Permitted Liens of the type set forth in clause (3), (6)(A), (9), (23) or (26) of the definitions thereof in the Indenture, which may be prior to the Lien of the Collateral Agent.

(d) Upon the entry by any Grantor in any Mortgage such Mortgage shall create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable Lien on all of the applicable Grantor's right, title and interest in and to the Mortgaged Property thereunder and the proceeds thereof, and when such Mortgage is filed in the appropriate recording office(s), such Mortgage shall constitute a fully perfected Lien on all right, title and interest of such Grantor in such Mortgaged Property and the proceeds thereof, in each case prior and superior in right to any Person, subject to Permitted Liens.

Section 3.2 Location of Grantor and Collateral. Such Grantor's Perfection Certificate contains a correct and complete list of such Grantor's sole jurisdiction of incorporation, formation or organization (as applicable), its place or places of business, including an indication of its chief executive office, the location of its books and records, the locations of the Collateral (other than Inventory that is in transit, consignments of Inventory not in excess of $500,000, rolling stock, and Collateral in the Collateral Agent's possession or the possession of any ABL Collateral Agent or Equipment in transit and Equipment at other locations for purposes of maintenance or repair). Such Grantor's Perfection Certificate correctly identifies any of such locations that are not owned by such Grantor and sets forth the names of the owners, landlords, bailees, lessors or sublessors of such locations.

Section 3.3 Exact Names. The name in which each Grantor has executed this Agreement is the exact name as it appears in such Grantor's organizational documents, as filed with such Grantor's jurisdiction of organization or incorporation (as applicable). Except as set forth on such Grantor's Perfection Certificate or as permitted by the Indenture or this Agreement, since the date of its organization or incorporation, no Grantor has been known by or used any other corporate or fictitious name, been a party to any merger or consolidation or acquired all or substantially all of the assets of any Person.

Section 3.4 Accounts and Chattel Paper. The names of the obligors, amounts owing, due dates and other information with respect to each Grantor's Accounts and Chattel Paper that are Collateral are and will be correctly stated, in all material respects, at the time furnished, in all records of such Grantor relating thereto and in all invoices furnished to the Collateral Agent by such Grantor from time to time.

Section 3.5 Documents, Instruments, and Chattel Paper. All documents, instruments and Chattel Paper of each Grantor describing, evidencing or constituting Collateral, and all signatures and endorsements thereon, are and will be complete, valid and genuine in all material respects. All goods evidenced by such documents, instruments and Chattel Paper are and will be owned by such Grantor free and clear of all Liens (subject to Permitted Liens). If any Grantor retains possession of any Chattel Paper or other instruments, at the Collateral Agent's request upon an Event of Default, such Chattel Paper or instruments shall be marked with the following legend: "This writing and the obligations evidenced or served hereby are subject to the security interest of U.S. Bank National Association, as Collateral Agent, for the benefit of the Collateral Agent and certain other secured parties."

Section 3.6 Proprietary Rights. Schedule 6 of each Grantor's Perfection Certificate sets forth a correct and complete list of all of such Grantor's registered or applied for patents, copyrights and trademarks material to its business, in each case owned by such Grantor in its own name. None of the patents, copyrights and trademarks listed in such Perfection Certificate is subject to any licensing agreement or similar arrangement except as set forth therein. To the best of such Grantor's knowledge, no slogan or other advertising device, product, process, method, substance, part or other material now employed by any Grantor infringes any valid and enforceable rights held by any other Person, which infringement could reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the foregoing is pending against any Grantor or threatened in a writing received by any Grantor.

Section 3.7 Investment Property.

(a) Schedule 8 of each Grantor's Perfection Certificate sets forth a correct and complete list of all of the Investment Property owned by such Grantor. Each Grantor is the legal and beneficial owner of such Investment Property, as so identified, free and clear of any Lien (other than Permitted Liens), and has not sold, granted any option with respect to, assigned or transferred, or otherwise disposed of any of its rights or interests therein (other than pursuant to Permitted Liens). Furthermore, (i) to such Grantor's knowledge, all Investment Property constituting an Equity Interest has been (to the extent such concepts are relevant with respect to such Investment Property) duly authorized and validly issued by the Investment Property Issuer thereof and are fully paid and non-assessable, (ii) with respect to any certificates delivered to the Collateral Agent representing an Equity Interest, either such certificates are securities as defined in Article 8 of the UCC or, if such certificates are not securities as defined in Article 8 of the UCC, such Grantor has taken all necessary steps to perfect the security interest of the Collateral Agent for the benefit of the Secured Parties therein as a General Intangible, and (iii) to such Grantor's knowledge, all Investment Property that represents Indebtedness owed to any Grantor has been duly authorized, authenticated or issued and delivered by the Investment Property Issuer of such Indebtedness is the legal, valid and binding obligation of such Investment Property Issuer and such Investment Property Issuer is not in default thereunder.

(b) To the best of such Grantor's knowledge, (i) none of the Investment Property that constitutes Collateral has been issued or transferred in violation in any material respect of the securities registration, securities disclosure or similar laws of any jurisdiction to which such issuance or transfer may be subject and (ii) none of such Investment Property is or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that would prohibit, impair, delay or otherwise affect the pledge of such Investment Property hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Collateral Agent of rights and remedies hereunder.

(c) To the extent any Grantor is an Investment Property Issuer: (i) the owners of the Investment Property Issuer's Equity Interests that are Grantors and the ownership interest of each such owner in the Investment Property Issuer are as set forth on the applicable Perfection Certificate, and each such owner is the registered owner thereof on the books of the Investment Property Issuer, consents to the Lien of the Collateral Agent hereunder or under any other Security Document and waives any restriction or limitation in any agreement that would otherwise prohibit or limit such Lien; (ii) the Investment Property Issuer acknowledges the Collateral Agent's Lien; (iii) to the extent required to perfect the Collateral Agent's Liens, such security interest, collateral assignment, lien and pledge in favor of the Collateral Agent has been registered on the books of the Investment Property Issuer for such purpose as of the date hereof; and (iv) the Investment Property Issuer is not aware of any liens, restrictions or adverse claims that exist on any such Investment Property other than Permitted Liens of the type set forth in clause (3) of the definition thereof in the Indenture and the continuing security interest and lien in favor of the Collateral Agent granted pursuant to Section 2.1.

Section 3.8 Commercial Tort Claims. No Grantor holds any Commercial Tort Claims the recovery from which could reasonably be expected to exceed $500,000, for which such Grantor has filed a complaint in a court of competent jurisdiction, except as indicated on Schedule 12 of each Perfection Certificate.

Section 3.9 Bank Accounts. Schedule 10 of each Perfection Certificate contains a complete and accurate list of all bank accounts, including deposit accounts, securities accounts and commodity accounts, other than any Excluded Assets, maintained by such Grantor with any bank, financial institution, depositary institution, broker, securities intermediary, commodity intermediary or other Person.

Section 3.10 Perfection Certificate . Each Perfection Certificate delivered by any Grantor has been duly prepared, completed and executed and the information set forth therein is true, correct and complete as stated therein as of the date provided and, with respect solely to the most recent Perfection Certificate delivered, as of each date subsequent to the date delivered on which Securities are issued pursuant to the Indenture.

Section 3.11 Title to Real Estate. Each Grantor has good, marketable and indefeasible title in fee simple to the Real Estate identified on Schedule 13 to such Grantor's Perfection Certificate as owned by such Grantor and good and valid leasehold interest to the Real Estate identified on such Schedule 13 as leased by such Grantor, in each case except for Permitted Liens of the type described in clauses (2), (3), (5), (8), (9), (13), (21), (27), (29) and (32). No part of the Mortgaged Properties (a) has been materially damaged, destroyed, condemned or abandoned or (b) is the subject of condemnation proceedings.

Section 3.12 Leases of Property. Schedule 3.12 sets forth a correct and complete list of all leases and subleases of real or personal property by each Grantor as lessee or sublessee (other than any Excluded Assets, and other than any leases of personal property as to which it is lessee or sublessee for which the value of such personal property is less than $500,000), and all leases and subleases of real or personal property by each Grantor as lessor or sublessor. Each of such leases and subleases is valid and enforceable in accordance with its terms (except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and to the effect of general principles of equity whether applied by a court of law or equity) and is in full force and effect, and, to the Grantors' knowledge, no default by any party to any such lease or sublease exists. Each Grantor party to any lease of Real Estate between Grantors subordinates its right, title and interest under such lease to the Lien of the Collateral Agent and agrees that such lease shall, at the election of the Collateral Agent, so long as an Event of Default has occurred and is continuing, be terminated by notice from the Collateral Agent to such Grantors.

Section 3.13 Trade Names. Schedule 3 to the Perfection Certificate provided by each Grantor includes all trade names, business names, fictitious names, corporate names or other names used by such Grantor, including any names under which such Grantor sells Inventory or creates Accounts, or to which instruments in payment of Accounts are made payable.

Section 3.14 No Financing Statements or Security Agreements. No financing statement or security agreement describing all or any portion of the Collateral and naming a Grantor as debtor has been filed or is of record in any jurisdiction except for (a) financing statements or security agreements naming the Collateral Agent on behalf of the Secured Parties as the secured party, (b) financing statements or security agreements naming the ABL Collateral Agents on behalf of the ABL Secured Parties as secured party, (c) financing statements in connection with Permitted Liens and (d) those that are no longer effective.

ARTICLE IV
COVENANTS

From the date hereof, and thereafter until this Agreement is terminated, each Grantor agrees as follows:

Section 4.1 General.

(a) Each Grantor shall maintain at all times reasonably detailed, accurate (in all material respects) and updated books and records pertaining to the Collateral and promptly furnish to the Collateral Agent such information relating to the Collateral as the Collateral Agent shall from time to time reasonably request.

(b) The Collateral Agent may, and each Grantor hereby authorizes the Collateral Agent to, at any time and from time to time, file financing statements, continuation statements and amendments thereto that describe the Collateral as "all assets" or words of similar import and that contain any other information required pursuant to Article 9 of the UCC for the sufficiency of filing office acceptance of any financing statement, continuation statement or amendment, and each Grantor agrees to furnish any such information to the Collateral Agent promptly upon request. The Collateral Agent shall inform the applicable Grantor of any such filing either prior to, or reasonably promptly after, such filing. Each Grantor acknowledges that it is not authorized to file any financing statement covering the Collateral or amendment or termination statement with respect to any financing statement covering the Collateral without the prior written consent of the Collateral Agent and agrees that it will not do so without such consent, subject to (i) the Grantors' rights under Section 9-509(d)(2) of the UCC and (ii) financing statements that may be filed, in accordance with the Indenture or each Intercreditor Agreement, to perfect or release any ABL Liens or Permitted Liens.

(c) Each Grantor shall, at any time and from time to time, (i) notify, in form reasonably satisfactory to the Collateral Agent, any warehouseman, bailee or any of such Grantor's agents or processors having possession of any Collateral consisting of Inventory or Equipment with a Fair Market Value in excess of $500,000 (calculated based on such Grantor's estimate of the Fair Market Value of the Inventory or Equipment to be possessed by such warehouseman, bailee, agent or processor over the course of any calendar year on a weighted average basis) of the security interest of the Collateral Agent in such Collateral (with a copy of such notice sent to the Collateral Agent), (ii) use its commercially reasonable efforts to obtain an acknowledgment, in form reasonably satisfactory to the Collateral Agent acting at the direction of the Majority Holders, from such warehouseman, bailee, agent or processor (other than with respect to any Intercreditor Collateral, unless the ABL Collateral Agents shall also have obtained such acknowledgement from such warehouseman, bailee, agent or processor), to the extent not already having otherwise entered into a subordination agreement for the benefit of the Collateral Agent, stating that the warehouseman, bailee, agent or processor holds such Collateral for the Collateral Agent, subject to each Intercreditor Agreement, and (iii) take such steps as are necessary or as the Collateral Agent may reasonably request (A) for the Collateral Agent to obtain "control" of any Investment Property, deposit accounts, securities accounts, commodity accounts, letter-of-credit rights or Electronic Chattel Paper constituting Noteholder First Lien Collateral in excess of $500,000 individually or $2,000,000 in the aggregate (other than Investment Property constituting Equity Interests of a Subsidiary for which no minimum dollar amount shall apply), excluding any Excluded Assets, with any agreements establishing control to be in form reasonably satisfactory to the Collateral Agent acting at the direction of the Majority Holders, and (B) to otherwise ensure the continued perfection and priority of the Collateral Agent's security interest in any of the Collateral (to the extent required hereunder) and of the preservation of its rights therein. The $500,000 threshold described in clause (iii)(A) of the preceding sentence as it relates to any deposit account, securities account or commodity account shall be measured by reference to the closing balance of such account as of each Business Day.

