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

FORM 8-K

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

Date of Report (Date of earliest event reported): **October 9, 2003**

Nektar Therapeutics

(Exact Name of Registrant as Specified in Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

000-23556

(Commission File No.)

94-3134940

(IRS Employer Identification No.)

**150 Industrial Road
San Carlos, CA 94070**

(Address of Principal Executive Offices and Zip Code)

Registrant's telephone number, including area code: **(650) 631-3100**

Item 5. Other Events and Required FD Disclosure.

On October 9, 2003, Nektar Therapeutics (the "Company") and certain holders of the Company's outstanding 3.5% Convertible Subordinated Notes due October 2007 completed an exchange and cancellation of \$50,000,000 in aggregate principal amount of the 3.5% Notes, for the issuance of \$33,591,000 in aggregate principal amount of newly issued 3% Convertible Subordinated Notes due June 2010, in a limited number of privately negotiated transactions.

Certain material terms of the 3.5% Notes and the 3% Notes are described below.

Interest Rate

Interest on the 3.5% Notes accrues at a rate of 3.5% per year, and is paid on April 17 and October 17 of each year, commencing April 17, 2001. Interest on the 3% Notes will accrue at a rate of 3% per year, and is paid on June 30 and December 30 of each year, commencing December 30, 2003.

Conversion

The 3.5% Notes are convertible into shares of the Company's common stock at an initial conversion price of \$50.46, which is equal to a conversion rate of approximately 19.8177 shares per \$1,000 principal amount of notes, subject to adjustment. The 3% Notes are convertible into shares of the Company's common stock at an initial conversion price of \$11.35 per share, which is equal to a conversion rate of approximately 88.1057 shares per \$1,000 principal amount of notes, subject to adjustment.

Maturity

The 3.5% Notes mature on October 17, 2007. The 3% Notes mature on June 30, 2010.

Redemption

We may redeem some or all of the 3.5% Notes at any time after October 17, 2003 at certain redemption prices dependent upon the date of redemption if the closing price of our common stock has exceeded 120% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive days.

We may redeem some or all of the 3% Notes at any time before June 30, 2006, at a redemption price of \$1,000 per \$1,000 principal amount plus a provisional redemption exchange premium payable in cash or shares of common stock, of \$90.00 per \$1,000 principal amount less the amount of any interest actually paid on such notes prior, to the provisional redemption date, if the closing price of our common stock has exceeded 150% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day before the date of mailing of the provisional redemption notice. We also may redeem some or all of the 3% Notes at any time after June 30, 2006 by paying certain premiums on the notes based on the date of redemption.

Security

The 3.5% Notes are unsecured and subordinated to our existing and future senior indebtedness. Other than approximately \$2.7 million in aggregate principal amount of U.S. treasury securities pledged for the exclusive benefit of the holders of the 3% Notes, the 3% Notes are unsecured and subordinated to our existing and future senior indebtedness.

For additional information concerning this exchange and the terms and conditions of the 3% Notes, please refer to the exhibits to this Current Report on Form 8-K.

This announcement is neither an offer to sell nor a solicitation of an offer to buy any of these securities and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offer, solicitation or sale is unlawful.

Item 7. Financial Statements, Pro Forma Financial Information and Exhibits

(c) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
4.1	Indenture, dated October 9, 2003, by and between the Company and J.P. Morgan Trust Company, National Association, as trustee.
4.2	Resale Registration Rights Agreement, dated October 9, 2003, by and among the Company and the entities named therein.
4.3	Form of Convertible Subordinated Note due 2010
10.1	Pledge Agreement, dated October 9, 2003, by and among the Company, J.P. Morgan Trust Company, National Association, as trustee, and J.P. Morgan Trust Company, National Association, as collateral agent.
10.2	Exchange Agreement, dated October 3, 2003, by and among the Company and the entities named therein.
10.3	Exchange Agreement, dated October 3, 2003, by and between the Company and Alexandra Global Master Fund Ltd.
10.4	Amendment Number 1 to Exchange Agreement, dated October 9, 2003, by and among the Company and the entities named therein.
10.5	Amendment Number 1 to Exchange Agreement, dated October 9, 2003, by and between the Company and Alexandra Global Master Fund Ltd.

SIGNATURE

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

NEKTAR THERAPEUTICS

Dated: October 9, 2003

By: /s/ Ajay Bansal

Ajay Bansal

*Chief Financial Officer and Vice
President, Finance and Administration*

INDENTURE

between

NEKTAR THERAPEUTICS,

as Issuer

and

J.P. MORGAN TRUST COMPANY,
NATIONAL ASSOCIATION

as Trustee

3% CONVERTIBLE SUBORDINATED NOTES DUE 2010

Dated as of October 9, 2003

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INDENTURE, dated as of October 9, 2003, between NEKTAR THERAPEUTICS, a corporation duly organized and existing under the laws of the State of Delaware, having its principal office at 150 Industrial Road, San Carlos, California 94070 (the “Company”), and J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, as Trustee (the “Trustee”), having its principal corporate trust office at 560 Mission Street, 13th Floor, San Francisco, California 94105.

RECITALS OF THE COMPANY

The Company has duly authorized the creation of an issue of its 3% Convertible Subordinated Notes due 2010 to be issued in one or more series from time to time (herein called the “Securities”) of substantially the tenor and amount hereinafter set forth, and to provide therefor the Company has duly authorized the execution and delivery of this Indenture.

All things necessary to make the Securities, when the Securities are executed by the Company and authenticated and delivered hereunder and duly issued by the Company, the valid obligations of the Company, and to make this Indenture a valid agreement of the Company, in accordance with their and its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities or of series thereof, as follows:

ARTICLE I

DEFINITIONS AND INCORPORATION
BY REFERENCE

Section 1.1. **Definitions.** For all purposes of this Indenture and the Securities, the following terms are defined as follows:

“Act,” when used with respect to any Holder of a Security, has the meaning specified in Section 15.4(a) hereof.

“Acquiring Party” has the meaning specified in Section 11.1 hereof.

“Acquiror Stock” has the meaning specified in Section 11.1 hereof.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control,” when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

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

“Board of Directors” means either the board of directors of the Company or any committee of that board empowered to act for it with respect to this Indenture.

“Board Resolution” means a resolution duly adopted by the Board of Directors, a copy of which, certified by the Secretary or an Assistant Secretary of the Company to be in full force and effect on the date of such certification, has been delivered to the Trustee.

“Business Day,” when used with respect to any Place of Payment or Place of Conversion, means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in that Place of Payment or Place of Conversion, as the case may be, are authorized or obligated by law to close.

“Change of Control” means the occurrence of any of the following after the original issuance of the Securities:

- (1) the acquisition by any person, including any syndicate or group deemed to be a “person” under Section 13(d)(3) of the Exchange Act, of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of shares of capital stock of the Company entitling such person to exercise 50% or more of the total voting power of all shares of capital stock of the Company entitled to vote generally in elections of directors, other than any such acquisition by the Company, any subsidiary of the Company or any employee benefit plan of the Company; or
- (2) any consolidation or merger of the Company with or into any other person, any merger of another person into the Company, or any conveyance, transfer, sale, lease or other disposition of all or substantially all of the properties and assets of the Company to another person, other than (a) any such transaction (x) that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of capital stock of the Company and (y) pursuant to which holders of capital stock of the Company immediately prior to such transaction have the entitlement to exercise, directly or indirectly, 50% or more of the total voting power of all shares of capital stock of the Company entitled to vote generally in the election of directors of the continuing or surviving person immediately after such transaction and (b) any merger which is effected solely to change the jurisdiction of incorporation of the Company and results in a reclassification, conversion or exchange of outstanding shares of Common Stock solely into shares of common stock of the surviving entity;

provided, however, that a Change of Control shall not be deemed to have occurred if (i) the closing sales price per share of the Common Stock for any five Trading Days within the period of 10 consecutive Trading Days ending immediately after the later of the Change of Control or the public announcement of the Change of Control, in the case of a Change of Control under clause (1) above, or the period of 10 consecutive Trading Days ending immediately before the Change of Control, in the case of a Change of Control under clause (2) above, shall equal or

exceed 105% of the Conversion Price of the Securities in effect on each such Trading Day or (ii) in the case of a merger or consolidation, 90% of the consideration in such merger or consolidation constituting the Change of Control consists of common stock traded on a United States national securities exchange or quoted on the Nasdaq National Market (or which will be so traded or quoted when issued or exchanged in connection with such Change of Control) and as a result of such transaction or transactions the Securities become convertible solely into such common stock. Beneficial ownership shall be determined in accordance with Rule 13d-3 promulgated by the SEC under the Exchange Act. The term “person” shall include any syndicate or group which would be deemed to be a “person” under Section 13(d)(3) of the Exchange Act.

“Chief Executive Officer” means the chief executive officer of the Company.

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

“Closing Date” means October 9, 2003 or such later date on which the Securities may be delivered pursuant to the Exchange Agreements.

“Closing Price” of any security on any date of determination means:

- (1) the closing sale price (or, if no closing sale price is reported, the last reported sale price) of such security on the New York Stock Exchange on such date;
- (2) if such security is not listed for trading on the New York Stock Exchange on any such date, the closing sale price as reported in the composite transactions for the principal U.S. securities exchange on which such security is so listed;
- (3) if such security is not so listed on a U.S. national or regional securities exchange, the closing sale price as reported by the Nasdaq National Market;
- (4) if such security is not so reported, the last quoted bid price for such security in the over-the-counter market as reported by the National Quotation Bureau or similar organization; or
- (5) if such bid price is not available, the average of the mid-point of the last bid and ask prices of such security on such date from at least three nationally recognized independent investment banking firms retained for this purpose by the Company.

“Common Stock” means any stock of any class of the Company which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which is not subject to redemption by the Company. However, subject to the provisions of Section 12.11 hereof, shares issuable on conversion of Securities shall include only shares of the class designated as Common Stock, par value \$0.0001 per share, of the Company at the date of this Indenture or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation,

proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

“Company” means the corporation named as the “Company” in the first paragraph of this instrument until a successor corporation shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor corporation.

“Company Notice” has the meaning specified in Section 11.3 hereof.

“Company Order” means a written order signed in the name of the Company by an Officer of the Company and delivered to the Trustee.

“Conversion Agent” means any Person authorized by the Company to convert Securities in accordance with Article 12 hereof.

“Conversion Price” has the meaning specified in Section 12.1 hereof.

“Corporate Trust Office” means for purposes of presentation or surrender of Securities for payment, registration, transfer, exchange or conversion or for service of notices or demands upon the Company, the office of the Trustee located in The City of New York at which at any particular time its corporate trust business shall be administered (which at the date of this Indenture is located at 4 New York Plaza, 15th Floor, New York, New York 10004), and for all other purposes, the office of the Trustee located in the City of San Francisco (which at the date of this Indenture is located at 560 Mission Street, 13th Floor, San Francisco, CA 94105).

“corporation” means corporations, limited liability companies, partnerships and trusts.

“Current Market Price” has the meaning set forth in Section 12.4(g).

“Custodian” means any receiver, trustee, assignee, liquidator, sequestrator or similar official under any Bankruptcy Law.

“Default” means an event which is, or after notice or lapse of time or both would be, an Event of Default.

“Default Exception” has the meaning specified in Section 4.1(d) hereof.

“Defaulted Interest” has the meaning specified in Section 2.17 hereof.

“Depository” means, with respect to Securities of any series for which the Company shall determine that such Securities will be issued as a Global Security, The Depository Trust Company, its nominees and their respective successors.

“Designated Senior Debt” means Senior Debt of the Company which is specifically designated in the instrument, agreement or other document evidencing or governing that Senior Debt as “Designated Senior Debt” for purposes of this Indenture.

“Dollar,” “U.S. Dollar” or “U.S. \$” means a dollar or other equivalent unit in such coin or currency of the United States as at the time shall be legal tender for the payment of public and private debts.

“DTC Participants” has the meaning specified in Section 2.8 hereof.

“Event of Default” has the meaning specified in Section 4.1 hereof.

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

“Exchange Agreements” means the Exchange Agreements, dated October 3 2003, between the Company and the Initial Purchasers.

“Expiration Time” has the meaning specified in Section 12.4(f) hereof.

“Fair market value” has the meaning set forth in Section 12.4(g) hereof.

“Global Security” has the meaning specified in Section 2.2 hereof.

“Guarantee” means any obligation, contingent or otherwise, of any Person, directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or maintain financial statement conditions or otherwise); or

(2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

provided, however, that the term “guarantee” will not include endorsements for collection or deposit in the ordinary course of business. The term “guarantee” used as a verb has a corresponding meaning.

“Holder,” when used with respect to any Security, means the Person in whose name the Security is registered in the Register.

“Indebtedness,” when used with respect to any Person, and without duplication means:

(1) all indebtedness, obligations and other liabilities (contingent or otherwise) of such Person for borrowed money (including obligations of the Company in respect of overdrafts, foreign exchange contracts, currency exchange agreements, Interest Rate Protection Agreements, and any loans or advances from banks, whether or not evidenced by notes or similar instruments) or evidenced by bonds, debentures, notes or other instruments for the payment of money, or incurred in connection with the acquisition of

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any property, services or assets (whether or not the recourse of the lender is to the whole of the assets of such Person or to only a portion thereof), other than any account payable or other accrued current liability or obligation to trade creditors incurred in the ordinary course of business in connection with the obtaining of materials or services;

(2) all reimbursement obligations and other liabilities (contingent or otherwise) of such Person with respect to letters of credit, bank guarantees, bankers’ acceptances, surety bonds, performance bonds or other guaranty of contractual performance;

(3) all obligations and liabilities (contingent or otherwise) in respect of (a) leases of such Person required, in conformity with generally accepted accounting principles, to be accounted for as capitalized lease obligations on the balance sheet of such Person and (b) any lease or related documents (including a purchase agreement) in connection with the lease of real property which provides that such Person is contractually obligated to purchase or cause a third party to purchase the leased property and thereby guarantee a minimum residual value of the leased property to the landlord and the obligations of such Person under such lease or related document to purchase or to cause a third party to purchase the leased property;

(4) all obligations of such Person (contingent or otherwise) with respect to an interest rate or other swap, cap or collar agreement or other similar instrument or agreement or foreign currency hedge, exchange, purchase or similar instrument or agreement;

(5) all direct or indirect guaranties or similar agreements by such Person in respect of, and obligations or liabilities (contingent or otherwise) of such Person to purchase or otherwise acquire or otherwise assure a creditor against loss in respect of, indebtedness, obligations or liabilities of another Person of the kind described in clauses (1) through (4);

(6) any indebtedness or other obligations described in clauses (1) through (5) secured by any mortgage, pledge, lien or other encumbrance existing on property which is owned or held by such Person, regardless of whether the indebtedness or other obligation secured thereby shall have been assumed by such Person; and

(7) any and all deferrals, renewals, extensions and refundings of, or amendments, modifications or supplements to, any indebtedness, obligation or liability of the kind described in clauses (1) through (6).

“Indenture” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

“Initial Purchasers” means Salomon Brothers Qualified Investor Portfolios Multi-Strategy Arbitrage Portfolio, Salomon Brothers Diversified Arbitrage Strategies Fund Ltd., Salomon Brothers Enhanced Arbitrage Strategies Fund, CEBT- Comingled Employee Benefit Trust – Capital Structure Arbitrage, General Motors Employees Global Group Pension Trust,

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General Motors Welfare Benefits Trust, Salomon Brothers Market Neutral Arbitrage Fund L.P. and Alexandra Global Master Fund Ltd.

“Interest Payment Date” means each June 30 and December 30.

“Interest Rate Protection Agreement” means, with respect to any Person, any interest rate swap agreement, interest rate cap or collar agreement or other financial agreement or arrangement designed to protect such person against fluctuations in interest rates, as in effect from time to time.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.

“Liquidated Damages” means all liquidated damages, if any, payable pursuant to Section 3 of the Registration Rights Agreement.

“June 2003 Indenture” means that certain Indenture, dated as of June 30, 2003, by and between the Company and J.P. Morgan Trust Company, National Association, as it may from time to time be supplemented or amended by one or more indentures supplemental thereto entered into pursuant to the applicable provisions thereof.

“Maturity” means the date on which the principal of such Security becomes due and payable as therein or herein provided, whether at the Stated Maturity or by acceleration, conversion, call for redemption, exercise of a Repurchase Right or otherwise.

“Nasdaq National Market” means the National Association of Securities Dealers Automated Quotation National Market or any successor national securities exchange or automated over-the-counter trading market in the United States.

“Non-Electing Share” has the meaning specified in Section 12.11 hereof.

“Officer” of the Company means the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, the Treasurer, any Vice President, the Controller, the Comptroller or the Secretary of the Company.

“Officers’ Certificate” means a certificate signed by both (1) the Chairman of the Board, the Chief Executive Officer, the President or a Vice President and (2) so long as not the same as the officer signing pursuant to clause (1), the Chief Financial Officer or the Secretary of the Company, and delivered to the Trustee.

“Opinion of Counsel” means a written opinion of counsel, who may be counsel to the Company (and may include directors or employees of the Company) and which opinion is reasonably acceptable to the Trustee.

“Outstanding,” when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except Securities:

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(1) previously canceled by the Trustee or delivered to the Trustee for cancellation;

(2) for the payment or redemption of which money in the necessary amount has been previously deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities, provided that if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture; and

(3) which have been paid, in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands such Securities are valid obligations of the Company.

“Paying Agent” has the meaning specified in Section 2.5 hereof.

“Payment Blockage Notice” has the meaning specified in Section 13.1(d) hereof.

“Periodic Offering” means an offering of Securities of a series from time to time, the specific terms of which Securities, including, without limitation, the rate or rates of interest thereon, the Stated Maturity or maturities thereof and the redemption provisions with respect thereto, are to be determined by the Company or its agents upon the issuance of such Securities.

“Permitted Payments” means payments on the Securities derived from United States treasury securities pledged by the Company for the ratable benefit of the Holders pursuant to the Pledge Agreement or from amounts deposited with the Trustee in accordance with the provisions of Article III hereof.

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

“Physical Securities” has the meaning specified in Section 2.2 hereof.

“Place of Conversion” means any city in which any Conversion Agent is located.

“Place of Payment” means any city in which any Paying Agent is located.

“Pledge Account” has the meaning specified in the Pledge Agreement.

“Pledge Agreement” means the Pledge Agreement, dated as of the date hereof, by and among the Company, the Trustee and J.P. Morgan Trust Company, National Association, as securities intermediary.

“Pledged Securities” has the meaning specified in the Pledge Agreement.

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“Pledged Securities Intermediary” means J.P. Morgan Trust Company, National Association, as securities intermediary under the Pledge Agreement until a successor securities intermediary shall have become such pursuant to the applicable provisions of the Pledge Agreement, and thereafter Pledged Securities Intermediary shall mean such successor Pledged Securities Intermediary.

“Predecessor Security” of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 2.12 hereof in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

“Provisional Redemption” has the meaning specified in Section 10.1 hereof.

“Quoted Price” of the Common Stock means the last reported sale price of the Common Stock on the Nasdaq National Market, or, if the Common Stock is listed on a national securities exchange, then on such exchange, or if the Common Stock is not quoted on Nasdaq National Market or listed on an exchange, the average of the last bid and asked price on the National Association of Securities Dealers Automated Quotation System.

“Record Date” means either a Regular Record Date or a Special Record Date, as the case may be, provided that, for purposes of Section 12.4 hereof, Record Date has the meaning specified in 12.4(g) hereof.

“Redemption Date,” when used with respect to any Security to be redeemed, means the Optional Redemption Date in the event of an Optional Redemption or the Provisional Redemption Date, in the event of a Provisional Redemption, as the case may be.

“Redemption Price,” means the Optional Redemption Price, in the event of an Optional Redemption, or the Provisional Redemption Price, in the event of a Provisional Redemption, as the case may be.

“Reference Dealer” means a dealer engaged in the trading of convertible securities.

“Reference Period” has the meaning set forth in Section 12.4(d) hereof.

“Register” has the meaning specified in Section 2.5 hereof.

“Registrar” has the meaning specified in Section 2.5 hereof.

“Registration Rights Agreement” means the Resale Registration Rights Agreement dated as of October 9, 2003, between the Company and the Initial Purchasers.

“Regular Record Date” for the interest on the Securities (including Liquidated Damages, if any) payable means the June 15 (whether or not a Business Day) next preceding a June 30 Interest Payment Date and the December 15 (whether or not a Business Day) next preceding a December 30 Interest Payment Date.

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“Repurchase Date” has the meaning specified in Section 11.1 hereof.

“Repurchase Price” has the meaning specified in Section 11.1 hereof.

“Repurchase Right” has the meaning specified in Section 11.1 hereof.

“Responsible Officer,” when used with respect to the Trustee, means any officer of the Trustee, including any vice president, assistant vice president, secretary, assistant secretary, the treasurer, any assistant treasurer, the managing director or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

“Restricted Securities” means the Securities defined as such in Section 2.3 hereof.

“Restricted Securities Legend” has the meaning set forth in Section 2.3(a) hereof.

“Rule 144” means Rule 144 under the Securities Act (including any successor rule thereof), as the same may be amended from time to time.

“SEC” means the Securities and Exchange Commission.

“Securities” has the meaning ascribed to it in the first paragraph under the caption “Recitals of the Company.”

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

“Senior Debt” means the principal of, premium, if any, interest (including all interest accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding) and rent payable on or termination payment with respect to or in connection with, and all fees, costs, expenses and other amounts accrued or due on or in connection with, Indebtedness of the Company, whether outstanding on the date of this Indenture or thereafter created, incurred, assumed, guaranteed or in effect guaranteed by the Company (including all deferrals, renewals, extensions or refundings of, or amendments, modifications or supplements to, the foregoing), unless in the case of any particular Indebtedness the instrument creating or evidencing such Indebtedness or the assumption or guarantee thereof expressly provides that Indebtedness shall not be senior in right of payment to the Securities or expressly provides that such Indebtedness is pari passu or junior to the Securities. The Securities shall not be senior in right of payment to the outstanding 3% Convertible Subordinated Notes due 2010 (the “June 2010 Notes”), 6¾% Convertible Subordinated Debentures due October 2006 (the “2006 Debentures”), the 5% Convertible Subordinated Notes due February 2007 (the “February 2007 Notes”) or the 3½% Convertible Subordinated Notes due October 2007 (the “October 2007 Notes”) and shall rank pari passu with the June 2010 Notes, 2006 Debentures, the February 2007 Notes and the October 2007 Notes. Neither the June 2010 Notes, 2006 Debentures, the February 2007 Notes nor the October 2007 Notes shall be Senior Debt, as that term is defined herein. Notwithstanding

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the foregoing, the term “Senior Debt” shall include, without limitation, all Designated Senior Debt, and shall not include Indebtedness of the Company to any Subsidiary.

“Significant Subsidiary” means any Subsidiary which is a “significant subsidiary” within the meaning of Rule 405 under the Securities Act.

“Special Record Date” for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 2.17 hereof.

“Stated Maturity” means the date specified in any Security as the fixed date for the payment of principal on such Security or on which an installment of interest on such Security is due and payable.

“Subsidiary” means a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For the purposes of this definition only, “voting stock” means stock which ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

“TIA” means the Trust Indenture Act of 1939 (15 U.S. Code Section 77aaa-77bbbb), as in effect on the date of this Indenture; provided, however, that in the event the TIA is amended after such date, “TIA” means, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended, or any successor statute.

“Trading Day” means:

- (1) if the applicable security is listed or admitted for trading on the New York Stock Exchange or another national security exchange, a day on which the New York Stock Exchange or such other national security exchange is open for business;
- (2) if the applicable security is quoted on the Nasdaq National Market, a day on which trades may be made thereon; or
- (3) if the applicable security is not so listed, admitted for trading or quoted, any day other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

“Trading Price” of a security on any date of determination means:

- (1) the closing sale price (or, if no closing sale price is reported, the last reported sale price) of such security on the New York Stock Exchange on such date;
- (2) if such security is not listed for trading on the New York Stock Exchange on any such date, the closing sale price as reported in the composite transactions for the principal U.S. securities exchange on which such security is so listed;

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(3) if such security is not so listed on a U.S. national or regional securities exchange, the closing sale price as reported by the Nasdaq National Market;

(4) if such security is not so reported, the last price quoted by Interactive Data Corporation for such security or, if Interactive Data Corporation is not quoting such price, a similar quotation service selected by the Company;

(5) if such security is not so quoted, the average of the mid-point of the last bid and ask prices for such security from at least two dealers recognized as market-makers for such security; or

(6) if such security is not so quoted, the average of the last bid and ask prices for such security from a Reference Dealer.

“Transfer Agent” means any Person, which may be the Company, authorized by the Company to exchange or register the transfer of Securities.

“Trigger Event” has the meaning specified in Section 12.4(d) hereof.

“Trustee” means the Person named as the “Trustee” in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean such successor Trustee.

“U.S. Government Obligations” means: (1) direct obligations of the United States of America for the payment of which the full faith and credit of the United States of America 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 payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America and which in either case, are non-callable at the option of the issuer thereof.

“Vice President,” when used with respect to the Company, means any vice president, whether or not designated by a number or a word or words added before or after the title “vice president.”

Section 1.2. Incorporation by Reference of Trust Indenture Act. Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture.

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

“indenture securities” means the Securities;

“indenture security holder” means a Holder;

“indenture to be qualified” means this Indenture;

“indenture trustee” or “institutional trustee” means the Trustee; and

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“obligor” on the Securities means the Company and any other obligor on the indenture securities.

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

Section 1.3. Rules of Construction. For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;
- (b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with accounting principles generally accepted in the United States prevailing at the time of any relevant computation hereunder; and
- (c) 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 or other subdivision.

ARTICLE II

THE SECURITIES

Section 2.1. Title and Terms. The Securities shall be known and designated as the “3% Convertible Subordinated Notes due 2010” of the Company. The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued in one or more series up to the aggregate principal amount of Securities of that series from time to time authorized or pursuant to a Board Resolution or pursuant to one or more Indenture supplements thereto. The Securities shall be issuable in denominations of \$1,000 or integral multiples thereof. Notwithstanding any provision to the contrary, any future series of Securities established in or pursuant to a Board Resolution or a supplemental indenture will be on the same terms as the Securities issued hereunder in all respects other than the date of issuance and denomination. There shall be established in or pursuant to one or more Board Resolutions, and set forth in an Officers’ Certificate, or established in one or more indentures supplemental hereto, prior to the initial issuance of Securities of any series,

- (i) the designation of the Securities of the series, which shall distinguish the Securities of the series from the Securities of all other series;
- (ii) any limit upon the aggregate principal amount of the Securities of that series that may be authenticated and delivered under this Indenture;
- (iii) the date or dates on which the principal of the Securities of the series is payable;

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(iv) the rate or rates at which the Securities of the series shall bear interest, if any, the date or dates from which such interest shall accrue, the date or dates on which a record shall be taken for the determination of Holders to whom interest is payable and/or the method by which such rate or rates or date or dates shall be determined;

(v) the place or places where the principal of and any interest on Securities of the series shall be payable (if other than as provided in Section 2.5);

(vi) the right of the Company to redeem Securities, in whole or in part, at its option and the period or periods within which, the price or prices at which and any terms and conditions;

(vii) if the Holders of the Securities of the series may convert or exchange the Securities of the series into or for securities of the Company or of other entities or other property (or the cash value thereof), the specific terms of and period during which such conversion or exchange may be made;

(viii) any restrictions applicable to the offer, sale, transfer, exchange or delivery of Securities;

(ix) if the Securities of such series are to be issuable in definitive form (whether upon the original issue or upon exchange of a temporary Security of such series) only upon receipt of certain certificates or other documents or satisfaction of other conditions, the form and terms of such certificates, documents or conditions;

(x) any trustee, depositaries, authenticating or paying agents, transfer agents or registrars or any other agents with respect to the Securities of such series; and

(xi) any other terms of the series.

All Securities of any one series need not be issued at the same time and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to such Board Resolution, such Officers’ Certificate or in any such indenture supplemental hereto.

The Securities shall mature on June 30, 2010.

Interest shall accrue from the date of issuance at a rate of 3% per annum until the principal thereof is paid or made available for payment. Interest shall be payable semiannually in arrears on June 30 and December 30, in each year, commencing December 30, 2003.

Interest on the Securities shall be computed (i) for any full semiannual period on the basis of a 360-day year of twelve 30-day months.

A Holder of any Security at the close of business on a Regular Record Date shall be entitled to receive interest (including Liquidated Damages, if any) on such Security on the

corresponding Interest Payment Date. A Holder of any Security which is converted after the close of business on a Regular Record Date and prior to the corresponding Interest Payment Date (other than any Security whose Maturity is prior to such Interest Payment Date) shall be entitled to receive interest (including Liquidated Damages, if any) on the principal amount of such Security, notwithstanding the conversion of such Security prior to such Interest Payment Date. However, any such Holder which surrenders any such Security for conversion during the period between the close of business on such Regular Record Date and ending with the opening of business on the corresponding Interest Payment Date (other than any Security whose Maturity is prior to such Interest Payment Date) shall be required to pay the Company an amount equal to the interest (including Liquidated Damages, if any) on the principal amount of such Security so converted, which is payable by the Company to such Holder on such Interest Payment Date, at the time such Holder surrenders such Security for conversion. Notwithstanding the foregoing, any such Holder which surrenders for conversion any Security which has been called for redemption by the Company in a notice of redemption given by the Company pursuant to Section 10.5 hereof shall be entitled to receive (and retain) such interest (including Liquidated Damages, if any) and need not pay the Company an amount equal to the interest (including Liquidated Damages, if any) on the principal amount of such Security so converted at the time such Holder surrenders such Security for conversion.

Principal of, and premium, if any, and interest on, Global Securities shall be payable to the Depository in immediately available funds.

Principal and premium, if any, on Physical Securities shall be payable at the office or agency of the Company maintained for such purpose, initially the Corporate Trust Office of the Trustee. Interest on Physical Securities will be payable by (i) U.S. Dollar check drawn on a bank in The City of New York mailed to the address of the Person entitled thereto as such address shall appear in the Register, or (ii) upon application to the Registrar not later than the relevant Record Date by a Holder of an aggregate principal amount in excess of \$5,000,000, wire transfer in immediately available funds.

The Securities shall be redeemable at the option of the Company as provided in Article 10 hereof.

The Securities shall have a Repurchase Right exercisable at the option of Holders as provided in Article 11 hereof.

The Securities shall be convertible as provided in Article 12 hereof.

The Securities shall be subordinated in right of payment to Senior Debt of the Company as provided in Article 13 hereof.

Section 2.2. Form of Securities. The Securities of each series and the Trustee's certificate of authentication to be borne by such Securities shall be substantially in the form annexed hereto as Exhibit A, which is incorporated in and made a part of this Indenture. The terms and provisions contained in the form of Security shall constitute, and are hereby expressly made, a part of this Indenture and to the extent applicable, the Company and the Trustee, by their

execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

Any of the Securities may have such letters, numbers or other marks of identification and such notations, legends and endorsements as the officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Securities may be listed or designated for issuance, or to conform to usage.

With respect to any series of Securities, the Securities may be issued in the form of one or more permanent Global Securities (each, a "Global Security") in registered form without interest coupons. The Global Securities shall be:

- (a) duly executed by the Company and authenticated by the Trustee as hereinafter provided;
- (b) registered in the name of the Depository (or its nominee) for credit to the respective accounts of the Holders at the Depository; and
- (c) deposited with the Trustee, as custodian for the Depository.

The Global Securities of any series shall be substantially in the form of Security set forth in Exhibit A annexed hereto (including the text and schedule called for by footnotes 1 and 2 thereto). The aggregate principal amount of the Global Securities of any series may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depository (or its nominee), in accordance with the instructions given by the Holder thereof, as hereinafter provided.

Securities issued in exchange for interests in the Global Securities pursuant to Section 2.8(d) hereof shall be issued in the form of permanent definitive Securities (the "Physical Securities") in registered form without interest coupons. The Physical Securities shall be substantially in the form set forth in Exhibit A annexed hereto.

The Securities shall be typed, printed, lithographed or engraved or produced by any combination of these methods or may be produced in any other manner permitted by the rules of any securities exchange on which the Securities may be listed, all as determined by the Officers executing such Securities, as evidenced by their execution of such Securities.

Section 2.3. Legends.

(a) Restricted Securities Legends. Each Security issued hereunder shall, upon issuance, bear the legend set forth in Section 2.3(a)(i) or Section 2.3(a)(ii) (each, a "Restricted Securities Legend"), as the case may be, and such legend shall not be removed except as provided in Section 2.3(a)(iii).

Section 2.3(a)(ii), collectively, the “Restricted Securities”) shall be subject to the restrictions on transfer set forth in this Section 2.3(a) (including the Restricted Securities Legend set forth below), and the Holder of each such Restricted Security, by such Holder’s acceptance thereof, shall be deemed to have agreed to be bound by all such restrictions on transfer.

As used in Section 2.3(a), the term “transfer” encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

(i) *Restricted Securities Legend for Securities.* Except as provided in Section 2.3(a)(iii), any certificate evidencing such Security (and all securities issued in exchange therefor or substitution thereof, other than Common Stock, if any, issued upon conversion thereof which shall bear the legend set forth in Section 2.3(a)(ii), if applicable) shall bear a Restricted Securities Legend in substantially the following form:

THE SECURITY EVIDENCED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ACQUISITION HEREOF, THE HOLDER (1) AGREES THAT IT WILL NOT WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITY EXCEPT (A) TO NEKTAR THERAPEUTICS (THE “COMPANY”) OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (C) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OR (D) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER; AND (2) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THE SECURITY EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE (1)(D) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THE SECURITY EVIDENCED HEREBY WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF SUCH SECURITY (OTHER THAN A TRANSFER PURSUANT TO CLAUSE (1)(D) ABOVE), THE HOLDER MUST MAKE THE REPRESENTATIONS AND WARRANTIES SET FORTH ON THE REVERSE HEREOF RELATING TO THE MANNER OF SUCH TRANSFER AND SUBMIT THIS CERTIFICATE TO THE TRUSTEE (OR ANY SUCCESSOR TRUSTEE, AS APPLICABLE). IF THE PROPOSED TRANSFER IS PURSUANT TO CLAUSE (1)(B) OR (1)(C) ABOVE, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE (OR ANY SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE COMPANY MAY

REASONABLY REQUIRE 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. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THE SECURITY EVIDENCED HEREBY PURSUANT TO CLAUSE (1)(D) ABOVE OR THE EXPIRATION OF TWO YEARS FROM THE ORIGINAL ISSUANCE OF THE SECURITY EVIDENCED HEREBY.