(d) Each Grantor agrees to furnish to the Collateral Agent prompt written notice of (i) any change in (A) such Grantor's name; (B) such Grantor's jurisdiction or other place of incorporation, formation or organization or place of business and (C) form of entity or organization, in each case at least fifteen (15) days prior thereto; (ii) such Grantor's Federal Taxpayer Identification Number or organizational identification number assigned to it by its jurisdiction of incorporation, formation or organization; or (iii) the acquisition by such Grantor of any material property for which additional filings or recordings are necessary to perfect and maintain the Collateral Agent's security interest therein (to the extent perfection of the security interest in such property is required hereby or by the terms of the Indenture). Each Grantor agrees not to effect or permit any change referred to in the preceding sentence unless all filings are promptly made under the UCC or other applicable law that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest (subject to the terms of each Intercreditor Agreement and subject to Permitted Liens) in the Collateral for its benefit and the benefit of the other Secured Parties.

(e) No Grantor shall (i) maintain any Collateral with a Fair Market Value in excess of $500,000 (other than Inventory in transit, consignments of Inventory not in excess of $500,000, rolling stock, Equipment in transit between locations set forth on such Grantor's Perfection Certificate, Equipment at other locations for purposes of maintenance or repair and Collateral in the Collateral Agent's possession or the possession of any ABL Collateral Agent) at any location other than those locations listed on such Grantor's Perfection Certificate, (ii) otherwise change or add to any of such locations or (iii) change the location of its jurisdiction of incorporation, formation or organization (as applicable) from the location identified on such Grantor's Perfection Certificate, unless in each case it gives the Collateral Agent prompt written notice thereof (but in any event in the case of clause (iii) not later than fifteen (15) days prior thereto) and executes or authorizes the filing of any and all financing statements and other documents that are necessary or that the Collateral Agent reasonably requests in connection therewith. In the event any Grantor changes or adds any location of Collateral, such Grantor shall prepare and promptly deliver to the Collateral Agent a revised Perfection Certificate. Each Grantor agrees not to effect or permit any change referred to in this Section 4.1(e) unless all filings are promptly made under the UCC or other applicable law that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest (subject to the terms of each Intercreditor Agreement and subject to Permitted Liens) in the Collateral for its benefit and the benefit of the other Secured Parties.

Section 4.2 Perfection and Protection of Security Interest.

(a) Each Grantor shall, at its expense, perform all steps necessary or otherwise reasonably requested by the Collateral Agent (at the direction of the Majority Holders) at any time to perfect, maintain, protect and enforce the Collateral Agent's Liens, subject to the terms of each Intercreditor Agreement, including: (i) filing and recording the Copyright, Patent and Trademark Agreements and amendments thereof in the United States Patent and Trademark Office, the United States Copyright Office and any other applicable jurisdiction's copyright, patent or trademark office, and filing financing statements or continuation statements in the respective Filing Office; (ii) to the extent constituting Noteholder First Lien Collateral, delivering to the Collateral Agent the originals of all instruments, documents and Chattel Paper (in each case in excess of $250,000), and all other Collateral of which the Collateral Agent is required to have or of which it reasonably requests to have physical possession in order to perfect and protect the Collateral Agent's security interest therein, duly pledged, endorsed or assigned to the Collateral Agent as provided herein; (iii) delivering to the Collateral Agent a duly executed amendment to this Agreement, in the form of Exhibit B (each, an "Amendment"), pursuant to which such Grantor will pledge any additional Collateral that constitutes Commercial Tort Claims; (iv) upon the occurrence and during the continuation of an Event of Default, delivering to the Collateral Agent (A) warehouse receipts covering any portion of the Noteholder First Lien Collateral located in warehouses and for which warehouse receipts are issued, (B) warehouse receipts covering any portion of the Intercreditor Collateral (so long as no ABL Liens are outstanding on such Collateral) located in warehouses and for which warehouse receipts are issued and (C) if requested by the Collateral Agent, certificates of title reflecting the Collateral Agent's Liens covering any portion of the Collateral for which certificates of title have been issued; (v) when an Event of Default exists, transferring Inventory to warehouses or other locations designated by the Collateral Agent; (vi) upon the occurrence and during the continuance of an Event of Default, delivering to the Collateral Agent all letters of credit constituting Collateral on which such Grantor is named beneficiary; and (vii) taking such other steps as are reasonably deemed necessary or desirable by the Collateral Agent (acting at the direction of the Majority Holders) to maintain, protect and enforce the Collateral Agent's Liens. To the extent permitted by any Requirement of Law, the Collateral Agent may file, without any Grantor's signature, one or more financing statements disclosing the Collateral Agent's Liens. Each Grantor hereby authorizes the Collateral Agent to attach each Amendment to this Agreement and agrees that all additional collateral set forth in such Amendments shall be considered to be part of the Collateral.

(b) If at any time any Collateral with a Fair Market Value in excess of $500,000 (other than Intercreditor Collateral, unless (i) no ABL Liens on such Collateral are outstanding or (ii) the applicable ABL Collateral Agent shall also have obtained such waiver or subordination from such landlord) is located at any operating facility of a Grantor that is not owned by such Grantor, such Grantor shall, upon request, use commercially reasonable efforts to obtain written landlord lien waivers or subordinations, in form reasonably satisfactory to the Collateral Agent, of all present and future Liens to which the owner or lessor of such premises may be entitled to assert against such Collateral.

(c) From time to time, subject to each Intercreditor Agreement, each Grantor shall, upon the Collateral Agent's reasonable request, execute and deliver confirmatory written instruments pledging to the Collateral Agent, for the benefit of the Secured Parties, the Collateral with respect to such Grantor, but the failure to do so shall not affect or limit any security interest or any other rights of the Secured Parties in and to the Collateral with respect to such Grantor.

(d) To the extent any Grantor is the owner of any Investment Property that is Collateral (each such Person that issues any such Investment Property being referred to herein as an "Investment Property Issuer") (x) with a Fair Market Value in excess of $500,000 or (y) constituting Equity Interests, each Grantor that is the owner of any such Investment Property agrees that it shall use its commercially reasonable efforts to cause the Investment Property Issuer thereof to agree as follows with respect to such Investment Property:

(i) all such Investment Property issued by such Investment Property Issuer, all warrants and all non-cash dividends and other non-cash distributions in respect thereof at any time registered in the name of, or otherwise deliverable to, any Grantor shall be delivered directly to the Collateral Agent for the account of such Grantor;

(ii) during the existence of any Event of Default, upon notice by the Collateral Agent, all cash dividends, cash distributions and other cash or cash equivalents in respect of such Investment Property at any time payable or deliverable to any Grantor shall be delivered directly to the Collateral Agent, for the account of the Secured Parties, at the Collateral Agent's address for notices set forth in Section 8.1; and

(iii) with respect to any of such Investment Property at any time constituting an uncertificated security as defined by the UCC, such Investment Property Issuer will comply with instructions originated by the Collateral Agent without further consent by the registered owner thereof.

Section 4.3 Accounts.

(a) So long as no ABL Liens are outstanding on an Account, no Grantor shall re-date any invoice or sale or make sales on extended dating or extend or modify such Account outside the ordinary course of business.

(b) So long as no ABL Liens are outstanding on an Account: (i) each Grantor shall notify the Collateral Agent promptly of all offsets, deductions, defenses or counterclaims in excess of $500,000 claimed by any Account Debtor with respect to such Account (not including rebates, returns, discounts and chargebacks made or given in the ordinary course of such Grantor's business), and agrees to settle, contest or adjust such dispute or claim at no expense to the Secured Parties; (ii) no discount, credit or allowance shall be granted to any such Account Debtor, except for discounts, credits and allowances made or given in the ordinary course of such Grantor's business (unless an Event of Default has occurred and is continuing and the Collateral Agent has notified the applicable Grantor that such exception is withdrawn); (iii) such Grantor shall promptly send the Collateral Agent a copy of each credit memorandum in excess of $500,000 (not including any credit memorandum that relates to rebates, returns, discounts and chargebacks made or given in the ordinary course of such Grantor's business); and (iv) the Collateral Agent may, at all times when an Event of Default exists, settle or adjust disputes and claims directly with such Account Debtor of any Grantor for amounts and upon terms that the Collateral Agent shall consider advisable.

(c) So long as no ABL Liens are outstanding on Inventory, if an Account Debtor returns to a Grantor such Inventory involving an amount in excess of $500,000 (not including rebates, returns, discounts and chargebacks made or given in the ordinary course of such Grantor's business), then: (i) unless an Event of Default exists and the Collateral Agent has given notice to the applicable Grantor not to do so, such Grantor shall promptly determine the reason for such return and shall issue a credit memorandum to the Account Debtor in the appropriate amount; (ii) if an Event of Default exists, such Grantor shall (A) hold such returned Inventory in trust for the Collateral Agent, (B) segregate such returned Inventory from all of its other property, (C) dispose of such returned Inventory solely according to the Collateral Agent's written instructions and (D) not issue any credits or allowances with respect thereto without the Collateral Agent's prior written consent; and (iii) such Grantor shall promptly notify the Collateral Agent of such return of Inventory, indicating the reasons for the return and the location and condition of the returned Inventory. All returned Inventory of any Grantor shall be subject to the Collateral Agent's Liens thereon, subject to the terms of each Intercreditor Agreement.

(d) If any Grantor at any time holds or acquires an interest in any Electronic Chattel Paper or any "transferable record", as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, such Grantor shall promptly notify the Collateral Agent thereof and (other than if such Electronic Chattel Paper constitutes Intercreditor Collateral for which ABL Liens are outstanding) shall take such action as is necessary to vest in the Collateral Agent Control under Section 9-105 of the UCC of such Electronic Chattel Paper or control (to the extent the meaning of "control" has not been clearly established under such provisions, "control" in this paragraph shall have such meaning as the Collateral Agent acting at the direction of the Majority Holders shall reasonably specify in writing after consultation with the Issuer) under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Collateral Agent agrees with such Grantor that the Collateral Agent will arrange, pursuant to procedures reasonably satisfactory to the Collateral Agent and so long as such procedures will not result in the Collateral Agent's loss of Control or control, as applicable, which may be established to the satisfaction of the Collateral Agent pursuant to the delivery to it by such Grantor of an Officers' Certificate or an Opinion of Counsel, for the Grantor to make alterations to the Electronic Chattel Paper or transferable record permitted under Section 9-105 of the UCC or, as the case may be, Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or Section 16 of the Uniform Electronic Transactions Act for a party in Control to allow without loss of Control or control, as applicable, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by such Grantor with respect to such Electronic Chattel Paper or transferable record.

Section 4.4 Maintenance of Property. Except as otherwise permitted hereunder or pursuant to the other Indenture Documents, each Grantor shall maintain all of its property necessary or useful in the conduct of its business, in reasonable operating condition and repair, ordinary wear and tear and obsolescence excepted.

Section 4.5 Investment Property.

(a) The Collateral Agent, on behalf of the Secured Parties, shall hold certificated Investment Property that is Collateral in the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Collateral Agent, but following the occurrence and during the continuance of an Event of Default shall have the right (in its sole and absolute discretion) to hold such Investment Property in its own name as pledgee or in the name of its nominee (as pledgee or as sub-agent). Each Grantor will promptly give to the Collateral Agent copies of any material notices or other material communications received by it with respect to any Investment Property that is Collateral registered in the name of such Grantor. Following the occurrence and during the continuance of an Event of Default, the Collateral Agent shall at all times have the right to exchange the certificates representing Investment Property that is Collateral for certificates of smaller or larger denominations for any purpose consistent with this Agreement.

(b) Unless an Event of Default exists and the Collateral Agent has delivered a notice as contemplated by Section 4.5(c), (i) each Grantor shall be entitled to exercise any and all voting and other consensual rights (including the right to give consents, waivers and notifications in respect of any securities) pertaining to its Investment Property that is Collateral or any part thereof; provided, however, that without the prior written consent of the Collateral Agent and the Trustee obtained in accordance with the Indenture, no vote shall be cast or consent, waiver or ratification given or action taken that would (A) be inconsistent with or violate any provision of the Indenture or any other Indenture Document or (B) amend, modify or waive any term, provision or condition of the certificate of incorporation, bylaws, certificate of formation or other charter document or other agreement relating to, evidencing, providing for the issuance of or securing any such Investment Property in any manner that would materially impair the value of such Investment Property, the transferability of such Investment Property or the Collateral Agent's Liens in such Investment Property, and (ii) each Grantor shall be entitled to receive and retain any and all dividends, interest paid and other cash distributions in respect of any of such Investment Property (unless otherwise required by the Indenture).

(c) During the existence of an Event of Default, after delivery of written notice to the applicable Grantor, (i) the Collateral Agent may exercise all voting and corporate rights at any meeting of any corporation, partnership or other business entity issuing any of the Investment Property that is Collateral and the proceeds thereof (in cash or otherwise) (collectively, the "Pledged Collateral") held by the Collateral Agent hereunder, and any and all rights of conversion, exchange or subscription or any other rights, privileges or options pertaining to any of the Pledged Collateral as if it were the absolute owner thereof, including the right to exchange at its discretion any and all of the Pledged Collateral upon the merger, consolidation, reorganization, recapitalization or other readjustment of any Investment Property Issuer or upon the exercise by any such issuer or the Collateral Agent of any right, privilege or option pertaining to any of the Pledged Collateral, and, in connection therewith, to deposit and deliver any and all of the Pledged Collateral with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as it may determine, all without liability except to account for property actually received by it, but the Collateral Agent shall have no duty to exercise any of the aforesaid rights, privileges or options, and the Collateral Agent shall not be responsible for any failure to do so or delay in so doing, (ii) all rights of any Grantor to exercise the voting and other consensual rights that it would otherwise be entitled to exercise pursuant to Section 4.5(b) and to receive the dividends, interest and other distributions that it would otherwise be authorized to receive and retain thereunder shall be suspended until such Event of Default shall no longer exist or as the Collateral Agent shall otherwise specify, and all such rights shall, until such Event of Default shall no longer exist or as the Collateral Agent shall otherwise specify, thereupon become vested in the Collateral Agent, which shall thereupon have the sole right, but no duty, to exercise such voting and other consensual rights and to receive and hold as Pledged Collateral such dividends, interest and other distributions, (iii) all dividends, interest and other distributions that are received by any Grantor contrary to the provisions of this Section 4.5(c) shall be received in trust for the benefit of the Collateral Agent, shall be segregated from other funds of such Grantor and shall be forthwith paid over to the Collateral Agent as Collateral in the same form as so received (with any necessary endorsement) and (iv) each Grantor shall execute and deliver (or cause to be executed and delivered) to the Collateral Agent all such proxies and other instruments as are necessary or that the Collateral Agent may reasonably request for the purpose of enabling the Collateral Agent to exercise the voting and other rights that it is entitled to exercise pursuant to this Section 4.5(c) and to receive the dividends, interest and other distributions that it is entitled to receive and retain pursuant to this Section 4.5(c). The foregoing shall not in any way limit the Collateral Agent's power and authority granted pursuant to Section 7.4. After all Events of Default have been cured or waived and the applicable Grantor shall have delivered to the Collateral Agent certificates to that effect, the Collateral Agent shall promptly repay to each Grantor (without interest) all dividends or other distributions that such Grantor would otherwise be permitted to retain pursuant to the terms of Section 4.5(b) and that remain in such account.

(d) The Grantors will cause or permit the Collateral Agent from time to time to cause the appropriate Investment Property Issuers (and, if held with a securities intermediary, such securities intermediary) of uncertificated securities or other types of Pledged Collateral not represented by certificates to mark their books and records with the numbers and face amounts of all such uncertificated securities or other types of Pledged Collateral not represented by certificates and all rollovers and replacements therefor to reflect the Lien of the Collateral Agent granted pursuant to this Agreement. The Grantors will take any actions reasonably necessary to cause (i) the Investment Property Issuers of uncertificated securities that are Pledged Collateral and (ii) any securities intermediary that is the holder of any Pledged Collateral to cause the Collateral Agent to have and retain Control over such Pledged Collateral. Notwithstanding the foregoing provisions of this Section 4.5(d), each Grantor will only be required to use commercially reasonable efforts to cause or permit the Collateral Agent to take the actions described in this Section 4.5(d) with respect to any Investment Property Issuer (and, if held with a securities intermediary, such securities intermediary) of uncertificated securities or other types of Pledged Collateral with respect to which Investment Property Issuers are not Affiliates or Subsidiaries of such Grantor or with respect to which a Grantor owns or Controls less than 50% of the Equity Interests of such Investment Property Issuer not represented by certificates.

Section 4.6 Proprietary Rights.

(a) The Issuer shall notify the Collateral Agent promptly if it knows or reasonably expects that any application or registration for any Proprietary Right (now or hereafter existing) owned by the Issuer and material to the conduct of the business of the Issuer or any Subsidiary of the Issuer may become abandoned or dedicated to the public, or of any material adverse determination or development (including the institution of, or any such determination or development in, any proceeding in any court, but excluding any of the foregoing in the United States Patent and Trademark Office provided in the normal course of prosecution of any pending patent or trademark application, such as any office action, examiner interview or the like) regarding the ownership by the Issuer or any of its Affiliates of any such Proprietary Right or its right to register the same or to keep and maintain the same.

(b) The Issuer, either directly or through any agent, employee, licensee or designee, shall inform the Collateral Agent on an annual basis of each application for the registration of any material Proprietary Right owned by the Issuer or any of its Affiliates with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any jurisdiction filed during the preceding year.

(c) Each Grantor shall take all actions necessary to maintain and pursue each material application, to obtain the relevant registration/patent and to maintain the registration/patent of each of the Proprietary Rights (now or hereafter existing) owned or licensed by such Grantor and material to the conduct of such Grantor's business or the business of any Affiliate of such Grantor, except in cases where, in the ordinary course of business consistent with past practice, such Grantor reasonably decides to abandon, allow to lapse or expire any Proprietary Right, including the filing of applications for renewal, affidavits of use and affidavits of non-contestability and, if consistent with good business judgment, to initiate opposition and interference and cancellation proceedings against third parties.

(d) Each Grantor shall, unless it shall reasonably determine that a Proprietary Right owned by such Grantor is not material to the conduct of its business, promptly notify the Collateral Agent and shall, if necessary in its good business judgment, promptly sue for infringement, misappropriation or dilution of such Proprietary Right and seek recovery of any and all damages for such infringement, misappropriation or dilution, and shall take such other actions as are reasonably appropriate under the circumstances to protect such Proprietary Right.

(e) Without limiting the generality of the obligations under Section 4.1 and Section 4.2, promptly following the acquisition or creation by any Grantor of any Proprietary Right pending, registered, issued or granted in the United States of America, such Grantor will take all necessary steps to vest in the Collateral Agent a perfected security interest in such Proprietary Rights, including executing and delivering any and all security agreements or other instruments as are reasonably necessary to evidence the Collateral Agent's security interest in such Proprietary Right and the General Intangibles of such Grantor represented thereby and the recordation of such agreements, instruments or other filings in the applicable intellectual property office or other filing office as are necessary to perfect the Collateral Agent's security interest in such Proprietary Rights and the General Intangibles of such Grantor represented thereby.

(f) Each Grantor will take all commercially reasonable steps to vest in the Collateral Agent a perfected security interest in any of its Proprietary Rights pending, registered, issued or granted in any non-U.S. jurisdiction (in accordance with the advice of counsel in such jurisdiction, which, if customary in such jurisdiction, may be in the form of an opinion of counsel in such jurisdiction) to the extent permitted under the laws of such jurisdiction, including the recordation of such security interest in any applicable intellectual property office or registry in such jurisdiction (to the extent permitted under the laws of such jurisdiction) and the preparation, execution and delivery of all documents required in connection therewith, if, as reasonably determined and certified by the Issuer in an Officers' Certificate delivered concurrently with the delivery of annual financial statements pursuant to Section 4.02(a) of the Indenture, the revenue accounted for by such Proprietary Right in such jurisdiction for such fiscal year exceeds 2.5% of the consolidated revenue of the Issuer and the Restricted Subsidiaries for such fiscal year. The Issuer shall promptly notify the Collateral Agent in writing if a security interest in such Proprietary Right in such jurisdiction is not perfected within 180 days following the date when the revenue exceeds the threshold in the preceding sentence.

Section 4.7 Inventory.

(a) Each Grantor shall keep its Inventory (other than returned or obsolete Inventory) in good and marketable condition, except for damaged or defective goods arising in the ordinary course of such Grantor's business. Each Grantor will conduct a physical count of its Inventory (i) so long as no ABL Liens are outstanding on such Inventory, at least once per fiscal year, and (ii) during the existence of an Event of Default, at such other times as the Collateral Agent may request and provide a report thereof to the Collateral Agent.

(b) In connection with all Inventory financed by letters of credit, so long as no ABL Liens are outstanding on such Inventory, each Grantor will instruct all suppliers, carriers, forwarders, customs brokers, warehouses or other Persons receiving or holding documents or instruments in which the Collateral Agent holds a security interest to deliver them to the Collateral Agent and/or subject them to the Collateral Agent's order and, if they shall come into such Grantor's possession, to deliver them to the Collateral Agent in their original form. The Grantors shall also designate the Collateral Agent as the consignee on all bills of lading and other negotiable and non-negotiable documents with respect to Inventory upon which no ABL Liens are outstanding.

Section 4.8 Commercial Tort Claims. If any Grantor shall at any time acquire a Commercial Tort Claim, the recovery from which could reasonably be expected to exceed $500,000, such Grantor shall promptly notify the Collateral Agent thereof in a writing, therein providing a reasonable description and summary thereof, and, upon delivery thereof to the Collateral Agent, together with an Amendment as contemplated by Section 4.2(a)(iii), such Grantor shall be deemed thereby to grant to the Collateral Agent a security interest in such Commercial Tort Claim.

Section 4.9 No Interference. Each Grantor agrees that it will not interfere with any right, power and remedy of the Collateral Agent provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise or with the exercise or beginning of the exercise by the Collateral Agent of any one or more of such rights, powers or remedies.

Section 4.10 Insurance.

(a) The Grantors shall maintain with financially sound and reputable insurers insurance that is reasonably consistent with prudent industry practice, including flood insurance with regard to any Real Estate that constitutes all or some portion of the Collateral and that is located in a flood zone.

(b) For each of the insurance policies issued as required by this Section 4.10 with respect to Collateral, each Grantor shall cause the Collateral Agent, for the benefit of the Secured Parties, to be named as an additional insured with respect to insurance policies for general liability for bodily injury and a lender loss payee for insurance policies for property damage. Certificates of insurance of such policies shall be delivered to the Collateral Agent if requested.

(c) The Issuer shall promptly provide written notice to the Collateral Agent of any loss, damage or destruction to the Collateral in excess of (A) $1,500,000 if covered by insurance or (B) $500,000 if not covered by insurance. During the existence of an Event of Default, subject to each Intercreditor Agreement and the rights of any applicable ABL Collateral Agent and any other ABL Secured Parties, the Collateral Agent is hereby authorized to directly collect all insurance proceeds in respect of Collateral and to apply such proceeds in accordance with Section 5.3.

(d) Unless the Grantors provide the Collateral Agent with evidence of the insurance coverage on the Collateral required by this Section 4.10, subject to each Intercreditor Agreement, the Collateral Agent may, upon thirty (30) days' prior written notice, purchase insurance at the applicable Grantor's expense to protect the Collateral Agent's Lien on such Collateral owned by the applicable Grantor. This insurance may, but need not, protect the interests of the Grantors. The coverage that the Collateral Agent purchases may (but shall not be required to) pay any claim that the Grantors make or any claim that is made against the Grantors in connection with said Collateral. The Grantors may later cancel any insurance purchased by the Collateral Agent but only after providing the Collateral Agent with evidence that the Grantors have obtained insurance as required by this Agreement. If the Collateral Agent purchases such insurance, the applicable Grantor will be responsible for the costs of that insurance, including interest and any other reasonable charges the Collateral Agent may impose in connection with the placement of insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance shall be added to the Obligations. The costs of the insurance may be more than the cost of insurance that the Grantors may be able to obtain on their own.

Section 4.11 Condemnation. Subject to each Intercreditor Agreement and the rights of any applicable ABL Collateral Agent and any other ABL Secured Parties, each Grantor shall, promptly upon learning of the institution of any proceeding for the condemnation or other taking of any of its property with a Fair Market Value in excess of $500,000, notify the Collateral Agent of the pendency of such proceeding.

Section 4.12 Further Assurances.