(ii) *Restricted Securities Legend for Common Stock Issued Upon Conversion of the Securities.* Until two years after the original issuance date of any Security, any stock certificate representing Common Stock issued upon conversion of such Security shall bear a Restricted Securities Legend in substantially the following form:

THE SECURITY EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. THE HOLDER HEREOF AGREES THAT UNTIL THE EXPIRATION OF TWO YEARS AFTER THE ORIGINAL ISSUANCE OF THE SECURITY UPON THE CONVERSION OF WHICH THE COMMON STOCK EVIDENCED HEREBY WAS ISSUED, (1) IT WILL NOT RESELL OR OTHERWISE TRANSFER THE SECURITY EXCEPT (A) TO NEKTAR THERAPEUTICS (THE “COMPANY”) OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR (C) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER; (2) PRIOR TO ANY SUCH TRANSFER OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(C) ABOVE, IT WILL FURNISH TO SUCH TRANSFER AGENT (OR ANY SUCCESSOR TRANSFER AGENT, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE COMPANY MAY REASONABLY REQUIRE 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; AND (3) IT WILL DELIVER TO EACH PERSON TO WHOM THE COMMON STOCK EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO A CLAUSE (1)(C) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THE COMMON STOCK EVIDENCED HEREBY PURSUANT TO CLAUSE (1)(C) ABOVE OR THE EXPIRATION OF TWO YEARS FROM THE ORIGINAL ISSUANCE OF THE SECURITY UPON THE CONVERSION OF WHICH THE COMMON STOCK EVIDENCED HEREBY WAS ISSUED.

(iii) *Removal of the Restricted Securities Legends.* Each Security or share of Common Stock issued upon conversion of such Security shall bear the Restricted Securities Legend set forth in Section 2.3(a)(i) or 2.3(a)(ii), as the case may be, until the earlier of:

- (A) two years after the original issuance date of such Security;
- (B) such Security or Common Stock has been sold pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such sale); or
- (C) such Common Stock has been issued upon conversion of Securities that have been sold pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such sale).

The Holder must give notice thereof to the Trustee and any transfer agent for the Common Stock, as applicable.

Notwithstanding the foregoing, the Restricted Securities Legend may be removed if there is delivered to the Company such reasonably satisfactory evidence, which may include an opinion of independent counsel, as may be reasonably required by the Company that neither such legend nor the restrictions on transfer set forth therein are required to ensure that transfers of such Security will not violate the registration requirements of the Securities Act. Upon provision of such reasonably satisfactory evidence, the Trustee, at the written direction of the Company, shall authenticate and deliver in exchange for such Securities another Security or Securities having an equal aggregate principal amount that does not bear such legend. If the Restricted Securities Legend has been removed from a Security as provided above, no other Security issued in exchange for all or any part of such Security shall bear such legend, unless the Company has reasonable cause to believe that such other Security is a "restricted security" within the meaning of Rule 144 and instructs the Trustee in writing to cause a Restricted Securities Legend to appear thereon.

Any Security (or security issued in exchange or substitution thereof) as to which such restrictions on transfer shall have expired in accordance with their terms or as to which the conditions for removal of the Restricted Securities Legend set forth in Section 2.3(a)(i) as set forth therein have been satisfied may, upon surrender of such Security for exchange to the Registrar in accordance with the provisions of Section 2.7 hereof, be exchanged for a new Security or Securities, of like tenor and aggregate principal amount, which shall not bear the Restricted Securities Legend required by Section 2.3(a)(i).

Any such Common Stock as to which such restrictions on transfer shall have expired in accordance with their terms or as to which the conditions for removal of the Restricted Securities Legend set forth in Section 2.3(a)(ii) as set forth therein have been satisfied may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new certificate or

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certificates for a like aggregate number of shares of Common Stock, which shall not bear the Restricted Securities Legend required by Section 2.3(a)(ii).

(b) Global Security Legend. Each Global Security shall also bear the following legend on the face thereof:

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

Section 2.4. Execution, Authentication, Delivery and Dating. Two Officers shall execute the Securities on behalf of the Company by manual or facsimile signatures. If such Officer whose signature is on a Security no longer holds that office at the time the Security is authenticated, the Security shall be valid nevertheless.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with such Company Order shall authenticate and deliver such Securities as in this Indenture provided and not otherwise. With respect to Securities of a series subject to a Periodic Offering, (i) such Company Order may be delivered by the Company to the Trustee prior to the delivery to the Trustee of such Securities for authentication and delivery, (ii) the Trustee shall authenticate and deliver Securities of such series for original issue from time to time, pursuant to an Company Order, and (iii) the maturity date or dates, original issue date or dates, interest rate or rates and any other terms of Securities of such series shall be determined by a Company Order.

Each Security shall be dated the date of its authentication.

No Security shall be entitled to any benefit under this Indenture, or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by or on behalf of the Trustee by manual signature, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder.

The Trustee may appoint an authenticating agent or agents reasonably acceptable to the Company with respect to the Securities. Unless limited by the terms of such appointment, an

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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.

Section 2.5. Registrar and Paying Agent. The Company shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange (the "Registrar") and an office or agency where Securities may be presented for payment (the "Paying Agent"). The Registrar shall keep a register of the Securities (the "Register") and of their transfer and exchange. The Company may appoint one or more co-Registrars and one or more additional Paying Agents for the Securities. The term "Paying Agent" includes any additional paying agent and the term "Registrar" includes any additional registrar. The Company may change any Paying Agent or Registrar without prior notice to any Holder.

The Company will cause each Paying Agent (other than the Trustee) to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

- (a) hold all sums held by it for the payment of the principal of and premium, if any, or interest (including Liquidated Damages, if any) on Securities in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as provided in this Indenture;
- (b) give the Trustee notice of any Default by the Company in the making of any payment of principal and premium, if any, or interest (including Liquidated Damages, if any); and
- (c) at any time during the continuance of any such Default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company shall give prompt written notice to the Trustee of the name and address of any Agent who is not a party to this Indenture. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Company or any Affiliate of the Company may act as Paying Agent or Registrar; provided, however, that none of the Company, its subsidiaries or the Affiliates of the foregoing shall act:

- (i) as Paying Agent in connection with redemptions, offers to purchase and discharges, as otherwise specified in this Indenture, and
- (ii) as Paying Agent or Registrar if a Default or Event of Default has occurred and is continuing.

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

Section 2.6. Paying Agent to Hold Assets in Trust. Not later than 12:00 p.m. (New York City time) on each due date of the principal, premium, if any, and interest (including Liquidated Damages, if any) on any Securities, the Company shall deposit with one or more Paying Agents money in immediately available funds sufficient to pay such principal, premium, if any, and

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interest (including Liquidated Damages, if any) so becoming due. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company) shall have no further liability for the money so paid over to the Trustee.

If the Company shall act as a Paying Agent, it shall, prior to or on each due date of the principal of and premium, if any, or interest (including Liquidated Damages, if any) on any of the Securities, segregate and hold in trust for the benefit of the Holders a sum sufficient with monies held by all other Paying Agents, to pay the principal and premium, if any, or interest (including Liquidated Damages, if any) so becoming due until such sums shall be paid to such Persons or otherwise disposed of as provided in this Indenture, and shall promptly notify the Trustee of its action or failure to act.

Section 2.7. General Provisions Relating to Transfer and Exchange. The Securities are issuable only in registered form. A Holder may transfer a Security only by written application to the Registrar stating the name of the proposed transferee and otherwise complying with the terms of this Indenture. No such transfer shall be effected until, and such transferee shall succeed to the rights of a Holder only upon, final acceptance and registration of the transfer by the Registrar in the Register. Furthermore, any Holder of a Global Security shall, by acceptance of such Global Security, agree that transfers of beneficial interests in such Global Security may be effected only through a book-entry system maintained by the Holder of such Global Security (or its agent) and that ownership of a beneficial interest in the Security shall be required to be reflected in a book-entry. Notwithstanding the foregoing, in the case of a Restricted Security, a beneficial interest in a Global Security being transferred in reliance on an exemption from the registration requirements of the Securities Act other than in accordance with Rule 144 may only be transferred for a Physical Security.

When Securities are presented to the Registrar with a request to register the transfer or to exchange them for an equal aggregate principal amount of Securities of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its requirements for such transactions are met (including that such Securities are duly endorsed or accompanied by a written instrument of transfer duly executed by the Holder thereof or by an attorney who is authorized in writing to act on behalf of the Holder). Subject to Section 2.4 hereof, to permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Securities at the Registrar's request. No service charge shall be made for any registration of transfer or exchange or redemption of the Securities, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or other similar governmental charge payable upon exchanges pursuant to Section 2.14, 7.5 or 10.8 hereof).

Neither the Company nor the Registrar shall be required to exchange or register a transfer of any Securities:

- (a) for a period of 15 Business Days prior to the day of any selection of Securities for redemption under Article 10 hereof;

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- (b) so selected for redemption or, if a portion of any Security is selected for redemption, such portion thereof selected for redemption;
- or

(c) surrendered for conversion or, if a portion of any Security is surrendered for conversion, such portion thereof surrendered for conversion.

Section 2.8. Book-Entry Provisions for the Global Securities.

- (a) The Global Securities of any series shall:
- (i) be registered in the name of the Depositary (or a nominee thereof);
 - (ii) be delivered to the Trustee as custodian for such Depositary; and
 - (iii) bear the Restricted Securities Legend as set forth in Section 2.3(a)(i) hereof.

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

(b) The registered Holder of a Global Security may grant proxies and otherwise authorize any Person, including DTC Participants and Persons that may hold interests through DTC Participants, to take any action which a Holder is entitled to take under this Indenture or the Securities.

(c) A Global Security may not be transferred, in whole or in part, to any Person other than the Depositary (or a nominee thereof), and no such transfer to any such other Person may be registered. Beneficial interests in a Global Security may be transferred in accordance with the rules and procedures of the Depositary and the provisions of Section 2.9 hereof.

(d) If at any time:

- (i) the Depositary notifies the Company in writing that it is no longer willing or able to continue to act as Depositary for such series of Global Securities, or the Depositary ceases to be a “clearing agency” registered under the Exchange Act and a successor depositary for the Global Securities is not appointed by the Company within 90 days of such notice or cessation;
- (ii) the Company, at its option, notifies the Trustee in writing that it elects to cause the issuance of the Securities in definitive form under this Indenture in exchange

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for all or any part of the Securities represented by a Global Security or Global Securities; or

(iii) an Event of Default has occurred and is continuing and the Registrar has received a request from the Depositary for the issuance of Physical Securities in exchange for such Global Security or Global Securities,

the Depositary shall surrender such Global Security or Global Securities to the Trustee for cancellation and the Company shall execute, and the Trustee, upon receipt of an Officers’ Certificate and Company Order for the authentication and delivery of Securities, shall authenticate and deliver in exchange for such Global Security or Global Securities, Physical Securities of like tenor as that of the Global Securities in an aggregate principal amount equal to the aggregate principal amount of such Global Security or Global Securities. Such Physical Securities shall be registered in such names as the Depositary shall identify in writing as the beneficial owners of the Securities represented by such Global Security or Global Securities (or any nominee thereof).

Notwithstanding the foregoing, in connection with any transfer of beneficial interests in a Global Security to beneficial owners pursuant to Section 2.8(d) hereof, the Registrar shall reflect on its books and records the date and a decrease in the principal amount of such Global Security in an amount equal to the principal amount of the beneficial interest in such Global Security to be transferred.

Section 2.9. Special Transfer Provisions.

With respect to the registration of any proposed transfer of Securities:

- (a) If the Securities to be transferred consist of an interest in the Global Securities, the transfer of such interest may be effected only through the book-entry system maintained by the Depositary.
- (b) In addition, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Global Securities in an amount equal to the principal amount of the Physical Securities to be transferred, and the Trustee shall cancel the Physical Securities so transferred.

By its acceptance of any Security bearing the Restricted Securities Legend, each Holder of such a Security acknowledges the restrictions on transfer of such Security set forth in this Indenture and agrees that it will transfer such Security only as provided in this Indenture. The Registrar shall not register a transfer of any Security unless such transfer complies with the restrictions on transfer of such Security set forth in this Indenture. The Registrar shall be entitled to receive and rely on written instructions from the Company verifying that such transfer complies with such restrictions on transfer. In connection with any transfer of Securities, each Holder agrees by its acceptance of the Securities to furnish the Registrar or the Company such certifications, legal opinions or other information as either of them may reasonably require to confirm that such transfer is being made pursuant to an exemption from, or a transaction not subject to, the registration requirements of the Securities Act; provided that the Registrar shall

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not be required to determine (but may rely on a determination made by the Company with respect to) the sufficiency of any such certifications, legal opinions or other information.

The Registrar shall retain copies of all letters, notices and other written communications received pursuant to Section 2.8 hereof or this Section 2.9. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar.

Section 2.10. 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 and shall otherwise comply with Section 312(a) of the TIA. If the Trustee is not the Registrar, the Company shall furnish to the Trustee prior to or on each Interest Payment Date and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders relating to such Interest Payment Date or request, as the case may be.

Section 2.11. Persons Deemed Owners. The Company, the Trustee and any agent of the Company or the Trustee may treat the registered Holder of a Global Security as the absolute owner of such Global Security for the purpose of receiving payment thereof or on account thereof and for all other purposes whatsoever, whether or not such Security be overdue, and notwithstanding any notice of ownership or writing thereon, or any notice of previous loss or theft or other interest therein. The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment of principal of and premium, if any, and interest (including Liquidated Damages, if any) on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and notwithstanding any notice of ownership or writing thereon, or any notice of previous loss or theft or other interest therein.

Section 2.12. Mutilated, Destroyed, Lost or Stolen Securities. If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there is delivered to the Company and the Trustee

(a) evidence to their satisfaction of the destruction, loss or theft of any Security, and

(b) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and, upon request, the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion, but subject to any conversion rights,

may, instead of issuing a new Security, pay such Security, upon satisfaction of the condition set forth in the preceding paragraph.

Upon the issuance of any new Security under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and such new Security shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

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

Section 2.13. Treasury Securities. In determining whether the Holders of the requisite principal amount of Outstanding Securities are present at a meeting of Holders for quorum purposes or have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any Affiliate of the Company shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such determination as to the presence of a quorum or upon any such request, demand, authorization, direction, notice, consent or waiver, only such Securities of which the Trustee has received written notice and are so owned shall be so disregarded.

Section 2.14. Temporary Securities. Pending the preparation of Securities in definitive form, the Company may execute and the Trustee shall, upon written request of the Company, authenticate and deliver temporary Securities (printed or lithographed). Temporary Securities shall be issuable in any authorized denomination, and substantially in the form of the Securities in definitive form but with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Company. Every such temporary Security shall be executed by the Company and authenticated by the Trustee upon the same conditions and in substantially the same manner, and with the same effect, as the Securities in definitive form. Without unreasonable delay, the Company will execute and deliver to the Trustee Securities in definitive form (other than in the case of Securities in global form) and thereupon any or all temporary Securities (other than any such Securities in global form) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 9.2 and the Trustee shall authenticate and deliver in exchange for such temporary Securities an equal aggregate principal amount of Securities in definitive form. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Securities in definitive form authenticated and delivered hereunder.

Section 2.15. Cancellation. All securities surrendered for payment, redemption, repurchase, conversion, registration of transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee. All Securities so delivered shall be canceled promptly by the Trustee, and no Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. Upon written instructions of the Company, the Trustee shall destroy canceled Securities and, after such destruction, shall deliver a certificate of such destruction to the Company. If the Company shall acquire any of the Securities, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless the same are delivered to the Trustee for cancellation.

Section 2.16. CUSIP Numbers. The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and the Trustee shall use CUSIP numbers in notices of redemption or exchange as a convenience to Holders; provided that any such notice shall state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any such notice and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee of any change in the CUSIP numbers.

Section 2.17. Defaulted Interest. If the Company fails to make a payment of interest (including Liquidated Damages, if any) on any Security when due and payable ("Defaulted Interest"), it shall pay such Defaulted Interest plus (to the extent lawful) any interest payable on the Defaulted Interest, in any lawful manner. It may elect to pay such Defaulted Interest, plus any such interest payable on it, to the Persons who are Holders of such Securities on which the interest is due on a subsequent Special Record Date. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each such Security. The Company shall fix any such Special Record Date and payment date for such payment. At least 15 days before any such Special Record Date, the Company shall mail to Holders affected thereby a notice that states the Special Record Date, the Interest Payment Date, and amount of such interest (and such Liquidated Damages, if any) to be paid.

ARTICLE III SATISFACTION AND DISCHARGE

Section 3.1. Satisfaction and Discharge of Indenture.

When:

(a) The Company shall deliver to the trustee for cancellation all securities previously authenticated (other than any securities which have been destroyed, lost or stolen and in lieu of, or in substitution for which, other securities shall have been authenticated and delivered) and not previously canceled, or

(b) (i) all the securities not previously canceled or delivered to the trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption,

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(ii) the Company shall deposit with the Trustee, in trust, cash in U.S. dollars and/or U.S. Government Obligations which through the payment of interest and principal in respect thereof, in accordance with their terms, will provide (and without reinvestment and assuming no tax liability will be imposed on such Trustee), not later than one day before the due date of any payment of money, an amount in cash, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay principal of, premium, if any, or interest (including Liquidated Damages, if any) on all of the Securities (other than any Securities which shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Securities shall have been authenticated and delivered) not previously canceled or delivered to the Trustee for cancellation, on the dates such payments of principal, premium, if any, or interest (including Liquidated Damages, if any) are due to such date of maturity or redemption, as the case may be, and

(iii) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel to the effect that (x) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (y) since the date of execution of this Indenture, there has been a change in the applicable federal income tax law, in the case of either clause (x) or (y) to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and discharge and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit and discharge had not occurred, and

if, in the case of either clause (1) or (2), the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Indenture shall cease to be of further effect (except as to:

(i) remaining rights of registration of transfer, substitution and exchange and conversion of Securities;

(ii) rights hereunder of Holders to receive payments of principal of and premium, if any, and interest (including Liquidated Damages, if any) on, the Securities and the other rights, duties and obligations of Holders, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee; and

(iii) the rights, obligations and immunities of the Trustee hereunder),

and the Trustee, on demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture; provided, however, the Company shall reimburse the Trustee for all amounts due the Trustee under Section 5.8 hereof and for any costs or expenses thereafter reasonably and properly incurred by the Trustee and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Indenture or the Securities.

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Section 3.2. Deposited Monies to be Held in Trust. Subject to Section 3.3 hereof, all monies deposited with the Trustee pursuant to Section 3.1 hereof shall be held in trust and applied by it to the payment, notwithstanding the provisions of Article 13 hereof, either directly or through any Paying Agent (including the Company if acting as its own Paying Agent), to the Holders of the particular Securities for the payment or redemption of which such monies have been deposited with the Trustee, of all sums due and to become due thereon for principal, premium, if any, and interest (including Liquidated Damages, if any). All monies deposited with the Trustee pursuant to Section 3.1 hereof (and held by it or any Paying Agent) for the payment of Securities subsequently converted shall be returned to the Company upon request of the Company.

Section 3.3. Return of Unclaimed Monies. The Trustee and the Paying Agent shall pay to the Company any money held by them for the payment of principal or premium, if any, or interest (including Liquidated Damages, if any) that remains unclaimed for two years after the date upon which such payment shall have become due. After payment to the Company, Holders entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person, and all liability of the Trustee and such Paying Agent with respect to such money shall cease.

ARTICLE IV

DEFAULTS AND REMEDIES

Section 4.1. Events of Default. An “Event of Default” with respect to the Securities occurs when any of the following occurs (whatever the reason for such Event of Default and whether it shall be occasioned by the provisions of Article 13 hereof or be voluntary or involuntary or be 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):

- (a) the Company defaults in the payment of the principal of or premium, if any, on any of the Securities when it becomes due and payable at Maturity, upon redemption or exercise of a Repurchase Right or otherwise, whether or not such payment is prohibited by Article 13 hereof; or
- (b) the Company defaults in the payment of interest (including Liquidated Damages, if any) on any of the Securities when it becomes due and payable and such default continues for a period of 30 days, whether or not such payment is prohibited by Article 13 hereof; provided that a failure to make any of the first six scheduled interest payments on any of the Securities within three Business Days of the applicable Interest Payment Date will constitute an Event of Default with no additional grace or cure period; or
- (c) the Company fails to perform or observe any other term, covenant or agreement contained in the Securities or this Indenture and the default continues for a period of 60 days after written notice of such failure, requiring the Company to remedy the same, shall have been given to the Company by the Trustee or to the Company and

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the Trustee by the Holders of at least 25% in aggregate principal amount of the Outstanding Securities; or

(d) (i) the Company fails to make any payment by the end of the applicable grace period, if any, after the maturity of any Indebtedness for borrowed money in an amount in excess of \$5,000,000 (provided that such failure shall not constitute an Event of Default if (1) the Company determines, in good faith, that a lessor under a lease described in clause (3)(a) of the definition of Indebtedness breached a covenant under the lease and the Company has given notice of the breach to the lessor and the Trustee and (2) as a result of the breach, the Company withholds payment under the lease) (a “Default Exception”), or (ii) there is an acceleration of any Indebtedness for borrowed money in an amount in excess of \$5,000,000 because of a default with respect to such Indebtedness (other than a Default Exception) without such Indebtedness having been discharged or such acceleration having been cured, waived, rescinded or annulled, in the case of either (i) or (ii) above, for a period of 30 days after written notice to the Company by the Trustee or to the Company and the Trustee by Holders of at least 25% in aggregate principal amount of the Outstanding Securities; or

(e) the entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable U.S. federal or state bankruptcy, insolvency, reorganization or other similar law or (ii) a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable U.S. federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days; or

(f) the commencement by the Company of a voluntary case or proceeding under any applicable U.S. federal or state bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by the Company to the entry of a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable U.S. federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against the Company, or the filing by the Company of a petition or answer or consent seeking reorganization or relief under any applicable U.S. federal or state law, or the consent by the Company to the filing of such petition or to the appointment of or the taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by the Company of an assignment for the benefit of creditors, or the admission by the Company in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company expressly in furtherance of any such action; or

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(g) the Pledge Agreement, as such agreement may be amended, restated or supplemented or otherwise modified from time to time, shall cease to be in full force and effect or enforceable in accordance with its terms, other than in accordance with its terms.

Section 4.2. Acceleration of Maturity; Rescission and Annulment. If an Event of Default with respect to Outstanding Securities (other than an Event of Default specified in Section 4.1(e) or 4.1(f) hereof) occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of

the Outstanding Securities, by written notice to the Company, may declare due and payable 100% of the principal amount of all Outstanding Securities plus any accrued and unpaid interest to the date of payment. Upon a declaration of acceleration, such principal and accrued and unpaid interest to the date of payment shall be immediately due and payable.

If an Event of Default specified in Section 4.1(e) or 4.1(f) hereof occurs, all unpaid principal and accrued and unpaid interest (including Liquidated Damages, if any) on the Outstanding Securities shall become and be immediately due and payable, without any declaration or other act on the part of the Trustee or any Holder.

Any payments by the Company on the Securities following any such acceleration will be subject to the subordination provisions of Article 13 to the extent provided therein.

The Holders of a majority in aggregate principal amount of the Outstanding Securities by written notice to the Trustee and the Company may rescind and annul an acceleration and waive such defaults and their consequences if:

- (a) all existing Events of Default, other than the nonpayment of principal of or interest on the Securities which have become due solely because of the acceleration, have been remedied, cured or waived,
- (b) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction, and
- (c) the principal of any Securities which has become due otherwise than by such declaration of acceleration and any interest thereon at the rate or rates prescribed therefor has been deposited with the Trustee;

provided, however, that in the event such declaration of acceleration has been made based on the existence of an Event of Default under Section 4.1(d) hereof and such Event of Default has been remedied, cured or waived in accordance with Section 4.1(d) hereof, then, without any further action by the Holders, such declaration of acceleration shall be rescinded automatically and the consequences of such declaration shall be annulled. No such rescission or annulment shall affect any subsequent Default or impair any right consequent thereon.

Section 4.3. Other Remedies. If an Event of Default with respect to Outstanding Securities occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of or interest on the Securities or to enforce the performance of any provision of the Securities.

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The Trustee may maintain a proceeding in which it may prosecute and enforce all rights of action and claims under this Indenture or the Securities, even if it does not possess any of the Securities or does not produce any of them in the proceeding.

Section 4.4. Waiver of Past Defaults. The Holders, either (a) through the written consent of not less than a majority in aggregate principal amount of the Outstanding Securities, or (b) by the adoption of a resolution, at a meeting of Holders of the Outstanding Securities at which a quorum is present, by the Holders of at least a majority in aggregate principal amount of the Outstanding Securities represented at such meeting, may, on behalf of the Holders of all of the Securities, waive an existing Default or Event of Default, except a Default or Event of Default:

- (a) in the payment of the principal of or premium, if any, or interest (including Liquidated Damages, if any) on any Security (provided, however, that subject to Section 4.7 hereof, the Holders of a majority in aggregate principal amount of the Outstanding Securities may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration); or
- (b) in respect of a covenant or provision hereof which, under Section 7.2 hereof, cannot be modified or amended without the consent of the Holders of each Outstanding Security affected.

Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; provided, however, that no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 4.5. Control by Majority. The Holders of a majority in aggregate principal amount of the Outstanding Securities (or such lesser amount as shall have acted as a meeting pursuant to the provisions of this Indenture) shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that:

- (a) conflicts with any law or with this Indenture;
- (b) the Trustee determines may be unduly prejudicial to the rights of the Holders not joining therein, or
- (c) may expose the Trustee to personal liability.

The Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

Section 4.6. Limitation on Suit. No Holder of any Security shall have any right to pursue any remedy with respect to this indenture or the Securities (including, instituting any proceeding, judicial or otherwise, with respect to this Indenture or for the appointment of a receiver or trustee) unless:

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- (a) such Holder has previously given written notice to the Trustee of an Event of Default that is continuing;

(b) the Holders of at least 25% in aggregate principal amount of the Outstanding Securities shall have made written request to the Trustee to pursue the remedy;

(c) such Holder or Holders have offered to the Trustee indemnity satisfactory to it against any costs, expenses and liabilities incurred in complying with such request;

(d) the Trustee has failed to comply with the request for 60 days after its receipt of such notice, request and offer of indemnity; and

(e) during such 60-day period, no direction inconsistent with such written request has been given to the Trustee by the Holders of a majority in aggregate principal amount of the Outstanding Securities (or such amount as shall have acted at a meeting pursuant to the provisions of this Indenture);

provided, however, that no one or more of such Holders may use this Indenture to prejudice the rights of another Holder or to obtain preference or priority over another Holder.

Section 4.7. Unconditional Rights of Holders to Receive Payment and to Convert. Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and premium, if any, and interest (including Liquidated Damages, if any) on such Security on the Stated Maturity expressed in such Security (or, in the case of redemption, on the Redemption Date, or in the case of the exercise of a Repurchase Right, on the Repurchase Date) and to convert such Security in accordance with Article 12, and to bring for the enforcement of any such payment on or after such respective dates and right to convert, and such rights shall not be impaired or affected without the consent of such Holder.

Section 4.8. Collection of Indebtedness and Suits for Enforcement by the Trustee. The Company covenants that if:

(a) a Default or Event of Default is made in the payment of any interest (including Liquidated Damages, if any) on any Security when such interest (including Liquidated Damages, if any) becomes due and payable and such Default or Event of Default continues for a period of 3 Business Days (in the case of any of the first six interest payments on the Securities) or 30 days (in all other cases), or

(b) a Default or Event of Default is made in the payment of the principal of or premium, if any, on any Security at the Maturity thereof,

the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable (as expressed therein or as a result of any acceleration effected pursuant to Section 4.2 hereof) on such Securities for principal and premium, if any, and interest (including Liquidated Damages, if any) and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal and

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premium, if any, and on any overdue interest (including Liquidated Damages, if any), calculated using the rate of interest on the Security, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company, wherever situated.

If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

Section 4.9. Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or the property of the Company or its creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest (including Liquidated Damages, if any)) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of principal and premium, if any, and interest (including Liquidated Damages, if any) owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders of Securities allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claim and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceedings is hereby authorized by each Holder of Securities to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders of Securities, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee under Section 5.8.

Nothing contained herein shall be deemed to authorize the Trustee to authorize or consent to or accept, or adopt on behalf of any Holder of a Security, any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder

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thereof or to authorize the Trustee to vote in respect of the claim of any Holder of a Security in any such proceeding.

Section 4.10. Restoration of Rights and Remedies. If the Trustee or any Holder of a Security has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders of Securities shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 4.11. Rights and Remedies Cumulative. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 2.12, no right or remedy conferred in this Indenture upon or reserved to the Trustee or to the Holders of Securities is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 4.12. Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder of any Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or any acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders of Securities may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders of Securities, as the case may be.

Section 4.13. Application of Money Collected. Subject to Article 13, any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or premium, if any, or interest (including Liquidated Damages, if any), upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee;

SECOND: To the payment of the amounts then due and unpaid for principal of and premium, if any, and interest (including Liquidated Damages, if any) on the Securities and coupons in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal and premium, if any, and interest (including Liquidated Damages, if any), respectively; and

THIRD: Any remaining amounts shall be repaid to the Company.

Section 4.14. Undertaking for Costs. All parties to this Indenture agree, and each Holder of any Security by such Holder's acceptance thereof shall be deemed to have agreed, that any

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court may in its discretion require, 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, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in aggregate principal amount of the Outstanding Securities, or to any suit instituted by any Holder of any Security for the enforcement of the payment of the principal of or premium, if any, or interest (including Liquidated Damages, if any) on any Security on or after the Stated Maturity expressed in such Security (or, in the case of redemption or exercise of a Repurchase Right, on or after the Redemption Date) or for the enforcement of the right to convert any Security in accordance with Article 12.

Section 4.15. Waiver of Stay or Extension Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim to take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE V

THE TRUSTEE

Section 5.1. Certain Duties and Responsibilities. (a) 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 or the TIA, and no implied covenants or obligations shall be read into this Indenture against the Trustee; 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; provided, however, that in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates or opinions to determine whether or not, on their face, they conform to the requirements to this Indenture (but need not investigate or confirm the accuracy of any facts stated therein).

(b) In case an Event of Default actually known to a Responsible Officer of the Trustee has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a

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prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) This paragraph (c) shall not be construed to limit the effect of paragraph (a) of this Section 5.1;

(ii) The Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with a direction received by it of the Holders of a majority in principal amount of the Outstanding Securities (or such lesser amount as shall have acted at a meeting pursuant to the provisions of this Indenture) relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

(d) Whether or not herein expressly so provided, 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 5.1.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers. The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity reasonably satisfactory to it against any loss, liability, cost or expense (including, without limitation, reasonable fees of counsel).

(f) The Trustee shall not be obligated to pay interest on any money or other assets received by it unless otherwise agreed in writing with the Company. Assets 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 bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney.

(h) The Trustee shall not be deemed to have notice or actual knowledge of any Event of Default or a Registration Default (as such term is defined in Section 3(a) of the Registration Rights Agreement) or the obligation of the Company to pay Liquidated Damages unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any

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event which is in fact a Default is received by the Trustee pursuant to Section 15.2 hereof, and such notice references the Securities and this Indenture.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee hereunder, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder and under the Pledge Agreement and as the Pledged Securities Intermediary under the Pledge Agreement, and each Paying Agent, authenticating agent, Conversion Agent or Registrar acting hereunder.

Section 5.2. Certain Rights of Trustee. Subject to the provisions of Section 5.1 hereof and subject to Section 315(a) through (d) of the TIA in relation to matters arising hereunder or under the Pledge Agreement:

(a) The Trustee may rely on any document reasonably 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 attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney or agent appointed with due care.

(d) The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith which it believed to be authorized or within the discretion or rights or powers conferred upon it by this Indenture, unless the Trustee's conduct constitutes negligence.

(e) The Trustee may consult with counsel of its selection and the written advice of such counsel as to matters of law shall be full and complete authorization and protection in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel; provided, however, that the provisions shall not protect the Trustee from liability for its own negligence or willful misconduct.

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

(g) The permissive rights of the Trustee to do things enumerated in this Indenture shall not be construed as a duty unless so specified herein.

Section 5.3. Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not

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Trustee. However, in the event that the Trustee acquires any conflicting interest (as such term is defined in Section 310(b) of the TIA), it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee (to the extent permitted under Section 310(b) of the TIA) or resign. Any agent may do the same with like rights and duties. The Trustee is also subject to Sections 5.11 and 5.12 hereof.

Subject to the limitations imposed by the Trustee Indenture Act, nothing in this Indenture shall prohibit the Trustee from becoming and acting as trustee under other indentures under which other securities, or certificates of interest of participation in other securities, of the Company are outstanding in the same manner as if it were not Trustee hereunder.

Section 5.4. Money Held in Trust. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise expressly agreed with the Company.

Section 5.5. Trustee's Disclaimer. The recitals contained herein and in the Securities (except for those in the certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity, sufficiency or priority of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

Section 5.6. Notice of Defaults. Within 90 days after the occurrence of any Default or Event of Default hereunder of which the Trustee has received written notice, the Trustee shall give notice to Holders pursuant to Section 15.2 hereof, unless such Default or Event of Default shall have been cured or waived; provided, however, that, except in the case of a Default or Event of Default in the payment of the principal of or premium, if any, or interest (including Liquidated Damages, if any), or in the payment of any redemption or repurchase obligation on any Security, the Trustee shall be protected in withholding such notice if and so long as Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interest of the Holders.

Section 5.7. Reports by Trustee to Holders. The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required by Section 313 of the TIA at the times and in the manner provided by the TIA.

A copy of each report at the time of its mailing to Holders shall be filed with the SEC, if required, and each stock exchange, if any, on which the Securities are listed. The Company shall promptly notify the Trustee when the Securities become listed on any stock exchange.