(a) The Grantors shall, at their own cost and expense, execute and deliver, or cause to be executed and delivered, to the Collateral Agent and/or the Trustee such documents and agreements, and shall take or cause to be taken such actions, as are necessary or that the Collateral Agent and/or the Trustee may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Indenture Documents. In addition, from time to time, the Grantors will, at their cost and expense, promptly secure the Obligations by pledging or creating, or causing to be pledged or created, perfected Liens with respect to such of its assets and properties (other than Excluded Assets) as the Collateral Agent or the Trustee may designate. Within ninety (90) days (or such later date as the Collateral Agent may agree in its reasonable discretion) following the acquisition by any Grantor of any After-Acquired Property (other than any Excluded Assets), including the formation of any new direct or indirect Subsidiary of a Grantor permitted in accordance with the Indenture, and to the extent such After-Acquired Property is not automatically included in the Collateral pursuant to the then-existing Security Documents or by operation of law (but subject to the limitations, if applicable, set forth herein, in the Indenture or in each Intercreditor Agreement), such Grantor shall execute and deliver such mortgages, deeds of trust, security instruments, pledge agreements, financing statements (or amendments to existing Security Documents and financing statements) and certificates and opinions of counsel as shall be reasonably necessary to vest in the Collateral Agent a perfected Lien in such After-Acquired Property and to have such After-Acquired Property added to the Collateral and shall promptly deliver such Officers' Certificates and Opinions of Counsel as are customary in secured financing transactions in the relevant jurisdictions or as are reasonably requested by the Trustee or the Collateral Agent (subject to customary assumptions, exceptions and qualifications), and thereupon all provisions of this Agreement relating to the Collateral shall be deemed to relate to such After-Acquired Property to the same extent and with the same force and effect. If any property or asset of any Grantor originally deemed to be an Excluded Asset at any point ceases to be an Excluded Asset pursuant to such defined term, all or the applicable portion of such property or asset shall be deemed to be After-Acquired Property and shall be added to the Collateral in accordance with the Indenture, this Agreement and each Intercreditor Agreement. Subject to each Intercreditor Agreement, such Liens will be created under security agreements, mortgages, deeds of trust and other instruments and documents in form reasonably satisfactory to the Collateral Agent, and the Grantors shall deliver or cause to be delivered to the Collateral Agent and the Trustee all such instruments and documents (including legal opinions, Officers' Certificates, title insurance policies and lien searches) as are necessary or that the Collateral Agent shall reasonably request to evidence compliance with this Section 4.12(a). The Grantors shall furnish to the Collateral Agent (i) each year at the time of delivery of the annual report required to be delivered by the Issuer pursuant to Section 4.02(a) of the Indenture and (ii) whenever any change has occurred that would require any action to be taken to perfect the Liens on the Collateral, a revised Perfection Certificate or an Officers' Certificate confirming that there has been no change in such information since the Effective Date or the date of the most recent certificate delivered pursuant to Section 4.1(e) or this Section 4.12(a).

(b) With respect to any After-Acquired Property that consists of Real Estate, whether owned or leased, concurrently with the execution and delivery of a mortgage or deed of trust as required above, any Grantor acquiring such After-Acquired Property shall deliver to the Collateral Agent within ninety (90) days (or such later date as the Collateral Agent may agree in its reasonable discretion) following such acquisition: (i) a policy of title insurance insuring the lien of the mortgage on such Real Estate, in an amount equal to the appraised value of such Real Estate, as provided in the appraisal referred to in clause (iii) below, issued by a nationally recognized title insurance company insuring the lien of such mortgage as a valid first lien on the property described therein, free of all other liens other than Permitted Liens, containing no general survey exception or mechanics lien exception and issued together with such endorsements and affirmative coverage as the Collateral Agent may reasonably request; (ii) except with respect to leased Real Estate, a current ALTA/ACSM survey certified, and reasonably acceptable, to the Collateral Agent and that is sufficient for the title insurance company to remove the survey exception for each title insurance policy and to issue such survey-dependent endorsements as are requested by the Collateral Agent; (iii) an appraisal of the Real Estate, in form and substance reasonably satisfactory to the Collateral Agent, which appraisal shall establish an appraised value of (A) in the case of fee-owned Real Estate, the Real Estate (including land, building and improvements constructed or installed thereon, or to be constructed or installed thereon, and owned by such Grantor) as if, on the date of the appraisal, such Real Estate was fully operational for the purposes intended by such Grantor, but in no event less than the sum of the acquisition price of such Real Estate (or the full value of consideration paid or given for such Real Estate for such acquisition at the time acquired) and the estimated cost of the improvements reasonably anticipated to be constructed or installed thereon and owned or to be owned by such Grantor, and (B) in the case of leased Real Estate, the Real Estate (including any improvements constructed or installed thereon, or to be constructed or installed thereon, whether said improvements are leased or owned by the Grantor that acquired the Real Estate) but not less than the sum of (x) the net present value of all rental payments due under the lease for such Real Estate and (y) the value of any improvements constructed or installed thereon, or to be constructed or installed thereon, and leased or owned by such Grantor, in each case from an appraiser reasonably acceptable to the Collateral Agent; (iv) a Phase I environmental assessment prepared by an environmental consultant reasonably acceptable to the Collateral Agent, in form, scope and substance reasonably satisfactory to the Collateral Agent, together with a letter from the environmental consultant permitting the Collateral Agent and the Holders of the Securities to rely on the environmental assessment as if addressed to and prepared for each of them; (v) an executed legal opinion of local counsel to a Grantor with respect to each Mortgaged Property, in form and substance, and from counsel, reasonably satisfactory to the Collateral Agent and in accordance with customary opinion practice (and each such legal opinion shall cover such other matters incident to the transactions contemplated by this Agreement as the Collateral Agent may reasonably require in accordance with customary opinion practice); and (vi) for any Real Estate located in the United States of America, a "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination and, with respect to such Real Estate that is located in a flood zone, flood acknowledgements executed by a Grantor, as the case may be, and evidence of the payment of the applicable flood insurance premium. For purposes of this Section 4.12(b), in any matter that is required to be satisfactory, reasonably satisfactory or reasonably acceptable (or the like) to the Collateral Agent, the Collateral Agent may take instructions from the Majority Holders or may consult with and rely on counsel to the Purchasers. Counsel to the Purchasers shall not be obligated to consult with or otherwise advise the Collateral Agent on such matters. Notwithstanding anything in this Agreement to the contrary, Grantors shall not be required to provide the Collateral Agent with a Lien upon leased Real Estate with respect to which Grantors have not obtained (after using commercially reasonable efforts to obtain) the consent of the lessor to grant a lien upon such leased Real Estate, provided, however, that no other Person is granted a Lien on such leased Real Estate other than Permitted Liens of the type described in clauses (3), (5), (13), (27) and (29) of the definition thereof.

Section 4.13 Post-Closing Obligations. The Issuer shall deliver the documents and take the actions specified on Schedule 4.13 as promptly as practicable following the date of this Agreement, but in any event no later than the times prescribed therein.

ARTICLE V
REMEDIES

Section 5.1 Remedies.

(a) If an Event of Default has occurred and is continuing:

(i) the Collateral Agent may exercise those rights and remedies provided in this Agreement, the Indenture or any other Indenture Document; provided that this Section 5.1(a) shall not limit, or be deemed to limit, any rights available to the Collateral Agent, the Trustee, the Holders of the Securities or any other Secured Party prior to an Event of Default;

(ii) the Collateral Agent shall have, for the benefit of the Secured Parties, in addition to all other rights of the Collateral Agent and the Trustee, the rights and remedies of a secured party under the UCC (whether or not the UCC applies to the affected Collateral) or under any other applicable law when a debtor is in default under a security agreement;

(iii) the Collateral Agent may, at any time, take possession of the Collateral and keep it on any Grantor's premises, at no cost to the Collateral Agent, the Trustee or any other Secured Party, or remove any part of it to such other place or places as the Collateral Agent may desire, or any Grantor shall, upon the Collateral Agent's demand, at such Grantor's cost, assemble the Collateral and make it available to the Collateral Agent at a place reasonably convenient to the Collateral Agent;

(iv) the Collateral Agent may sell and deliver any Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as the Collateral Agent deems advisable, in its sole discretion, and may, if the Collateral Agent deems it reasonable, postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale; provided, that in connection with any such sale of Collateral, the Collateral Agent shall use its reasonable commercial efforts to maintain the confidentiality of any proprietary information of the Grantors (consistent with the confidentiality obligations of the Holders of the Securities as required by the Indenture Documents);

(v) the Collateral Agent may give notice of sole control or any other instruction under any Account Control Agreement and take any action provided therein with respect to the applicable Collateral; and

(vi) the Collateral Agent may, concurrently with or following written notice to the Grantors, transfer and register in its name or in the name of its nominee the whole or any part of the Investment Property, exchange certificates or instruments representing or evidencing Investment Property for certificates or instruments of smaller or larger denominations, exercise the voting and all other rights as a holder with respect thereto, collect and receive all cash dividends, interest, principal and other distributions made thereon and otherwise act with respect to the Investment Property as though the Collateral Agent was the outright owner thereof.

(b) Without in any way requiring notice to be given in the following manner, each Grantor agrees that any notice by the Collateral Agent of a sale, disposition or other intended action hereunder or in connection herewith, whether required by the UCC or otherwise, shall constitute reasonable notice to the Grantors if such notice is mailed by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least five (5) Business Days prior to such action to the Grantors' address specified in or pursuant to Section 8.1.

(c) If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Obligations until the Collateral Agent receives payment, and if the buyer defaults in payment, the Collateral Agent may resell the Collateral without further notice to any Grantor.

(d) In the event the Collateral Agent seeks to take possession of all or any portion of the Collateral by judicial process, each Grantor irrevocably waives: (i) the posting of any bond, surety or security with respect thereto that might otherwise be required; (ii) any demand for possession prior to the commencement of any suit or action to recover the Collateral; and (iii) any requirement that the Collateral Agent retain possession and not dispose of any Collateral until after trial or final judgment.

(e) If an Event of Default occurs and is continuing, each Grantor hereby waives all rights to notice and hearing prior to the exercise by the Collateral Agent of the Collateral Agent's rights to repossess the Collateral without judicial process or to replevy, attach or levy upon the Collateral.

(f) Each Grantor acknowledges and agrees that the Collateral Agent has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person.

(g) Each Grantor acknowledges and agrees that the compliance by the Collateral Agent, on behalf of the Secured Parties, with any applicable state or federal law requirements may be required in connection with a disposition of the Collateral, and such compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(h) The Collateral Agent shall have the right upon any public sale or sales and, to the extent permitted by law, upon any private sale or sales to purchase, for the benefit of the Collateral Agent and the other Secured Parties, the whole or any part of the Collateral so sold, free of any right of equity redemption, which equity redemption each Grantor hereby expressly releases.

(i) Until the Collateral Agent is able to effect a sale, lease, transfer or other disposition of Collateral, the Collateral Agent shall have the right, but no duty or obligation, to hold or use Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or the value of the Collateral, or for any other purpose deemed appropriate by the Collateral Agent. The Collateral Agent may, if it so elects, but shall have no obligation to, seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of the Collateral Agent's remedies (for the benefit of the Collateral Agent and the other Secured Parties), with respect to such appointment without prior notice or hearing as to such appointment.

(j) Each Grantor recognizes that the Collateral Agent may be unable to effect a public sale of any or all of the Collateral consisting of securities to be sold by reason of certain prohibitions contained in the laws of any jurisdiction outside the United States or in applicable federal or state securities laws but may be compelled to resort to one or more private sales thereof to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Collateral or other property to be sold for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall, to the extent permitted by law, be deemed to have been made in a commercially reasonable manner. Unless required by a Requirement of Law, the Collateral Agent shall not be under any obligation to delay a sale of any of the Collateral or other property to be sold for the period of time necessary to permit the issuer of any relevant securities to register such securities under the laws of any jurisdiction outside the United States or under any applicable United States federal or state securities laws, even if such issuer would agree to do so. Each Grantor further agrees to do or cause to be done, at its own cost and expense, to the extent that such Grantor may do so under Requirements of Law, all such other acts and things as may be necessary to make such sales or resales of any portion or all of the Collateral or other property to be sold valid and binding and in compliance with any and all Requirements of Law at the Grantors' expense.

(k) Any remedy or enforcement action to be taken hereunder by the Collateral Agent with respect to the Collateral shall be at the written direction of the Trustee (acting pursuant to the direction of the Majority Holders pursuant to the Indenture, including Section 6.05 thereof).

Section 5.2 Grant of Intellectual Property License. Effective only upon the occurrence and during the continuance of an Event of Default, for the purpose of enabling the Collateral Agent to exercise the rights and remedies under this Article V at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, subject to the terms of each Intercreditor Agreement, each Grantor hereby grants to the Collateral Agent a non-exclusive license or other right to use, without charge, each Grantor's labels, patents, copyrights, name, trade secrets, trade names, trademarks and advertising matter, or any similar property, to the extent constituting Collateral in completing production of, advertising or selling any Collateral, and, subject to the rights of any licensor or franchisor under such agreements and to the extent not in violation of such agreements, each Grantor's rights under all licenses and all franchise agreements shall inure to the Collateral Agent's benefit for such purpose.