Section 5.8. Compensation and Indemnification. The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) and the Company covenants and agrees to pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by or on behalf of it in accordance with any of the provisions of this Indenture (including

the reasonable compensation and the expenses and disbursements of its counsel and of all agents and other persons not regularly in its employ), except to the extent that any such expense, disbursement or advance is due to its negligence or bad faith. When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 4.1 hereof, the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any bankruptcy law. The Company also covenants to indemnify the Trustee and its officers, directors, employees and agents for, and to hold such Persons harmless against, any loss, liability or expense incurred by them, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder or the performance of their duties hereunder, including the costs and expenses of defending themselves against or investigating any claim of liability in the premises, except to the extent that any such loss, liability or expense was due to the negligence or willful misconduct of such Persons. The obligations of the Company under this Section 5.8 to compensate and indemnify the Trustee and its officers, directors, employees and agents and to pay or reimburse such Persons for expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee. Such additional indebtedness shall be a senior claim to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the Holders of particular Securities, and the Securities are hereby subordinated to such senior claim. "Trustee" for purposes of this Section 5.8 shall include any predecessor Trustee, but the negligence or willful misconduct of any Trustee shall not affect the indemnification of any other Trustee.

Section 5.9. Replacement of Trustee. A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 5.9.

The Trustee may resign and be discharged from the trust hereby created by so notifying the Company in writing. The Holders of at least a majority in aggregate principal amount of Outstanding Securities may remove the Trustee by so notifying the Trustee and the Company in writing. The Company must remove the Trustee if:

- (a) the Trustee fails to comply with Section 5.11 hereof or Section 310 of the TIA;
- (b) the Trustee becomes incapable of acting;
- (c) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law; or
- (d) a Custodian or public officer takes charge of the Trustee or its property.

If the Trustee resigns or is removed or if a vacancy exists in the office of the Trustee for any reason, the Company shall promptly appoint a successor Trustee. The Trustee shall be entitled to payment of its fees and reimbursement of its expenses while acting as Trustee. Within one year after the successor Trustee takes office, the Holders of at least a majority in aggregate

principal amount of Outstanding Securities may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

In the event the Trustee fails to comply with Section 5.11 hereof, (a) the Company may remove the Trustee or (b) any Holder may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation or removal, the resigning or removed Trustee, as the case may be, may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. 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 Company shall mail a notice of the successor Trustee's succession to the Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee. Notwithstanding replacement of the Trustee pursuant to this Section 5.9, the Company's obligations under Section 5.8 hereof shall continue for the benefit of the retiring Trustee with respect to expenses, losses and liabilities incurred by it prior to such replacement.

Section 5.10. Successor Trustee by Merger, Etc. Subject to Section 5.11 hereof, if the Trustee consolidates with, merges or converts into, or transfers or sells all or substantially all of its corporate trust business to, another corporation or national banking association, the successor entity without any further act shall be the successor Trustee as to the Securities.

Section 5.11. Corporate Trustee Required; Eligibility. The Trustee shall at all times satisfy the requirements of Section 310(a)(1), (2) and (5) of the TIA. The Trustee shall at all times have (or, in the case of a corporation included in a bank holding company system, the related bank holding company shall at all times have), a combined capital and surplus of at least \$100 million as set forth in its (or its related bank holding company's) most recent published annual report of condition. The Trustee is subject to Section 310(b) of the TIA.

Section 5.12. Collection of Claims Against the Company. The Trustee is subject to 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 therein.

ARTICLE VI

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 6.1. Company May Consolidate, Etc., Only on Certain Terms. The Company shall not consolidate with or merge into any other Person or convey, transfer or lease all or substantially all of its properties and assets to any Person, unless:

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(a) it is the continuing corporation or the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, all or substantially all of the properties and assets of the Company is a corporation organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and expressly assumes, (1) by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the due and punctual payment of the principal of and premium, if any and interest (including Liquidated Damages, if any), on all the Securities and the performance of every covenant of this Indenture on the part of the Company to be performed or observed, which supplemental indenture shall provide for conversion rights in accordance with Section 12.11 hereof, and (2) by an amendment to the Pledge Agreement, executed and delivered to the Trustee and the Pledged Securities Intermediary, in form reasonably satisfactory to each of them, the performance of every covenant of the Pledge Agreement on the part of the Company to be performed or observed;

(b) at the time of consummation of such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

(c) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 6.2. Successor Corporation Substituted. Upon any consolidation or merger by the Company with or into any other corporation or any conveyance, transfer or lease of the properties and assets of the Company substantially as an entirety to any Person, in accordance with Section 6.1 hereof, the successor corporation formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor corporation had been named as the Company herein, and thereafter, except in the case of a lease to another Person, the predecessor corporation shall be relieved of all obligations and covenants under this Indenture and the Securities.

ARTICLE VII

AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 7.1. Without Consent of Holders of Securities. Without the consent of any Holders of Securities, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may amend this Indenture and the Securities to:

(a) add to the covenants of the Company for the benefit of the Holders of Securities;

- (b) surrender any right or power herein conferred upon the Company;
- (c) make provision with respect to the conversion rights of Holders of Securities pursuant to Section 12.11 hereof;
- (d) provide for the assumption of the Company's obligations to the Holders of Securities in the case of a merger, consolidation, conveyance, transfer or lease pursuant to Article 6 hereof;
- (e) reduce the Conversion Price; provided, that such reduction in the Conversion Price shall not adversely affect the interest of the Holders of Securities (after taking into account tax and other consequences of such reduction) in any material respect; provided further that the Company may not voluntarily reduce the Conversion Price if such reduction shall result in the issuance, upon exchange of all Securities, of a number of shares of Common Stock in excess of the thresholds requiring stockholder approval under the rules of the Nasdaq National Market or such other United States securities exchange on which the Common Stock is traded, unless the Company shall have, prior to such reduction in the Conversion Price, obtained any such required stockholder approval;
- (f) comply with the requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA;
- (g) make any changes or modifications to this Indenture necessary in connection with the registration of any Securities under the Securities Act as contemplated in the Registration Rights Agreement, provided, that such action pursuant to this clause (g) does not adversely affect the interests of the Holders of Securities in any material respect;
- (h) establish the forms or terms of Securities of any series as permitted by Section 2.01;
- (i) cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein or which is otherwise defective, or to make any other provisions with respect to matters or questions arising under this Indenture which the Company and the Trustee may deem necessary or desirable and which shall not be inconsistent with the provisions of this Indenture, provided, that such action pursuant to this clause (i) does not adversely affect the interests of the Holders of Securities in any material respect;
- (j) add or modify any other provisions with respect to matters or questions arising under this Indenture which the Company and the Trustee may deem necessary or desirable and which shall not be inconsistent with the provisions of this Indenture, provided that such action pursuant to this clause (j) does not adversely affect the interests of the Holders of Securities in any material respect;

- (k) make provision for the establishment of a book-entry system, in which Holders would have the option to participate, for the clearance and settlement of transactions in Securities originally issued in definitive form;
- (l) provide for uncertificated notes in addition to or in place of certificated notes; or
- (m) modify the provisions of the Indenture relating to the Pledge Agreement or any transactions contemplated thereby, provided that such action pursuant to this clause (m) does not adversely affect the interests of the Holders of Securities in any material respect.

Section 7.2. With Consent of Holders of Securities. Except as provided below in this Section 7.2, this Indenture or the Securities may be amended or supplemented, and noncompliance in any particular instance with any provision of this Indenture or the Securities may be waived, in each case (i) with the written consent of the Holders of at least a majority in aggregate principal amount of the Outstanding Securities or (ii) by the adoption of a resolution, at a meeting of Holders of the Outstanding Securities at which a quorum is present, by the Holders of a majority in aggregate principal amount of the Outstanding Securities represented at such meeting.

Without the written consent or the affirmative vote of each Holder of Securities, an amendment or waiver under this Section 7.2 may not:

- (a) change the Stated Maturity of the principal of, or any installment of interest (including Liquidated Damages, if any) on, any Security;
- (b) reduce the principal amount of, or premium, if any, on any Security;
- (c) reduce the rate of interest (including Liquidated Damages, if any) on any Security;
- (d) change the currency of payment of principal of, premium, if any, or interest (including Liquidated Damages, if any) on any Security;
- (e) impair the right of any Holder to institute suit for the enforcement of any payment in or with respect to any Security;
- (f) modify the obligation of the Company to maintain an office or agency in The City of New York pursuant to Section 9.2 hereof;
- (g) except as permitted by Section 12.11 hereof, adversely affect the Repurchase Right or the right to convert any Security as provided in Article 12 hereof;
- (h) modify the subordination provisions of the Securities in a manner adverse to the Holders of Securities;

(i) modify any of the provisions of this Section, Section 4.4 or Section 15.11, except to increase any percentage contained herein or therein or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby;

(j) reduce the requirements of Section 8.4 hereof for quorum or voting, or reduce the percentage in aggregate principal amount of the Outstanding Securities the consent of whose Holders is required for any such supplemental indenture or the consent of whose Holders is required for any waiver provided for in this Indenture; or

(k) impair the right of any Holder to receive payment of interest on the first six scheduled Interest Payment Dates from the portfolio of pledged U.S. treasury securities as set forth in the Pledge Agreement.

It shall not be necessary for any Act of Holders of Securities under this Section to approve the particular form of any proposal supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 7.3. Compliance with Trust Indenture Act. Every amendment to this Indenture or the Securities shall be set forth in a supplemental indenture that complies with the TIA as then in effect.

Section 7.4. Revocation of Consents and Effect of Consents or Votes. Until an amendment, supplement or waiver becomes effective, a written consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security; provided, however, that unless a record date shall have been established, any such Holder or subsequent Holder may revoke the consent as to its Security or portion of a Security if the Trustee receives written notice of revocation before the date the amendment, supplement or waiver becomes effective.

An amendment, supplement or waiver becomes effective on receipt by the Trustee of written consents from or affirmative votes by, as the case may be, the Holders of the requisite percentage of aggregate principal amount of the Outstanding Securities, and thereafter shall bind every Holder of Securities; provided, however, if the amendment, supplement or waiver makes a change described in any of the clauses (a) through (k) of Section 7.2 hereof, the amendment, supplement or waiver shall bind only each Holder of a Security which has consented to it or voted for it, as the case may be, and every subsequent Holder of a Security or portion of a Security that evidences the same indebtedness as the Security of the consenting or affirmatively voting, as the case may be, Holder.

Section 7.5. Notation on or Exchange of Securities. If an amendment, supplement or waiver changes the terms of a Security:

(a) the Trustee may require the Holder of a Security to deliver such Securities to the Trustee, the Trustee may place an appropriate notation on the Security about the changed terms and return it to the Holder and the Trustee may place an appropriate notation on any Security of any series thereafter authenticated for such series; or

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(b) if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms.

Failure to make the appropriate notation or issue a new Security shall not affect the validity and effect of such amendment, supplement or waiver.

Section 7.6. Trustee to Sign Amendment, Etc. The Trustee shall sign any amendment authorized pursuant to this Article 7 if the amendment does not adversely affect the rights, duties, liabilities or immunities of the Trustee in any material respects. If the amendment does adversely affect the rights, duties, liabilities or immunities of the Trustee, the Trustee may but need not sign it. In signing or refusing to sign such amendment, the Trustee shall be entitled to receive and shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel as conclusive evidence that such amendment is authorized or permitted by this Indenture.

ARTICLE VIII

MEETING OF HOLDERS OF SECURITIES

Section 8.1. Purposes for Which Meetings May Be Called. A meeting of Holders of Securities may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be made, given or taken by Holders of Securities.

Section 8.2. Call Notice and Place of Meetings. (a) The Trustee may at any time call a meeting of Holders of Securities for any purpose specified in Section 8.1 hereof, to be held at such time and at such place in The City of New York. Notice of every meeting of Holders of Securities, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 15.2 hereof, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(b) In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% in principal amount of the Outstanding Securities shall have requested the Trustee to call a meeting of the Holders of Securities for any purpose specified in Section 8.1 hereof, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have made the first publication of the notice of such meeting within 21 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Company or the Holders of Securities in the amount specified, as the case may be, may determine the time and the place in The City of New York for such meeting and may call such meeting for such purposes by giving notice thereof as provided in paragraph (a) of this Section.

Section 8.3. Persons Entitled to Vote at Meetings. To be entitled to vote at any meeting of Holders of Securities, a Person shall be (a) a Holder of one or more Outstanding Securities, or (b) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Securities by such Holder or Holders. The only Persons who shall be entitled

to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 8.4. Quorum; Action. The Persons entitled to vote a majority in principal amount of the Outstanding Securities shall constitute a quorum. In the absence of a quorum within 30 minutes of the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities, be dissolved. In any other case, the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such adjourned meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in Section 8.2(a) hereof, except that such notice need be given only once and not less than five days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage of the principal amount of the Outstanding Securities which shall constitute a quorum.

Subject to the foregoing, at the reconvening of any meeting adjourned for a lack of a quorum, the Persons entitled to vote 25% in principal amount of the Outstanding Securities at the time shall constitute a quorum for the taking of any action set forth in the notice of the original meeting.

At a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid, any resolution and all matters (except as limited by the proviso to Section 7.2 hereof) shall be effectively passed and decided if passed or decided by the Persons entitled to vote not less than a majority in principal amount of Outstanding Securities represented and voting at such meeting.

Any resolution passed or decisions taken at any meeting of Holders of Securities duly held in accordance with this Section shall be binding on all the Holders of Securities, whether or not present or represented at the meeting.

Section 8.5. Determination of Voting Rights; Conduct and Adjournment of Meetings.

(a) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities in regard to proof of the holding of Securities and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 2.2 hereof and the appointment of any proxy shall be proved in the manner specified in Section 2.2 hereof. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 2.2 hereof or other proof.

(b) The Trustee shall, by an instrument in writing, appoint a temporary chairman (which may be the Trustee) of the meeting, unless the meeting shall have been called by the Company or by Holders of Securities as provided in Section 8.2(b) hereof, in which case the Company or the Holders of Securities calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in principal amount of the Outstanding Securities represented at the meeting.

(c) At any meeting each Holder of a Security or proxy shall be entitled to one vote for each \$1,000 principal amount of Securities held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Security or proxy.

(d) Any meeting of Holders of Securities duly called pursuant to Section 8.2 hereof at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the Outstanding Securities represented at the meeting, and the meeting may be held as so adjourned without further notice.

Section 8.6. Counting Votes and Recording Action of Meetings. The vote upon any resolution submitted to any meeting of Holders of Securities shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record, at least in duplicate, of the proceedings of each meeting of Holders of Securities shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 8.2 hereof and, if applicable, Section 8.4 hereof. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

ARTICLE IX

COVENANTS

Section 9.1. Payment of Principal, Premium and Interest. The Company will duly and punctually pay the principal of and premium, if any, and interest (including Liquidated Damages, if any) in respect of the Securities in accordance with the terms of the Securities and this Indenture. The Company will deposit or cause to be deposited with the Trustee as directed by the Trustee, no later than the day of the Stated Maturity of any Security or installment of interest (including Liquidated Damages, if any), all payments so due.

Section 9.2. Maintenance of Offices or Agencies. The Company hereby appoints the Trustee's Corporate Trust Office as its office in The City of New York, where Securities may be:

- (a) presented or surrendered for payment;
- (b) surrendered for registration of transfer or exchange;
- (c) surrendered for conversion;

and where notices and demands to or upon the Company in respect of the Securities and this Indenture maybe served.

The Company may at any time and from time to time vary or terminate the appointment of any such office or appoint any additional offices for any or all of such purposes; provided, however, that until all of the Securities have been delivered to the Trustee for cancellation, or moneys sufficient to pay the principal of and premium, if any, and interest (including Liquidated Damages, if any) on the Securities have been made available for payment and either paid or returned to the Company pursuant to the provisions of Section 3.3 hereof, the Company will maintain in The City of New York, an office or agency where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer or exchange, where Securities may be surrendered for conversion and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company will give prompt written notice to the Trustee, and notice to the Holders in accordance with Section 15.2 hereof, of the appointment or termination of any such agents and of the location and any change in the location of any such office or agency.

If at any time the Company shall fail to maintain any such required office or agency in The City of New York, or shall fail to furnish the Trustee with the address thereof, presentations and surrenders may be made at, and notices and demands may be served on, the Corporate Trust Office of the Trustee.

Section 9.3. Corporate Existence. Subject to Article 6 hereof, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises; provided, however, that the Company shall not be required to preserve any such right or franchise if the Company determines that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Holders.

Section 9.4. Maintenance of Properties. The Company will maintain and keep its properties and every part thereof in such repair, working order and condition, and make or cause to be made all such needful and proper repairs, renewals and replacements thereto, as in the judgment of the Company are necessary in the interests of the Company; provided, however, that nothing contained in this Section shall prevent the Company from selling, abandoning or otherwise disposing of any of its properties or discontinuing a part of its business from time to time if, in the judgment of the Company, such sale, abandonment, disposition or discontinuance is advisable and does not materially adversely affect the interests or business of the Company.

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Section 9.5. Payment of Taxes and Other Claims. The Company will, and will cause any Significant Subsidiary to, promptly pay and discharge or cause to be paid and discharged all material taxes, assessments and governmental charges or levies lawfully imposed upon it or upon its income or profits or upon any of its property, real or personal, or upon any part thereof, as well as all material claims for labor, materials and supplies which, if unpaid, might by law become a lien or charge upon its property; provided, however, that neither the Company nor any Significant Subsidiary shall be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge, levy, or claim if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and if the Company or such Significant Subsidiary, as the case may be, shall have set aside on its books reserves deemed by it adequate with respect thereto.

Section 9.6. Reports. The Company shall deliver to the Trustee within 15 days after it files them with the SEC copies of the annual reports and of the information, documents, and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act; provided, however, the Company shall not be required to deliver to the Trustee any materials for which the Company has sought and received confidential treatment by the SEC. The Company also shall comply with the other provisions of Section 314(a) of the TIA.

Section 9.7. Compliance Certificate. The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, an Officers' Certificate stating that in the course of the performance by the signers of their duties as Officers of the Company, they would normally have knowledge of any failure by the Company to comply with all conditions, or Default by the Company with respect to any covenants, under this Indenture, and further stating whether or not they have knowledge of any such failure or default and, if so, specifying each such failure or Default and the nature thereof. In the event an Officer of the Company comes to have actual knowledge of a Default, regardless of the date, the Company shall deliver an Officers' Certificate to the Trustee specifying such Default and the nature and status thereof.

Section 9.8. Resale of Certain Securities. During the period of two years after the last date of original issuance of any Securities, the Company shall not, and shall not permit any of its "affiliates" (as defined under Rule 144 under the Securities Act) to, resell any Securities, or shares of Common Stock issuable upon conversion of the Securities, which constitute "restricted securities" under Rule 144, that are acquired by any of them within the United States or to "U.S. persons" (as defined in Regulation S) except pursuant to an effective registration statement under the Securities Act or an applicable exemption therefrom. The Trustee shall have no responsibility or liability in respect of the Company's performance of its agreement in the preceding sentence.

Section 9.9. June 2010 Notes. In the event that the Company exercises any of its rights, in its sole discretion, under Section 3.1, Section 7.1, Section 10.1, Section 10.2, Section 11.1 and Section 12.4(h) of the June 2003 Indenture, the Company shall treat the Holders of the Securities equally with the Holders (as defined in the June 2003 Indenture) of the June 2010 Notes in all material respects as if the Securities were issued under the June 2003 Indenture to the extent permissible under applicable law and the terms of the Indenture and the June 2003 Indenture.

REDEMPTION OF SECURITIES

Section 10.1. Provisional Redemption. Any time prior to June 30, 2006, the Company may, at its option, redeem the Securities in whole or in part on any date from time to time, upon notice as set forth in Section 10.5, at a Redemption Price, payable in cash, equal to \$1,000 per \$1,000 principal amount of the Securities redeemed (such amount, together with the Make-Whole Payment described below, the “Provisional Redemption Price”), on the date of redemption (the “Provisional Redemption Date”) if (i) the Closing Price of the Common Stock has exceeded 150% of the Conversion Price (as defined in Article 12 and as such may be adjusted from time to time) then in effect for at least 20 Trading Days in any consecutive 30-Trading Day period ending on the Trading Day prior to the date of mailing of the provisional notice of redemption pursuant to Section 10.5 (the “Notice Date”), and (ii) either (a) a registration statement covering resales of the Securities and the Common Stock issuable upon conversion thereof is effective and available for use and is expected to remain effective for the 30 days following the Provisional Redemption Date (such redemption, a “Provisional Redemption”) or (b) the Securities and the Common Stock issuable upon conversion thereof are no longer Transfer Restricted Securities (as defined in the Registration Rights Agreement).

Upon any such Provisional Redemption, the Company shall make an additional payment (the “Make-Whole Payment”) with respect to the Securities called for redemption to Holders on the Notice Date in an amount equal to \$90 per \$1,000 principal amount of the Securities, less the amount of any interest actually paid on such Securities prior to the Provisional Redemption Date. The Company shall calculate the amount of the Make-Whole Payment and make such Make-Whole Payment on all Securities called for Provisional Redemption, including those Securities converted into Common Stock between the Notice Date and the Provisional Redemption Date.

The Company may elect to pay the Make-Whole Payment or any portion thereof (i) in cash or, (ii) subject to the fulfillment by the Company of the conditions set forth in the following paragraph, by delivering the number of shares of Common Stock equal to (x) the Make-Whole Payment (or any portion thereof that the Company elects to pay in shares of Common Stock) divided by (y) 97% of the average of the Closing Prices per share of Common Stock for the five consecutive Trading Days immediately preceding and including the first Trading Day prior to the Provisional Redemption Date.

The following shall constitute the conditions to any election by the Company pursuant to this Section 10.1 to pay the Make-Whole Payment (or any portion thereof) in shares of Common Stock:

(a) The shares of Common Stock to be issued in payment of the Make-Whole Payment (or any portion thereof) hereunder shall not require registration under any federal securities law before such shares may be freely transferable without being subject to any transfer restrictions under the Securities Act, or, if registration is required, such registration shall be completed and shall become effective prior to the Provisional Redemption Date (and the Company shall state in the notice of Provisional Redemption

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that the Company expects that such registration shall remain effective for at least 30 days following the Provisional Redemption Date);

(b) The shares of Common Stock to be issued in payment of the Make-Whole Payment (or any portion thereof) hereunder shall not require registration with, or approval of, any governmental authority under any state law or any other federal law before such shares may be validly issued or delivered or if such registration is required or such approval must be obtained, such registration shall be completed or such approval shall be obtained prior to the Provisional Redemption Date;

(c) The shares of Common Stock to be issued upon payment of the Make-Whole Payment (or any portion thereof) hereunder are, or shall have been, approved for listing on the Nasdaq National Market or the New York Stock Exchange or listed on another national securities exchange, in any case, prior to the Provisional Redemption Date;

(d) All shares of Common Stock which may be issued upon payment of the Make-Whole Payment (or any portion thereof) will be issued out of the Company’s authorized but unissued Common Stock and will, upon issue, be duly and validly issued and fully paid and nonassessable and free of any preemptive or similar rights; and

(e) If any of the conditions set forth in clauses (a) through (d) of this paragraph are not satisfied in accordance with the terms thereof, the Make-Whole Payment shall be paid by the Company only in cash.

Section 10.2. Optional Redemption. Except as set forth under Section 10.1, the Securities are not redeemable prior to June 30, 2006 (the “Optional Redemption Date”). On or after June 30, 2006, the Company may, at its option, redeem the Securities in whole at any time or in part from time to time, on any date prior to maturity, upon notice as set forth in Section 10.5, at the redemption price (expressed as percentages of the principal amount) set forth below if redeemed during the 12-month period beginning June 30 of the years indicated and ending June 29 of the following year:

During the Twelve Months Commencing	Redemption Price
2006	101.714%
2007	101.286%
2008	100.857%
2009	100.429%

(the “Optional Redemption Price”), plus any interest accrued but not paid prior to the Optional Redemption Date.

Section 10.3. Notice to Trustee. If the Company elects to redeem Securities pursuant to the redemption provisions of Section 10.1 or Section 10.2 hereof, it shall notify the Trustee at least 30 days prior to the Redemption Date of such intended Redemption Date, the principal amount of Securities to be redeemed, the CUSIP numbers of the Securities to be redeemed and,

in the case of a Provisional Redemption, of whether the Make-Whole Payment shall be paid by the Company (x) in cash, (y) by delivery of shares of Common Stock or (z) in a combination of cash and delivery of shares of Common Stock, in which case, the portion of the Make-Whole Payment that will be paid in cash and the portion that will be paid in shares of Common Stock.

Section 10.4. Selection of Securities to Be Redeemed. If fewer than all the Securities are to be redeemed, the Trustee shall select the particular Securities to be redeemed from the Outstanding Securities by a method that complies with the requirements of any exchange on which the Securities are listed, or, if the Securities are not listed on an exchange, on a pro rata basis or by lot or in accordance with any other method the Trustee considers fair and appropriate. Securities and portions thereof that the Trustee selects shall be in amounts equal to the minimum authorized denominations for Securities to be redeemed or any integral multiple thereof.

If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed to be the portion selected for redemption (provided, however, that the Holder of such Security so converted and deemed redeemed shall not be entitled to any additional interest payment as a result of such deemed redemption than such Holder would have otherwise been entitled to receive upon conversion of such Security). Securities which have been converted during a selection of Securities to be redeemed may be treated by the Trustee as Outstanding for the purpose of such selection.

The Trustee shall promptly notify the Company and the Registrar in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities which has been or is to be redeemed.

Section 10.5. Notice of Redemption. Notice of redemption shall be given in the manner provided in Section 15.2 hereof to the Holders of Securities to be redeemed. Such notice shall be given not less than 20 nor more than 60 days prior to the Redemption Date.

All notices of redemption shall state:

- (a) the Redemption Date;
- (b) the Redemption Price and interest accrued and unpaid to the Redemption Date, if any;
- (c) with respect to a Provisional Redemption, whether the Make-Whole Payment shall be paid by the Company (x) in cash, (y) by delivery of shares of Common Stock or (z) in a combination of cash and delivery of shares of Common Stock, in which case, the portion of the Make-Whole Payment that will be paid in cash and the portion that will be paid in shares of Common Stock;

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(d) if fewer than all the Outstanding Securities are to be redeemed, the aggregate principal amount of Securities to be redeemed and the aggregate principal amount of Securities which will be outstanding after such partial redemption;

(e) that on the Redemption Date the Redemption Price and interest accrued and unpaid to the Redemption Date, if any, will become due and payable upon each such Security to be redeemed, and that interest thereon shall cease to accrue on and after such date;

(f) the Conversion Price, the date on which the right to convert the principal of the Securities to be redeemed will terminate and the places where such Securities may be surrendered for conversion;

(g) the place or places where such Securities are to be surrendered for payment of the Redemption Price and accrued and unpaid interest, if any; and

(h) the CUSIP number of the Securities.

The notice given shall specify the last date on which exchanges or transfers of Securities may be made pursuant to Section 2.1 hereof, and shall specify the serial numbers of Securities and the portions thereof called for redemption.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name of and at the expense of the Company.

Section 10.6. Effect of Notice of Redemption. Notice of redemption having been given as provided in Section 10.5 hereof, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued and unpaid interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with such notice, such Security shall be paid by the Company at the Redemption Price; provided, however, the installments of interest on Securities whose Stated Maturity is prior to or on the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such on the relevant Record Date according to their terms and the provisions of Section 2.1 hereof.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal and premium, if any, shall, until paid, bear interest from the Redemption Date at 3% per annum.

Section 10.7. Deposit of Redemption Price. Prior to or on any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent an amount of money sufficient to pay the Redemption Price of all the Securities to be redeemed on that Redemption Date, other than any Securities called for redemption on that date which have been converted prior to the date of such deposit, and accrued and unpaid interest, if any, on such Securities.

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If any Security called for redemption is converted, any money deposited with the Trustee or with a Paying Agent or so segregated and held in trust for the redemption of such Security shall (subject to any right of the Holder of such Security or any Predecessor Security to receive interest as provided in the fourth to last paragraph of Section 2.1 hereof) be paid to the Company at the Company's request or, if then held by the Company, shall be discharged from such trust.

Section 10.8. Securities Redeemed in Part. Any Security which is to be redeemed only in part shall be surrendered at an office or agency of the Company designated for that purpose pursuant to Section 9.2 hereof (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or the Holder's attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

ARTICLE XI

REPURCHASE AT THE OPTION OF A HOLDER UPON A CHANGE OF CONTROL

Section 11.1. Repurchase Right. In the event that a Change of Control shall occur, each Holder shall have the right (the "Repurchase Right"), at the Holder's option, but subject to the provisions of Section 11.2 hereof, to require the Company to repurchase, and upon the exercise of such right the Company shall repurchase, all of such Holder's Securities not theretofore called for redemption, or any portion of the principal amount thereof that is equal to \$1,000 or any integral multiple thereof (provided that no single Security may be repurchased in part unless the portion of the principal amount of such Security to be Outstanding after such repurchase is equal to \$1,000 or integral multiples thereof), on the date (the "Repurchase Date") that is 45 days after the date of the Company Notice (as defined in Section 11.3) at a purchase price equal to 100% of the principal amount of the Securities to be repurchased (the "Repurchase Price"), plus interest accrued and unpaid to, but excluding, the Repurchase Date; provided, however, that installments of interest on Securities whose Stated Maturity is prior to or on the Repurchase Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such on the relevant Record Date according to their terms and the provisions of Section 2.1 hereof.

Subject to the fulfillment by the Company of the conditions set forth in Section 11.2 hereof, the Company may, at its option, elect to pay the Repurchase Price in Common Stock or in securities of the acquiring party in a Change of Control (the "Acquiring Party") for which the Common Stock is exchanged in connection with such Change of Control (the "Acquiror Stock"), or a combination thereof with cash, by delivering the number of shares of Common Stock or Acquiror Stock equal to (i) the Repurchase Price (less any amounts paid in cash) divided by (ii) 95% of the average of the Closing Prices per share of Common Stock or Acquiror Stock, as applicable, for the five consecutive Trading Days immediately preceding and including the third Trading Day prior to the Repurchase Date.

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Whenever in this Indenture (including Sections 2.2, 4.1(a) and 4.7 hereof) or Exhibit A annexed hereto there is a reference, in any context, to the principal of any Security as of any time, such reference shall be deemed to include reference to the Repurchase Price payable in respect to such Security to the extent that such Repurchase Price is, was or would be so payable at such time, and express mention of the Repurchase Price in any provision of this Indenture shall not be construed as excluding the Repurchase Price in those provisions of this Indenture when such express mention is not made; provided, however, that, for the purposes of Article 13 hereof, such reference shall be deemed to include reference to the Repurchase Price only to the extent the Repurchase Price is payable in cash.

Section 11.2. Conditions to the Company's Election to Pay the Repurchase Price in Common Stock or Acquiror Stock. (a) The shares of Common Stock or Acquiror Stock to be issued upon repurchase of Securities hereunder:

(i) shall not require registration under any federal securities law before such shares may be freely transferable without being subject to any transfer restrictions under the Securities Act upon repurchase or, if such registration is required, such registration shall be completed and shall become effective prior to the Repurchase Date; and

(ii) shall not require registration with, or approval of, any governmental authority under any state law or any other federal law before shares may be validly issued or delivered upon repurchase or if such registration is required or such approval must be obtained, such registration shall be completed or such approval shall be obtained prior to the Repurchase Date.

(b) The shares of Common Stock or Acquiror Stock to be listed upon repurchase of Securities hereunder are, or shall have been, approved for listing on the Nasdaq National Market or the New York Stock Exchange or listed on another national securities exchange, in any case, prior to the Repurchase Date.

(c) All shares of Common Stock or Acquiror Stock which may be issued upon repurchase of Securities will be issued out of the Company's or the Acquiring Party's, as the case may be, authorized but unissued Common Stock or Acquiror Stock, as applicable, and will, upon issue, be duly and validly issued and fully paid and nonassessable and free of any preemptive or similar rights.

(d) If any of the conditions set forth in clauses (a) through (c) of this Section 11.2 are not satisfied in accordance with the terms thereof, the Repurchase Price shall be paid by the Company only in cash.

Section 11.3. Notices; Method of Exercising Repurchase Right, Etc. (a) Unless the Company shall have theretofore called for redemption all of the Outstanding Securities, prior to or on the 30th day after the occurrence of a Change of Control, the Company, or, at the written request and expense of the Company prior to or on the 30th day after such occurrence, the Trustee, shall give to all Holders of Securities notice, in the manner provided in Section 15.2 hereof, of the occurrence of the Change of Control and of the Repurchase Right set forth herein

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arising as a result thereof (the "Company Notice"). The Company shall also deliver a copy of such notice of a Repurchase Right to the Trustee. Each notice of a Repurchase Right shall state:

- (i) the Repurchase Date;
- (ii) the date by which the Repurchase Right must be exercised;
- (iii) the Repurchase Price and accrued and unpaid interest, if any, and whether the Repurchase Price shall, at the option of the Company and in accordance with the provisions of this Article 11, be paid by the Company in (x) cash, (y) by delivery of shares of Common Stock or Acquiror Stock or (z) in a combination of cash and delivery of Common Stock or Acquiror Stock, as the case may be, in which case the portion of the Redemption Price that will be paid in cash and the portion that will be paid in shares of Common Stock or Acquiror Stock;
- (iv) a description of the procedure which a Holder must follow to exercise a Repurchase Right, and the place or places where such Securities, are to be surrendered for payment of the Repurchase Price and accrued and unpaid interest, if any;
- (v) that on the Repurchase Date the Repurchase Price and accrued and unpaid interest, if any, will become due and payable upon each such Security designated by the Holder to be repurchased, and that interest thereon shall cease to accrue on and after said date;
- (vi) the Conversion Rate then in effect, the date on which the right to convert the principal amount of the Securities to be repurchased will terminate and the place where such Securities may be surrendered for conversion, and
- (vii) the place or places where such Securities, together with the Option to Elect Repayment Upon a Change of Control certificate included in Exhibit A annexed hereto are to be delivered for payment of the Repurchase Price and accrued and unpaid interest, if any.

No failure of the Company to give the foregoing notices or defect therein shall limit any Holder's right to exercise a Repurchase Right or affect the validity of the proceedings for the repurchase of Securities.

If any of the foregoing provisions or other provisions of this Article 11 are inconsistent with applicable law, such law shall govern.

- (b) To exercise a Repurchase Right, a Holder shall deliver to the Trustee prior to or on the 30th day after the date of the Company Notice:
 - (i) written notice of the Holder's exercise of such right, which notice shall set forth the name of the Holder, the principal amount of the Securities to be repurchased (and, if any Security is to be repurchased in part, the serial number thereof, the portion of the principal amount thereof to be repurchased) and a statement that an election to exercise the Repurchase Right is being made thereby, and, in the event that all or any

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portion of the Repurchase Price shall be paid with shares of Common Stock or Acquiror Stock, the name or names (with addresses) in which the certificate or certificates for shares of Common Stock or Acquiror Stock, as the case may be, shall be issued, and

- (ii) the Securities with respect to which the Repurchase Right is being exercised.

Such written notice shall be irrevocable, except that the right of the Holder to convert the Securities with respect to which the Repurchase Right is being exercised shall continue until the close of business on the Business Day immediately preceding the Repurchase Date.

- (c) In the event a Repurchase Right shall be exercised in accordance with the terms hereof, the Company shall pay or cause to be paid to the Trustee the Repurchase Price in cash or shares of Common Stock or Acquiror Stock or the applicable combination thereof, as provided above, for payment to the Holder on the Repurchase Date or, if shares of Common Stock or Acquiror Stock are to be paid, as promptly after the Repurchase Date as practicable, together with accrued and unpaid interest to the Repurchase Date payable in cash with respect to the Securities as to which the Repurchase Right has been exercised; provided, however, that installments of interest that mature prior to or on the Repurchase Date shall be payable in cash to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Regular Record Date.

- (d) If any Security (or portion thereof) surrendered for repurchase shall not be so paid on the Repurchase Date, the principal amount of such Security (or portion thereof, as the case may be) shall, until paid, bear interest to the extent permitted by applicable law from the Repurchase Date at the rate of interest on the Security, and each Security shall remain convertible into Common Stock until the principal of such Security (or portion thereof, as the case may be) shall have been paid or duly provided for.

- (e) Any Security which is to be repurchased only in part shall be surrendered to the Trustee (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Security without service charge, a new Security or Securities, containing identical terms and conditions, each in an authorized denomination in aggregate principal amount equal to and in exchange for the unreurchased portion of the principal of the Security so surrendered.

- (f) Any issuance of shares of Common Stock or Acquiror Stock in respect of the Repurchase Price shall be deemed to have been effected immediately prior to the close of business on the Repurchase Date and the Person or Persons in whose name or names any certificate or certificates for shares of Common Stock or Acquiror Stock shall be issuable upon such repurchase shall be deemed to have become on the Repurchase Date the holder or holders of record of the shares represented thereby; provided, however, that any surrender for repurchase on a date when the stock transfer books of the Company or the Acquiring Party, as the case may be, shall be closed shall constitute the Person or Persons in whose name or names the certificate or certificates for such shares are to be issued as the record holder or holders thereof for all

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purposes at the opening of business on the next succeeding day on which such stock transfer books are open. No payment or adjustment shall be made for dividends or distributions on any Common Stock or Acquiror Stock issued upon repurchase of any Security declared prior to the Repurchase Date.

(g) No fractions of shares of Common Stock or Acquiror Stock shall be issued upon repurchase of any Security or Securities. If more than one Security shall be repurchased from the same Holder and the Repurchase Price shall be payable in shares of Common Stock or Acquiror Stock, the number of full shares which shall be issued upon such repurchase shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof) to be so repurchased. Instead of any fractional share of Common Stock or Acquiror Stock which would otherwise be issued on the repurchase of any Security or Securities (or specified portions thereof), the Company shall pay a cash adjustment in respect of such fraction (calculated to the nearest one-100th of a share) in an amount equal to the same fraction of the Quoted Price of the Common Stock or Acquiror Stock as of the Trading Day preceding the Repurchase Date.

(h) Any issuance and delivery of certificates for shares of Common Stock or Acquiror Stock on repurchase of Securities shall be made without charge to the Holder of Securities being repurchased for such certificates or for any tax or duty in respect of the issuance or delivery of such certificates or the Securities represented thereby; provided, however, that the Company shall not be required to pay any tax or duty which may be payable in respect of (i) income of the Holder or (ii) any transfer involved in the issuance or delivery of certificates for shares of Common Stock in a name other than that of the Holder of the Securities being repurchased, and no such issuance or delivery shall be made unless the Persons requesting such issuance or delivery has paid to the Company the amount of any such tax or duty or has established, to the satisfaction of the Company, that such tax or duty has been paid.

(i) All Securities delivered for repurchase shall be delivered to the Trustee to be canceled at the direction of the Trustee, which shall dispose of the same as provided in Section 2.15 hereof.

ARTICLE XII

CONVERSION OF SECURITIES

Section 12.1. Conversion Right and Conversion Price. Subject to and upon compliance with the provisions of this Article, at the option of the Holder thereof, any Security or any portion of the principal amount thereof which is \$1,000 or an integral multiple of \$1,000 may be converted at the principal amount thereof, or of such portion thereof, into duly authorized, fully paid and nonassessable shares of Common Stock, at the Conversion Price, determined as hereinafter provided, in effect at the time of conversion. Such conversion right shall expire at the close of business on June 30, 2010.

In case a Security or portion thereof is called for redemption, such conversion right in respect of the Security or the portion so called, shall expire at the close of business on the second Business Day preceding the Redemption Date, unless the Company defaults in making the

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payment due upon redemption. In the case of a Change of Control for which the Holder exercises its Repurchase Right with respect to a Security or portion thereof, such conversion right in respect of the Security or portion thereof shall expire at the close of business on the Business Day immediately preceding the Repurchase Date.

The price at which shares of Common Stock shall be delivered upon conversion (the "Conversion Price") shall be initially equal to \$11.35 per share of Common Stock. The Conversion Price shall be adjusted in certain instances as provided in paragraphs (a), (b), (c), (d), (e), (f), (h) and (i) of Section 12.4 hereof.

Section 12.2. Exercise of Conversion Right. To exercise the conversion right, the Holder of any Security to be converted shall surrender such Security duly endorsed or assigned to the Company or in blank, at the office of any Conversion Agent, accompanied by a duly signed conversion notice substantially in the form attached to the Security to the Company stating that the Holder elects to convert such Security or, if less than the entire principal amount thereof is to be converted, the portion thereof to be converted.

Securities surrendered for conversion during the period from the close of business on any Regular Record Date to the opening of business on the next succeeding Interest Payment Date (except in the case of any Security whose Maturity is prior to such Interest Payment Date) shall be accompanied by payment in New York Clearing House funds or other funds acceptable to the Company of an amount equal to the interest to be received on such Interest Payment Date on the principal amount of Securities being surrendered for conversion.

Securities shall be deemed to have been converted immediately prior to the close of business on the day of surrender of such Securities for conversion in accordance with the foregoing provisions, and at such time the rights of the Holders of such Securities as Holders shall cease, and the Person or Persons entitled to receive the Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such Common Stock at such time. As promptly as practicable on or after the conversion date, the Company shall cause to be issued and delivered to such Conversion Agent a certificate or certificates for the number of full shares of Common Stock issuable upon conversion, together with payment in lieu of any fraction of a share as provided in Section 12.3 hereof.

In the case of any Security which is converted in part only, upon such conversion the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Security or Securities of authorized denominations in aggregate principal amount equal to the unconverted portion of the principal amount of such Securities.

If shares of Common Stock to be issued upon conversion of a Restricted Security, or Securities to be issued upon conversion of a Restricted Security in part only, are to be registered in a name other than that of the Holder of such Restricted Security, such Holder must deliver to the Conversion Agent a certificate in substantially the form set forth in the form of Security set forth in Exhibit A annexed hereto, dated the date of surrender of such Restricted Security and signed by such Holder, as to compliance with the restrictions on transfer applicable to such Restricted Security. Neither the Trustee nor any Conversion Agent, Registrar or Transfer Agent shall be required to register in a name other than that of the Holder shares of Common Stock or

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Securities issued upon conversion of any such Restricted Security not so accompanied by a properly completed certificate.

The Company hereby initially appoints the Trustee as the Conversion Agent.

Section 12.3. Fractions of Shares. No fractional shares of Common Stock shall be issued upon conversion of any Security or Securities. If more than one Security shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issued upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof) so surrendered. Instead of any fractional share of Common Stock which would otherwise be issued upon conversion of any Security or Securities (or specified portions thereof), the Company shall pay a cash adjustment in respect of such fraction (calculated to the nearest one-100th of a share) in an amount equal to the same fraction of the Quoted Price of the Common Stock as of the Trading Day preceding the date of conversion.

Section 12.4. Adjustment of Conversion Price. The Conversion Price shall be subject to adjustments, calculated by the Company, from time to time as follows:

(a) In case the Company shall hereafter pay a dividend or make a distribution to all holders of the outstanding Common Stock in shares of Common Stock, the Conversion Price in effect at the opening of business on the date following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced by multiplying such Conversion Price by a fraction:

(i) the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the Record Date (as defined in Section 12.4(g)) fixed for such determination, and

(ii) the denominator of which shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution.

Such reduction shall become effective immediately after the opening of business on the day following the Record Date. If any dividend or distribution of the type described in this Section 12.4(a) is declared but not so paid or made, the Conversion Price shall again be adjusted to the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(b) In case the outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately reduced, and conversely, in case outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately increased, such reduction or increase, as the case may be, to become effective immediately after the

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opening of business on the day following the day upon which such subdivision or combination becomes effective.

(c) In case the Company shall issue rights or warrants (other than any rights or warrants referred to in Section 12.4(d)) to all holders of its outstanding shares of Common Stock entitling them for a period of not more than 60 days to subscribe for or purchase shares of Common Stock (or securities convertible into Common Stock) at a price per share (or having a conversion price per share) less than the Current Market Price (as defined in Section 12.4(g)) on the Record Date fixed for the determination of stockholders entitled to receive such rights or warrants, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect at the opening of business on the date after such Record Date by a fraction:

(i) the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the Record Date plus the number of shares which the aggregate offering price of the total number of shares so offered for subscription or purchase (or the aggregate conversion price of the convertible securities so offered) would purchase at such Current Market Price, and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding on the close of business on the Record Date plus the total number of additional shares of Common Stock so offered for subscription or purchase (or into which the convertible securities so offered are convertible).

Such adjustment shall become effective immediately after the opening of business on the day following the Record Date fixed for determination of stockholders entitled to receive such rights or warrants. To the extent that shares of Common Stock (or securities convertible into Common Stock) are not delivered pursuant to such rights or warrants, upon the expiration or termination of such rights or warrants the Conversion Price shall be readjusted to the Conversion Price which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock (or securities convertible into Common Stock) actually delivered. In the event that such rights or warrants are not so issued, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Current Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants, the value of such consideration if other than cash, to be determined by the Board of Directors.

(d) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of capital stock of the Company (other than any dividends or distributions to which Section 12.4(a) applies) or evidences of its indebtedness, cash or other assets, including securities, but excluding (1) any rights or warrants referred to in Section 12.4(c), (2) any stock, securities or other property or assets

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(including cash) distributed in connection with a reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance to which Section 12.11 hereof applies and (3) dividends and distributions paid exclusively in cash (the securities described in foregoing clauses (1), (2) and (3) hereinafter in this Section 12.4(d) called the "securities"), then, in each such case, subject to the second succeeding paragraph of this Section 12.4(d), the Conversion Price shall be reduced so that the same shall be equal to the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on the Record Date (as defined in Section 12.4(g)) with respect to such distribution by a fraction:

- (i) the numerator of which shall be the Current Market Price (determined as provided in Section 12.4(g)) on such date less the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution) on such date of the portion of the securities so distributed applicable to one share of Common Stock (determined on the basis of the number of shares of the Common Stock outstanding on the Record Date), and
- (ii) the denominator of which shall be such Current Market Price.

Such reduction shall become effective immediately prior to the opening of business on the day following the Record Date. However, in the event that the then fair market value (as so determined) of the portion of the securities so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion of a Security (or any portion thereof) the amount of securities such Holder would have received had such Holder converted such Security (or portion thereof) immediately prior to such Record Date. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

If the Board of Directors determines the fair market value of any distribution for purposes of this Section 12.4(d) by reference to the actual or when issued trading market for any securities comprising all or part of such distribution, it must in doing so consider the prices in such market over the same period (the "Reference Period") used in computing the Current Market Price pursuant to Section 12.4(g) to the extent possible, unless the Board of Directors in a Board Resolution determines in good faith that determining the fair market value during the Reference Period would not be in the best interest of the Holder.

Rights or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's capital stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("Trigger Event"):

- (i) are deemed to be transferred with such shares of Common Stock;

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- (ii) are not exercisable; and

- (iii) are also issued in respect of future issuances of Common Stock,

shall be deemed not to have been distributed for purposes of this Section 12.4(d) (and no adjustment to the Conversion Price under this Section 12.4(d) will be required) until the occurrence of the earliest Trigger Event. If such right or warrant is subject to subsequent events, upon the occurrence of which such right or warrant shall become exercisable to purchase different securities, evidences of indebtedness or other assets or entitle the holder to purchase a different number or amount of the foregoing or to purchase any of the foregoing at a different purchase price, then the occurrence of each such event shall be deemed to be the date of issuance and record date with respect to a new right or warrant (and a termination or expiration of the existing right or warrant without exercise by the holder thereof). In addition, 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 the preceding sentence) with respect thereto, that resulted in an adjustment to the Conversion Price under this Section 12.4(d):

- (i) in the case of any such rights or warrants which shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Price 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 cash distribution, equal to the per share redemption or repurchase price received by a holder of Common Stock with respect to such rights or warrant (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
- (ii) in the case of such rights or warrants all of which shall have expired or been terminated without exercise, the Conversion Price shall be readjusted as if such rights and warrants had never been issued.

For purposes of this Section 12.4(d) and Sections 12.4(a), 12.4(b) and 12.4(c), any dividend or distribution to which this Section 12.4(d) is applicable that also includes shares of Common Stock, a subdivision or combination of Common Stock to which Section 12.4(b) applies, or rights or warrants to subscribe for or purchase shares of Common Stock to which Section 12.4(c) applies (or any combination thereof), shall be deemed instead to be:

- (i) a dividend or distribution of the evidences of indebtedness, assets, shares of capital stock, rights or warrants other than such shares of Common Stock, such subdivision or combination or such rights or warrants to which Sections 12.4(a), 12.4(b) and 12.4(c) apply, respectively (and any Conversion Price reduction required by this Section 12.4(d) with respect to such dividend or distribution shall then be made), immediately followed by
- (ii) a dividend or distribution of such shares of Common Stock, such subdivision or combination or such rights or warrants (and any further Conversion

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Price reduction required by Sections 12.4(a), 12.4(b) and 12.4(c) with respect to such dividend or distribution shall then be made), except:

(A) the Record Date of such dividend or distribution shall be substituted as (x) “the date fixed for the determination of stockholders entitled to receive such dividend or other distribution,” “Record Date fixed for such determinations” and “Record Date” within the meaning of Section 12.4(a), (y) “the day upon which such subdivision becomes effective” and “the day upon which such combination becomes effective” within the meaning of Section 12.4(b), and (z) as “the date fixed for the determination of stockholders entitled to receive such rights or warrants,” “the Record Date fixed for the determination of the stockholders entitled to receive such rights or warrants” and such “Record Date” within the meaning of Section 12.4(c), and

(B) any shares of Common Stock included in such dividend or distribution shall not be deemed “outstanding at the close of business on the date fixed for such determination” within the meaning of Section 12.4(a) and any reduction or increase in the number of shares of Common Stock resulting from such subdivision or combination shall be disregarded in connection with such dividend or distribution.

(e) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock cash (excluding any cash that is distributed upon a reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance to which Section 12.11 hereof applies or as part of a distribution referred to in Section 12.4(d) hereof), in an aggregate amount that, combined together with:

(i) the aggregate amount of any other such distributions to all holders of Common Stock made exclusively in cash within the 12 months preceding the date of payment of such distribution, and in respect of which no adjustment pursuant to this Section 12.4(e) has been made, and

(ii) the aggregate of any cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution) of consideration payable in respect of any tender offer by the Company or any of its subsidiaries for all or any portion of the Common Stock concluded within the 12 months preceding the date of such distribution, and in respect of which no adjustment pursuant to Section 12.4(f) hereof has been made,

exceeds (A) 1% in the case of any such dividend or other distribution made prior to June 30, 2006 or (B) 10% in the case of any such dividend or distribution made on or after June 30, 2006, of the product of the Current Market Price (determined as provided in Section 12.4(g)) on the Record Date with respect to such distribution times the number of shares of Common Stock outstanding on such date, then and in each such case,

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immediately after the close of business on such date, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on such Record Date by a fraction:

(i) the numerator of which shall be equal to the Current Market Price on the Record Date less an amount equal to the quotient of (x) the excess of such combined amount over such 1% or 10%, as the case may be, and (y) the number of shares of Common Stock outstanding on the Record Date, and

(ii) the denominator of which shall be equal to the Current Market Price on such date.

However, in the event that the then fair market value (as so determined) of the portion of the securities so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion of a Security (or any portion thereof) the amount of cash such Holder would have received had such Holder converted such Security (or portion thereof) immediately prior to such Record Date. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(f) In case a tender offer made by the Company or any of its subsidiaries for all or any portion of the Common Stock shall expire and such tender offer (as amended upon the expiration thereof) shall require the payment to stockholders (based on the acceptance (up to any maximum specified in the terms of the tender offer) of Purchased Shares (as defined below)) of an aggregate consideration having a fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution) that combined together with:

(i) the aggregate of the cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution), as of the expiration of such tender offer, of consideration payable in respect of any other tender offers, by the Company or any of its subsidiaries for all or any portion of the Common Stock expiring within the 12 months preceding the expiration of such tender offer and in respect of which no adjustment pursuant to this Section 12.4(f) has been made, and

(ii) the aggregate amount of any distributions to all holders of the Company’s Common Stock made exclusively in cash within 12 months preceding the expiration of such tender offer and in respect of which no adjustment pursuant to Section 12.4(e) has been made,

exceeds 10% of the product of the Current Market Price (determined as provided in Section 12.4(g)) as of the last time (the “Expiration Time”) tenders could have been made

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pursuant to such tender offer (as it may be amended) times the number of shares of Common Stock outstanding (including any tendered shares) on the Expiration Time, then, and in each such case, immediately prior to the opening of business on the day after the date of the Expiration Time, the

Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to close of business on the date of the Expiration Time by a fraction:

(A) the numerator of which shall be the number of shares of Common Stock outstanding (including any tendered shares) at the Expiration Time multiplied by the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time, and

(B) the denominator shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender offer) of all shares validly tendered and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) on the Expiration Time and the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time.

Such reduction (if any) shall become effective immediately prior to the opening of business on the day following the Expiration Time. In the event that the Company is obligated to purchase shares pursuant to any such tender offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such tender offer had not been made. If the application of this Section 12.4(f) to any tender offer would result in an increase in the Conversion Price, no adjustment shall be made for such tender offer under this Section 12.4(f).

(g) For purposes of this Section 12.4, the following terms shall have the meanings indicated:

(i) "Current Market Price" shall mean the average of the daily Closing Prices per share of Common Stock for the ten consecutive Trading Days immediately prior to the date in question; provided, however, that if:

(A) the "ex" date (as hereinafter defined) for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 12.4(a), (b), (c), (d), (e) or (f) occurs during such ten consecutive Trading Days, the Closing Price for each Trading Day prior to the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the same

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fraction by which the Conversion Price is so required to be adjusted as a result of such other event;

(B) the "ex" date for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 12.4(a), (b), (c), (d), (e) or (f) occurs on or after the "ex" date for the issuance or distribution requiring such computation and prior to the day in question, the Closing Price for each Trading Day on and after the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the reciprocal of the fraction by which the Conversion Price is so required to be adjusted as a result of such other event; and

(C) the "ex" date for the issuance or distribution requiring such computation is prior to the day in question, after taking into account any adjustment required pursuant to clause (i) or (ii) of this proviso, the Closing Price for each Trading Day on or after such "ex" date shall be adjusted by adding thereto the amount of any cash and the fair market value (as determined by the Board of Directors in a manner consistent with any determination of such value for purposes of Section 12.4(d) or (f), whose determination shall be conclusive and set forth in a Board Resolution) of the evidences of indebtedness, shares of capital stock or assets being distributed applicable to one share of Common Stock as of the close of business on the day before such "ex" date.

For purposes of any computation under Section 12.4(f), the Current Market Price of the Common Stock on any date shall be deemed to be the average of the daily Closing Prices per share of Common Stock for such day and the next two succeeding Trading Days; provided, however, that if the "ex" date for any event (other than the tender offer requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 12.4(a), (b), (c), (d), (e) or (f) occurs on or after the Expiration Time for the tender or exchange offer requiring such computation and prior to the day in question, the Closing Price for each Trading Day on and after the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the reciprocal of the fraction by which the Conversion Price is so required to be adjusted as a result of such other event. For purposes of this paragraph, the term "ex" date, when used:

(A) with respect to any issuance or distribution, means the first date on which the Common Stock trades regular way on the relevant exchange or in the relevant market from which the Closing Price was obtained without the right to receive such issuance or distribution;

(B) with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades regular way on such exchange or in such market after the time at which such subdivision or combination becomes effective, and

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(C) with respect to any tender or exchange offer, means the first date on which the Common Stock trades regular way on such exchange or in such market after the Expiration Time of such offer.

Notwithstanding the foregoing, whenever successive adjustments to the Conversion Price are called for pursuant to this Section 12.4, such adjustments shall be made to the Current Market Price as may be necessary or appropriate to effectuate the intent of this Section 12.4 and to avoid unjust or inequitable results as determined in good faith by the Board of Directors.

(ii) “fair market value” shall mean the amount which a willing buyer would pay a willing seller in an arm’s length transaction.

(iii) “Record Date” shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(h) The Company may make such reductions in the Conversion Price, in addition to those required by Sections 12.4(a), (b), (c), (d), (e) or (f), as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

To the extent permitted by applicable law, the Company from time to time may reduce the Conversion Price by any amount for any period of time if the period is at least 20 days and the reduction is irrevocable during the period and the Board of Directors determines in good faith that such reduction would be in the best interests of the Company, which determination shall be conclusive and set forth in a Board Resolution; provided however, the Company may not voluntarily reduce the Conversion Price if such reduction shall result in the issuance, upon exchange of all Securities, of a number of shares of Common Stock in excess of the thresholds requiring stockholder approval under the rules of the Nasdaq National Market or such other United States securities exchange on which the Common Stock is traded, unless the Company shall have, prior to such reduction in the Conversion Price, obtained any such required stockholder approval. Whenever the Conversion Price is reduced pursuant to the preceding sentence, the Company shall mail to the Trustee and each Holder at the address of such Holder as it appears in the Register a notice of the reduction at least 15 days prior to the date the reduced Conversion Price takes effect, and such notice shall state the reduced Conversion Price and the period during which it will be in effect.

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(i) No adjustment in the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% in such price; provided, however, that any adjustments which by reason of this Section 12.4(i) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article 12 shall be made by the Company and shall be made to the nearest cent or to the nearest one hundredth of a share, as the case may be. No adjustment need be made for a change in the par value or no par value of the Common Stock.

(j) In any case in which this Section 12.4 provides that an adjustment shall become effective immediately after a Record Date for an event, the Company may defer until the occurrence of such event (i) issuing to the Holder of any Security converted after such Record Date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (ii) paying to such holder any amount in cash in lieu of any fraction pursuant to Section 12.3 hereof.

(k) For purposes of this Section 12.4, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

(l) If the distribution date for the rights provided in the Company’s rights agreement, if any, occurs prior to the date a Security is converted, the Holder of the Security who converts such Security after the distribution date is not entitled to receive the rights that would otherwise be attached (but for the date of conversion) to the shares of Common Stock received upon such conversion; provided, however, that an adjustment shall be made to the Conversion Price pursuant to clause 12.4(b) as if the rights were being distributed to the common stockholders of the Company immediately prior to such conversion. If such an adjustment is made and the rights are later redeemed, invalidated or terminated, then a corresponding reversing adjustment shall be made to the Conversion Price, on an equitable basis, to take account of such event.

Section 12.5. Notice of Adjustments of Conversion Price. Whenever the Conversion Price is adjusted as herein provided (other than in the case of an adjustment pursuant to the second paragraph of Section 12.4(h) for which the notice required by such paragraph has been provided), the Company shall promptly file with the Trustee and any Conversion Agent other than the Trustee an Officers’ Certificate setting forth the adjusted Conversion Price and showing in reasonable detail the facts upon which such adjustment is based. Promptly after delivery of such Officers’ Certificate, the Company shall prepare a notice stating that the Conversion Price has been adjusted and setting forth the adjusted Conversion Price and the date on which each adjustment becomes effective, and shall mail such notice to each Holder at the address of such Holder as it appears in the Register within 20 days of the effective date of such adjustment. Failure to deliver such notice shall not effect the legality or validity of any such adjustment.

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Section 12.6. Notice Prior to Certain Actions. In case at any time after the date hereof:

(a) the Company shall declare a dividend (or any other distribution) on its Common Stock payable otherwise than in cash out of its capital surplus or its consolidated retained earnings;

(b) the Company shall authorize the granting to the holders of its Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class (or of securities convertible into shares of capital stock of any class) or of any other rights;

(c) there shall occur any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, a change in par value, a change from par value to no par value or a change from no par value to par value), or any

merger, consolidation, statutory share exchange or combination to which the Company is a party and for which approval of any shareholders of the Company is required, or the sale, transfer or conveyance of all or substantially all of the assets of the Company; or

(d) there shall occur the voluntary or involuntary dissolution, liquidation or winding up of the Company;

the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of securities pursuant to Section 9.2 hereof, and shall cause to be provided to the Trustee and all Holders in accordance with Section 15.2 hereof, at least 20 days (or 10 days in any case specified in clause (1) or (2) above) prior to the applicable record or effective date hereinafter specified, a notice stating:

(a) the date on which a record is to be taken for the purpose of such dividend, distribution, rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights or warrants are to be determined, or

(b) the date on which such reclassification, merger, consolidation, statutory share exchange, combination, sale, transfer, conveyance, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, merger, consolidation, statutory share exchange, sale, transfer, dissolution, liquidation or winding up.

Neither the failure to give such notice nor any defect therein shall affect the legality or validity of the proceedings or actions described in clauses (1) through (4) of this Section 12.6.

Section 12.7. Company to Reserve Common Stock. The Company shall at all times use its best efforts to reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, for the purpose of effecting the conversion of Securities, the full

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number of shares of fully paid and nonassessable Common Stock then issuable upon the conversion of all Outstanding Securities.

Section 12.8. Taxes on Conversions. Except as provided in the next sentence, the Company will pay any and all taxes (other than taxes on income) and duties that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Securities pursuant hereto. A Holder delivering a Security for conversion shall be liable for and will be required to pay any tax or duty which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that of the Holder of the Security or Securities to be converted, and no such issue or delivery shall be made unless the Person requesting such issue has paid to the Company the amount of any such tax or duty, or has established to the satisfaction of the Company that such tax or duty has been paid.

Section 12.9. Covenant as to Common Stock. The Company covenants that all shares of Common Stock which may be issued upon conversion of Securities will upon issue be fully paid and nonassessable and, except as provided in Section 12.8, the Company will pay all taxes, liens and charges with respect to the issue thereof.

Section 12.10. Cancellation of Converted Securities. All Securities delivered for conversion shall be delivered to the Trustee to be canceled by or at the direction of the Trustee, which shall dispose of the same as provided in Section 2.9.

Section 12.11. Effect of Reclassification, Consolidation, Merger or Sale. If any of following events occur, namely:

(a) any reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination),

(b) any merger, consolidation, statutory share exchange or combination of the Company with another corporation as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock or

(c) any sale or conveyance of all or substantially all of the properties and assets of the Company to any other corporation as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock,

the Company or the successor or purchasing corporation, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the TIA as in force at the date of execution of such supplemental indenture if such supplemental indenture is then required to so comply) providing that such Security shall be convertible into the kind and amount of shares of stock and other securities or property or assets (including cash) which such Holder would have been entitled to receive upon such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance had such Securities been converted into Common Stock immediately prior to such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance assuming such holder of Common Stock did not

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exercise its rights of election, if any, as to the kind or amount of securities, cash or other property receivable upon such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance (provided that, if the kind or amount of securities, cash or other property receivable upon such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance is not the same for each share of Common Stock in respect of which such rights of election shall not have been exercised ("Non-Electing Share"), then for the purposes of this Section 12.11 the kind and amount of securities, cash or other property receivable upon such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance for each Non-Electing Share shall be deemed to be the kind and amount so receivable per share by a plurality of the Non-Electing Shares). Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 12. If, in the case of any such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or

conveyance, the stock or other securities and assets receivable thereupon by a holder of shares of Common Stock includes shares of stock or other securities and assets of a corporation other than the successor or purchasing corporation, as the case may be, in such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance, then such supplemental indenture shall also be executed by such other corporation and shall contain such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including to the extent practicable the provisions providing for the Repurchase Rights set forth in Article 11 hereof.

The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder, at the address of such Holder as it appears on the Register, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

The above provisions of this Section shall similarly apply to successive reclassifications, mergers, consolidations, statutory share exchanges, combinations, sales and conveyances.

If this Section 12.11 applies to any event or occurrence, Section 12.4 hereof shall not apply.

Section 12.12. Responsibility of Trustee for Conversion Provisions. The Trustee, subject to the provisions of Section 5.1 hereof, and any Conversion Agent shall not at any time be under any duty or responsibility to any Holder of Securities to determine whether any facts exist which may require any adjustment of the Conversion Price, or with respect to the nature or intent of any such adjustments when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. Neither the Trustee, subject to the provisions of Section 5.1 hereof, nor any Conversion Agent shall be accountable with respect to the validity or value (of the kind or amount) of any Common Stock, or of any other securities or property, which may at any time be issued or delivered upon the conversion of any Security; and it or they do not make any representation with respect thereto. Neither the Trustee, subject to the provisions of Section 5.1 hereof, nor any Conversion Agent shall be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any shares of stock or share certificates or other securities or property upon the surrender of any Security for the purpose of conversion; and the Trustee, subject to the provisions of

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Section 5.1 hereof, and any Conversion Agent shall not be responsible or liable for any failure of the Company to comply with any of the covenants of the Company contained in this Article.

ARTICLE XIII

SUBORDINATION

Section 13.1. Securities Subordinated to Senior Debt. The Company covenants and agrees, and each Holder of Securities, by such Holder's acceptance thereof, likewise covenants and agrees, that the Indebtedness represented by the Securities and the payment of the principal of and premium, if any, and interest (including Liquidated Damages, if any) on each and all of the Securities is hereby expressly subordinated and junior, to the extent and in the manner set forth and as set forth in this Section 13.1, in right of payment to the prior payment in full of all Senior Debt.

(a) Subject to the rights of the Holders of the Securities pursuant to the Pledge Agreement, in the event of any distribution of assets of the Company upon any dissolution, winding up, liquidation or reorganization of the Company, whether in bankruptcy, insolvency, reorganization or receivership proceedings or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Company or otherwise, the holders of all Senior Debt shall first be entitled to receive payment of the full amount due thereon in respect of all such Senior Debt and all other amounts due or provision shall be made for such amount in cash, or other payments satisfactory to the holders of Senior Debt, before the Holders of any of the Securities are entitled to receive any payment or distribution of any character, whether in cash, securities or other property, on account of the principal of or premium, if any, or interest (including Liquidated Damages, if any) on the Indebtedness evidenced by the Securities.

(b) In the event of any acceleration of Maturity of the Securities because of an Event of Default, unless the full amount due in respect of all Senior Debt is paid in cash or other form of payment satisfactory to the holders of Senior Debt, no payment shall be made (except, in each case, for Permitted Payments) by the Company with respect to the principal of, premium, if any, or interest (including Liquidated Damages, if any) on the Securities or to acquire any of the Securities (including any redemption, conversion or cash repurchase pursuant to the exercise of the Repurchase Right), and the Company shall give prompt written notice of such acceleration to such holders of Senior Debt.

(c) In the event of and during the continuance of any default in payment of the principal of or premium, if any, or interest on, rent or other payment obligation in respect of, any Senior Debt, unless all such payments due in respect of such Senior Debt have been paid in full in cash or other payments satisfactory to the holders of Senior Debt, no payment shall be made (except, in each case, for Permitted Payments) by the Company with respect to the principal of, premium, if any, or interest (including Liquidated Damages, if any) on the Securities or to acquire any of the Securities (including any redemption, conversion or cash repurchase pursuant to the exercise of the Repurchase Right). The Company shall give prompt written notice to the Trustee of any default

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under any Senior Debt or under any agreement pursuant to which Senior Debt may have been issued.

(d) During the continuance of any event of default with respect to any Designated Senior Debt, as such event of default is defined under any such Designated Senior Debt or in any agreement pursuant to which any Designated Senior Debt has been issued (other than a default in payment of the principal of or premium, if any, or interest on, rent or other payment obligation in respect of any Designated Senior Debt), permitting the holder or holders of such Designated Senior Debt to accelerate the maturity thereof (or in the case of any lease, permitting the landlord either to terminate the lease or to require the Company to make an irrevocable offer to terminate the lease following an event of default thereunder), no payment shall be made (except, in each case, for Permitted Payments) by the Company, directly or indirectly, with respect to principal of, premium, if any, or interest (including Liquidated Damages, if any) on the Securities for 179 days following notice in writing (a "Payment Blockage Notice") to the Company, from any holder or holders of such Designated Senior Debt or their representative or representatives or the trustee or trustees under

any indenture or under which any instrument evidencing any such Designated Senior Debt may have been issued, that such an event of default has occurred and is continuing, unless such event of default has been cured or waived or such Designated Senior Debt has been paid in full; provided, however, if the maturity of such Designated Senior Debt is accelerated (or in the case of any lease, as a result of such event of default, the landlord under the lease has given the Company notice of its intention to terminate the lease or to require the Company to make an irrevocable offer to terminate the lease), no payment may be made (except, in each case, for Permitted Payments) on the Securities until such Designated Senior Debt has been paid in full in cash or other payment satisfactory to the holders of such Designated Senior Debt or such acceleration (or termination, in the case of a lease) has been cured or waived.