Section 5.3 Application of Proceeds. Subject to each Intercreditor Agreement, the Collateral Agent shall apply the proceeds of any collection, sale, foreclosure or other realization upon any Collateral, as well as any Collateral consisting of cash, resulting from the exercise of remedies following an Event of Default as follows:

FIRST, to the payment of all reasonable costs and expenses incurred by the Collateral Agent (in its capacity as such hereunder or under the Indenture or any other Indenture Document) and the Trustee in connection with such collection, sale, foreclosure or realization or reasonable costs, expenses, claims or liabilities of the Collateral Agent or the Trustee otherwise relating to or arising in connection with this Agreement, the Indenture or any other Indenture Document or any of the Obligations, including all court costs and the reasonable fees and expenses of its agents and legal counsel, the repayment of all advances made by the Collateral Agent or the Trustee hereunder or under the Indenture or any other Indenture Document on behalf of any Grantor, any other reasonable costs or expenses incurred by the Collateral Agent or the Trustee in connection with the exercise of any remedy hereunder or under the Indenture or any other Indenture Document, and any indemnification of the Collateral Agent and the Trustee required by the terms hereunder, under the Indenture or under any other Indenture Document; and

SECOND, to the Trustee for distribution in accordance with the priorities set forth in Section 6.10 of the Indenture.

Except as otherwise provided herein, the Collateral Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement and each Intercreditor Agreement. Upon any sale of Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Collateral Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold, and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof.

ARTICLE VI
CONCERNING THE COLLATERAL AGENT

Section 6.1 Reliance by Collateral Agent; Indemnity Against Liabilities.

(a) Whenever in the performance of its duties under this Agreement or any other Indenture Document, the Collateral Agent shall deem it necessary or desirable that a matter be proved or established with respect to the Grantors or any other Person in connection with the taking, suffering or omitting of any action hereunder by the Collateral Agent, such matter may be conclusively deemed to be proved or established by a certificate executed by an Officer of such Person, including an Officers' Certificate or an Opinion of Counsel, and the Collateral Agent shall have no liability with respect to any action taken, suffered or omitted in reliance thereon. The Collateral Agent may at any time solicit written confirmatory instructions, including a direction of the Trustee or any Grantor or an order of a court of competent jurisdiction as to any action that it may be requested or required to take or that it may propose to take in the performance of any of its obligations under this Agreement or any other Indenture Document and shall be fully justified in failing or refusing to act hereunder or under any other Indenture Document until it shall have received such requisite instruction.

(b) The Collateral Agent shall be fully protected in relying upon any note, writing, affidavit, electronic communication, fax, resolution, statement, certificate, instrument, opinion, report, notice (including any notice of an Event of Default or of the cure or waiver thereof), request, consent, order or other paper or document or oral conversation (including telephone conversations) that it in good faith believes to be genuine and correct and to have been signed, presented or made by the proper party. The Collateral Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any notice, certificate or opinion furnished to the Collateral Agent in connection with this Agreement or any other Indenture Document and upon advice and statements of legal counsel (including counsel to any Grantor, independent accountants and other agents consulted by the Collateral Agent).

Section 6.2 Exercise of Remedies. The remedies of the Collateral Agent hereunder and under the other Security Documents shall include the disposition of the Collateral by foreclosure or other sale and the exercising of all remedies of a secured lender under the UCC, bankruptcy laws or similar laws of any applicable jurisdiction.

Section 6.3 Authorized Investments. Any and all funds held by the Collateral Agent in its capacity as Collateral Agent, whether pursuant to any provision hereof or of any other Security Document or otherwise, shall, to the extent reasonably practicable following receipt by the Collateral Agent from the Issuer of specific written instructions in form and substance reasonably satisfactory to the Collateral Agent delivered to the Collateral Agent at least three (3) Business Days prior to the proposed investment, be invested by the Collateral Agent within a reasonable time in the Cash Equivalents identified in such written instructions. Any interest earned on such funds shall be disbursed (a) during an Event of Default, in accordance with Section 5.3, and (b) at all other times, as the Issuer shall direct. To the extent that the interest rate payable with respect to any such account varies over time, the Collateral Agent may use an average interest rate in making the interest allocations among the respective Secured Parties. In the absence of gross negligence or willful misconduct as determined by a final non-appealable order of a court of competent jurisdiction, the Collateral Agent shall not be responsible for any investment losses in respect of any funds invested in accordance with this Section 6.3. The Collateral Agent shall have no duty or obligation regarding the reinvestment of any such funds in the absence of updated written instructions from the Issuer in form and substance reasonably satisfactory to the Collateral Agent. The Collateral Agent or its Affiliates are permitted to receive additional compensation that could be deemed to be in the Collateral Agent's economic self-interest for (i) serving as an investment advisor, administrator, shareholder servicing agent, custodian or subcustodian with respect to certain Cash Equivalents, (ii) using Affiliates to effect transactions in certain Cash Equivalents and (iii) effecting transactions in certain Cash Equivalents. The Collateral Agent does not guarantee the performance of any Eligible Investments. The Collateral Agent shall have no liability in respect of losses incurred as a result of the liquidation of any investment prior to its stated maturity or the failure of the Issuer to provide timely written investment direction. The Issuer acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Issuer the right or option to receive individual confirmations of security transactions at no additional cost, as they occur, the Issuer specifically waives the option to receive such confirmation to the extent permitted by law. The Collateral Agent shall furnish the Issuer monthly cash transaction statements that include details of all investment transactions made by the Collateral Agent hereunder.

Section 6.4 Bankruptcy Proceedings. The following provisions shall apply during any Bankruptcy Proceeding of any Grantor:

(a) The Collateral Agent shall represent all Secured Parties in connection with all matters directly relating to the Collateral, including any use, sale or lease of Collateral, use of cash collateral, request for relief from the automatic stay and request for adequate protection.

(b) Each Secured Party shall be free to act independently on any issue not affecting the Collateral. Each Secured Party shall give prior notice to the Collateral Agent of any such action that could materially affect the rights or interests of the Collateral Agent or the other Secured Parties to the extent that such notice is reasonably practicable. If such prior notice is not given, such Secured Party shall give prompt notice following any action taken hereunder.

(c) Any proceeds of the Collateral received by any Secured Party as a result of, or during, any Bankruptcy Proceeding will be delivered promptly to the Collateral Agent for distribution in accordance with Section 5.3.

ARTICLE VII
COLLATERAL AGENT AND TRUSTEE RIGHTS, DUTIES AND LIABILITIES; ATTORNEY IN FACT; PROXY

Section 7.1 The Collateral Agent's and the Trustee's Rights, Duties and Liabilities.

(a) The Grantors assume all responsibility and liability arising from or relating to the use, maintenance, storage, sale, collection, foreclosure, realization on, conveyance or other disposition of or involving the Collateral. The Obligations shall not be affected by any failure of any Grantor, the Collateral Agent or the Trustee to take any steps to perfect the Collateral Agent's Liens or to collect or realize upon the Collateral, nor shall loss of or damage to the Collateral release any Grantor from any of the Obligations. Following the occurrence and during the continuation of an Event of Default, the Collateral Agent may (but shall not be required to), and at the direction of the Trustee (acting in accordance with the instructions of the Majority Holders pursuant to the Indenture including Section 6.05 thereof) shall, subject to each Intercreditor Agreement and the terms of the Indenture, without notice to or consent from any Grantor sue upon or otherwise collect, extend the time for payment of, modify or amend the terms of, compromise or settle for cash, credit or otherwise upon any terms, grant other indulgences, extensions, renewals, compositions or releases, and take or omit to take any other action with respect to the Collateral, any security therefor, any agreement relating thereto, any insurance applicable thereto or any Person liable directly or indirectly in connection with any of the foregoing, without discharging or otherwise affecting the liability of any Grantor for the Obligations or under the Indenture, any other Indenture Document or any other agreement now or hereafter existing between any Secured Party and any Grantor.

(b) It is expressly agreed by the Grantors that, anything herein to the contrary notwithstanding, each of the Grantors shall remain liable under each of its contracts and each of its licenses to observe and perform all the conditions and obligations to be observed and performed by it thereunder. Neither the Collateral Agent nor the Trustee shall have any obligation or liability under any contract or license by reason of or arising out of this Agreement or the granting herein of a Lien thereon or the receipt by the Collateral Agent or the Trustee of any payment relating to any contract or license pursuant hereto that is applied as required herein. Neither the Collateral Agent nor the Trustee shall be required or obligated in any manner to perform or fulfill any of the obligations of any Grantor under or pursuant to any contract or license, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any contract or license, or to present or file any claims, or to take any action to collect or enforce any performance or the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times.

Section 7.2 Right to Cure. The Collateral Agent may (but shall not be required to) in its reasonable discretion, subject to each Intercreditor Agreement, pay any reasonable amount or do any reasonable act required of any Grantor hereunder or under any other Indenture Document in order to preserve, protect, maintain or enforce the Obligations, the Collateral or the Collateral Agent's Liens therein, and which any Grantor fails to timely pay or do, including payment of any judgment against any Grantor, any insurance premium, any warehouse charge, any finishing or processing charge, any landlord's or bailee's claim and any other Lien upon or with respect to the Collateral. All payments that the Collateral Agent makes under this Section 7.2 and all reasonable and documented out-of-pocket costs and expenses that the Collateral Agent pays or incurs in connection with any action taken by it hereunder shall be promptly reimbursed by such Grantor. Any payment made or other action taken by the Collateral Agent under this Section 7.2 shall be without prejudice to any right to assert an Event of Default hereunder and to proceed thereafter as herein provided.

Section 7.3 Confidentiality.

(a) The Collateral Agent, accompanied by the Trustee if the Trustee so elects, may upon reasonable advance notice and at reasonable times during regular business hours, and at any time when an Event of Default exists, have access to, examine, audit, make extracts from or copies of, and inspect any or all of the Grantors' records, files and books of account and the Collateral, and discuss the Grantors' affairs with the Grantors' officers and senior management. The Grantors will deliver to the Collateral Agent any instrument necessary for the Collateral Agent to obtain records from any service bureau maintaining records for the Grantors. The Collateral Agent may, and at the direction of the Trustee shall, at any time when an Event of Default exists, and at the Grantors' expense, make copies of all of the Grantors' books and records, or require the Grantors to deliver such copies to the Collateral Agent. Upon reasonable request to senior management of the Issuer, the Collateral Agent may, without expense to the Collateral Agent, use such of the Grantors' respective personnel, supplies and premises as may be reasonably necessary for maintaining or enforcing the Collateral Agent's Liens. The Collateral Agent shall have the right (but not the obligation), upon the occurrence and during the continuance of an Event of Default, in the Collateral Agent's name or in the name of a nominee of the Collateral Agent, to verify the validity, amount or any other matter relating to the Accounts, Inventory or other Collateral (but if any such Accounts, Inventory or other Collateral constitute Intercreditor Collateral, only so long as no ABL Liens are outstanding on such Collateral), by mail, telephone or otherwise; provided, however, in the absence of an Event of Default, the Collateral Agent agrees that it will not attempt to verify more than five (5) Accounts each month.

(b) The Collateral Agent, in its individual capacity and as Collateral Agent, and the Trustee, in its individual capacity and as Trustee, agree and acknowledge that all information provided to the Collateral Agent or the Trustee by any Grantor may be considered to be proprietary and confidential information ("Confidential Information"). Each of the Trustee and the Collateral Agent agrees to take all reasonable precautions necessary to keep such information confidential, which precautions shall be no less stringent than those that the Collateral Agent and the Trustee, as applicable, employs to protect its own confidential information. Each of the Collateral Agent and the Trustee shall not disclose to any third party other than as set forth herein, and shall not use for any purpose other than the exercise of the Collateral Agent's and the Trustee's rights and the performance of its respective obligations under this Agreement, any such information without the prior written consent of such Grantor, as applicable. Each of the Collateral Agent and the Trustee shall limit access to such information received hereunder to (i) its directors, officers, managers and employees and (ii) its legal advisors, to each of whom disclosure of such information is necessary for the purposes described above; provided, however, that in each case such party has expressly agreed to maintain such information in confidence under terms and conditions substantially identical to the terms of this Section 7.3(b).

(c) Each of the Collateral Agent and the Trustee agrees that no Grantor has any responsibility whatsoever for any reliance on Confidential Information by the Collateral Agent or the Trustee or by any Person to whom such information is disclosed in connection with this Agreement, whether related to the purposes described above or otherwise. Without limiting the generality of the foregoing, each of the Collateral Agent and the Trustee agrees that no Grantor makes any representation or warranty whatsoever to it with respect to Confidential Information or its suitability for such purposes. Each of the Collateral Agent and the Trustee further agrees that it shall not acquire any rights against any Grantor or any employee, officer, director, manager, representative or agent of any Grantor (collectively, "Confidential Parties") as a result of the disclosure of Confidential Information to the Trustee or the Collateral Agent and that no Confidential Party has any duty, responsibility, liability or obligation to any Person as a result of any such disclosure.