For purposes of this Section 13.1(d), such Payment Blockage Notice shall be deemed to include notice of all other events of default under such indenture or instrument which are continuing at the time of the event of default specified in such Payment Blockage Notice. The provisions of this Section 13.1(d) shall apply only to one such Payment Blockage Notice given in any period of 365 days with respect to any issue of Designated Senior Debt, and no such continuing event of default that existed or was continuing on the date of delivery of any Payment Blockage Notice shall be, or shall be made, the basis for a subsequent Payment Blockage Notice.

(e) In the event that, notwithstanding the foregoing provisions of Sections 13.1(a), 13.1(b), 13.1(c) and 13.1(d), any payment (except for any Permitted Payment on account of principal, premium, if any, or interest (including Liquidated Damages, if any) on the Securities shall be made by or on behalf of the Company and received by the Trustee, by any Holder or by any Paying Agent (or, if the Company is acting as its own Paying Agent, money for any such payment shall be segregated and held in trust):

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(i) after the occurrence of an event specified in Section 13.1(a) or 13.1(b), then, unless all Senior Debt is paid in full in cash, or provision shall be made therefor;

(ii) after the happening of an event of default of the type specified in Section 13.1(c) above, then, unless the amount of such Senior Debt then due shall have been paid in full, or provision made therefor or such event of default shall have been cured or waived; or

(iii) after the happening of an event of default of the type specified in Section 13.1(d) above and delivery of a Payment Blockage Notice, then, unless such event of default shall have been cured or waived or the 179-day period specified in Section 13.1(d) shall have expired,

such payment (subject, in each case, to the provisions of Section 13.7 hereof) shall be held in trust for the benefit of, and shall be immediately paid over to, the holders of Designated Senior Debt (unless an event described in Section 13.1(a), (b) or (c) has occurred, in which case the payment shall be held in trust for the benefit of, and shall be immediately paid over to all holders of Senior Debt) or their representative or representatives or the trustee or trustees under any indenture under which any instruments evidencing any of the Designated Senior Debt or Senior Debt, as the case may be, may have been issued, as their interests may appear.

Section 13.2. Subrogation. Subject to the payment in full of all Senior Debt (and except for Permitted Payments) to which the Indebtedness evidenced by the Securities is in the circumstances subordinated as provided in Section 13.1 hereof, the Holders of the Securities shall be subrogated to the rights of the holders of such Senior Debt to receive payments or distributions of cash, property or securities of the Company applicable to such Senior Debt until all amounts owing on the Securities shall be paid in full, and, as between the Company, its creditors other than holders of such Senior Debt, and the Holders of the Securities, no such payment or distribution made to the holders of Senior Debt by virtue of this Article which otherwise would have been made to the holders of the Securities shall be deemed to be a payment by the Company on account of such Senior Debt, provided that the provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of Senior Debt, on the other hand.

Section 13.3. Obligation of the Company is Absolute and Unconditional. Nothing contained in this Article or elsewhere in this Indenture or in the Securities is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Debt, and the Holders of the Securities, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Securities the principal of and premium, if any, and interest (including Liquidated Damages, if any) on the Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders of the Securities and creditors of the Company other than the holders of Senior Debt, nor shall anything contained herein or therein prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture,

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subject to the rights, if any, under this Article of the holders of Senior Debt in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

Section 13.4. Maturity of or Default on Senior Debt. Upon the maturity of any Senior Debt by lapse of time, acceleration or otherwise, all principal of or premium, if any, or interest on, rent or other payment obligations in respect of all such matured Senior Debt shall first be paid in full, or such payment shall have been duly provided for, before any payment on account of principal, or premium, if any, or interest (including Liquidated Damages, if any) is made upon the Securities (other than with respect to Permitted Payments).

Section 13.5. Payments on Securities Permitted. Except as expressly provided in this Article, nothing contained in this Article shall affect the obligation of the Company to make, or prevent the Company from making, payments of the principal of, or premium, if any, or interest (including Liquidated Damages, if any) on the Securities in accordance with the provisions hereof and thereof, or shall prevent the Trustee or any Paying Agent from applying any moneys deposited with it hereunder to the payment of the principal of, or premium, if any, or interest (including Liquidated Damages, if any) on the Securities.

Section 13.6. Effectuation of Subordination by Trustee. Each Holder of Securities, by such Holder's acceptance thereof, authorizes and directs the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints

the Trustee such Holder's attorney-in-fact for any and all such purposes.

Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee and the Holders of the Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which any such dissolution, winding up, liquidation or reorganization proceeding affecting the affairs of the Company is pending or upon a certificate of the trustee in bankruptcy, receiver, assignee for the benefit of creditors, liquidating trustee or agent or other Person making any payment or distribution, delivered to the Trustee or to the Holders of the Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, and as to other facts pertinent to the right of such Persons under this Article, and if such evidence is not furnished, the Trustee may defer any payment to such Persons pending judicial determination as to the right of such Persons to receive such payment.

Section 13.7. Knowledge of Trustee. Notwithstanding the provision of this Article or any other provisions of this Indenture, the Trustee shall not be charged with knowledge of the existence of any Senior Debt, of any default in payment of principal of, premium, if any, or interest on, rent or other payment obligation in respect of any Senior Debt, or of any facts which would prohibit the making of any payment of moneys to or by the Trustee, or the taking of any other action by the Trustee, unless a Responsible Officer of the Trustee having responsibility for the administration of the trust established by this Indenture shall have received written notice thereof from the Company, any Holder of Securities, any Paying or Conversion Agent of the Company or the holder or representative of any class of Senior Debt, and, prior to the receipt of any such written notice, the Trustee shall be entitled in all respects to assume that no such default or facts exist; provided, however, that unless on the third Business Day prior to the date upon which by the terms hereof any such moneys may become payable for any purpose the Trustee

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shall have received the notice provided for in this Section 13.7, then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such moneys and apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such date.

Section 13.8. Trustee's Relation to Senior Debt. The Trustee shall be entitled to all the rights set forth in this Article with respect to any Senior Debt at the time held by it, to the same extent as any other holder of Senior Debt and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

Nothing contained in this Article shall apply to claims of or payments to the Trustee under or pursuant to Section 5.8 hereof.

With respect to the holders of Senior Debt, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article, and no implied covenants or obligations with respect to the holders of Senior Debt shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and the Trustee shall not be liable to any holder of Senior Debt if it shall pay over or deliver to Holders, the Company or any other Person moneys or assets to which any holder of Senior Debt shall be entitled by virtue of this Article or otherwise.

Section 13.9. Rights of Holders of Senior Debt Not Impaired. No right of any present or future holder of any Senior Debt to enforce the subordination herein shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

Section 13.10. Modification of Terms of Senior Debt. Any renewal or extension of the time of payment of any Senior Debt or the exercise by the holders of Senior Debt of any of their rights under any instrument creating or evidencing Senior Debt, including without limitation the waiver of default thereunder, may be made or done all without notice to or assent from the Holders of the Securities or the Trustee.

No compromise, alteration, amendment, modification, extension, renewal or other change of, or waiver, consent or other action in respect of, any liability or obligation under or in respect of, or of any of the terms, covenants or conditions of any indenture or other instrument under which any Senior Debt is outstanding or of such Senior Debt, whether or not such release is in accordance with the provisions or any applicable document, shall in any way alter or affect any of the provisions of this Article or of the Securities relating to the subordination thereof.

Section 13.11. Certain Conversions Not Deemed Payment. For the purposes of this Article 13 only:

(a) the issuance and delivery of junior securities upon conversion of Securities in accordance with Article 12 hereof shall not be deemed to constitute a payment or distribution on account of the principal of, premium, if any, or interest (including Liquidated Damages, if any) on Securities or on account of the purchase or other acquisition of Securities, and

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(b) the payment, issuance or delivery of cash (except in satisfaction of fractional shares pursuant to Section 12.3 hereof), property or securities (other than junior securities) upon conversion of a Security shall be deemed to constitute payment on account of the principal of, premium, if any, or interest (including Liquidated Damages, if any) on such Security.

For the purposes of this Section 13.11, the term "junior securities" means:

(a) shares of any common stock of the Company or

(b) other securities of the Company that are subordinated in right of payment to all Senior Debt that may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent that, the Securities are so subordinated as provided in this Article.

Nothing contained in this Article 13 or elsewhere in this Indenture or in the Securities is intended to or shall impair, as among the Company, its creditors (other than holders of Senior Debt) and the Holders of Securities, the right, which is absolute and unconditional, of the Holder of any Security to convert such Security in accordance with Article 12 hereof.

Section 13.12. Enforcement of Rights Under the Pledge Agreement. No provision in this Article 13 shall prohibit any Holder from enforcing its rights under the Pledge Agreement.

ARTICLE XIV

SECURITY

Section 14.1. Pledge Agreement. The Company agrees to (i) enter into the Pledge Agreement on the Closing Date and comply with the terms and provisions thereof and (ii) purchase the Pledged Securities to be pledged to the Trustee for ratable benefit of the Holders in such amount as will be sufficient upon receipt of scheduled interest and/or principal payments of such Pledged Securities to provide for payment in full of the first six scheduled interest payments due on the Securities and to secure repayment of the principal, premium, if any, and interest on the Securities in the event that the Securities become due and payable prior to such time as the first six scheduled interest payments thereon shall have been paid in full. The Pledged Securities shall be pledged by the Company to the Trustee for the ratable benefit of the Holders, and shall be held by the Trustee in the Pledge Account pending disposition pursuant to the Pledge Agreement.

Section 14.2. Acceptance of Terms of Pledge Agreement. Each Holder, by its acceptance of a Security, consents and agrees to the terms of the Pledge Agreement (including, without limitation, the provisions providing for foreclosure and release of the Pledged Securities) as the same may be in effect or may be amended from time to time in accordance with its terms, and authorizes and directs the Trustee, in its capacity as such, to enter into the Pledge Agreement and to perform its obligations and exercise its rights thereunder in accordance therewith. The Company will do or cause to be done all such acts and things as may be necessary or reasonably requested by the Trustee, or as may be required by the provisions of the Pledge Agreement, to

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assure and confirm to the Trustee the security interest in the Pledged Securities contemplated hereby, by the Pledge Agreement or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Securities secured thereby, according to the intent and purposes herein and therein expressed. The Company shall take, or shall cause to be taken, upon request of the Trustee, any and all actions reasonably required to cause the Pledge Agreement to create and maintain, as security for the obligations of the Company under this Indenture and the Securities, valid and enforceable first priority liens in and on all the Pledged Securities, in favor of the Trustee, superior to and prior to the rights of third Persons and subject to no other liens.

Section 14.3. Trust Indenture Act Requirements. The release of any Pledged Securities (as defined in the Pledge Agreement) pursuant to the Pledge Agreement will not be deemed to impair the security granted thereunder in respect of the Securities in contravention of the provisions hereof and thereof if and to the extent the Pledged Securities are released pursuant to this Indenture and the Pledge Agreement. To the extent applicable, the Company shall cause TIA Section 314(d) relating to the release of property or securities from the lien and security interest created under the Pledge Agreement and relating to the substitution thereof of any property or securities to be subjected to the lien and security interest created under the Pledge Agreement to be complied with. Any certificate or opinion required by TIA Section 314(d) may be made by an Officer of the Company, except in cases where TIA Section 314(d) requires that such certificate or opinion be made by an independent Person, which Person shall be an independent engineer, appraiser or other expert selected by the Company.

Section 14.4. Opinions as to Collateral. The Company shall cause TIA Section 314(b) to be complied with.

ARTICLE XV

OTHER PROVISIONS OF GENERAL APPLICATION

Section 15.1. Trust Indenture Act Controls. This Indenture is subject to the provisions of the TIA which are required to be part of this Indenture, and shall, to the extent applicable, be governed by such provisions.

Section 15.2. Notices. Any notice or communication to the Company or the Trustee is duly given if in writing and delivered in person or mailed by first-class mail to the address set forth below:

(a) if to the Company:

Nektar Therapeutics
150 Industrial Road
San Carlos, California
Attention: Paula Kesler, Esq.

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with a copy to:

Cooley Godward LLP
3000 Sand Hill Road
Building #3, Suite 230
Menlo Park, California 94025
Attention: John Geschke, Esq.

(b) if to the Trustee:

J.P. Morgan Trust Company, National Association
560 Mission Street
13th Floor
San Francisco, California 94105
Attention: Institutional Trust Services

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

Any notice or communication to a Holder shall be mailed by first-class mail to his address shown on the Register kept by the Registrar. Failure to mail a notice or communication to a Holder or any defect in such notice or communication shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed or sent in the manner provided above within the time prescribed, it is duly given as of the date it is mailed, whether or not the addressee receives it, except that notice to the Trustee shall only be effective upon receipt thereof by the Trustee.

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

Section 15.3. Communication by Holders with Other Holders. Holders may communicate pursuant to Section 312(b) of the TIA with other Holders with respect to their rights under the Securities or this Indenture. The Company, the Trustee, the Registrar and anyone else shall have the protection of Section 312(c) of the TIA.

Section 15.4. Acts of Holders of Securities. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of Securities may be embodied in and evidenced by:

- (i) one or more instruments of substantially similar tenor signed by such Holders in person or by agent or proxy duly appointed in writing;
- (ii) the record of Holders of Securities voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders of Securities duly called and held in accordance with the provisions of Article 8; or
- (iii) a combination of such instruments and any such record.

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Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments and record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders of Securities signing such instrument or instruments and so voting at such meeting. Proof of execution of any such instrument or of a writing appointing any such agent or proxy, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and (subject to Section 5.1 hereof) conclusive in favor of the Trustee and the Company if made in the manner provided in this Section. The record of any meeting of Holders of Securities shall be proved in the manner provided in Section 8.6 hereof.

(b) The fact and date of the execution by any Person of any such instrument or writing may be provided in any manner which the Trustee reasonably deems sufficient.

(c) The principal amount and serial numbers of Securities held by any Person, and the date of such Person holding the same, shall be proved by the Register.

(d) Any request, demand, authorization, direction, notice, consent, election, waiver or other Act of the Holders of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

Section 15.5. Certificate and Opinion as to Conditions Precedent. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon an Opinion of Counsel, unless such officer knows, or in the exercise of reasonable care should know, that the Opinion of Counsel with respect to the matters upon which such certificate or opinion is based is erroneous. Any such Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate

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

Section 15.6. Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- (a) a statement that each individual signing such certificate or opinion on behalf of the Company has read such covenant or condition and the definitions herein relating thereto;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (c) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 15.7. Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 15.8. Successors and Assigns. All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

Section 15.9. Separability Clause. In case any provision in this Indenture or the Securities 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.

Section 15.10. Benefits of Indenture. Nothing contained in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, the holders of Senior Debt and the Holders of Securities, any benefit or legal or equitable right, remedy or claim under this Indenture.

Section 15.11. Governing Law. THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

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Section 15.12. Counterparts. This instrument may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original but all such counterparts shall together constitute but one and the same instrument.

Section 15.13. Legal Holidays. In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Security or the last day on which a Holder of a Security has a right to convert such Security shall not be a Business Day at any Place of Payment or Place of Conversion, then (notwithstanding any other provision of this Indenture or of the Securities) payment of interest (including Liquidated Damages, if any) or principal or premium, if any, or conversion of the Securities, need not be made at such Place of Payment or Place of Conversion on such day, but may be made on the next succeeding Business Day at such Place of Payment or Place of Conversion with the same force and effect as if made on the Interest Payment Date or Redemption Date or at the Stated Maturity or on such last day for conversion, provided, that in the case that payment is made on such succeeding Business Day, no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be.

Section 15.14. Recourse Against Others. No recourse for the payment of the principal of or premium, if any, or interest (including Liquidated Damages, if any) on any Security, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, shareholder, officer or director, as such, past, present or future, of the Company or of any successor corporation, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance thereof and as part of the consideration for the issue thereof, expressly waived and released.

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

NEKTAR THERAPEUTICS

By: /s/ Ajit S. Gill
Name: Ajit S. Gill
Title: Chief Executive Officer and President

J.P. MORGAN TRUST COMPANY,
NATIONAL ASSOCIATION

By: /s/ James Nagy
Name: James Nagy
Title: Assistant Vice President

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EXHIBIT A

FORM OF SECURITY

[FACE OF SECURITY]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC") TO NEKTAR THERAPEUTICS (OR ITS SUCCESSOR) OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, CONVERSION OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.(1)

THE SECURITY EVIDENCED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ACQUISITION HEREOF, THE HOLDER (1) AGREES THAT IT WILL NOT WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITY EXCEPT (A) TO NEKTAR THERAPEUTICS (THE "COMPANY") OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (C) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OR (D) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER; AND (2) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THE SECURITY EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE (1)(D) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THE SECURITY EVIDENCED HEREBY WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF SUCH SECURITY (OTHER THAN A TRANSFER PURSUANT TO CLAUSE (1)(D) ABOVE), THE HOLDER MUST MAKE THE REPRESENTATIONS AND WARRANTIES SET FORTH ON THE REVERSE HEREOF RELATING TO THE MANNER OF SUCH TRANSFER AND SUBMIT THIS CERTIFICATE TO THE TRUSTEE (OR ANY SUCCESSOR TRUSTEE, AS APPLICABLE). IF THE PROPOSED TRANSFER IS PURSUANT TO CLAUSE (1)(B) OR (1)(C) ABOVE, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE (OR ANY SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH

(1) This legend should be included on if the Security is issued in global form

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CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE COMPANY MAY REASONABLY REQUIRE 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. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THE SECURITY EVIDENCED HEREBY PURSUANT TO CLAUSE (1)(D) ABOVE OR THE EXPIRATION OF TWO YEARS FROM THE ORIGINAL ISSUANCE OF THE SECURITY EVIDENCED HEREBY.

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NEKTAR THERAPEUTICS

3% Convertible Subordinated Note due 2010

CUSIP NO. 640268 AC

No. 1

\$

NEKTAR THERAPEUTICS, a Delaware corporation (the "Company," which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to Cede & Co., or its registered assigns, the principal sum of U.S. Dollars (\$) on June 30, 2010.

Interest Payment Dates: June 30 and December 30, commencing December 30, 2003

Regular Record Dates: June 15 and December 15

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

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IN WITNESS WHEREOF, the Company has caused this Security to be duly executed manually or by facsimile by its duly authorized officers.

NEKTAR THERAPEUTICS

By: _____
Name:
Title:

By: _____
Name:
Title:

Trustee's Certificate of Authentication

This is one of the 3% Convertible Subordinated Notes due 2010 described in the within-named Indenture.

J.P. MORGAN TRUST COMPANY,
NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory

Dated: , 2003

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[REVERSE OF SECURITY]

NEKTAR THERAPEUTICS

3% Convertible Subordinated Note due 2010

Capitalized terms used herein but not defined shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. Principal and Interest.

Nektar Therapeutics, a Delaware corporation (the "Company") promises to pay interest on the principal amount of this Security at the rate of 3 percent per annum from until repayment at Maturity, redemption or repurchase. The Company will pay interest on this Security semiannually in arrears on June 30 and December 30 of each year (each an "Interest Payment Date"), commencing December 30, 2003.

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

A Holder of any Security at the close of business on a Regular Record Date shall be entitled to receive interest on such Security on the corresponding Interest Payment Date. A Holder of any Security which is converted after the close of business on a Regular Record Date and prior to the corresponding Interest Payment Date (other than any Security whose Maturity is prior to such Interest Payment Date) shall be entitled to receive interest on the principal amount of such Security, notwithstanding the conversion of such Security prior to such Interest Payment Date. However, any such Holder which surrenders any such Security for conversion during the period between the close of business on such Regular Record Date and ending with the opening of business on the corresponding Interest Payment Date shall be required to pay the Company an amount equal to the interest on the principal amount of such Security so converted, which is payable by the Company to such Holder on such Interest Payment Date, at the time such Holder surrenders such Security for conversion. Notwithstanding the foregoing, any such Holder which surrenders for conversion any Security which has been called for redemption by the Company in a notice of redemption given by the Company pursuant to Section 10.5 of the Indenture shall be entitled to receive (and retain) such interest and need not pay the Company an amount equal to the interest on the principal amount of such Security so converted at the time such Holder surrenders such Security for conversion.

To the maximum extent permitted by applicable law, in the event that any amounts owing in respect of the principal of, the premium (if any) or interest on the Securities is not paid in full on the due date therefor, interest shall accrue on such unpaid amounts at the rate of 3% per annum until such amounts are paid in full.

In accordance with the terms of the Resale Registration Rights Agreement, dated October 9, 2003, between the Company and the Initial Purchasers party thereto (the "Registration Rights Agreement"), during the first 90 days following a Registration Default (as

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defined in the Registration Rights Agreement), the interest rate borne by the Securities shall be increased by 0.25% on:

(a) May 7, 2004, if the Shelf Registration Statement is not declared effective by the Securities and Exchange Commission prior to or on May 6, 2004;

(b) the day after the fifth Business Day after the Shelf Registration Statement, previously declared effective, ceases to be effective or fails to be usable, if a post-effective amendment (or report filed pursuant to the Exchange Act) that, upon effectiveness would cure the Shelf Registration Statement is not filed with the Securities and Exchange Commission during such five Business Day period; or

(c) the day following the 45th, 60th or 90th day, as the case may be, of any Suspension Period (as defined in the Registration Rights Agreement), if such suspension has not been terminated.

From and after the 91st day following such Registration Default, the interest rate borne by the Securities shall be increased by 0.50%. In no event shall the interest rate borne by the Securities be increased by more than 0.50%.

Any amount of additional interest will be payable in cash semiannually, in arrears, on each Interest Payment Date and will cease to accrue on the date the Registration Default is cured.

2. Method of Payment.

Interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

Principal of, and premium, if any, and interest on, Global Securities will be payable to the Depositary in immediately available funds.

Principal and premium, if any, on Physical Securities will be payable at the office or agency of the Company maintained for such purpose, initially the Corporate Trust Office of the Trustee. Interest on Physical Securities will be payable by (i) U.S. Dollar check drawn on a bank in The City of New York mailed to the address of the Person entitled thereto as such address shall appear in the Register, or (ii) upon application to the Registrar not later than the relevant Record Date by a Holder of an aggregate principal amount in excess of \$5,000,000, wire transfer in immediately available funds.

3. Paying Agent and Registrar.

Initially, J.P. Morgan Trust Company, National Association, the Trustee under the Indenture, will act as Paying Agent and Registrar. The Company may change the Paying Agent or Registrar without notice to any Holder.

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4. Indenture.

This Security is one of a duly authorized series of Securities issued under an Indenture, dated as of October 9, 2003 (the "Indenture"), between the Company and J.P. Morgan Trust Company, National Association, as trustee (the "Trustee"). The Securities issued under the Indenture may be issued in one or more series and the Securities of each such series shall rank equally and pari passu with the Securities of each other series. Notwithstanding any provision to the contrary, any future series of Securities established in or pursuant to a Board Resolution or a supplemental indenture will be on the same terms as the Securities issued pursuant to the Indenture in all respects other than the date of issuance. All Securities of any one series need not be issued at the same time and may be issued from time to time, consistent with the terms of the Indenture, if so provided by or pursuant to such Board Resolution, such Officers' Certificate or in any such indenture supplemental thereto. The terms of the Security include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended ("TIA"). This Security is subject to all such terms, and Holders are referred to the Indenture and the TIA for a statement of all such terms. To the extent permitted by applicable law, in the event of any inconsistency between the terms of this Security and the terms of the Indenture, the terms of the Indenture shall control.

5. Provisional Redemption.

The Securities may be redeemed at the election of the Company, as a whole or from time to time in part or any date, at any time prior to June 30, 2006 (a "Provisional Redemption"), at a Redemption Price, payable in cash, equal to \$1,000 per \$1,000 principal amount of the Securities, on the date of redemption (the "Provisional Redemption Date") if (i) the Closing Price of the Common Stock has exceeded 150% of the Conversion Price (as may be adjusted from time to time) then in effect for at least 20 Trading Days in any consecutive 30 Trading Day period ending on the Trading Day prior to the date of mailing of the provisional notice of redemption upon not less than 20 nor more than 60 days notice (the "Notice Date"), and (ii) either (a) a registration statement covering resales of the Securities and the Common Stock issuable upon conversion thereof is effective and available for use and is expected to remain effective for the 30 days following the Provisional Redemption Date or (b) the Securities and the Common Stock issuable upon conversion thereof are no longer Transfer Restricted Securities (as defined in the Registration Rights Agreement).

Upon any such Provisional Redemption, the Company shall make an additional payment (the "Make-Whole Payment") with respect to the Securities called for redemption to Holders on the Notice Date in an amount equal to \$90 per \$1,000 principal amount of the Securities, less the amount of any interest actually paid on such Securities prior to the Provisional Redemption Date. The Company shall make the Make-Whole Payment on all Securities called for Provisional Redemption, including those Securities converted into Common Stock between the Notice Date and the Provisional Redemption Date.

The Company may elect to pay the Make-Whole Payment or any portion thereof (i) in cash or, (ii) subject to the fulfillment by the Company of the conditions set forth in Section 10.1 of the Indenture, by delivering the number of shares of Common Stock equal to (x) the Make-Whole Payment (or any portion thereof that the Company elects to pay in shares of Common

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Stock) divided by (y) 97% of the average of the Closing Prices per share of Common Stock for the five consecutive Trading Days immediately preceding and including the first Trading Day prior to the Provisional Redemption Date.

6. Optional Redemption.

Except as provided above, this Security is not redeemable prior to June 30, 2006. This Security may be redeemed in whole or in part, upon not less than 20 nor more than 60 days' notice, at any time on or after June 30, 2006, at the option of the Company, at the Redemption Prices (expressed as percentages of the principal amount) set forth below if redeemed during the 12-month period beginning June 30 of the years indicated and ending June 29 of the following years, plus any interest accrued but not paid prior to the Optional Redemption Date.

<u>During the Twelve Months Commencing</u>	<u>Redemption Prices</u>
June 30, 2006	101.714%
June 30, 2007	101.286%
June 30, 2008	100.857%
June 30, 2009	100.429%

Securities in original denominations larger than \$1,000 may be redeemed in part. If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed to be the portion selected for redemption (provided, however, that the Holder of such Security so converted and deemed redeemed shall not be entitled to any additional interest payment as a result of such deemed redemption than such Holder would have otherwise been entitled to receive upon conversion of such Security). Securities which have been converted during a selection of Securities to be redeemed may be treated by the Trustee as Outstanding for the purpose of such selection.

On and after the Redemption Date, interest ceases to accrue on Securities or portions of Securities called for redemption, unless the Company defaults in the payment of the Redemption Price and accrued and unpaid interest.

Notice of redemption will be given by the Company to the Holders as provided in the Indenture.

7. Repurchase Right Upon a Change of Control.

If a Change of Control occurs, the Holder of Securities, at the Holder's option, shall have the right, in accordance with the provisions of the Indenture, to require the Company to repurchase the Securities (or any portion of the principal amount hereof that is at least \$1,000 or an integral multiple thereof, provided that the portion of the principal amount of this Security to be Outstanding after such repurchase is at least equal to \$1,000) at the Repurchase Price in cash, plus any interest accrued and unpaid to the Repurchase Date.

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Subject to the conditions provided in the Indenture, the Company may, at its option, elect to pay the Repurchase Price in Common Stock or in securities of the acquiring party in a Change of Control for which the Common Stock is exchanged in connection with such Change of Control, or a combination thereof with cash, by delivering the number of shares of Common Stock or Acquiror Stock equal to (i) the Repurchase Price (less any amounts paid in cash) divided by (ii) 95% of the average of the Closing Prices per share of Common Stock or Acquiror Stock, as applicable, for the five consecutive Trading Days immediately preceding and including the third Trading Day prior to the Repurchase Date.

No fractional shares of Common Stock or Acquiror Stock will be issued upon repurchase of any Securities. Instead of any fractional share of Common Stock or Acquiror Stock which would otherwise be issued upon conversion of such Securities, the Company shall pay a cash adjustment as provided in the Indenture.

A Company Notice will be given by the Company to the Holders as provided in the Indenture. To exercise a repurchase right, a Holder must deliver to the Trustee a written notice as provided in the Indenture.

8. Conversion Rights.

Subject to and upon compliance with the provisions of the Indenture, the Holder of Securities is entitled, at such Holder's option, at any time before the close of business on June 30, 2010, to convert the Holder's Securities (or any portion of the principal amount hereof which is \$1,000 or an integral multiple thereof), at the principal amount thereof or of such portion, into duly authorized, fully paid and nonassessable shares of Common Stock of the Company at the Conversion Price in effect at the time of conversion.

In the case of a Security (or a portion thereof) called for redemption, such conversion right in respect of the Security (or such portion thereof) so called, shall expire at the close of business on the second Business Day preceding the Redemption Date, unless the Company defaults in making the payment due upon redemption. In the case of a Change of Control for which the Holder exercises its Repurchase Right with respect to a Security (or a portion thereof), such conversion right in respect of the Security (or portion thereof) shall expire at the close of business on the Business Day preceding the Repurchase Date.

The Conversion Price shall be initially equal to \$11.35 per share of Common Stock. The Conversion Price shall be adjusted under certain circumstances as provided in the Indenture.

To exercise the conversion right, the Holder must surrender the Security (or portion thereof) duly endorsed or assigned to the Company or in blank, at the office of the Conversion Agent, accompanied by a duly signed conversion notice to the Company. Any Security surrendered for conversion during the period from the close of business on any Regular Record Date to the opening of business on the corresponding Interest Payment Date (other than any Security whose Maturity is prior to such Interest Payment Date), shall also be accompanied by payment in New York Clearing House funds or other funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount of the Securities being surrendered for conversion.

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No fractional shares of Common Stock will be issued upon conversion of any Securities. Instead of any fractional share of Common Stock which would otherwise be issued upon conversion of such Securities, the Company shall pay a cash adjustment as provided in the Indenture.

9. Subordination.

The Indebtedness evidenced by this Security is, to the extent and in the manner provided in the Indenture, subordinated and subject in right of payment to the prior payment in full of all amounts then due on all Senior Debt of the Company, and this Security is issued subject to such provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee such Holder's attorney-in-fact for any and all such purposes.

10. Security.

The Holder of this Note is entitled to the benefits of a Pledge Agreement, dated as of October 9, 2003, among the Company, the Trustee and the Pledged Securities Intermediary named therein, pursuant to which the Company has placed in the Pledge Account cash or Pledged Securities sufficient to provide for the payment of the first six scheduled interest payments due on the Notes and to secure repayment of the principal, premium (if any) and interest on the Notes in the event that the Notes become due and payable prior to such time as the first six scheduled interest payments thereon shall have been paid in full.

11. Denominations; Transfer; Exchange.

The Securities are issuable in registered form, without coupons, in denominations of \$1,000 and integral multiples of \$1,000 in excess thereof. A Holder may register the transfer or exchange of Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes and fees required by law or permitted by the Indenture.

In the event of a redemption in part, the Company will not be required (a) to register the transfer of, or exchange, Securities for a period of 15 days immediately preceding the date notice is given identifying the serial numbers of the Securities called for such redemption, or (b) to register the transfer of, or exchange, any such Securities, or portion thereof, called for redemption.

In the event of redemption, conversion or repurchase of the Securities in part only, a new Security or Securities for the unredeemed, unconverted or unredeemed portion thereof will be issued in the name of the Holder hereof.

12. Persons Deemed Owners.

The registered Holder of this Security shall be treated as its owner for all purposes.

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13. Unclaimed Money.

The Trustee and the Paying Agent shall pay to the Company any money held by them for the payment of principal, premium, if any, or interest that remains unclaimed for two years after the date upon which such payment shall have become due. After payment to the Company, Holders entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person, and all liability of the Trustee and such Paying Agent with respect to such money shall cease.

14. Discharge Prior to Redemption or Maturity.

Subject to certain conditions contained in the Indenture, the Company may discharge its obligations under the Securities and the Indenture if (1) (a) all of the Outstanding Securities shall become due and payable at their scheduled Maturity within one year or (b) all of the Outstanding Securities are scheduled for redemption within one year, and (2) the Company shall have deposited with the Trustee money and/or U.S. Government Obligations sufficient to pay the principal of, and premium, if any, and interest on, all of the Outstanding Securities on the date of Maturity or redemption, as the case may be.

15. Amendment; Supplement; Waiver.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in aggregate principal amount of the Outstanding Securities (or such lesser amount as shall have acted at a meeting pursuant to the provisions of the Indenture). The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities at the time Outstanding, on behalf of the Holders of all the Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security or such other Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and premium, if any, and interest (including Liquidated Damages, if any) on this Security at the times, places and rate, and in the coin or currency, herein prescribed or to convert this Security (or pay cash in lieu of conversion) as provided in the Indenture.

16. Defaults and Remedies.

The Indenture provides that an Event of Default with respect to the Securities occurs when any of the following occurs:

(a) the Company defaults in the payment of the principal of or premium, if any, on any of the Securities when it becomes due and payable at Maturity, upon redemption

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or exercise of a Repurchase Right or otherwise, whether or not such payment is prohibited by the subordination provisions of Article 13 of the Indenture;

(b) the Company defaults in the payment of interest on any of the Securities when it becomes due and payable and such default continues for a period of 30 days, whether or not such payment is prohibited by the subordination provisions of Article 13 of the Indenture; provided that a failure to make any of the first six scheduled interest payments on any of the Securities within three Business Days of the applicable Interest Payment Date will constitute an Event of Default with no additional grace or cure period;

(c) the Company fails to perform or observe any other term, covenant or agreement contained in the Securities or the Indenture and such default continues for a period of 60 days after written notice of such failure is given as specified in the Indenture;

(d) (i) the Company fails to make any payment by the end of the applicable grace period, if any, after the maturity of any Indebtedness for borrowed money in an amount in excess of \$5,000,000 (provided that such failure shall not constitute an Event of Default if (1) the Company determines, in good faith, that a lessor under a lease described in clause (3)(a) of the definition of Indebtedness set forth in the Indenture breached a covenant under the lease and the Company has given notice of the breach to the lessor and the Trustee and (2) as a result of the breach, the Company withholds payment under the lease) (a "Default Exception"), or (ii) there is an acceleration of any Indebtedness for borrowed money in an amount in excess of \$5,000,000 because of a default with respect to such Indebtedness (other than a Default Exception) without such Indebtedness having been discharged or such acceleration having been cured, waived, rescinded or annulled, in the case of either clause (i) or (ii) above, for a period of 30 days after written notice is given to the Company as specified in the Indenture;

(e) the Pledge Agreement, as such agreement may be amended, restated or supplemented or otherwise modified from time to time, shall cease to be in full force and effect or enforceable in accordance with its terms, other than in accordance with its terms; and

(f) there are certain events of bankruptcy, insolvency or reorganization of the Company.

If an Event of Default shall occur and be continuing, the principal of all the Securities may be declared due and payable in the manner and with the effect provided in the Indenture.

17. Authentication.

This Security shall not be valid until the Trustee (or authenticating agent) executes the certificate of authentication on the other side of this Security.

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18. Abbreviations.

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

19. Additional Rights of Holders of Restricted Securities.

In addition to the rights provided to Holders under the Indenture, Holders of Restricted Securities shall have all the rights set forth in the Registration Rights Agreement.

20. CUSIP Numbers.

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

21. Governing Law.

The Indenture and this Security shall be governed by, and construed in accordance with, the law of the State of New York.

22. Successor Corporation.

In the event a successor corporation assumes all the obligations of the Company under this Security, pursuant to the terms hereof and of the Indenture, the Company will be released from all such obligations.

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To assign this Security, fill in the form below and have your signature guaranteed: (I) or (we) assign and transfer this Security to:

(Insert assignee's soc. sec. or tax I.D. no.)

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

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

&nb sp;to transfer this

Dated: _____

Your Name: _____
(Print your name exactly as it appears on the
face of this Security)

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

Signature Guarantee*: _____

** Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).*

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In connection with any transfer of this Security occurring prior to the date which is two years following the original issuance of this Security, the undersigned represents and warrants that without utilizing any general solicitation or general advertising that this Security is being transferred in compliance with an exemption from registration under the Securities Act of 1933, as amended and documents are being furnished which comply with the conditions of transfer set forth in this Security and the Indenture.

The Trustee or other Registrar shall not be obligated to register this Security in the name of any Person other than the Holder hereof unless the conditions to any such transfer of registration set forth herein and in Sections 2.7, 2.8 and 2.9 of the Indenture shall have been satisfied.

Dated: _____

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

Signature Guarantee:

Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor acceptable to the Trustee.

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CONVERSION NOTICE

TO: NEKTAR THERAPEUTICS
150 Industrial Road
San Carlos, California 94070

The undersigned registered owner of this Security hereby irrevocably exercises the option to convert this Security, or the portion hereof (which is \$1,000 principal amount or an integral multiple thereof) below designated, into shares of Common Stock in accordance with the terms of the Indenture referred to in this Security, and directs that the shares issuable and deliverable upon such conversion, together with any check in payment for fractional shares and any Securities representing any unconverted principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If shares or any portion of this Security not converted are to be issued in the name of a person other than the undersigned, the

undersigned will pay all transfer taxes payable with respect thereto. Any amount required to be paid to the undersigned on account of interest (including Liquidated Damages, if any) accompanies this Security.

Dated: _____

Your Name: _____
(Print your name exactly as it appears on the face of this Security)

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

Signature Guarantee*: _____

Principal amount to be converted (if less than all): \$

** Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).*

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Fill in for registration of shares (if to be issued) and Securities (if to be delivered) other than to and in the name of the registered holder:

(Name)

(Street Address)

(City, State and Zip Code)

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NOTICE OF EXERCISE OF REPURCHASE RIGHT

TO: NEKTAR THERAPEUTICS
150 Industrial Road
San Carlos, California 94070

The undersigned registered owner of this Security hereby irrevocably acknowledges receipt of a notice from Nektar Therapeutics (the "Company") as to the occurrence of a Change of Control with respect to the Company and requests and instructs the Company to repay the entire principal amount of this Security, or the portion thereof (which is \$1,000 principal amount or an integral multiple thereof) below designated, in accordance with the terms of the Indenture referred to in this Security, together with interest (including Liquidated Damages, if any) accrued and unpaid to, but excluding, such date, to the registered holder hereof, in cash or by delivery of shares of Common Stock as specified in the Company's notice.

Dated: _____

Your Name: _____
(Print your name exactly as it appears on the face of this Security)

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

Signature Guarantee*: _____

Principal amount to be converted (if less than all): \$

** Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).*

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SCHEDULE OF EXCHANGES FOR PHYSICAL SECURITIES(2)

The following exchanges of a part of this Global Security for Physical Securities have been made:

Date of Exchange	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 officer of Trustee
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(2) This schedule should be included only if the Security is issued in global form.

RESALE REGISTRATION RIGHTS AGREEMENT

This **Resale Registration Rights Agreement** (the “**Agreement**”) is made as of October 9, 2003 by and among **NEKTAR THERAPEUTICS**, a Delaware corporation (together with any successor entity, herein referred to as the “**Issuer**”) and the persons or entities listed on the signature pages hereto (the “**Holders**” and each individually as a “**Holder**”).

RECITALS

WHEREAS, each Holder has agreed to acquire from the Issuer 3% Convertible Subordinated Notes due 2010 (the “**Notes**”);

WHEREAS, the Notes will be convertible into fully paid, nonassessable common stock, par value \$0.0001 per share, of the Issuer (the “**Common Stock**”) on the terms, and subject to the conditions, set forth in the Indenture (as defined herein); and

WHEREAS, to induce each Holder to acquire the Notes, the Issuer has agreed to provide the registration rights set forth in this Agreement.

AGREEMENT

The parties hereby agree as follows:

1. *Definitions.* As used in this Agreement, the following capitalized terms shall have the following meanings:

Advice: As defined in Section 4(c)(ii) hereof.

Agreement: As defined in the preamble hereto.

Blue Sky Application: As defined in Section 6(a)(i) hereof.

Broker-Dealer: Any broker or dealer registered under the Exchange Act.

Business Day: A day other than a Saturday or Sunday or any federal holiday in the United States.

Closing Date: The date of this Agreement.

Commission: Securities and Exchange Commission.

Common Stock: As defined in the preamble hereto.

Damages Payment Date: Each Interest Payment Date. For purposes of this Agreement, if no Notes are outstanding, “Damages Payment Date” shall mean each June 30 and December 30.

Effectiveness Period: As defined in Section 2(a)(iii) hereof.

Effectiveness Target Date: As defined in Section 2(a)(ii) hereof.

Exchange Act: Securities Exchange Act of 1934, as amended.

Holder: As defined in the initial paragraph of this Agreement.

Indemnified Holder: As defined in Section 6(a) hereof.

Indenture: The Indenture, dated as of the date herewith, by and between the Issuer and J.P. Morgan Trust Company, National Association, as trustee (the “**Trustee**”), pursuant to which the Notes are to be issued, as such Indenture is amended, modified or supplemented from time to time in accordance with the terms thereof.

Interest Payment Date: As defined in the Indenture.

Issuer: As defined in the preamble hereto.

Liquidated Damages: As defined in Section 3(a) hereof.

Majority of Holders: Holders holding over 50% of the aggregate principal amount of Notes outstanding; *provided that*, for purpose of this definition, a holder of shares of Common Stock which constitute Transfer Restricted Securities and were issued upon conversion of the Notes shall be deemed to hold an aggregate principal amount of Notes (in addition to the aggregate principal amount of Notes held by such holder) equal to the aggregate principal amount of Notes converted by such Holder into such shares of Common Stock.

Notes: As defined in the preamble hereto.

Person: An individual, partnership, corporation, unincorporated organization, trust, joint venture or a government or agency or political subdivision thereof.

Prospectus: The prospectus included in a Shelf Registration Statement, as amended or supplemented by any prospectus supplement and by all other amendments thereto, including post-effective amendments, and all material incorporated by reference into such Prospectus.

Questionnaire Deadline: As defined in Section 2(b) hereof.

Record Holder: With respect to any Damages Payment Date, each Person who is a Holder on the record date with respect to the Interest Payment Date on which such Damages Payment Date shall occur. In the case of a Holder of shares of Common Stock issued upon conversion of the Notes, "Record Holder" shall mean each Person who is a Holder of shares of Common Stock which constitute Transfer Restricted Securities on the June 15 or December 15 immediately preceding the Damages Payment Date.

Registration Default: As defined in Section 3(a) hereof.

Sale Notice: As defined in Section 4(e) hereof.

Securities Act: Securities Act of 1933, as amended.

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Shelf Filing Deadline: As defined in Section 2(a)(i) hereof.

Shelf Registration Statement: As defined in Section 2(a)(i) hereof.

Suspension Period. As defined in Section 4(b)(i) hereof.

Transfer Restricted Securities: Each Note and each share of Common Stock issued upon conversion of Notes until the earlier of:

(i) the date on which such Note or such share of Common Stock issued upon conversion has been effectively registered under the Securities Act and disposed of in accordance with the Shelf Registration Statement;

(ii) the date on which such Note or such share of Common Stock issued upon conversion (y) is transferred in compliance with Rule 144 under the Securities Act, or (z) may be sold or transferred pursuant to Rule 144(k) under the Securities Act (or any other similar provision then in force); *provided*, that with respect to the condition set forth in (z) above, the Issuer shall have notified the Holder of its willingness to remove the restricted securities legends placed on such securities as required by the terms of the Indenture upon the request of the Holder; or

(iii) the date on which such Note or such share of Common Stock issued upon conversion ceases to be outstanding (whether as a result of redemption, repurchase and cancellation, conversion or otherwise).

Underwritten Registration or Underwritten Offering: A registration in which securities of the Issuer are sold to an underwriter for reoffering to the public.

2. *Shelf Registration*.

(a) The Issuer shall:

(i) not later than 45 days after the date hereof (the "**Shelf Filing Deadline**"), cause to be filed a registration statement pursuant to Rule 415 under the Securities Act (the "**Shelf Registration Statement**"), which Shelf Registration Statement shall provide for resales of all Transfer Restricted Securities held by Holders that have provided the information required pursuant to the terms of Section 2(b) hereof;

(ii) use commercially reasonable efforts to cause the Shelf Registration Statement to be declared effective by the Commission as promptly as reasonably practicable thereafter (the "**Effectiveness Target Date**"); and

(iii) use commercially reasonable efforts to keep the Shelf Registration Statement continuously effective, supplemented and amended as required by the provisions of Section 4(b) hereof to the extent necessary to ensure that (A) it is available for resales by the Holders of Transfer Restricted Securities entitled to the benefit of this Agreement and (B) conforms with the requirements of this Agreement and the Securities

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Act and the rules and regulations of the Commission promulgated thereunder as announced from time to time for a period (the "**Effectiveness Period**") of:

(A) two (2) years after the date hereof; *provided*, that such period shall be extended to the extent the Issuer shall not have notified the Holder of its willingness to remove the restricted securities legends placed on such securities as required by the terms of the Indenture upon the request of the Holder; or

(B) such shorter period that will terminate when (w) all of the Holders of Transfer Restricted Securities are able to sell all Transfer Restricted Securities immediately without restriction pursuant to Rule 144(k) under the Securities Act or any successor rule thereto; *provided*, that the Issuer shall have notified the Holder of its willingness to remove the restricted securities legends placed on such securities as required by the terms of the Indenture upon the request of the Holders, (x) when all Transfer Restricted Securities have ceased to be outstanding (whether as a result of redemption, repurchase and cancellation, conversion or otherwise), (y) all Transfer Restricted Securities registered under the Shelf Registration Statement have been sold or (z) all Notes and Conversion Shares cease to be Transfer Restricted Securities.

(b) No Holder of Transfer Restricted Securities may include any of its Transfer Restricted Securities in the Shelf Registration Statement pursuant to this Agreement unless such Holder furnishes to the Issuer in writing, prior to or on the 15th day after becoming a party to this Agreement (the “*Questionnaire Deadline*”), a complete and accurate questionnaire in substantially the form of Exhibit A hereto and such other information as the Issuer may reasonably request for use in connection with the Shelf Registration Statement or the Prospectus or preliminary Prospectus included therein and in any application to be filed with or under state securities laws. Each Holder as to which the Shelf Registration Statement is being effected agrees to furnish promptly to the Issuer all information required to be disclosed in order to make information previously furnished to the Issuer by such Holder not materially misleading.

3. *Liquidated Damages.*

(a) If:

(i) the Shelf Registration Statement has not been declared effective by the Commission prior to or on the date 210 days after the date of this Agreement;

(ii) subject to the provisions of Section 4(b)(i) hereof, the Shelf Registration Statement is filed and declared effective but, during the Effectiveness Period, shall thereafter cease to be effective or fail to be usable for its intended purpose without being succeeded within five Business Days by the filing of a post-effective amendment to the Shelf Registration Statement or a report filed with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act that, upon effectiveness, cures such failure; or

(iii) prior to or on the 45th, 60th or 90th day, as the case may be, of any Suspension Period, such suspension has not been terminated,

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(each such event referred to in foregoing clauses (i) through (iii), a “Registration Default”), the Issuer hereby agrees to pay additional interest as liquidated damages (“Liquidated Damages”) with respect to the Transfer Restricted Securities from and including the day following the Registration Default to but excluding the day on which the Registration Default has been cured:

(A) in respect of the Notes, to each holder of Notes, (x) with respect to the first 90-day period during which a Registration Default shall have occurred and be continuing, in an amount per year equal to an additional 0.25% of the principal amount of the Notes, and (y) with respect to the period commencing on the 91st day following the day the Registration Default shall have occurred and be continuing, in an amount per year equal to an additional 0.50% of the principal amount of the Notes; provided that in no event shall Liquidated Damages accrue at a rate per year exceeding 0.50% of the principal amount of the Notes; and

(B) in respect of any shares of Common Stock, to each holder of shares of Common Stock issued upon conversion of Notes, (x) with respect to the first 90-day period during which a Registration Default shall have occurred and be continuing, in an amount per year equal to 0.25% of the principal amount of the converted Notes, and (y) with respect to the period commencing the 91st day following the day the Registration Default shall have occurred and be continuing, in an amount per year equal to 0.50% of the principal amount of the converted Notes; provided that in no event shall Liquidated Damages accrue at a rate per year exceeding 0.50% of the principal amount of the converted Notes.

(c) All accrued Liquidated Damages shall be paid in arrears to Record Holders by the Issuer on each Damages Payment Date by wire transfer of immediately available funds or by federal funds check. Following the cure of all Registration Defaults relating to any particular Note or share of Common Stock, the accrual of Liquidated Damages with respect to such Note or share of Common Stock will cease. All obligations of the Issuer set forth in this Section 3 that are outstanding with respect to any Transfer Restricted Security at the time such security ceases to be a Transfer Restricted Security shall survive until such time as all such obligations with respect to such Transfer Restricted Security shall have been satisfied in full.

(d) The Liquidated Damages set forth above shall be the exclusive monetary remedy available to the Holders of Transfer Restricted Securities for such Registration Default.

4. *Registration Procedures.*

(a) In connection with the Shelf Registration Statement, the Issuer shall comply with all the provisions of Section 4(b) hereof and shall use commercially reasonable efforts to effect such registration to permit the sale of the Transfer Restricted Securities being sold in accordance with the intended method or methods of distribution thereof, and pursuant thereto, shall as expeditiously as possible prepare and file with the Commission a Shelf Registration Statement relating to the registration on any appropriate form under the Securities Act.

(b) In connection with the Shelf Registration Statement and any Prospectus required by this Agreement to permit the sale or resale of Transfer Restricted Securities, the Issuer shall:

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(i) Subject to any notice by the Issuer in accordance with this Section 4(b) of the existence of any fact or event of the kind described in Section 4(b)(iii)(D), use commercially reasonable efforts to keep the Shelf Registration Statement continuously effective during the Effectiveness Period; upon the occurrence of any event that would cause the Shelf Registration Statement or the Prospectus contained therein (A) to contain a material misstatement or omission or (B) not be effective and usable for resale of Transfer Restricted Securities during the Effectiveness Period, the Issuer shall file promptly an appropriate amendment to the Shelf Registration Statement or a report filed with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, in the case of clause (A), correcting any such misstatement or omission, and, in the case of either clause (A) or (B), use commercially reasonable efforts to cause such amendment to be declared effective and the Shelf Registration Statement and the related Prospectus to become usable for their intended purposes as soon as practicable thereafter. Notwithstanding the foregoing, the Issuer may suspend the effectiveness of the Shelf Registration Statement by written notice to the Holders:

(x) for a period (each such period, a “*Suspension Period*”) not to exceed an aggregate of 45 days in any 90-day if (A) an event occurs and is continuing as a result of which the Shelf Registration Statement would, in the Issuer’s reasonable judgment, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and (B) the Issuer reasonably determines that the disclosure of such event at such time would have a material adverse effect on the business of the Issuer (and its subsidiaries, if any, taken as a whole); *provided* that in the event the disclosure relates to a previously undisclosed proposed or pending material business transaction, the disclosure of which would impede the Issuer’s ability to consummate such transaction, the Issuer may extend a Suspension Period from 45 days to 60 days; *provided, however*, that Suspension Periods shall not exceed an aggregate of 90 days in any 360-day period; or

(y) upon the filing of any post-effective amendment required to be filed by the Issuer pursuant to the Issuer’s obligations under Section 4(b)(iv) until such time as such post-effective amendment is declared effective.

(ii) Prepare and file with the Commission such amendments and post-effective amendments to the Shelf Registration Statement as may be necessary to keep the Shelf Registration Statement effective during the Effectiveness Period; cause the Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 under the Securities Act, and to comply fully with the applicable provisions of Rules 424 and 430A under the Securities Act in a timely manner; and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by the Shelf Registration Statement during the applicable period in accordance with the intended method or methods of distribution by the sellers thereof set forth in the Shelf Registration Statement or supplement to the Prospectus.

(iii) Advise the selling Holders promptly (but in any event within five (5) Business Days) and, if requested by any Holder, to confirm such advice in writing:

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(A) when the Prospectus or any Prospectus supplement or post-effective amendment has been filed, and, with respect to the Shelf Registration Statement or any post-effective amendment thereto, when the same has become effective,

(B) of any request by the Commission for amendments to the Shelf Registration Statement or amendments or supplements to the Prospectus or for additional information relating thereto,

(C) of the issuance by the Commission of any stop order suspending the effectiveness of the Shelf Registration Statement under the Securities Act or of the suspension by any state securities commission of the qualification of the Transfer Restricted Securities for offering or sale in any jurisdiction, or the initiation of any proceeding for any of the preceding purposes, or

(D) of the existence of any fact or the happening of any event, during the Effectiveness Period, that makes any statement of a material fact made in the Shelf Registration Statement, the Prospectus, any amendment or supplement thereto, or any document incorporated by reference therein untrue, or that requires the making of any additions to or changes in the Shelf Registration Statement or the Prospectus in order to make the statements therein not misleading.

If at any time the Commission shall issue any stop order suspending the effectiveness of the Shelf Registration Statement, or any state securities commission or other regulatory authority shall issue an order suspending the qualification or exemption from qualification of the Transfer Restricted Securities under state securities or Blue Sky laws, the Issuer shall use commercially reasonable efforts to obtain the withdrawal or lifting of such order at the earliest possible time.

(iv) If requested by any selling Holders, promptly incorporate in the Shelf Registration Statement or Prospectus, pursuant to a supplement or post-effective amendment if necessary, such information as such selling Holders, if any, may reasonably request to have included therein, including, without limitation: (1) information relating to the “Plan of Distribution” of the Transfer Restricted Securities, or (2) any other terms of the offering of the Transfer Restricted Securities to be sold in such offering; and make all required filings of such Prospectus supplement or post-effective amendment as soon as reasonably practicable after the Issuer is notified of the matters to be incorporated in such Prospectus supplement or post-effective amendment. Notwithstanding the foregoing, following the effective date of the Shelf Registration Statement, the Issuer shall not be required to file at the request of the Holders more than one such supplement or post-effective amendment to reflect (x) changes in the amount of Notes held by or the identity of any Holder, or (y) the addition of any Holder, in any 30-day period.

(v) Make available to each selling Holder, without charge, at least one copy of the Shelf Registration Statement, as first filed with the Commission, and of each amendment thereto (and any documents incorporated by reference therein or exhibits

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thereto (or exhibits incorporated in such exhibits by reference) as such Person may request).

(vi) Make available to each selling Holder, without charge, as many copies of the Prospectus (including each preliminary prospectus) and any amendment or supplement thereto as such Holders reasonably may request; subject to any notice by the Issuer in accordance with this Section 4(b) of the existence of any fact or event of the kind described in Section 4(b)(iii)(D), the Issuer hereby consents to the use of the Prospectus and any amendment or supplement thereto by each of the selling Holders and each of the underwriter(s), if any, in connection with the offering and the sale of the Transfer Restricted Securities covered by the Prospectus or any amendment or supplement thereto.

(vii) Cooperate with the selling Holders in connection with the registration and qualification of the Transfer Restricted Securities under the securities or Blue Sky laws of such jurisdictions as the selling Holders may reasonably request and do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Transfer Restricted Securities covered by the Shelf Registration Statement; *provided, however*, that the Issuer shall not be required (A) to register or qualify as a foreign corporation or a dealer of securities where it is not now so qualified or to take any action that would subject it to the service of process in any jurisdiction where it is not now so subject or (B) to subject themselves to taxation in any such jurisdiction if they are not now so subject.

(viii) Cooperate with the selling Holders to facilitate the timely preparation and delivery of certificates representing Transfer Restricted Securities to be sold and not bearing any restrictive legends (unless required by applicable securities laws); and enable such Transfer Restricted Securities to be in such denominations and registered in such names as the Holders may request at least two (2) Business Days before any sale of Transfer Restricted Securities made by such underwriter(s).

(ix) Use commercially reasonable efforts to cause the Transfer Restricted Securities covered by the Shelf Registration Statement to be registered with or approved by such other U.S. governmental agencies or authorities as may be necessary to enable the Holders to consummate the disposition of such Transfer Restricted Securities.

(x) Subject to Section 4(b)(i) hereof, if any fact or event contemplated by Section 4(b)(iii)(D) hereof shall exist or have occurred, use commercially reasonable efforts to prepare a supplement or post-effective amendment to the Shelf Registration Statement or related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of Transfer Restricted Securities, the Prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

(xi) Provide CUSIP numbers for all Transfer Restricted Securities not later than the effective date of the Shelf Registration Statement and provide the Trustee under

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the Indenture with certificates for the Notes that are in a form eligible for deposit with The Depository Trust Company.

(xii) Otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the Commission and all reporting requirements under the rules and regulations of the Exchange Act.

(xiii) Cause all Transfer Restricted Securities covered by the Shelf Registration Statement to be listed or quoted, as the case may be, on each securities exchange or automated quotation system on which similar securities issued by the Issuer are then listed or quoted.

(c) Each Holder agrees by acquisition of a Transfer Restricted Security that, upon receipt of any notice from the Issuer of the existence of any fact of the kind described in Section 4(b)(iii)(D) hereof, such Holder will, and will use its reasonable best efforts to cause any underwriter(s) in an Underwritten Offering to, forthwith discontinue disposition of Transfer Restricted Securities pursuant to the Shelf Registration Statement until:

(i) such Holder has received copies of the supplemented or amended Prospectus contemplated by Section 4(b)(x) hereof; or

(ii) such Holder is advised in writing (the "**Advice**") by the Issuer that the use of the Prospectus may be resumed, and has received copies of any additional or supplemental filings that are incorporated by reference in the Prospectus.

If so directed by the Issuer, each Holder will deliver to the Issuer all copies, other than permanent file copies then in such Holder's possession, of the Prospectus covering such Transfer Restricted Securities that was current at the time of receipt of such notice of suspension.

(d) Each Holder who intends to be named as a selling Holder in the Shelf Registration Statement shall furnish to the Issuer in writing, within 15 days after becoming a party hereto, a complete and accurate questionnaire in substantially the form set forth as Exhibit A hereto and such other information regarding such Holder and the proposed distribution by such Holder of its Transfer Restricted Securities as the Issuer may reasonably request for use in connection with the Shelf Registration Statement or Prospectus or preliminary Prospectus included therein. Holders that do not complete the questionnaire and deliver it to the Issuer on or prior to the Questionnaire Deadline shall not be named as selling securityholders in the Prospectus or preliminary Prospectus included in the Shelf Registration Statement and therefore shall not be permitted to sell any Transfer Restricted Securities pursuant to the Shelf Registration Statement. Each Holder who intends to be named as a selling Holder in the Shelf Registration Statement shall promptly furnish to the Issuer in writing such other information as the Issuer may from time to time reasonably request in writing.

(e) Upon the effectiveness of the Shelf Registration Statement, each Holder shall notify the Issuer at least three (3) Business Days prior to any intended distribution of Transfer Restricted Securities pursuant to the Shelf Registration Statement (a "**Sale Notice**"), which notice shall be effective for five (5) Business Days. Each Holder of this Security, by accepting the same, agrees to hold any communication by the Issuer in response to a Sale Notice in

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confidence. Upon any transfer of Transfer Restricted Securities pursuant to the Shelf Registration Statement, each Holder shall comply with all such Holder's obligations relating to delivery of the Prospectus under applicable securities laws. The Issuer and its representatives shall be entitled to rely on the foregoing covenant as evidence of compliance with such obligations by such Holder in connection with (i) any instruction requested of it in connection with such transfer by the Trustee of the Notes or the transfer agent of the Common Stock or (ii) any representation made by the Issuer or such representative to any governing authority, including, the Commission or NASD.

5. *Registration Expenses.* All expenses incident to the Issuer's performance of or compliance with this Agreement shall be borne by the Issuer regardless of whether a Shelf Registration Statement becomes effective, which shall include:

(a) all registration and filing fees and expenses (including filings made by any Holders with the NASD);

(b) all fees and expenses of compliance with federal securities and state Blue Sky or securities laws;

(c) all expenses of printing (including printing of Prospectuses and certificates for the Common Stock to be issued upon conversion of the Notes), messenger and delivery services and telephone charges;

(d) all fees and disbursements of counsel to the Issuer;

(e) all application and filing fees in connection with listing (or authorizing for quotation) the Common Stock on a national securities exchange or automated quotation system pursuant to the requirements hereof; and

(f) all fees and disbursements of independent certified public accountants of the Issuer (including the expenses of any special audit and comfort letters required by or incident to such performance).

The Issuer shall bear its internal expenses (including, without limitation, all salaries and expenses of their officers and employees performing legal, accounting or other duties), the expenses of any annual audit and the fees and expenses of any Person, including special experts, retained by the Issuer.

6. *Indemnification and Contribution.*

(a) The Issuer shall indemnify and hold harmless each Holder, such Holder's officers and employees and each person, if any, who controls such Holder within the meaning of the Securities Act (each, an "**Indemnified Holder**"), from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof (including, but not limited to, any loss, claim, damage, liability or action relating to resales of the Transfer Restricted Securities), to which such Indemnified Holder may become subject, insofar as any such loss, claim, damage, liability or action arises out of, or is based upon:

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(i) any untrue statement or alleged untrue statement of a material fact contained in (A) the Shelf Registration Statement or Prospectus or any amendment or supplement thereto or (B) any blue sky application or other document or any amendment or supplement thereto prepared or executed by the Issuer (or based upon written information furnished by or on behalf of the Issuer expressly for use in such blue sky application or other document or amendment or supplement) filed in any jurisdiction specifically for the purpose of qualifying any or all of the Transfer Restricted Securities under the securities law of any state or other jurisdiction (such application or document being hereinafter called a "**Blue Sky Application**"); or

(ii) the omission or alleged omission to state therein any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading,

and shall reimburse each Indemnified Holder promptly upon demand for any legal or other expenses reasonably incurred by such Indemnified Holder in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred; *provided, however*, that the Issuer shall not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement or omission or alleged omission made in the Shelf Registration Statement or Prospectus or amendment or supplement thereto or Blue Sky Application in reliance upon and in conformity with written information furnished to the Issuer by or on behalf of any Holder (or its related Indemnified Holder) specifically for use therein. The foregoing indemnity agreement is in addition to any liability which the Issuer may otherwise have to any Indemnified Holder.

(b) Each Holder, severally and not jointly, shall indemnify and hold harmless the Issuer, its officers and employees and each person, if any, who controls the Issuer within the meaning of the Securities Act, from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof, to which the Issuer or any such officer, employee or controlling person may become subject, insofar as any such loss, claim, damage or liability or action arises out of, or is based upon:

(i) any untrue statement or alleged untrue statement of any material fact contained in the Shelf Registration Statement or Prospectus or any amendment or supplement thereto or any Blue Sky Application; or

(ii) the omission or the alleged omission to state therein any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading,

but in each case only to the extent that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Issuer by or on behalf of such Holder (or its related Indemnified Holder) specifically for use therein, and shall reimburse the Issuer and any such officer, employee or controlling person promptly upon demand for any legal or other expenses reasonably incurred by the Issuer or any such officer, employee or controlling person in

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connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred. The foregoing indemnity agreement is in addition to any liability which any Holder may otherwise have to the Issuer and any such officer, employee or controlling person.

(c) Promptly after receipt by an indemnified party under this Section 6 of notice of any claim or the commencement of any action, the indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under this Section 6, notify the indemnifying party in writing of the claim or the commencement of that action; *provided, however*, that the failure to notify the indemnifying party shall not relieve it from any liability which it may have under this Section 6 except to the extent it has been materially prejudiced by such failure and, *provided, further*, that the failure to notify the indemnifying party shall not relieve it from any liability which it may have to an indemnified party otherwise than under this Section 6. If any such claim or action shall be brought against an indemnified party, and it shall notify the indemnifying party thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable to the indemnified party under this Section 6 for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation; *provided, however*, that a Majority of Holders shall have the right to employ a single counsel to represent jointly a Majority of Holders and their respective officers, employees and controlling persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought by a Majority of Holders against the Issuer under this Section 6, if a Majority of Holders shall have reasonably concluded that there may be one or more legal defenses available to them and their respective officers, employees

and controlling persons that are different from or additional to those available to the Issuer and its officers, employees and controlling persons, the fees and expenses of a single separate counsel shall be paid by the Issuer. No indemnifying party shall:

(i) without the prior written consent of the indemnified parties (which consent shall not be unreasonably withheld) settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent (1) includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding and (2) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party, or

(ii) be liable for any settlement of any such action effected without its written consent (which consent shall not be unreasonably withheld), but if settled with its written consent or if there be a final judgment for the plaintiff in any such action, the indemnifying party agrees to indemnify and hold harmless any indemnified party from and against any loss of liability by reason of such settlement or judgment.

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(d) If the indemnification provided for in this Section 6 shall for any reason be unavailable or insufficient to hold harmless an indemnified party under Section 6(a) or 6(b) in respect of any loss, claim, damage or liability (or action in respect thereof) referred to therein, each indemnifying party shall, in lieu of indemnifying such indemnified party, contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability (or action in respect thereof):

(i) in such proportion as is appropriate to reflect the relative benefits received by the Issuer from the offering and sale of the Transfer Restricted Securities on the one hand and a Holder with respect to the sale by such Holder of the Transfer Restricted Securities on the other, or

(ii) if the allocation provided by clause (6)(d)(i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause 6(d)(i) but also the relative fault of the Issuer on the one hand and the Holders on the other in connection with the statements or omissions or alleged statements or alleged omissions that resulted in such loss, claim, damage or liability (or action in respect thereof), as well as any other relevant equitable considerations.

The relative benefits received by the Issuer on the one hand and a Holder on the other with respect to such offering and such sale shall be deemed to be in the same proportion as the total net proceeds from the offering of the Notes (before deducting expenses) received by the Issuer, on the one hand, bear to the total proceeds received by such Holder with respect to its sale of Transfer Restricted Securities on the other.

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

The Issuer and each Holder agree that it would not be just and equitable if the amount of contribution pursuant to this Section 6(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the first sentence of this paragraph (d). The amount paid or payable by an indemnified party as a result of the loss, claim, damage or liability, or action in respect thereof, referred to above in this Section 6 shall be deemed to include, for purposes of this Section 6, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating, or defending or preparing to defend any such litigation, investigation or proceeding by any governmental agency or body, or commenced or threatened action or claim. Notwithstanding the provisions of this Section 6, no Holder shall be required to contribute any amount in excess of the amount by which the total price at which the Transfer Restricted Securities purchased by it were resold exceeds the amount of any damages which such Holder has otherwise been required to pay by reason of any untrue or alleged untrue statement or omission or alleged omission.

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

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fraudulent misrepresentation. The Holders' obligations to contribute as provided in this Section 6(d) are several and not joint.

7. *Selection of Underwriters.* In the event any Holder of Transfer Restricted Securities covered by the Shelf Registration Statement proposes to dispose of such Transfer Restricted Securities through an Underwritten Offering, the investment banker or investment bankers and manager or managers that will administer the offering will be selected by a Majority of Holders whose Transfer Restricted Securities are included in such offering; *provided*, that such investment bankers and managers must be reasonably satisfactory to the Issuer.

8. *Miscellaneous.*

(a) *Amendments and Waivers.* Except as set forth pursuant to Section 8(c) and Section 8(i) hereto, this Agreement may not be amended, modified or supplemented, and waivers or consents to or departures from the provisions hereof may not be given, unless the Issuer has obtained the written consent of a Majority of Holders.

(b) *Notices.* All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, first-class mail (registered or certified, return receipt requested), electronic mail, telex, telecopier, or air courier guaranteeing overnight delivery:

(i) if to a Holder, at the address set forth on the records of the registrar under the Indenture or the transfer agent of the Common Stock, as the case may be; and

(ii) if to the Issuer:

Nektar Therapeutics
150 Industrial Road
San Carlos, California 94070
Attention: Secretary

With a copy to:

Cooley Godward LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306
Attention: John M. Geschke, Esq.

All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five (5) Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt acknowledged, if telecopied or electronically mailed; and on the next Business Day, if timely delivered to an air courier guaranteeing overnight delivery.