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

Section 7.4 Power of Attorney. Each Grantor, as to itself, hereby appoints the Collateral Agent and the Collateral Agent's designee as such Grantor's attorney, with power upon the occurrence and during the continuance of an Event of Default: (a) to endorse such Grantor's name on any checks, notes, acceptances, money orders or other forms of payment or security that come into the Collateral Agent's or any other Secured Parties' possession; (b) to sign such Grantor's name on any invoice, bill of lading, warehouse receipt or other document of title relating to any Collateral, on drafts against customers, on assignments of Accounts, on notices of assignment, financing statements and other public records and to file any such financing statements by electronic means with or without a signature as authorized or required by applicable law or filing procedure; (c) to notify the post office authorities to change the address for delivery of such Grantor's mail to an address designated by the Collateral Agent and to receive, open and dispose of all mail addressed to such Grantor; (d) to send requests for verification of Accounts to customers or Account Debtors (but if any such Accounts constitute Intercreditor Collateral, only so long as no ABL Liens are outstanding on such Collateral); (e) to clear Inventory through customs in such Grantor's name, the Collateral Agent's name or the name of the Collateral Agent's designee, and to sign and deliver to customs officials powers of attorney in such Grantor's name for such purpose; and (f) to do all things the Collateral Agent reasonably determines are necessary to carry out the security interest provisions of the Indenture and the provisions of this Agreement. Each Grantor ratifies and approves all acts of such attorney. Notwithstanding anything in this Agreement or any other Indenture Document to the contrary, none of the Trustee, the Collateral Agent or their attorneys, employees or Affiliates will be liable for any acts or omissions or for any error of judgment or mistake of fact or law other than any such liability arising from any such Person's gross negligence or willful misconduct, as finally determined by a court of competent jurisdiction.

Section 7.5 Proxy. CONSISTENT WITH AND SUBJECT TO THE LIMITATIONS IN SECTION 4.5(b), EACH GRANTOR HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS THE COLLATERAL AGENT AS ITS PROXY AND ATTORNEY-IN-FACT (AS SET FORTH IN SECTION 7.4) WITH RESPECT TO THE INVESTMENT PROPERTY THAT IS COLLATERAL, INCLUDING THE RIGHT TO VOTE SUCH INVESTMENT PROPERTY, WITH FULL POWER OF SUBSTITUTION TO DO SO. IN ADDITION TO THE RIGHT TO VOTE ANY SUCH INVESTMENT PROPERTY, THE APPOINTMENT OF THE COLLATERAL AGENT AS PROXY AND ATTORNEY-IN-FACT SHALL INCLUDE THE RIGHT TO EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES AND REMEDIES TO WHICH A HOLDER OF SUCH INVESTMENT PROPERTY WOULD BE ENTITLED (INCLUDING GIVING OR WITHHOLDING WRITTEN CONSENTS OF SHAREHOLDERS, CALLING SPECIAL MEETINGS OF SHAREHOLDERS AND VOTING AT SUCH MEETINGS). SUBJECT TO SECTION 4.5(b), SUCH PROXY SHALL BE EFFECTIVE, AUTOMATICALLY AND WITHOUT THE NECESSITY OF ANY ACTION (INCLUDING ANY TRANSFER OF ANY SUCH INVESTMENT PROPERTY ON THE RECORD BOOKS OF THE ISSUER THEREOF) BY ANY PERSON (INCLUDING THE ISSUER OF SUCH INVESTMENT PROPERTY OR ANY OFFICER OR AGENT THEREOF), UPON THE OCCURRENCE AND DURING THE CONTINUANCE OF AN EVENT OF DEFAULT.

Section 7.6 Nature of Appointment; Limitation of Duty. THE APPOINTMENT OF THE COLLATERAL AGENT AS PROXY AND ATTORNEY-IN-FACT IN THIS ARTICLE VII IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL THE DATE ON WHICH THIS AGREEMENT IS TERMINATED IN ACCORDANCE WITH SECTION 8.13. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT OR IN ANY OTHER INDENTURE DOCUMENT, NONE OF THE COLLATERAL AGENT, ANY OTHER SECURED PARTY OR ANY OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL HAVE ANY DUTY TO EXERCISE ANY RIGHT OR POWER GRANTED HEREUNDER OR OTHERWISE OR TO PRESERVE THE SAME AND SHALL NOT BE LIABLE FOR ANY FAILURE TO DO SO OR FOR ANY DELAY IN DOING SO, EXCEPT TO THE EXTENT SUCH DAMAGES ARE ATTRIBUTABLE TO THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION; PROVIDED THAT IN NO EVENT SHALL THEY BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

Section 7.7 Additional Matters Relating to the Collateral Agent.

(a) U.S. Bank National Association shall initially act as Collateral Agent for the Secured Parties and shall be authorized to appoint co-collateral agents as necessary in its sole discretion. U.S. Bank National Association, as Collateral Agent, is authorized and directed to (i) enter into the Indenture Documents, (ii) bind the Secured Parties on the terms as set forth in the Indenture Documents and (iii) perform and observe its obligations under the Indenture Documents.

(b) The rights, duties, liabilities and immunities of the Collateral Agent and its appointment, resignation and replacement hereunder and under the Indenture and the other Indenture Documents shall be governed by this Agreement, Article 11 of the Indenture and the relevant provisions contained in the other Indenture Documents. Without limiting the foregoing, the rights, privileges, protections and benefits given to the Collateral Agent under the Indenture are extended to, and shall be enforceable by, the Collateral Agent in connection with the execution, delivery and administration of this Agreement and the other Indenture Documents and any action taken or omitted to be taken by the Collateral Agent in connection with its appointment and performance under this Agreement and the other Indenture Documents to which it is a party.

(c) The Collateral Agent undertakes to perform or to observe only such of its agreements and obligations as are specifically set forth in this Agreement, the Indenture and the other Indenture Documents, and no implied agreements, covenants or obligations with respect to any Grantor or any Affiliate of any Grantor, any Secured Party or any other party shall be read into this Agreement against the Collateral Agent. The Collateral Agent in its capacity as such is not a fiduciary of and shall not owe or be deemed to owe any fiduciary duty to any Grantor or any Related Person of any Grantor.

(d) None of the Collateral Agent, the Trustee or any of their respective officers, directors, employees, agents, attorneys-in-fact or Related Persons shall be responsible or liable in any manner (i) to any Grantor or any of their respective Related Persons for any action taken or omitted to be taken by it under or in connection with this Agreement in compliance herewith, (ii) to any Secured Party or any other Person for any recitals, statements, representations, warranties, covenants or agreements contained in this Agreement or in any other Indenture Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Collateral Agent under or in connection with, this Agreement or any other Indenture Document, (iii) to any Secured Party or any other Person for the validity, effectiveness, adequacy, genuineness or enforceability of this Agreement or any other Indenture Document, or any Lien purported to be created hereunder or under any other Indenture Document, (iv) to any Secured Party or any other Person for the validity or sufficiency of the Collateral or the validity of the title of any Grantor to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral or (v) to any Secured Party or other Person for any failure of any Grantor to perform its obligations hereunder or to perform any of the Obligations.

(e) Notwithstanding anything to the contrary contained in this Agreement, (i) in no event shall the Trustee or the Collateral Agent be responsible for or have any obligation, duty or liability with respect to the creation, perfection, priority, maintenance, protection or enforcement of any lien on, security interest in or pledge or other encumbrance involving or relating to the Collateral or any other assets, properties or rights of the Grantors, provided, however that the Collateral Agent acknowledges that with respect to the enforcement of any Liens, its actions will be subject to each Intercreditor Agreement, (ii) neither the Trustee nor the Collateral Agent shall be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any Liens in the Collateral and (iii) neither the Trustee nor the Collateral Agent shall be under any obligation to any Person to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or to inspect the properties or records of any Grantor. The permissive rights of the Collateral Agent to do things enumerated in this Agreement shall not be construed as a duty or obligation. The Collateral Agent may rely conclusively on any Opinions of Counsel rendered to the Collateral Agent under the Indenture in determining any necessary or desirable actions under this Agreement. Notwithstanding anything to the contrary herein, the Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under the UCC or otherwise, shall be to deal with it in the same manner as the Collateral Agent deals with similar property for its own account, and the Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which comparable secured parties accord comparable collateral. Neither the Collateral Agent nor the Trustee shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof.

(f) Notwithstanding anything to the contrary contained herein, none of the Collateral Agent, the Trustee or any of their respective officers, directors, employees, agents, attorneys-in-fact or Related Persons shall be exonerated from any liability arising from its or their own gross negligence or willful misconduct, as finally determined by a court of competent jurisdiction.

(g) The Grantors shall, jointly and severally, upon demand pay to the Collateral Agent and any other Secured Party the amount of any and all reasonable and documented out-of-pocket fees, costs and expenses (including the reasonable and documented fees and expenses of one external counsel for the Collateral Agent and one external counsel for the other Secured Parties as a whole (except to the extent the interests of the Secured Parties with respect to items (i) through (v) below diverge, in which case, one additional external counsel for each set of Secured Parties that have such divergent interests but no more than three (3) separate external counsel for the Secured Parties in the aggregate), any special consultants reasonably engaged (and, unless an Event of Default exists, engaged only with the consent of the Issuer), and any necessary local counsel who might reasonably be retained by the Collateral Agent or the Secured Parties, as the case may be (on corresponding terms as with external counsel above), in connection with the transactions contemplated hereby) that the Collateral Agent or any other Secured Party, as the case may be, may incur in connection with (i) any Event of Default, including the sale, lease, license or other disposition of, collection from, or other realization upon, any of the Collateral pursuant to the exercise or enforcement of any of their respective rights hereunder, (ii) the exercise of their respective rights under this Agreement or under any other Indenture Document, including the custody, preservation, use or operation of, or the sale of, any of the Collateral, (iii) performance by the Collateral Agent of any obligations of any Grantor that any Grantor has failed or refused to perform with respect to the Collateral, (iv) bankruptcy, insolvency, receivership, foreclosure, winding up or liquidation proceedings and defending or asserting rights and claims of the Collateral Agent in respect thereof, by litigation or otherwise, including expenses of insurance, or (v) the execution and delivery and administration of this Agreement, each Intercreditor Agreement and the other Indenture Documents and any agreement supplemental hereto or thereto, and any instruments of amendment, waiver, further assurance, release or termination, including with respect to the termination and/or release of any or all of the Liens in the Collateral provided for in this Agreement and the other Security Documents. Any amounts payable by any Grantor pursuant to this Section 7.7 shall be payable on demand.

(h) The Grantors, jointly and severally, shall pay on demand all filing, registration and recording fees or re-filing, re-registration and re-recording fees, and all federal, state, county and municipal stamp taxes and other similar taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Agreement, the Indenture, each Intercreditor Agreement, the other Indenture Documents and any agreement supplemental hereto or thereto and any instruments of further assurance or termination.

(i) Except for action expressly provided for herein and in the other Indenture Documents, the Collateral Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement or any other Indenture Document at the request, order or direction of any Secured Party pursuant to the provisions of the Indenture or any other Indenture Document, unless such Secured Party shall have offered to the Collateral Agent security or indemnity satisfactory to the Collateral Agent against the costs, expenses and liabilities that may be incurred by it in compliance with such request, order or direction.

(j) In no event shall the Collateral Agent or any other Secured Party be liable or responsible for any funds or investments of funds held by any Grantor or any Affiliates thereof.

Section 7.8 Appointment of Co-Collateral Agent. In the event that the Collateral Agent appoints a Co-Collateral Agent or Co-Collateral Agents in accordance with Section 7.7(a), such Co-Collateral Agent(s) shall enter into an appointment agreement in a form satisfactory to the Collateral Agent and such Co-Collateral Agent, and, upon acceptance of the appointment, such Co-Collateral Agent shall be entitled to all of the rights, privileges, limitations on liability and immunities afforded to and subject to all the duties of the Collateral Agent hereunder and shall be deemed to be a party to this Agreement for all purposes provided in this Section 7.8, in each case, subject to the specific rights and duties vested in the Co-Collateral Agent pursuant to such appointment agreement and related Security Documents. It is accepted and acknowledged by the parties hereto that any Co-Collateral Agent appointed in accordance with Section 7.7(a) and this Section 7.8 shall be entitled to the payment of its fees and expenses as agreed to by the Issuer and, without limitation of any of the other provisions of this Agreement, shall be deemed to be an indemnified party under Section 8.17 with respect to any liability arising under this Agreement or the other Indenture Documents without need for further act by the Grantors.