(c) *Successors and Assigns.* This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties, including without limitation

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assignees of the Holders of Transfer Restricted Securities. The rights to cause the Issuer to register Transfer Restricted Securities pursuant to this Agreement may be assigned by a Holder to a transferee or assignee of Transfer Restricted Securities that (a) is a subsidiary, parent, general partner, limited partner, retired partner, member or retired member of a Holder, or (b) is an entity affiliated by common control with such Holder; *provided, however*, that (i) the Holder shall, with five (5) days after such transfer, furnish to the Company written notice of the name and address of such assignee, (ii) such assignee shall agree in writing to be bound by the terms and conditions of this Agreement, (iii) the inclusion of the assignee as a selling securityholder and the Transfer Restricted Securities held by such assignee in the Shelf Registration Statement may be accomplished by a Prospectus supplement filed pursuant to Rule 424 under the Securities Act and shall not require a post-effective amendment to the Shelf Registration Statement, and (iv) nothing contained herein shall be deemed to permit any assignment, transfer or other disposition of Transfer Restricted Securities in violation of the Indenture.

(d) *Counterparts.* This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(e) *Securities Held by the Issuer or its Affiliates.* Whenever the consent or approval of Holders of a specified percentage of Transfer Restricted Securities is required hereunder, Transfer Restricted Securities held by the Issuer or its "affiliates" (as such term is defined in Rule 405 under the Securities Act) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

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

(g) *Governing Law.* This Agreement shall be governed by, and construed in accordance with, the law of the State of California, without regard to conflict of laws principles thereof.

(h) *Severability.* If any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby.

(i) *Additional Holders.* Notwithstanding anything to the contrary contained herein, if the Issuer shall sell additional Notes under the Indenture prior to the date that the Commission declares the Shelf Registration Statement effective, any such holder of such Notes shall become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement and shall be deemed a "Holder" and a party hereunder without the approval of the Holders; *provided, however*, that if such sale of additional Notes is after the effectiveness of the Shelf Registration Statement, then such holder of such Notes shall become a party to this Agreement only with the approval of a Majority of Holders.

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(j) *Entire Agreement.* This Agreement is intended by the parties as a final expression of their agreement and 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. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein with respect to the registration rights granted by the Issuer with respect to the Transfer Restricted Securities. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

NEKTAR THERAPEUTICS

By: /s/ Ajay Bansal
Ajay Bansal

RESALE REGISTRATION RIGHTS AGREEMENT
SIGNATURE PAGE

HOLDERS:

Salomon Brothers Qualified Investor Portfolios Multi-Strategy Arbitrage Portfolio
Salomon Brothers Diversified Arbitrage Strategies Fund Ltd.
Salomon Brothers Enhanced Arbitrage Strategies Fund
CEBT- Comingled Employee Benefit Trust – Capital Structure Arbitrage
General Motors Employees Global Group Pension Trust
General Motors Welfare Benefits Trust
Salomon Brothers Market Neutral Arbitrage Fund L.P.

By: Salomon Brothers Asset Management, Inc.,
the investment manager of each of the above listed Holders.

Signature: /s/ Kenneth Lee

Print Name: Kenneth Lee

Title: Director

HOLDERS:

ALEXANDRA GLOBAL MASTER FUND LTD.

By: Alexandra Investment Management, LLC,
as Investment Advisor

Signature: /s/ Mikhail Filimonov

Print Name: Mikhail Filimonov

Title: Chairman, CEO & Chief Investment Officer

NEKTAR THERAPEUTICS

SELLING SECURITYHOLDER NOTICE AND QUESTIONNAIRE

The undersigned beneficial holder of 3% Convertible Subordinated Notes due 2010 (the “Notes”) of Nektar Therapeutics (the “Issuer”), or common stock, par value \$0.0001 per share (the “Shares” and together with the Notes, the “Transfer Restricted Securities”) of the Issuer understands that the Issuer has filed, or intends to file, with the Securities and Exchange Commission (the “Commission”) a registration statement (the “Shelf Registration Statement”), for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the “Securities Act”), of the Transfer Restricted Securities in accordance with the terms of the Registration Rights Agreement, dated as of October 9, 2003 (the “Registration Rights Agreement”) between the Issuer and certain holders of the Transfer Restricted Securities. All capitalized terms not otherwise defined herein have the meaning ascribed thereto in the Registration Rights Agreement.

In order to sell or otherwise dispose of any Transfer Restricted Securities pursuant to the Shelf Registration Statement, the Holder will be required to be named as a selling securityholder in the related Prospectus, deliver a Prospectus to purchasers of Transfer Restricted Securities and be bound by those provisions of the Registration Rights Agreement applicable to the Holder (including certain indemnification provisions, as described below). **Holder** that do not complete this Notice and Questionnaire within 15 days of becoming a party to the Registration Rights Agreement and deliver it to the Issuer as provided below will not be named as selling securityholders in the Prospectus and therefore will not be permitted to sell any Transfer Restricted Securities pursuant to the Shelf Registration Statement.

Certain legal consequences arise from being named as a selling securityholder in the Shelf Registration Statement and the related Prospectus. Accordingly, Holders and beneficial owners of Transfer Restricted Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling securityholder in the Shelf Registration Statement and the related Prospectus.

NOTICE

The undersigned Holder (the “Selling Securityholder”) of Transfer Restricted Securities hereby gives notice to the Issuer of its intention to sell or otherwise dispose of Transfer Restricted Securities beneficially owned by it and listed below in Item 3 (unless otherwise specified under Item 3) pursuant to the Shelf Registration Statement. The undersigned, by signing and returning this Notice and Questionnaire, understands that it will be bound by the terms and conditions of this Notice and Questionnaire and the Registration Rights Agreement.

Pursuant to the Registration Rights Agreement, the undersigned has agreed to indemnify and hold harmless the Issuer, the Issuer's directors, the Issuer's officers who sign the Shelf Registration Statement and each person, if any, who controls the Issuer within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against certain losses arising in connection with statements concerning the undersigned made in the Shelf Registration Statement or the related Prospectus in reliance upon the information provided

in this Notice and Questionnaire.

The undersigned hereby provides the following information to the Issuer and represents and warrants that such information is accurate and complete:

QUESTIONNAIRE

- 1. (a) Full legal name of Selling Securityholder:
_____ □ 0; _____
- (b) Full legal name of registered holder (if not the same as (a) above) through which Transfer Restricted Securities listed in (3) below are held:
_____ □ 60; _____
- (c) Full legal name of DTC participant (if applicable and if not the same as (b) above) through which Transfer Restricted Securities listed in (3) are held:
_____ □ 0; _____
- (d) If the Selling Securityholder is a privately-owned entity, list the full legal name of each natural person with voting or investment control over securities of the Company held (or to be held as of the time of purchase of the Notes) by the Selling Securityholder:
_____ □ 60; _____
_____ □ 0; _____

- 2. Address for notices to Selling Securityholder:
_____ □ 0; _____
_____ □ 0; _____
_____ □ 0; _____
- Telephone: _____ ; _____
- Fax: _____ □ 0; _____
- Contact Person: _____

- 3. Beneficial ownership of Transfer Restricted Securities:
 - (a) Type of Transfer Restricted Securities beneficially owned, and principal amount of Notes or number of shares of Common Stock, as the case may be, beneficially owned:

_____ □ 0; _____
_____ □ 0; _____

- (b) CUSIP No(s). of such Transfer Restricted Securities beneficially owned:
_____ □ 0; _____
_____ □ 0; _____

- 4. Beneficial ownership of the Issuer's securities owned by the Selling Securityholder:
Except as set forth below in this Item (4), the undersigned is not the beneficial or registered owner of any securities of the Issuer other than the Transfer Restricted Securities listed above in Item (3) ("Other Securities").

- (a) Type and amount of Other Securities beneficially owned by the Selling Securityholder:

0;

0;

(b) CUSIP No(s). of such Other Securities beneficially owned:

0;

0;

5. Relationship with the Issuer

Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (5% or more) has held any position or office or has had any other material relationship with the Issuer (or their predecessors or affiliates) during the past three years.

State any exceptions here: _____

;

6. Plan of Distribution

Except as set forth below, the undersigned (including its donees or pledgees) intends to distribute the Transfer Restricted Securities listed above in Item (3) pursuant to the Shelf Registration Statement only as follows (if at all). Such Transfer Restricted Securities may be sold from time to time directly by the undersigned or, alternatively, through underwriters, broker-dealers or agents. If the Transfer Restricted Securities are sold through underwriters or broker-dealers, the Selling Securityholder will be responsible

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for underwriting discounts or commissions or agent's commissions. Such Transfer Restricted Securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale, or at negotiated prices. Such sales may be effected in transactions (which may involve crosses or block transactions):

- (i) on any national securities exchange or quotation service on which the Transfer Restricted Securities may be listed or quoted at the time of sale;
- (ii) in the over-the-counter market;
- (iii) in transactions otherwise than on such exchanges or services or in the over-the-counter market; or
- (iv) through the writing of options.

In connection with sales of the Transfer Restricted Securities or otherwise, the undersigned may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the Transfer Restricted Securities and deliver Transfer Restricted Securities to close out such short positions, or loan or pledge Transfer Restricted Securities to broker-dealers that in turn may sell such securities. Notwithstanding the forgoing, the undersigned understands that the Transfer Restricted Securities may not be delivered to close out any short position entered into prior to the effective date of the Shelf Registration Statement.

State any exceptions here: _____

& #160;

Note: In no event will such method(s) of distribution take the form of an underwritten offering of the Transfer Restricted Securities without the prior agreement of the Issuer.

7. Please complete the following by checking the applicable box:

- (a) Yes. No. The Selling Securityholder received the Notes as compensation for the sale of securities or the delivery of investment services.
- (b) Yes. No. The Selling Securityholder is a registered Broker-Dealer under the Exchange Act.
- (c) Yes. No. The Selling Securityholder is an "affiliate" (as defined in the Exchange Act) of a registered Broker-Dealer under the Exchange Act.

If the Selling Securityholder is such an "affiliate":

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- (i) Yes. No. The Selling Securityholder is purchasing the Notes in the ordinary course of business.
- (ii) Yes. No. The Selling Securityholder does not and, as of the time of purchase of the Notes, did not have any agreement or understanding, whether directly or indirectly, with any person or entity to distribute or resell the Notes.
- (d) Yes. No. The Selling Securityholder does not have and, as of the time of purchase of the Notes, did not have any open short position in the securities of the Company.

If the Selling Securityholder does have such an open short position, indicate the size of that short position:

The undersigned acknowledges that it understands its obligation to comply with the provisions of the Exchange Act and the rules and regulations promulgated thereunder relating to stock manipulation, particularly Regulation M thereunder (or any successor rules or regulations), in connection with any offering of Transfer Restricted Securities pursuant to the Shelf Registration Statement. The undersigned agrees that neither it nor any person acting on its behalf will engage in any transaction in violation of such provisions.

The Selling Securityholder hereby acknowledges its obligations under the Registration Rights Agreement to indemnify and hold harmless certain persons as set forth therein and to deliver the Prospectus as required under applicable securities laws.

Pursuant to the Registration Rights Agreement, the Issuer has agreed under certain circumstances to indemnify the Selling Securityholders against certain liabilities.

In accordance with the undersigned's obligation under the Registration Rights Agreement to provide such information as may be required by law for inclusion in the Shelf Registration Statement, the undersigned agrees to promptly notify the Issuer of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Shelf Registration Statement remains effective. All notices hereunder and pursuant to the Registration Rights Agreement shall be made in writing at the address set forth below.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to items (1) through (7) above and the inclusion of such information in the Shelf Registration Statement and the related Prospectus. The undersigned understands that such information will be relied upon by the Issuer in connection with the preparation or amendment of the Shelf Registration Statement and the related Prospectus.

IN WITNESS WHEREOF, the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Dated: _____

Name of Beneficial Owner

By: _____
 Name:
 Title:

Please return the completed and executed Notice and Questionnaire, by mail or facsimile, to:

Steve Kuan
 Cooley Godward LLP
 Five Palo Alto Square
 3000 El Camino Real
 Palo Alto, CA 94306-2155
 Facsimile: (650) 849-7400

with a copy to:

Nektar Therapeutics
150 Industrial Road
San Carlos, California 94070
Attention: Assistant Secretary
Facsimile: (650) 620-5360

FORM OF SECURITY

[FACE OF SECURITY]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC") TO NEKTAR THERAPEUTICS (OR ITS SUCCESSOR) OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, CONVERSION OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.(1)

THE SECURITY EVIDENCED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ACQUISITION HEREOF, THE HOLDER (1) AGREES THAT IT WILL NOT WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITY EXCEPT (A) TO NEKTAR THERAPEUTICS (THE "COMPANY") OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (C) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OR (D) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER; AND (2) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THE SECURITY EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE (1)(D) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THE SECURITY EVIDENCED HEREBY WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF SUCH SECURITY (OTHER THAN A TRANSFER PURSUANT TO CLAUSE (1)(D) ABOVE), THE HOLDER MUST MAKE THE REPRESENTATIONS AND WARRANTIES SET FORTH ON THE REVERSE HEREOF RELATING TO THE MANNER OF SUCH TRANSFER AND SUBMIT THIS CERTIFICATE TO THE TRUSTEE (OR ANY SUCCESSOR TRUSTEE, AS APPLICABLE). IF THE PROPOSED TRANSFER IS PURSUANT TO CLAUSE (1)(B) OR (1)(C) ABOVE, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE (OR ANY SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE COMPANY MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING

(1) This legend should be included on if the Security is issued in global form

MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THE SECURITY EVIDENCED HEREBY PURSUANT TO CLAUSE (1)(D) ABOVE OR THE EXPIRATION OF TWO YEARS FROM THE ORIGINAL ISSUANCE OF THE SECURITY EVIDENCED HEREBY.

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NEKTAR THERAPEUTICS

3% Convertible Subordinated Note due 2010

CUSIP NO. 640268 AC

No. 1

\$

NEKTAR THERAPEUTICS, a Delaware corporation (the "Company," which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to Cede & Co., or its registered assigns, the principal sum of U.S. Dollars (\$) on June 30, 2010.

Interest Payment Dates: June 30 and December 30, commencing December 30, 2003

Regular Record Dates: June 15 and December 15

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

3

IN WITNESS WHEREOF, the Company has caused this Security to be duly executed manually or by facsimile by its duly authorized officers.

Dated: October 9, 2003

NEKTAR THERAPEUTICS

By: _____
Name:
Title:

By: _____
Name:
Title:

Trustee's Certificate of Authentication

This is one of the 3% Convertible Subordinated Notes due 2010 described in the within-named Indenture.

J.P. MORGAN TRUST COMPANY,
NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory

Dated: October 9, 2003

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[REVERSE OF SECURITY]

NEKTAR THERAPEUTICS

3% Convertible Subordinated Note due 2010

Capitalized terms used herein but not defined shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

Principal and Interest.

Nektar Therapeutics, a Delaware corporation (the "Company") promises to pay interest on the principal amount of this Security at the rate of 3 percent per annum from October 9, 2003 until repayment at Maturity, redemption or repurchase. The Company will pay interest on this Security semiannually in arrears on June 30 and December 30 of each year (each an "Interest Payment Date"), commencing December 30, 2003.

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

A Holder of any Security at the close of business on a Regular Record Date shall be entitled to receive interest on such Security on the corresponding Interest Payment Date. A Holder of any Security which is converted after the close of business on a Regular Record Date and prior to the corresponding Interest Payment Date (other than any Security whose Maturity is prior to such Interest Payment Date) shall be entitled to receive interest on the principal amount of such Security, notwithstanding the conversion of such Security prior to such Interest Payment Date. However, any such Holder which surrenders any such Security for conversion during the period between the close of business on such Regular Record Date and ending with the opening of business on the corresponding Interest Payment Date shall be required to pay the Company an amount equal to the interest on the principal amount of such Security so converted, which is payable by the Company to such Holder on such Interest Payment Date, at the time such Holder surrenders such Security for conversion. Notwithstanding the foregoing, any such Holder which surrenders for conversion any Security which has been called for redemption by the Company in a notice of redemption given by the Company pursuant to Section 10.5 of the Indenture shall be entitled to receive (and retain) such interest and need not pay the Company an amount equal to the interest on the principal amount of such Security so converted at the time such Holder surrenders such Security for conversion.

To the maximum extent permitted by applicable law, in the event that any amounts owing in respect of the principal of, the premium (if any) or interest on the Securities is not paid in full on the due date therefor, interest shall accrue on such unpaid amounts at the rate of 3% per annum until such amounts are paid in full.

In accordance with the terms of the Resale Registration Rights Agreement, dated October 9, 2003, between the Company and the Initial Purchasers party thereto (the "Registration Rights Agreement"), during the first 90 days following a Registration Default (as

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defined in the Registration Rights Agreement), the interest rate borne by the Securities shall be increased by 0.25% on:

(a) May 7, 2004, if the Shelf Registration Statement is not declared effective by the Securities and Exchange Commission prior to or on May 6, 2004;

(b) the day after the fifth Business Day after the Shelf Registration Statement, previously declared effective, ceases to be effective or fails to be usable, if a post-effective amendment (or report filed pursuant to the Exchange Act) that, upon effectiveness would cure the Shelf Registration Statement is not filed with the Securities and Exchange Commission during such five Business Day period; or

(c) the day following the 45th, 60th or 90th day, as the case may be, of any Suspension Period (as defined in the Registration Rights Agreement), if such suspension has not been terminated.

From and after the 91st day following such Registration Default, the interest rate borne by the Securities shall be increased by 0.50%. In no event shall the interest rate borne by the Securities be increased by more than 0.50%.

Any amount of additional interest will be payable in cash semiannually, in arrears, on each Interest Payment Date and will cease to accrue on the date the Registration Default is cured.

Method of Payment.

Interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

Principal of, and premium, if any, and interest on, Global Securities will be payable to the Depository in immediately available funds.

Principal and premium, if any, on Physical Securities will be payable at the office or agency of the Company maintained for such purpose, initially the Corporate Trust Office of the Trustee. Interest on Physical Securities will be payable by (i) U.S. Dollar check drawn on a bank in The City of New York mailed to the address of the Person entitled thereto as such address shall appear in the Register, or (ii) upon application to the Registrar not later than the relevant Record Date by a Holder of an aggregate principal amount in excess of \$5,000,000, wire transfer in immediately available funds.

Paying Agent and Registrar.

Initially, J.P. Morgan Trust Company, National Association, the Trustee under the Indenture, will act as Paying Agent and Registrar. The Company may change the Paying Agent or Registrar without notice to any Holder.

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Indenture.

This Security is one of a duly authorized series of Securities issued under an Indenture, dated as of October 9, 2003 (the "Indenture"), between the Company and J.P. Morgan Trust Company, National Association, as trustee (the "Trustee"). The Securities issued under the Indenture may be issued in one or more series and the Securities of each such series shall rank equally and pari passu with the Securities of each other series. Notwithstanding any provision to the contrary, any future series of Securities established in or pursuant to a Board Resolution or a supplemental indenture will be on the same terms as the Securities issued pursuant to the Indenture in all respects other than the date of issuance. All Securities of any one series need not be issued at the same time and may be issued from time to time, consistent with the terms of the Indenture, if so provided by or pursuant to such Board Resolution, such Officers' Certificate or in any such indenture supplemental thereto. The terms of the Security include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended ("TIA"). This Security is subject to all such terms, and Holders are referred to the Indenture and the TIA for a statement of all such terms. To the extent permitted by applicable law, in the event of any inconsistency between the terms of this Security and the terms of the Indenture, the terms of the Indenture shall control.

Provisional Redemption.

The Securities may be redeemed at the election of the Company, as a whole or from time to time in part or any date, at any time prior to June 30, 2006 (a "Provisional Redemption"), at a Redemption Price, payable in cash, equal to \$1,000 per \$1,000 principal amount of the Securities, on the date of redemption (the "Provisional Redemption Date") if (i) the Closing Price of the Common Stock has exceeded 150% of the Conversion Price (as may be adjusted from time to time) then in effect for at least 20 Trading Days in any consecutive 30 Trading Day period ending on the Trading Day prior to the date of mailing of the provisional notice of redemption upon not less than 20 nor more than 60 days notice (the "Notice Date"), and (ii) either (a) a registration statement covering resales of the Securities and the Common Stock issuable upon conversion thereof is effective and available for use and is expected to remain effective for the 30 days following the Provisional Redemption Date or (b) the Securities and the Common Stock issuable upon conversion thereof are no longer Transfer Restricted Securities (as defined in the Registration Rights Agreement).

Upon any such Provisional Redemption, the Company shall make an additional payment (the "Make-Whole Payment") with respect to the Securities called for redemption to Holders on the Notice Date in an amount equal to \$90 per \$1,000 principal amount of the Securities, less the amount of any interest actually paid on such Securities prior to the Provisional Redemption Date. The Company shall make the Make-Whole Payment on all Securities called for Provisional Redemption, including those Securities converted into Common Stock between the Notice Date and the Provisional Redemption Date.

The Company may elect to pay the Make-Whole Payment or any portion thereof (i) in cash or, (ii) subject to the fulfillment by the Company of the conditions set forth in Section 10.1 of the Indenture, by delivering the number of shares of Common Stock equal to (x) the Make-Whole Payment (or any portion thereof that the Company elects to pay in shares of Common

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Stock) divided by (y) 97% of the average of the Closing Prices per share of Common Stock for the five consecutive Trading Days immediately preceding and including the first Trading Day prior to the Provisional Redemption Date.

Optional Redemption.

Except as provided above, this Security is not redeemable prior to June 30, 2006. This Security may be redeemed in whole or in part, upon not less than 20 nor more than 60 days' notice, at any time on or after June 30, 2006, at the option of the Company, at the Redemption Prices (expressed as percentages of the principal amount) set forth below if redeemed during the 12-month period beginning June 30 of the years indicated and ending June 29 of the following years, plus any interest accrued but not paid prior to the Optional Redemption Date.

<u>During the Twelve Months Commencing</u>	<u>Redemption Prices</u>
June 30, 2006	101.714%
June 30, 2007	101.286%
June 30, 2008	100.857%
June 30, 2009	100.429%

Securities in original denominations larger than \$1,000 may be redeemed in part. If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed to be the portion selected for redemption (provided, however, that the Holder of such Security so converted and deemed redeemed shall not be entitled to any additional interest payment as a result of such deemed redemption than such Holder would have otherwise been entitled to receive upon conversion of such Security). Securities which have been converted during a selection of Securities to be redeemed may be treated by the Trustee as Outstanding for the purpose of such selection.

On and after the Redemption Date, interest ceases to accrue on Securities or portions of Securities called for redemption, unless the Company defaults in the payment of the Redemption Price and accrued and unpaid interest.

Notice of redemption will be given by the Company to the Holders as provided in the Indenture.

Repurchase Right Upon a Change of Control.

If a Change of Control occurs, the Holder of Securities, at the Holder's option, shall have the right, in accordance with the provisions of the Indenture, to require the Company to repurchase the Securities (or any portion of the principal amount hereof that is at least \$1,000 or an integral multiple thereof, provided that the portion of the principal amount of this Security to be Outstanding after such repurchase is at least equal to \$1,000) at the Repurchase Price in cash, plus any interest accrued and unpaid to the Repurchase Date.

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Subject to the conditions provided in the Indenture, the Company may, at its option, elect to pay the Repurchase Price in Common Stock or in securities of the acquiring party in a Change of Control for which the Common Stock is exchanged in connection with such Change of Control, or a combination thereof with cash, by delivering the number of shares of Common Stock or Acquiror Stock equal to (i) the Repurchase Price (less any amounts paid in cash) divided by (ii) 95% of the average of the Closing Prices per share of Common Stock or Acquiror Stock, as applicable, for the five consecutive Trading Days immediately preceding and including the third Trading Day prior to the Repurchase Date.

No fractional shares of Common Stock or Acquiror Stock will be issued upon repurchase of any Securities. Instead of any fractional share of Common Stock or Acquiror Stock which would otherwise be issued upon conversion of such Securities, the Company shall pay a cash adjustment as provided in the Indenture.

A Company Notice will be given by the Company to the Holders as provided in the Indenture. To exercise a repurchase right, a Holder must deliver to the Trustee a written notice as provided in the Indenture.

Conversion Rights.

Subject to and upon compliance with the provisions of the Indenture, the Holder of Securities is entitled, at such Holder's option, at any time before the close of business on June 30, 2010, to convert the Holder's Securities (or any portion of the principal amount hereof which is \$1,000 or an integral multiple thereof), at the principal amount thereof or of such portion, into duly authorized, fully paid and nonassessable shares of Common Stock of the Company at the Conversion Price in effect at the time of conversion.

In the case of a Security (or a portion thereof) called for redemption, such conversion right in respect of the Security (or such portion thereof) so called, shall expire at the close of business on the second Business Day preceding the Redemption Date, unless the Company defaults in making the payment due upon redemption. In the case of a Change of Control for which the Holder exercises its Repurchase Right with respect to a Security (or a portion thereof), such conversion right in respect of the Security (or portion thereof) shall expire at the close of business on the Business Day preceding the Repurchase Date.

The Conversion Price shall be initially equal to \$11.35 per share of Common Stock. The Conversion Price shall be adjusted under certain circumstances as provided in the Indenture.

To exercise the conversion right, the Holder must surrender the Security (or portion thereof) duly endorsed or assigned to the Company or in blank, at the office of the Conversion Agent, accompanied by a duly signed conversion notice to the Company. Any Security surrendered for conversion during the period from the close of business on any Regular Record Date to the opening of business on the corresponding Interest Payment Date (other than any Security whose Maturity is prior to such Interest Payment Date), shall also be accompanied by payment in New York Clearing House funds or other funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount of the Securities being surrendered for conversion.

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No fractional shares of Common Stock will be issued upon conversion of any Securities. Instead of any fractional share of Common Stock which would otherwise be issued upon conversion of such Securities, the Company shall pay a cash adjustment as provided in the Indenture.

Subordination.

The Indebtedness evidenced by this Security is, to the extent and in the manner provided in the Indenture, subordinated and subject in right of payment to the prior payment in full of all amounts then due on all Senior Debt of the Company, and this Security is issued subject to such provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee such Holder's attorney-in-fact for any and all such purposes.

Security.

The Holder of this Note is entitled to the benefits of a Pledge Agreement, dated as of October 9, 2003, among the Company, the Trustee and the Pledged Securities Intermediary named therein, pursuant to which the Company has placed in the Pledge Account cash or Pledged Securities sufficient to provide for the payment of the first six scheduled interest payments due on the Notes and to secure repayment of the principal, premium (if any) and interest on the Notes in the event that the Notes become due and payable prior to such time as the first six scheduled interest payments thereon shall have been paid in full.

Denominations; Transfer; Exchange.

The Securities are issuable in registered form, without coupons, in denominations of \$1,000 and integral multiples of \$1,000 in excess thereof. A Holder may register the transfer or exchange of Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes and fees required by law or permitted by the Indenture.

In the event of a redemption in part, the Company will not be required (a) to register the transfer of, or exchange, Securities for a period of 15 days immediately preceding the date notice is given identifying the serial numbers of the Securities called for such redemption, or (b) to register the transfer of, or exchange, any such Securities, or portion thereof, called for redemption.

In the event of redemption, conversion or repurchase of the Securities in part only, a new Security or Securities for the unredeemed, unconverted or unpurchased portion thereof will be issued in the name of the Holder hereof.

Persons Deemed Owners.

The registered Holder of this Security shall be treated as its owner for all purposes.

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Unclaimed Money.

The Trustee and the Paying Agent shall pay to the Company any money held by them for the payment of principal, premium, if any, or interest that remains unclaimed for two years after the date upon which such payment shall have become due. After payment to the Company, Holders entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person, and all liability of the Trustee and such Paying Agent with respect to such money shall cease.

Discharge Prior to Redemption or Maturity.

Subject to certain conditions contained in the Indenture, the Company may discharge its obligations under the Securities and the Indenture if (1) (a) all of the Outstanding Securities shall become due and payable at their scheduled Maturity within one year or (b) all of the Outstanding Securities are scheduled for redemption within one year, and (2) the Company shall have deposited with the Trustee money and/or U.S. Government Obligations sufficient to pay the principal of, and premium, if any, and interest on, all of the Outstanding Securities on the date of Maturity or redemption, as the case may be.

Amendment; Supplement; Waiver.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in aggregate principal amount of the Outstanding Securities (or such lesser amount as shall have acted at a meeting pursuant to the provisions of the Indenture). The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities at the time Outstanding, on behalf of the Holders of all the Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security or such other Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and premium, if any, and interest (including Liquidated Damages, if any) on this Security at the times, places and rate, and in the coin or currency, herein prescribed or to convert this Security (or pay cash in lieu of conversion) as provided in the Indenture.

Defaults and Remedies.

The Indenture provides that an Event of Default with respect to the Securities occurs when any of the following occurs:

the Company defaults in the payment of the principal of or premium, if any, on any of the Securities when it becomes due and payable at Maturity, upon

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redemption or exercise of a Repurchase Right or otherwise, whether or not such payment is prohibited by the subordination provisions of Article 13 of the Indenture;

the Company defaults in the payment of interest on any of the Securities when it becomes due and payable and such default continues for a period of 30 days, whether or not such payment is prohibited by the subordination provisions of Article 13 of the Indenture; provided that a failure to make any of the first six scheduled interest payments on any of the Securities within three Business Days of the applicable Interest Payment Date will constitute an Event of Default with no additional grace or cure period;

the Company fails to perform or observe any other term, covenant or agreement contained in the Securities or the Indenture and such default continues for a period of 60 days after written notice of such failure is given as specified in the Indenture;

(i) the Company fails to make any payment by the end of the applicable grace period, if any, after the maturity of any Indebtedness for borrowed money in an amount in excess of \$5,000,000 (provided that such failure shall not constitute an Event of Default if (1) the Company determines, in good faith, that a lessor under a lease described in clause (3)(a) of the definition of Indebtedness set forth in the Indenture breached a covenant under the lease and the Company has given notice of the breach to the lessor and the Trustee and (2) as a result of the breach, the Company withholds payment under the lease) (a "Default Exception"), or (ii) there is an acceleration of any Indebtedness for borrowed money in an amount in excess of \$5,000,000 because of a default with respect to such Indebtedness (other than a Default Exception) without such Indebtedness having been discharged or such acceleration having been cured, waived, rescinded or annulled, in the case of either clause (i) or (ii) above, for a period of 30 days after written notice is given to the Company as specified in the Indenture;

the Pledge Agreement, as such agreement may be amended, restated or supplemented or otherwise modified from time to time, shall cease to be in full force and effect or enforceable in accordance with its terms, other than in accordance with its terms; and

there are certain events of bankruptcy, insolvency or reorganization of the Company.

If an Event of Default shall occur and be continuing, the principal of all the Securities may be declared due and payable in the manner and with the effect provided in the Indenture.

Authentication.

This Security shall not be valid until the Trustee (or authenticating agent) executes the certificate of authentication on the other side of this Security.

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Abbreviations.

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

Additional Rights of Holders of Restricted Securities.

In addition to the rights provided to Holders under the Indenture, Holders of Restricted Securities shall have all the rights set forth in the Registration Rights Agreement.

CUSIP Numbers.

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

Governing Law.

The Indenture and this Security shall be governed by, and construed in accordance with, the law of the State of New York.

Successor Corporation.

In the event a successor corporation assumes all the obligations of the Company under this Security, pursuant to the terms hereof and of the Indenture, the Company will be released from all such obligations.

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ASSIGNMENT FORM

To assign this Security, fill in the form below and have your signature guaranteed: (I) or (we) assign and transfer this Security to:

(Insert assignee's soc. sec. or tax I.D. no.)

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

Dated: _____

Your Name: _____
(Print your name exactly as it appears on the face of this Security)

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

Signature Guarantee*: _____

** Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).*

In connection with any transfer of this Security occurring prior to the date which is two years following the original issuance of this Security, the undersigned represents and warrants that without utilizing any general solicitation or general advertising that this Security is being transferred in compliance with an exemption from registration under the Securities Act of 1933, as amended and documents are being furnished which comply with the conditions of transfer set forth in this Security and the Indenture.

The Trustee or other Registrar shall not be obligated to register this Security in the name of any Person other than the Holder hereof unless the conditions to any such transfer of registration set forth herein and in Sections 2.7, 2.8 and 2.9 of the Indenture shall have been satisfied.

Dated: _____

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

Signature Guarantee:

Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor acceptable to the Trustee.

CONVERSION NOTICE

TO: NEKTAR THERAPEUTICS
150 Industrial Road
San Carlos, California 94070

The undersigned registered owner of this Security hereby irrevocably exercises the option to convert this Security, or the portion hereof (which is \$1,000 principal amount or an integral multiple thereof) below designated, into shares of Common Stock in accordance with the terms of the Indenture referred to in this Security, and directs that the shares issuable and deliverable upon such conversion, together with any check in payment for fractional shares and any Securities representing any unconverted principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If shares or any portion of this Security not converted are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. Any amount required to be paid to the undersigned on account of interest (including Liquidated Damages, if any) accompanies this Security.

Dated: _____

Your Name: _____
(Print your name exactly as it appears on the face of this Security)

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

Signature Guarantee*: _____

Principal amount to be converted (if less than all): \$

** Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).*

Fill in for registration of shares (if to be issued) and Securities (if to be delivered) other than to and in the name of the registered holder:

(Name)

(Street Address)

(City, State and Zip Code)

NOTICE OF EXERCISE OF REPURCHASE RIGHT

TO: NEKTAR THERAPEUTICS
150 Industrial Road
San Carlos, California 94070

The undersigned registered owner of this Security hereby irrevocably acknowledges receipt of a notice from Nektar Therapeutics (the "Company") as to the occurrence of a Change of Control with respect to the Company and requests and instructs the Company to repay the entire principal amount of this Security, or the portion thereof (which is \$1,000 principal amount or an integral multiple thereof) below designated, in accordance with the terms of the Indenture referred to in this Security, together with interest (including Liquidated Damages, if any) accrued and unpaid to, but excluding, such date, to the registered holder hereof, in cash or by delivery of shares of Common Stock as specified in the Company's notice.