Section 7.9 Instructions under Account Control Agreement. The Collateral Agent agrees not to issue a notice of exclusive control or any other instruction under such Account Control Agreement unless an Event of Default has occurred and is continuing.

ARTICLE VIII
GENERAL PROVISIONS

Section 8.1 Notices. All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax, as follows:

(a) if to the Collateral Agent, to it at:

U.S. Bank National Association
Corporate Trust Services
One Federal Street, 3rd Floor
Boston, Massachusetts 02110
Attention: Alison Nadeau (Aquestive Indenture)
Facsimile: 617-603-6683

(b) if to the Trustee, to it at:

U.S. Bank National Association
Corporate Trust Services
One Federal Street, 3rd Floor
Boston, Massachusetts 02110
Attention: Alison Nadeau (Aquestive Indenture)
Facsimile: 617-603-6683

(c) if to any Grantor, to it at:

Aquestive Therapeutics, Inc.
30 Technology Drive
Warren, New Jersey 07059
Attention: Chief Financial Officer & General Counsel
Facsimile: 908-561-1209

With copies (which shall not constitute notice) to:

Aquestive Therapeutics, Inc.
30 Technology Drive
Warren, New Jersey 07059
Attention: Legal Department
Facsimile: (908) 561-1209

Dechert LLP
1095 Avenue of the Americas
New York, New York 10036
Attention: David Rosenthal & Scott Zimmerman
Facsimile: (212) 698-3599

Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto (and for this purpose a notice to the Issuer shall be deemed to be a notice to each Grantor). All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by facsimile or on the date five (5) Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 8.1 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 8.1. Notwithstanding the foregoing, notices to the Collateral Agent shall only be effective upon actual receipt.

Section 8.2 Waiver of Notices. Unless otherwise expressly provided herein, each Grantor hereby waives presentment, demand, protest or notice (to the maximum extent permitted by applicable law) of any kind in connection with this Agreement or any Collateral.

Section 8.3 Limitation on Collateral Agent's and Other Secured Parties' Duty with Respect to the Collateral. The Collateral Agent shall have no obligation to clean up or otherwise prepare the Collateral for sale. The Collateral Agent and each Secured Party shall use reasonable care with respect to the Collateral in its possession or under its control. Neither the Collateral Agent nor any other Secured Party shall have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Collateral Agent or such other Secured Party or any income thereon (other than to account for proceeds therefrom) or as to the preservation of rights against prior parties or any other rights pertaining thereto. To the extent that applicable law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, and to the extent permitted by applicable law, each Grantor acknowledges and agrees that it would be commercially reasonable for the Collateral Agent (a) to fail to incur expenses deemed significant by the Collateral Agent to prepare Collateral for disposition or otherwise to transform raw material or work in process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (d) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other Persons, whether or not in the same business as such Grantor, for expressions of interest in acquiring all or any portion of such Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (h) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (k) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Collateral or (l) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Collateral Agent in the collection or disposition of any of the Collateral. Each Grantor acknowledges that the purpose of this Section 8.3 is to provide non-exhaustive indications of what actions or omissions by the Collateral Agent would be commercially reasonable in the Collateral Agent's exercise of remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 8.3. Without limitation upon the foregoing, nothing contained in this Section 8.3 shall be construed to grant any rights to any Grantor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section 8.3.

Section 8.4 Compromises and Collection of Collateral. Each Grantor and the Collateral Agent recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Accounts, that certain of the Accounts may be or become uncollectible in whole or in part and that the expense and probability of success in litigating a disputed Account may exceed the amount that reasonably may be expected to be recovered with respect to an Account. In view of the foregoing, each Grantor agrees that the Collateral Agent may at any time and from time to time if an Event of Default has occurred and is continuing (but if such Account constitutes Intercreditor Collateral, only so long as no ABL Liens are outstanding in on such Collateral) compromise with the obligor on any Account, accept in full payment of any Account such amount as the Collateral Agent in its sole discretion shall determine or abandon any Account, and any such action by the Collateral Agent shall be commercially reasonable so long as the Collateral Agent acts in good faith based on information known to it at the time it takes any such action.

Section 8.5 Specific Performance of Certain Covenants. Each Grantor acknowledges and agrees that a breach of any of the covenants contained in Sections 4.2(a), 4.5, 4.6, 4.7, 4.8, 4.10, 4.12, 5.1(j), 7.3(a), 7.6, 8.11, 8.17 and 8.18 will cause irreparable injury to the Collateral Agent and the other Secured Parties and that the Collateral Agent and the other Secured Parties have no adequate remedy at law in respect of such breaches, and each Grantor therefore agrees, without limiting the right of the Collateral Agent or the other Secured Parties to seek and obtain specific performance of other obligations of any Grantor contained in this Agreement, that the covenants of such Grantor contained in the Sections referred to in this Section 8.5 shall be specifically enforceable against such Grantor.

Section 8.6 Cumulative Remedies; No Prior Recourse to Collateral. The enumeration herein of the Collateral Agent's and the Trustee's rights and remedies is not intended to be exclusive, and such rights and remedies are in addition to and not by way of limitation of any other rights or remedies that the Collateral Agent and the Trustee may have under the UCC, other applicable law or the Indenture Documents. The Collateral Agent and the Trustee shall have the right, in their sole discretion, to determine which rights and remedies are to be exercised and in which order. The exercise of one right or remedy shall not preclude the exercise of any others, all of which shall be cumulative. The Collateral Agent and the Trustee may, without limitation, proceed directly against any Person liable therefor to collect the Obligations without any prior recourse to the Collateral. No failure to exercise and no delay in exercising, on the part of the Collateral Agent or the Trustee, any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 8.7 Limitation by Law; Severability of Provisions. All rights, remedies and powers provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they shall not render this Agreement invalid, unenforceable or not entitled to be recorded or registered, in whole or in part. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

Section 8.8 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor for liquidation or reorganization, should any Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of such Grantor's assets. This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time when there is or has been more than one Grantor payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a "voidable preference", "fraudulent conveyance" or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 8.9 Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective representatives, successors and permitted assigns of the parties hereto; provided, however, no Grantor shall assign or delegate any of its rights or duties hereunder without the prior written consent of the Collateral Agent and the Trustee (other than pursuant to a transaction permitted under the Indenture), and any attempted assignment without such consent shall be null and void. The rights and benefits of the Collateral Agent and the Trustee hereunder shall, if such Persons so agree, inure to any party acquiring any interest in the Obligations or any part thereof in accordance with the terms hereof or of the Indenture.

Section 8.10 Survival of Representations. All covenants, agreements, representations and warranties made by the Grantors in the Indenture Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Indenture Document shall be considered to have been relied upon by the Secured Parties and shall survive the execution and delivery of the Indenture Documents and the purchase of the Securities by the Purchasers, regardless of any investigation made by any Secured Party or on its behalf and notwithstanding that the Collateral Agent, the Trustee or any other Secured Party may have had notice or knowledge of any Default or incorrect representation or warranty and shall continue in full force and effect as long as any Obligation (except for contingent indemnities and cost and reimbursement obligations to the extent no claim has been made) remains unpaid. Notwithstanding anything to the contrary set forth herein, the provisions of Section 8.17 and Section 8.18 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment in full of the Securities or the termination of this Agreement or any other Indenture Document.

Section 8.11 Guaranties; Third Party Joinder. Promptly upon creation or acquisition of any Subsidiary of a Grantor, such Grantor shall, to the extent such Subsidiary is required to become a Guarantor pursuant to the terms of the Indenture, cause such Subsidiary to become a Grantor by executing and delivering to the Collateral Agent such an instrument in the form of Exhibit C hereto and other instruments, certificates and agreements as the Collateral Agent may reasonably request. Upon execution and delivery of such instruments, certificates and agreements, such newly created or acquired Subsidiary shall automatically become a Grantor and thereupon shall have all of the rights, benefits, duties and obligations of a Grantor under the Indenture Documents.

Section 8.12 Captions. The captions contained in this Agreement are for convenience of reference only, are without substantive meaning and should not be construed to modify, enlarge or restrict any provision.

Section 8.13 Termination and Release. This Agreement and the security interests granted hereby shall terminate in accordance with the Indenture and each Intercreditor Agreement.

Section 8.14 Entire Agreement. This Agreement taken together with the other Indenture Documents embody the entire agreement and understanding between each Grantor and the Collateral Agent relating to the Collateral and supersede all prior agreements and understandings between any Grantor and the Collateral Agent relating to the Collateral.

Section 8.15 Governing Law; Jurisdiction; Consent to Service of Process.

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW), EXCEPT TO THE EXTENT THAT LOCAL LAW GOVERNS THE CREATION, PERFECTION, PRIORITY OR ENFORCEMENT OF SECURITY INTERESTS.

(b) EACH PARTY HERETO HEREBY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS OF COMPETENT JURISDICTION IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK IN ANY SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 8.1. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

Section 8.16 Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.16.

Section 8.17 Indemnity. EACH GRANTOR AGREES, JOINTLY AND SEVERALLY, TO DEFEND, INDEMNIFY AND HOLD THE COLLATERAL AGENT, THE TRUSTEE AND EACH OF THEIR RELATED PERSONS (EACH, AN "INDEMNIFIED PERSON") HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, CHARGES, EXPENSES AND DISBURSEMENTS (INCLUDING REASONABLE AND DOCUMENTED ATTORNEY COSTS) OF ANY KIND OR NATURE WHATSOEVER THAT MAY AT ANY TIME (INCLUDING AT ANY TIME FOLLOWING THE TERMINATION, RESIGNATION OR REPLACEMENT OF THE COLLATERAL AGENT OR THE TRUSTEE) BE IMPOSED ON, INCURRED BY OR ASSERTED AGAINST ANY SUCH PERSON IN ANY WAY RELATING TO OR ARISING OUT OF THIS AGREEMENT, THE INDENTURE OR ANY OTHER INDENTURE DOCUMENT OR ANY DOCUMENT CONTEMPLATED BY OR REFERRED TO HEREIN OR THEREIN, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, OR ANY ACTION TAKEN OR OMITTED BY ANY SUCH PERSON UNDER OR IN CONNECTION WITH ANY OF THE FOREGOING, INCLUDING WITH RESPECT TO ANY INVESTIGATION, LITIGATION, OR PROCEEDING (INCLUDING ANY INSOLVENCY PROCEEDING OR APPELLATE PROCEEDING) RELATED TO OR ARISING OUT OF THIS AGREEMENT, THE INDENTURE, THE SECURITIES OR ANY OTHER INDENTURE DOCUMENT OR THE USE OF THE PROCEEDS THEREOF, WHETHER OR NOT ANY INDEMNIFIED PERSON IS A PARTY THERETO, INCLUDING ANY SUCH LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, CHARGES, EXPENSES AND REIMBURSEMENTS RESULTING FROM THE NEGLIGENCE OF SUCH INDEMNIFIED PERSON (ALL THE FOREGOING, COLLECTIVELY, THE "INDEMNIFIED LIABILITIES"); PROVIDED THAT THE GRANTORS SHALL HAVE NO OBLIGATION HEREUNDER TO ANY INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES TO THE EXTENT SUCH INDEMNIFIED LIABILITIES RESULT FROM (x) THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PERSON OR ITS RESPECTIVE AFFILIATES, AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION, OR (y) A CLAIM THAT IS SOLELY BETWEEN OR AMONG INDEMNIFIED PERSONS (OTHER THAN CLAIMS ARISING OUT OF ANY ACT OR OMISSION BY A GRANTOR). THE AGREEMENTS IN THIS SECTION 8.17 SHALL SURVIVE PAYMENT OF ALL OTHER OBLIGATIONS AND ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT OR ANY OTHER INDENTURE DOCUMENT.

Section 8.18 Limitation of Liability. NO CLAIM MAY BE MADE BY ANY GRANTOR OR OTHER PERSON AGAINST THE COLLATERAL AGENT, THE TRUSTEE OR THE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS OR THEIR RESPECTIVE RELATED PERSONS OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, THE INDENTURE OR ANY OTHER INDENTURE DOCUMENT OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH GRANTOR HEREBY IRREVOCABLY WAIVES, RELEASES AND AGREES NOT TO SUE UPON OR BRING IN ANY JUDICIAL, ARBITRAL OR ADMINISTRATIVE FORUM ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR. THE AGREEMENTS IN THIS SECTION 8.18 SHALL SURVIVE PAYMENT OF ALL OTHER OBLIGATIONS AND ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT OR ANY OTHER INDENTURE DOCUMENT.

Section 8.19 Currency of Account; Conversion of Currency; Foreign Exchange Restrictions.

(a) U.S. Dollars are the sole currency of account and payment for all sums payable by the Grantors under or in connection with this Agreement, including damages related thereto. Any amount received or recovered in a currency other than U.S. Dollars by the Trustee, the Collateral Agent or any other Secured Party (whether as a result of, or as a result of the enforcement of, a judgment or order of a court of any jurisdiction, in the winding-up or dissolution of any Grantor or otherwise) in respect of any sum expressed to be due to it from a Grantor shall only constitute a discharge to the Grantor to the extent of the U.S. Dollar amount, which the recipient is able to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so). If that U.S. Dollar amount is less than the U.S. Dollar amount expressed to be due to the recipient under the applicable Obligations, the Grantors shall indemnify it against any loss sustained by it as a result as set forth in Section 8.19(b). In any event, the Grantors shall indemnify the recipient against the cost of making any such purchase. For the purposes of this Section 8.19, it will be sufficient for the holder of any Obligations to certify in a satisfactory manner (indicating sources of information used) that it would have suffered a loss had an actual purchase of U.S. Dollars been made with the amount so received in that other currency on the date of receipt or recovery (or, if a purchase of U.S. Dollars on such date had not been practicable, on the first date on which it would have been practicable, it being required that the need for a change of date be certified in the manner mentioned above).

(b) The following provisions shall apply to conversion of currency for purposes of this Agreement:

(i) if for the purpose of obtaining judgment in, or enforcing the judgment of, any court in any country, it becomes necessary to convert into a currency (the "Judgment Currency") an amount due in any other currency (the "Base Currency"), then the conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which the judgment is given or the order of enforcement is made, as the case may be (unless a court shall otherwise determine);

(ii) if there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given or an order of enforcement is made, as the case may be (or such other date as a court shall determine), and the date of receipt of the amount due, the Grantors will pay such additional (or, as the case may be, such lesser) amount, if any, as may be necessary so that the amount paid in the Judgment Currency when converted at the rate of exchange prevailing on the date of receipt will produce the amount in the Base Currency originally due; and

(iii) in the event of the winding-up of any Grantor at any time while any amount, payment or damages owing under this Agreement, or any judgment or order rendered in respect thereof, shall remain outstanding, the Grantors shall indemnify and hold the Trustee, the Collateral Agent and the other Secured Parties harmless against any deficiency arising or resulting from any variation in rates of exchange between (A) the date as of which the non-U.S. currency equivalent of the amount due or contingently due under this Agreement (other than under this subsection (b)(iii)) is calculated for the purposes of such winding-up and (B) the final date for the filing of proofs of claim in such winding-up (which shall be the date fixed by the liquidator or otherwise in accordance with the relevant provisions of applicable law as being the latest practicable date as at which liabilities of such Grantor may be ascertained for such winding-up prior to payment by the liquidator or otherwise in respect thereof).

(c) The obligations contained in this Section 8.19 shall constitute separate and independent obligations from the other obligations of the Grantors under this Agreement, shall give rise to separate and independent causes of action against the Grantors, shall apply irrespective of any waiver or extension granted by the Trustee or the Collateral Agent or either of them from time to time and shall continue in full force and effect notwithstanding any judgment or order or the filing of any proof of claim in the winding-up of any Grantor for a liquidated sum in respect of amounts due hereunder (other than under subsection (b)(iii) above) or under any such judgment or order. Any such deficiency as aforesaid shall be deemed to constitute a loss suffered by the Trustee, the Collateral Agent or any other Secured Party, as the case may be, and no proof or evidence of any actual loss shall be required by any Grantor or the liquidator or otherwise or any of them. In the case of subsection (b)(iii) above, the amount of such deficiency shall not be deemed to be reduced by any variation in rates of exchange occurring between the said final date and the date of any liquidating distribution.

(d) For purposes of this Section 8.19, the term “rate(s) of exchange” shall mean the rate of exchange quoted by Reuters at 10:00 a.m. (New York City time) for spot purchases of the Base Currency with the Judgment Currency other than the Base Currency and includes any premiums and costs of exchange payable.

Section 8.20 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute one and the same Agreement. Any counterpart may be executed by facsimile or other electronic transmission, and such facsimile or other electronic transmission shall be deemed an original.

Section 8.21 Amendments. Other than as permitted pursuant to the Indenture, neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent, the Trustee and the Grantor or Grantors with respect to which such waiver, amendment or modification is to apply, subject to any consent that may be required in accordance with Section 9.02 of the Indenture.

Section 8.22 Incorporation by Reference. It is expressly understood and agreed that U.S. Bank National Association is entering into this Agreement solely in its capacity as Collateral Agent and as Trustee as appointed pursuant to the Indenture and shall be entitled to all of the rights, privileges, immunities and protections under the Indenture as if such rights, privileges, immunities and protections were set forth herein.

Section 8.23 English Language. All certificates, reports, notices and other documents and communications given or delivered by any party hereto pursuant to this Agreement or any other Indenture Document shall be in English or, if not in English, accompanied by a certified English translation thereof. The English version of any such document shall control the meaning of the matters set forth herein.

Section 8.24 Intercreditor Agreements. In the event of any conflict or inconsistency between the provisions of this Agreement and any Intercreditor Agreement, the provisions of such Intercreditor Agreement shall control and govern.

{Signature Pages Follow}

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

AQUESTIVE THERAPEUTICS, INC.

By: /s/ John Maxwell
Name: John Maxwell
Title: CFO

U.S. BANK NATIONAL ASSOCIATION,
as Collateral Agent

By: /s/ Allison D.B. Nadeau
Name: Allison D.B. Nadeau
Title: Vice President

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: /s/ Allison D.B. Nadeau
Name: Allison D.B. Nadeau
Title: Vice President

{Signature Page to the Collateral Agreement}

Exhibit 99.1

Aquestive Therapeutics Completes $70 Million Debt Refinancing

Warren, NJ, July 15, 2019 – Aquestive Therapeutics, Inc. (NASDAQ:AQST) ("Aquestive"), a specialty pharmaceutical company focused on developing and commercializing differentiated products based on its proprietary PharmFilm® technology to meet patients' unmet needs and solve therapeutic problems, today announced that it has completed a private placement of $70 million of 12.5% Senior Secured Notes due June 2025 and warrants, and refinanced its existing credit facility. In addition, the indenture governing the Notes provides opportunity to issue up to $30 million of additional Notes under certain conditions for a total possible Note issuance of $100 million, as described below.

The financing, led by Madryn Asset Management, LP ("Madryn"), with participation by other institutional investors, provided net proceeds of approximately $67 million after expenses. The net proceeds of the financing were used by Aquestive to repay all outstanding obligations under the Company's prior credit facility of approximately $52 million. The Company will use the balance of approximately $15 million for the continued commercialization and advancement of its proprietary products and pipeline candidates, and other general corporate purposes.

Under the terms of this transaction, under certain conditions, Aquestive may issue $10 million of First Additional Notes upon the completion of the New Drug Application filing for Libervant™ (diazepam) Buccal Film with the U.S. Food and Drug Administration ("FDA"); furthermore, Aquestive may offer up to $30 million (less the amount of any First Additional Notes that are issued) of Second Additional Notes upon receiving FDA approval for Libervant.

The Notes are senior secured obligations of Aquestive and will mature on June 30, 2025, unless redeemed or repurchased in accordance with their terms prior to such date. The Notes bear interest at a fixed rate of 12.5% per year, payable quarterly. Principal will be repaid starting on September 30, 2021.

Purchasers of the original Notes received warrants to purchase up to 2,000,000 shares of Aquestive's common stock exercisable at a price of $4.25 per share ("Warrants"). The Warrants are immediately exercisable and may be exercised at any time up to June 30, 2025.

"This financing brings new institutional investors to the Aquestive story, enabling the Company to continue to expand and grow with increased access to capital," stated Keith J. Kendall, Chief Executive Officer. "We are able to retire our existing debt facility as well as provide additional liquidity which, along with our commercial product revenues, allows us to bring Libervant to market, to continue to advance our pipeline assets and grow our epilepsy franchise."

Morgan Stanley & Co. LLC acted as the sole placement agent on the transaction. Dechert LLP acted as counsel to Aquestive, Pillsbury Winthrop Shaw Pittman LLP acted as counsel to the initial purchasers of the Notes and Warrants, and Proskauer Rose LLP acted as counsel to Madryn.

For more information regarding the terms and conditions of the Notes and the Warrants, please refer to the Current Report on Form 8-K filed today by Aquestive with the Securities and Exchange Commission.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy these securities, nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such jurisdiction. The securities have not been and will not be registered under the Securities Act of 1933 or any state securities laws, and unless so registered, may not be offered or sold in the United States except pursuant to an exemption from the registration requirements of the Securities Act of 1933 and applicable state securities laws.

About Aquestive Therapeutics

Aquestive Therapeutics is a specialty pharmaceutical company that applies innovative technology to solve therapeutic problems and improve medicines for patients. Aquestive is advancing a late-stage proprietary product pipeline to treat CNS conditions and provide alternatives to invasively-administered standard of care therapies. The Company also collaborates with pharmaceutical companies to bring new molecules to market using proprietary, best-in-class technologies, like PharmFilm®, and has proven capabilities for drug development and commercialization.

About Madryn Asset Management

Madryn Asset Management, LP is a leading alternative asset management firm that invests in innovative healthcare companies specializing in unique and transformative products, technologies, and services. The firm draws on its extensive and diverse experience spanning the investment management and healthcare industries, and employs an independent research process based on original insights to target attractive economic opportunities that deliver strong risk-adjusted and absolute returns for its limited partners while creating long-term value in support of its portfolio companies. For additional information, please visit https://madrynlp.com/.

Forward-Looking Statement

This press release includes forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Words such as “believe,” "anticipate," "plan," "expect," "estimate," "intend," "may," "will," or the negative of those terms, and similar expressions, are intended to identify forward-looking statements. These forward-looking statements may include, but are not limited to, statements about our growth and future financial and operating results and financial position, ability to advance Libervant to the market, regulatory approvals and pathways, clinical trial timing and plans, business strategies, market opportunities, and other statements that are not historical facts.

These forward-looking statements are based on our current expectations and beliefs and are subject to a number of risks and uncertainties that could cause actual results to differ materially from those described in the forward-looking statements. Such risks and uncertainties include, but are not limited to, risks associated with the Company's development work, including any delays or changes to the timing, cost and success of our product development activities and clinical trials; the risks of delays in FDA approval of our drug candidates or failure to receive approval; the risks inherent in commercializing a new product (including technology risks, financial risks, market risks and implementation risks and regulatory limitations); risk of development of our sales and marketing capabilities; risk of legal costs associated with and the outcome of our patent litigation challenging third party at risk generic sale of our proprietary products; risk of sufficient capital and cash resources, including access to available debt and equity financing and revenues from operations, to satisfy all of our short-term and longer term cash requirements and other cash needs, at the times and in the amounts needed; risk of failure to satisfy all financial and other debt covenants and of any default; risk related to government claims against Indivior for which we license, manufacture and sell Suboxone and which accounts for the substantial part of our current operating revenues; risks related to the outsourcing of certain sales, marketing and other operational and staff functions to third parties; risk of the rate and degree of market acceptance of our products and product candidates; the success of any competing products, including generics; risk of the size and growth of our product markets; risk of the effectiveness and safety of our products and product candidates; risk of compliance with all FDA and other governmental and customer requirements for our manufacturing facilities; risks associated with intellectual property rights and infringement claims relating to the Company's products; risk of unexpected patent developments; the impact of existing and future legislation and regulatory provisions on product exclusivity; legislation or regulatory action affecting pharmaceutical product pricing, reimbursement or access; claims and concerns that may arise regarding the safety or efficacy of the Company's products and product candidates; risk of loss of significant customers; risks related to legal proceedings, including patent infringement, investigative and antitrust litigation matters; changes in governmental laws and regulations; risk of product recalls and withdrawals; uncertainties related to general economic, political, business, industry, regulatory and market conditions and other unusual items; and other risks and uncertainties affecting the Company including those described in the "Risk Factors" section and in other sections included in the Company's Annual Report on Form 10-K filed with the SEC on March 14, 2019 and in our quarterly reports on Form 10-Q. Given these uncertainties, you should not place undue reliance on these forward-looking statements, which speak only as of the date made. All subsequent forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by this cautionary statement. The Company assumes no obligation to update forward-looking statements or outlook or guidance after the date of this press release whether as a result of new information, future events or otherwise, except as may be required by applicable law.

Media inquiries:
Christopher Hippolyte
christopher.hippolyte@syneoshealth.com
212-364-0458

Investor inquiries:
Stephanie Carrington
stephanie.carrington@icrinc.com
646-277-1282