Dated: _____

Your Name: _____
(Print your name exactly as it appears on the face of this Security)

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

Signature Guarantee*: _____

Principal amount to be converted (if less than all): \$

** Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).*

PLEDGE AGREEMENT

This PLEDGE AGREEMENT (this "Agreement") is made and entered into as of October 9, 2003 by and among NEKTAR THERAPEUTICS, a Delaware corporation (the "Grantor"), having its principal executive offices at 150 Industrial Road, San Carlos, California 94070 and J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION ("J.P. Morgan"), having an office at 560 Mission Street, 13th Floor, San Francisco, California 94105, (i) in its capacity as trustee (the "Trustee") for the holders (the "Holders") of the Notes (as hereinafter defined) issued by the Grantor under the Indenture referred to below and (ii) in its individual capacity, as securities intermediary (in such capacity, the "Pledged Securities Intermediary") at its office in New York c/o: J.P. Morgan Chase Bank, Institutional Trust Services, 4 New York Plaza, 15th Floor, New York, New York 10004 (the "Account Office") with respect to the Pledge Account (as hereinafter defined). Capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Indenture.

WITNESSETH

WHEREAS, the Grantor and the Trustee have entered into that certain Indenture dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "Indenture"), pursuant to which the Grantor is issuing in one or more series from time to time its 3% Convertible Subordinated Notes due 2010 (the "Notes"); and

WHEREAS, subject to the terms of this Agreement, the Pledged Securities Intermediary has established for the Grantor, as beneficial owner, a securities account (the "Pledge Account") at the Account Office, registered in the name of the Trustee, as entitlement holder, and designated as Account No. 10206353.1, Reference: "J.P. Morgan Trust Company, National Association as Pledged Securities Intermediary, Nektar Therapeutics Convertible Bond Collateral A/C"; and

WHEREAS, the Grantor has agreed to purchase or cause the purchase of security entitlements with respect to the U. S. Government Securities identified by CUSIP number in Schedule I hereto (such security entitlements being, collectively, the "Pledged Securities"), for the account of the Pledged Securities Intermediary for credit to the Pledge Account, in an amount that will be sufficient, upon receipt of the scheduled interest and principal payments in respect thereof, to provide for the payment of the first six scheduled interest payments due on the Notes; and

WHEREAS, to secure the obligations of the Grantor under the Indenture and the Notes to pay in full each of the first six scheduled interest payments on the Notes and to pay in full all of the principal, premium (if any) and interest on the Notes and all other amounts payable by the Grantor under the Indenture in the event that the Notes or any principal thereof or premium, if any, thereon becomes due and payable prior to such time as the first six scheduled interest payments thereon shall have been paid in full (collectively, the "Obligations"), the Grantor has

agreed (i) to grant to the Trustee, for its benefit and the ratable benefit of the Holders of the Notes, a security interest in the Pledge Account and all cash, Pledged Securities and other Collateral (as hereinafter defined) from time to time deposited therein or credited thereto and (ii) to execute and deliver this Agreement in order to secure the payment and performance by the Grantor of all the Obligations; and

WHEREAS, it is a condition precedent to the purchase of the Notes by the initial Holders thereof that the Grantor shall have granted the security interests contemplated by this Agreement; and

WHEREAS, unless otherwise defined herein or in the Indenture, terms used herein that are defined in Article 8 or 9 of the Uniform Commercial Code as in effect in the State of New York (the "UCC") are used herein as therein defined:

NOW, THEREFORE, in consideration of the mutual promises herein contained, and in order to induce the initial Holders to purchase the Notes, the Grantor hereby agrees with the Trustee, for the benefit of the Trustee and for the ratable benefit of the Holders of the Notes, and with the Pledged Securities Intermediary as follows:

SECTION 1. Grant of Security Interest. The Grantor hereby grants to the Trustee, for its benefit and for the ratable benefit of the Holders of the Notes, a security interest in and to all of the Grantor's right, title and interest in, to and under the following, in each case whether now owned or hereafter acquired, wherever located and whether now or hereafter existing (hereinafter collectively referred to as the "Collateral"):

- (a) the Pledge Account;
- (b) all cash or credit balances from time to time deposited in or credited to the Pledge Account;
- (c) the Pledged Securities and all other financial assets (including certificated and uncertificated securities) and security entitlements from time to time deposited in, credited to, or created or otherwise carried in the Pledge Account;
- (d) all interest, dividends, 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 the Collateral;
- (e) all securities (whether certificated or uncertificated) or other financial assets, security entitlements, securities accounts, accounts, general intangibles, instruments, documents, cash or deposit accounts representing or evidencing any or all of the Collateral; and

(f) to the extent not covered by clauses (a) through (e) above, all proceeds of any and all of the foregoing Collateral (including, without limitation, proceeds that constitute property of the types described in clauses (a) through (e) above).

SECTION 2. Secured Obligations. This Agreement and the grant of a security interest in the Collateral secure the prompt and complete payment and performance when due (whether at stated maturity, by acceleration, upon redemption or otherwise) of all Obligations now or hereafter existing, whether for principal, premium, interest, fees, indemnities or otherwise, and all obligations of the Grantor now or hereafter existing under this Agreement (all such Obligations and such other obligations being, collectively, the "Secured Obligations"). Without limiting the generality of the foregoing, this Agreement and the grant of a security interest in the Collateral hereunder secure, to the fullest extent permitted by applicable law, the payment of all amounts that constitute part of the Secured Obligations and that would be owed by the Grantor to the Trustee or the Holders under the Notes or the Indenture but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving the Grantor.

SECTION 3. Maintaining the Pledge Account. Prior to or concurrently with the execution and delivery hereof and for so long as any Secured Obligation shall remain outstanding,

(a) the Trustee shall establish and maintain (and the Pledged Securities Intermediary shall maintain and administer in accordance with this Agreement) the Pledge Account with the Pledged Securities Intermediary at the Account Office in accordance with the terms of this Agreement. The Pledge Account shall at all times be under the sole dominion and control of, and shall at all times be segregated from any other custodial, collateral or other accounts maintained by, or under the dominion and control of, the Trustee;

(b) it shall be a term and condition of the Pledge Account, notwithstanding any term or condition to the contrary in any other agreement relating to the Pledge Account, and except as otherwise provided by the provisions of Section 5 and Section 15.9 of this Agreement, that no Collateral (including proceeds thereof) shall be paid or released from the Pledge Account to or for the account of, or withdrawn by or for the account of, and no entitlement orders with respect to any of the Collateral shall be given to the Pledged Securities Intermediary by, the Grantor or any other Person other than the Trustee as provided herein;

(c) subject to the provisions of this Agreement, the Pledge Account shall be registered in the name of the Trustee on the books and records of the Pledged Securities Intermediary, the Trustee shall be identified on such books and records as the entitlement holder with respect to all security entitlements in all financial assets from time to time held in or credited to the Pledge Account, and the Trustee shall have the sole right to (i) deliver entitlement orders with respect to the Pledge Account and any Collateral from time to time credited thereto, deposited therein or represented thereby or (ii) make withdrawals from the Pledge Account or

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otherwise exercise any other rights with respect to any Collateral from time to time credited thereto or on deposit therein; and

(d) the Pledge Account shall be subject to such applicable laws, and such applicable regulations of any appropriate banking or governmental authority, as may now or hereafter be in effect, including without limitation any applicable regulations of the Board of Governors of the Federal Reserve System.

SECTION 4. Acquisition of Pledged Securities for Credit to the Pledge Account.

(a) On or prior to the date hereof, the Grantor shall purchase or cause the purchase of the Pledged Securities for the account of the Pledged Securities Intermediary for credit to the Pledge Account.

(b) Upon transfer or credit of the Pledged Securities to the Pledged Securities Intermediary, as confirmed to the Pledged Securities Intermediary by the Federal Reserve Bank of New York or another securities intermediary at which the Pledged Securities Intermediary maintains a securities account, the Pledged Securities Intermediary shall make appropriate book entries indicating that the Pledged Securities have been credited to and are held in the Pledge Account.

SECTION 5. Disbursements From the Pledge Account; Transfers of Additional Amounts to the Pledge Account.

(a) At least three Business Days prior to the due date of any of the first six scheduled interest payments on the Notes, the Grantor may, pursuant to written instructions given by the Grantor to the Trustee (each an "Issuer Order"), instruct the Trustee to direct the Pledged Securities Intermediary to release from the Pledge Account, and pay to the Holders of the Notes as of the applicable Regular Record Date, proceeds of the Pledged Securities sufficient to provide for payment in full of such interest then due on the Notes. Upon receipt of an Issuer Order, the Trustee will direct the Pledged Securities Intermediary to release funds from (and to the extent of) proceeds of the Pledged Securities in the Pledge Account in an amount sufficient to provide for the payment in full of such interest then due on the Notes, as instructed in such Issuer Order, and to transfer such funds to the Holders of the Notes in accordance with the payment provisions of the Indenture. Nothing in this Section 5 shall affect the Trustee's rights to direct the application of the Collateral to the payment of amounts due on the Notes upon acceleration thereof in accordance with the terms of the Indenture.

(b) If the Grantor makes all or any portion of any interest payment for which the Collateral is security from a source of funds other than the Pledge Account ("Grantor Funds"), the Grantor may, after payment in full of such interest payment, instruct the Trustee, pursuant to an Issuer Order, to direct the Pledged Securities Intermediary to release to the Grantor, or to another party designated by the Grantor in such Issuer Order (the "Grantor's Designee"), proceeds from the Pledge Account in an amount that, in the discretion of the Grantor, is less than

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or equal to the amount of Grantor Funds applied to such interest payment; *provided* that, after giving effect to such release, the scheduled interest and principal payments in respect of the Pledged Securities remaining in the Pledge Account, together with any cash remaining in the Pledge Account, equal or exceed the amount necessary to provide for the timely payment in full of interest on the Notes for as many of the first six scheduled interest payments as shall then remain. Upon (i) receipt by the Trustee of such Issuer Order and (ii) confirmation by the Trustee of the payment in full of such interest payment (from such Grantor Funds and, if necessary, additional funds released from the Pledge Account in accordance with Section 5(a)), the Trustee shall direct the Pledged Securities Intermediary to release funds from (and to the extent of) proceeds of the Pledged Securities in the Pledge Account and to transfer such funds to the Grantor or the Grantor's Designee, as the case may be, as instructed in such Issuer Order as soon as practicable after such conditions are satisfied.

(c) If at any time the scheduled interest and principal payments in respect of the Pledged Securities then credited to the Pledge Account, together with any cash then held in the Pledge Account, exceed 100% of the amount necessary (which shall be certified in writing by an Officer of the Company or, if such amount, together with all other amounts disbursed from the Pledge Account in the preceding 12 month period, equals or exceeds \$100,000, by a nationally recognized firm of independent accountants selected by the Grantor and delivered to the Trustee) to provide for the payment in full, when due, of the first six scheduled interest payments on the Notes (or such number of the first six scheduled interest payments on the Notes as shall then remain, as the case may be), the Grantor may instruct the Trustee, pursuant to an Issuer Order, to direct the Pledged Securities Intermediary to release any such excess amount to the Grantor or to the Grantor's Designee. Upon receipt of such Issuer Order (which shall be accompanied by a certificate in accordance with, and meeting the requirements of, the provisions of Section 314(d) of the TIA or, if the amount to be released from the pledge, together with all other amounts disbursed from the Pledge Account in the preceding 12 month period, equals or exceeds \$100,000, by a certificate of such nationally recognized firm of independent accountants stating that the scheduled interest and principal payments in respect of the Pledged Securities credited to the Pledge Account, together with any cash held in the Pledge Account, in each case after giving effect to such release, equal or exceed 100% of the amount necessary to provide for the payment in full, when due, of such remaining scheduled interest payments on the Notes), the Trustee shall instruct the Pledged Securities Intermediary to release funds from (and to the extent of) proceeds of such Pledged Securities in accordance with such Issuer Order and the accompanying certificate and to transfer such funds to the Grantor or the Grantor's Designee, as the case may be.

(d) Upon the release of any Collateral from the Pledge Account in accordance with the terms of this Section 5, whether upon release of proceeds of Collateral to the Holders as payment of interest or upon release of proceeds of Collateral to the Grantor or the Grantor's Designee as provided in Section 5(b) or Section 5(c), the security interest evidenced by this Agreement in such released Collateral will automatically terminate and be of no further force and effect.

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(e) At least three Business Days prior to the due date of each of the first six scheduled interest payments on the Notes, the Grantor shall give the Trustee notice (by Issuer Order) as to whether such interest payment will be made pursuant to Section 5(a) or 5(b) above and the respective amounts of interest that will be paid from the Pledge Account and from Grantor Funds (it being understood that the failure by the Grantor to provide an Issuer Order shall not constitute an Event of Default). Any Grantor Funds to be used to make any interest payment (or portion thereof) shall be delivered to the Trustee, in immediately available funds, prior to 12:00 p.m. (New York City time) on such interest payment date. If no such notice is given or such Grantor Funds have not been so delivered, the Trustee will act pursuant to Section 5(a) above as if it had received an Issuer Order pursuant thereto for the payment in full of the interest then due from the proceeds of Pledged Securities in the Pledge Account.

(f) If on any interest payment date there are insufficient proceeds of Pledged Securities in the Pledge Account to make the scheduled payment of interest due on such date (after taking into account any Grantor Funds delivered to the Trustee as provided in Section 5(b) above), the Trustee shall direct the Pledged Securities Intermediary to liquidate Collateral in the Pledge Account to the extent necessary to pay, in full, such scheduled payment of interest.

(g) Nothing contained in this Agreement (including without limitation the provisions hereof regarding the delivery of Issuer Orders by the Grantor to the Trustee) shall (i) afford the Grantor any right to issue entitlement orders to the Pledged Securities Intermediary or any other Person with respect to the Pledge Account or any security entitlement in respect of the Pledged Securities, or otherwise afford the Grantor control of the Pledge Account or any such security entitlement, or (ii) otherwise give rise to any rights of the Grantor with respect to the Pledge Account, the Pledged Securities, or any security entitlement thereto, other than the Grantor's rights under this Agreement as the beneficial owner of Collateral pledged to and subject to the exclusive dominion and control (subject to the Trustee's obligations to comply with Sections 5(a) through (f) and Section 15.9 hereof) of the Trustee in its capacity as such (and not as a securities intermediary). The Grantor acknowledges, confirms and agrees that the Trustee holds a security interest in the Pledged Securities solely as Trustee for the Holders of the Notes and not as a securities intermediary.

(h) Anything contained herein to the contrary notwithstanding, prior to any release of any Collateral to the Grantor or the Grantor's Designee, the Grantor shall deliver to the Trustee such certificates, opinions or other documents as may be required by the Indenture or the TIA in connection with such release and shall otherwise comply with the requirements of the Indenture and the TIA applicable thereto.

(i) If at any time the Grantor is obligated to pay any amount to the Trustee pursuant to the terms of this Agreement and the Trustee charges such amount against the Pledge Account with the result that the scheduled interest and principal payments in respect of the Pledged Securities then credited to the Pledge Account, together with any cash then held in the Pledge Account, are less than 100% of the amount necessary to provide for the payment in full, when

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due, of the first six scheduled interest payments on the Notes (or such number of the first six scheduled interest payments on the Notes as shall then remain, as the case may be), the Grantor shall deposit cash into the Pledge Account in the amount of such deficiency and shall deliver to the Trustee a certificate signed by one of its Officers (as defined in the Indenture) stating that the scheduled interest and principal payments in respect of the Pledged Securities credited to the Pledge Account, together with any cash held in the Pledge Account, in each case after giving effect to such deposit by the Grantor, equal or exceed 100% of the amount necessary to provide for the payment in full, when due, of such remaining scheduled interest payments on the Notes.

(j) Neither the Trustee nor the Pledged Securities Intermediary shall be liable for any disbursement made or other action taken in accordance with an Issuer Order. In no event shall either of the Pledged Securities Intermediary or the Trustee in its role hereunder be liable for any special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), except as a result of its gross negligence or willful misconduct.

SECTION 6. Securities Intermediary. (a) J.P. Morgan, as Pledged Securities Intermediary, hereby represents and warrants to, and agrees with the Grantor and the Trustee, as follows:

(a) It is a securities intermediary as of the date hereof and, for so long as this Agreement remains in effect and J.P. Morgan is acting as the Pledged Securities Intermediary hereunder, it shall remain a securities intermediary and shall at all times act in such capacity with respect to the Trustee, the Pledge Account and all other Collateral.

(b) The Pledge Account is and will be maintained as a securities account.

(c) Each item of property (whether cash, certificated or uncertificated securities, security certificates, security entitlements or any other property whatsoever) credited to the Pledge Account shall be treated as a financial asset.

(d) All financial assets in registered form or payable to, or to the order of, any Person and credited to the Pledge Account shall be registered in the name of, payable to or to the order of, or endorsed to, the Pledged Securities Intermediary, and in no case during the term of this Agreement will any financial asset credited to the Pledge Account be registered in the name of, payable to or to the order of, or endorsed to, the Grantor, except to the extent the foregoing have been subsequently endorsed by the Grantor to the Pledged Securities Intermediary or in blank.

(e) It (i) shall, upon written direction from the Trustee, as entitlement holder with respect to the Pledge Account, the Pledged Securities and all other Collateral, and without further consent from the Grantor, comply with all instructions, entitlement orders and directions of any kind originated by the Trustee concerning the Collateral, including without limitation directions to liquidate or otherwise dispose of the Collateral as and to the extent directed by the Trustee and to pay over to the Trustee, or as otherwise directed by the Trustee, all proceeds and other value therefrom or otherwise distributed with respect thereto, without any set-off or deduction, and (ii)

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shall not, except as otherwise directed in writing by the Trustee, as entitlement holder with respect to the Pledge Account, the Pledged Securities and all other Collateral, comply or agree to comply with any instructions, entitlement orders or directions of any kind that are originated by the Grantor or any other Person with respect to any of the Collateral.

(f) Except for the claims and interests of the Trustee under this Agreement and the rights of the Grantor vis-à-vis the Trustee hereunder, it does not know of any claim to or security interest or other interest in the Collateral.

(g) It hereby waives its rights to set off any obligations of the Grantor to it against any or all of the Collateral, and hereby agrees that any and all liens, encumbrances, claims or security interests which it may have against the Collateral, either now or in the future, are and shall be subordinate and junior in right of payment to the prior payment in full of all Secured Obligations.

SECTION 7. Representations and Warranties. The Grantor hereby represents and warrants that:

(a) The execution and delivery by the Grantor of, and the performance by the Grantor of its obligations under, this Agreement will not contravene any provision of applicable law or the articles of incorporation or by-laws of the Grantor or any material agreement or other material instrument binding upon the Grantor or any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Grantor, or result in the creation or imposition of any lien on any assets of the Grantor, except for the security interests granted under this Agreement.

(b) No consent of any other Person and no approval, authorization or order of, action by or qualification with, any governmental authority, regulatory body, agency or other third party is required (i) for the execution, delivery or performance by the Grantor of its obligations under this Agreement or (ii) for the grant by the Grantor of the security interests created by this Agreement. To the best of Grantor's knowledge, no consent of any other Person and no approval, authorization or order of, action by or qualification with, any governmental authority, regulatory body, agency or other third party is required for the exercise by the Trustee of the rights provided for in this Agreement or the remedies in respect of the Collateral pursuant to this Agreement.

(c) The Grantor is the beneficial owner of the Collateral, free and clear of any lien or claim of any Person (except for the security interests created by this Agreement and any lien arising under the Indenture in favor of the Trustee). The Grantor has not at any time transferred any of the Collateral to any Person other than the Trustee or encumbered any of the Collateral with a lien in favor of any other Person. No financing statement or instrument similar in effect covering all or any part of the Grantor's interest in any of the Collateral is on file in any public or

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recording office, other than the financing statements filed pursuant to this Agreement. Other than the Grantor's previous name, Inhale Therapeutics, Inc., the Grantor has no trade names.

(d) This Agreement has been duly authorized, executed and delivered by the Grantor and constitutes a valid and binding agreement of the Grantor, enforceable against the Grantor in accordance with its terms, except as the enforceability hereof may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally or by equitable principles of general applicability.

(e) Upon the transfer to the Pledged Securities Intermediary of the Pledged Securities, the crediting thereof to the Pledge Account in accordance with Section 4 above and the execution and delivery of this Agreement by all of the parties hereto, the grant of a security interest in the Collateral pursuant to this Agreement for the benefit of the Trustee and the Holders of the Notes will create a valid and perfected first priority security interest in such Collateral securing the payment of the Secured Obligations.

(f) There are no legal or governmental proceedings pending or, to the best of the Grantor's knowledge, threatened to which the Grantor is a party or to which any of the properties of the Grantor is subject that would adversely affect in any material respect the power or ability of the Grantor to perform its obligations under this Agreement or to consummate the transactions contemplated hereby.

(g) The pledge of the Collateral pursuant to this Agreement is not prohibited by any law or governmental regulation (including, without limitation, Regulations U and X of the Board of Governors of the Federal Reserve System) applicable to the Grantor.

(h) To the best of Grantor's knowledge, no Default or Event of Default exists.

(i) The Grantor's exact legal name is that indicated on the signature page hereof.

- (j) The Grantor is a corporation organized in the State of Delaware.
- (k) The Grantor's organizational identification number is 943134940.
- (l) The Grantor's place of business or, if more than one, its chief executive office as well as the Grantor's mailing address is as is set forth in Section 15.1.

SECTION 8. Further Assurances.

(a) The Grantor agrees that from time to time, it will, at its own expense, promptly upon reasonable request by the Trustee, execute and deliver or cause to be executed and delivered, or use its commercially reasonable efforts to procure, all assignments, instruments and other documents, all in form and substance reasonably satisfactory to the Trustee, deliver any instruments to the Trustee and take any other actions that may be necessary or, in the reasonable

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opinion of the Trustee, desirable to perfect, continue the perfection of, or protect the first priority of the Trustee's security interest in and to the Collateral, to protect the Collateral against the rights, claims, or interests of third Persons (other than any such rights, claims or interests created by or arising through the Trustee) or to effect the purposes of this Agreement.

(b) The Grantor hereby authorizes the Trustee to file any financing or continuation statements with respect to the Collateral without the signature of the Grantor (to the extent permitted by applicable law); *provided, however*, that the Grantor shall not be relieved of any of its obligations under Section 8(a) or 8(d) hereof. A photocopy or other reproduction of this Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

(c) The Grantor will furnish to the Trustee from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Trustee may reasonably request, all in reasonable detail.

(d) The Grantor will promptly pay all costs and expenses reasonably incurred in connection with any of the foregoing within 30 days of receipt of an invoice therefor. The Grantor also agrees, whether or not requested by the Trustee, to take all actions that are necessary to perfect and to continue the perfection of, and to protect the first priority of, the Trustee's security interest in and to the Collateral, including the filing of all necessary financing and continuation statements, and to protect the Collateral against the rights, claims or interests of third Persons (other than any such rights, claims or interests created by or arising through the Trustee).

(e) The Grantor hereby irrevocably authorizes the Trustee at any time and from time to time to file in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (x) indicate the Collateral as being of an equal or lesser scope or with greater detail, and (y) contain any other information required by part 5 of Article 9 of the Uniform Commercial Code of the appropriate jurisdiction for the sufficiency or filing office acceptance of any financing statement or amendment; *provided* that the Trustee shall have no obligation to perform any of the foregoing actions other than those expressly provided herein or in the Indenture.

(f) The Pledged Securities Intermediary covenants and agrees with the Grantor and the Trustee that for so long as the Pledged Securities Intermediary holds assets in the Pledge Account, the Pledged Securities Intermediary will, as soon as reasonably practicable, certify in writing the aggregate dollar value of the assets held in such Pledge Account on a monthly basis, as of the Grantor's fiscal month end or at such other time as the parties may mutually agree. The Grantor will provide the Pledged Securities Intermediary with a schedule of its fiscal months as soon as such schedule becomes reasonably available.

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SECTION 9. Covenants. The Grantor covenants and agrees with the Trustee and the Holders of the Notes that from and after the date of this Agreement until the earlier of (x) payment in full in cash of each of the first six scheduled interest payments due on the Notes under the terms of the Indenture or (y) payment in full in cash of all Secured Obligations due and owing under the Indenture and the Notes in the event such Secured Obligations become due and payable prior to the payment in full of the first six scheduled interest payments on the Notes:

(a) it will not (and will not purport to) sell or otherwise dispose of, or grant any option, right or warrant with respect to, any of the Collateral or its beneficial interest therein, and it will not create or permit to exist any lien or other adverse interest in or with respect to its beneficial interest in any of the Collateral (except for the security interests granted under this Agreement and any lien arising under the Indenture in favor of the Trustee);

(b) it will not (i) enter into any agreement or understanding that restricts or inhibits or purports to restrict or inhibit the Trustee's rights or remedies hereunder, including without limitation the Trustee's right to sell or otherwise dispose of the Collateral, or (ii) fail to pay or discharge when due any tax, assessment or levy of any nature with respect to its beneficial interest in the Collateral not later than five days prior to the date of any proposed sale under any judgment, writ or warrant of attachment with respect to such beneficial interest; and

(c) it will not, without providing at least five days prior written notice to the Trustee, change its name, its place of business or, if more than one, chief executive office, or its mailing address or organizational identification number and will not change its type of organization, jurisdiction of organization or other legal structure.

SECTION 10. Power of Attorney. In addition to all of the powers granted to the Trustee pursuant to the Indenture, the Grantor hereby appoints and constitutes the Trustee as the Grantor's attorney-in-fact (with full power of substitution), with full authority in the place and stead of the Grantor and in the name of the Grantor or otherwise, from time to time in the Trustee's reasonable discretion to take any action and to execute any instrument that the Trustee may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation:

(a) to ask for, demand, collect, sue for, recover, compromise, receive and give acquittance and receipt for moneys due and to become due under or in respect of any of the Collateral,

(b) to receive, indorse and collect any drafts or other instruments, documents and chattel paper,

(c) to file any claims or take any action or institute any proceedings that the Trustee may reasonably deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Trustee with respect to any of the Collateral, and

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(d) to pay or discharge any taxes or liens levied or placed upon the Collateral, the legality or validity thereof and the amounts necessary to discharge the same all as determined by the Trustee in its sole discretion, it being understood that any such payments made by the Trustee shall become part of the Secured Obligations of the Grantor to the Trustee, and shall be due and payable immediately upon demand;

provided, however, that the Trustee shall have no obligation to perform any of the foregoing actions. The Trustee's authority under this Section 10 shall include, without limitation, the authority to endorse and negotiate any checks or instruments representing proceeds of Collateral in the name of the Grantor, execute and give receipt for any certificate of ownership or any document constituting Collateral, transfer title to any item of Collateral, authorize the filing of any financing statements (to the extent permitted by applicable law) or any other documents reasonably deemed necessary or appropriate by the Trustee to preserve, protect or perfect the security interest in the Collateral and to file the same, prepare, file and sign the Grantor's name on any notice of lien, and to take any other actions arising from or incident to the powers granted to the Trustee in this Agreement. This power of attorney is coupled with an interest and is irrevocable by the Grantor.

SECTION 11. No Assumption of Duties; Reasonable Care. The rights and powers conferred on the Trustee hereunder are solely to preserve and protect the security interest of the Trustee and the Holders of the Notes in and to the Collateral granted hereby and shall not be interpreted to, and shall not, impose any duties on the Trustee in connection therewith other than those expressly provided herein or in the Indenture or imposed under applicable law. Except as provided by herein, by applicable law or by the Indenture, the Trustee shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Trustee accords similar property held by itself for its own account, it being understood that the Trustee, in its capacity as such, shall not have any responsibility for (a) ascertaining or taking action with respect to calls, conversions, exchanges, maturities or other matters relative to any Collateral, whether or not the Trustee has or is deemed to have knowledge of such matters, (b) taking any necessary steps to preserve rights against any parties with respect to any Collateral or (c) investing or reinvesting any of the Collateral or any loss on any investment. Without limiting any rights of the Trustee hereunder, the rights and limitations upon the liability of the Trustee set forth in Article 5 of the Indenture are expressly incorporated herein and made a part hereof and shall extend to the role of the Trustee as Pledged Securities Intermediary.

SECTION 12. Indemnity. The Grantor shall indemnify, hold harmless and defend the Trustee, the Pledged Securities Intermediary and each of their respective directors, officers, agents and employees, from and against any and all claims, actions, obligations, liabilities and expenses, including defense costs, investigative fees and costs, and legal fees and damages arising from their execution of or performance under this Agreement, except to the extent that such claim, action, obligation, liability or expense is directly attributable to the bad faith, gross

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negligence or willful misconduct of such indemnified person. This indemnification shall survive the termination of this Agreement.

SECTION 13. Remedies Upon Event of Default. If any Event of Default shall have occurred and be continuing:

(a) The Trustee may exercise, in addition to all other rights given by law or by this Agreement or the Indenture, all of the rights and remedies with respect to the Collateral of a secured party under the Uniform Commercial Code as in effect from time to time in any relevant jurisdiction and also may, without notice except as specified below, (i) sell, redeem or liquidate any of the Collateral, (ii) transfer any or all of the Collateral to any account designated by the Trustee, including an account or accounts established in the Trustee's name, (iii) register title to any Collateral in any name specified by the Trustee, including the name of the Trustee or any of its nominees or agents, without reference to any interest of the Grantor, or (iv) sell the Collateral or any part thereof in one or more parcels at any broker's board or at public or private sale, in one or more sales or lots, at any of the Trustee's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Trustee may deem commercially reasonable. The Grantor agrees that the Collateral is of a type customarily sold on recognized markets and, accordingly, that no notice to any Person is required before any sale of any of the Collateral pursuant to the terms of this Agreement; *provided, however* that, without prejudice to the foregoing, to the extent notice of any such sale shall be required by law, the Grantor agrees that at least ten days' notice to the Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Trustee shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Trustee may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The purchaser of any or all Collateral so sold shall thereafter hold the same absolutely free from any claim, encumbrance or right of any kind whatsoever created by or through the Grantor. Any sale of the Collateral conducted in conformity with reasonable commercial practices of banks, insurance companies, commercial finance companies, or other financial institutions disposing of property similar to the Collateral shall be deemed to be commercially reasonable. The Trustee or any Holder of Notes may, in its own name or in the name of a designee or nominee, buy any of the Collateral at any public sale and, if permitted by applicable law, at any private sale. All expenses (including court costs and reasonable attorneys' fees, expenses and disbursements) of, or incident to, the enforcement of any of the provisions hereof shall be recoverable from the proceeds of the sale or other disposition of the Collateral. If there are insufficient Pledged Securities together with proceeds of Pledged Securities and other Collateral in the Pledge Account to make any required payment on the Secured Obligations, the Grantor shall be liable to the Trustee for any deficiency.

(b) All cash proceeds received by or on behalf of the Trustee in respect of any sale of, collection from, or other realization upon all or any part of the Collateral may, following the payment of the reasonable fees and expenses of the Trustee, be held by the Trustee (or by the

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Pledged Securities Intermediary on its behalf) as collateral for, and/or then or at any time thereafter applied (after payment of any amounts payable to the Trustee pursuant to Section 14) in whole or in part by the Trustee as provided in clause SECOND of Section 4.13 of the Indenture. Any surplus of such cash or cash proceeds held by or on behalf of the Trustee and remaining after payment in full of all the Secured Obligations shall be paid over as provided in clause THIRD of Section 4.13 of the Indenture.

(c) The Trustee may, without notice to the Grantor except as required by law and at any time or from time to time, charge, set-off and otherwise apply all or any part of the Secured Obligations against the Pledge Account or any part thereof.

(d) The Grantor further agrees to use its commercially reasonable efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of all or any portion of the Collateral pursuant to this Section 13 valid and binding and in compliance with any and all other applicable requirements of law. The Grantor further agrees that a breach of any of the covenants contained in this Section 13 will cause irreparable injury to the Trustee and the Holders of the Notes, that the Trustee and the Holders of the Notes have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 13 shall be specifically enforceable against the Grantor and, to the fullest extent permitted by law, the Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing.

SECTION 14. Expenses. The Grantor will promptly upon demand pay to the Trustee and the Pledged Securities Intermediary the amount of any and all reasonable expenses, including, without limitation, the reasonable fees, expenses and disbursements of counsel, experts and agents retained by the Trustee or the Pledged Securities Intermediary, as the case may be, that the Trustee or the Pledged Securities Intermediary, as the case may be, may incur in connection with (a) the review, negotiation and administration of this Agreement, (b) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Collateral, (c) the exercise or enforcement of any of the rights of the Trustee and the Holders of the Notes hereunder or (d) the failure by the Grantor to perform or observe any of the provisions hereof.

SECTION 15. Miscellaneous Provisions.

Section 15.1. Notices. Any notice or other communication given hereunder shall be sufficiently given if in writing and delivered in person or mailed by first class mail, commercial courier service or telecopier communication, addressed as follows:

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IF TO THE GRANTOR:

Nektar Therapeutics
150 Industrial Road
San Carlos, California 94070
Attention: Chief Financial Officer
Fax: 650-631-3150

IF TO THE TRUSTEE OR PLEDGED SECURITIES INTERMEDIARY:

J.P. Morgan Trust Company, National Association
560 Mission Street
13th Floor
San Francisco, California 94105
Attention: Institutional Trust Services
Fax: 415-315-7585

All such notices and other communications shall, when mailed, delivered or telecopied, respectively, be effective when deposited in the mails, delivered or telecopied, respectively, addressed as aforesaid.

Section 15.2. No Adverse Interpretation of Other Agreements. This Agreement may not be used to interpret another pledge, security or debt agreement of the Grantor or any subsidiary thereof. No such pledge, security or debt agreement (other than the Indenture) may be used to interpret this Agreement.

Section 15.3. Severability. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then, to the fullest extent permitted by law, such invalidity or unenforceability shall affect in that jurisdiction only such clause or provision, or part thereof, and shall not in any manner affect such clause or provision in any other jurisdiction or any other clause or provision of this Agreement in any jurisdiction.

Section 15.4. Headings. The headings in this Agreement have been inserted for convenience of reference only, are not to be considered a part hereof and shall in no way modify or restrict any of the terms or provisions hereof.

Section 15.5. Counterpart Originals. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same agreement.

Section 15.6. Benefits of Agreement. Nothing in this Agreement, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, and the

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Section 15.7. Amendments, Waivers and Consents. Any amendment or waiver of any provision of this Agreement and any consent to any departure by the Grantor from any provision of this Agreement shall be effective only if made or duly given in compliance with all of the terms and provisions of the Indenture, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given, *provided that* an amendment or supplement to this Agreement for the purpose contemplated by Section 16 may be entered into by the Grantor, the Trustee and the Pledged Securities Intermediary without the consent of any Holder, so long as such amendment or supplement is reasonably satisfactory in form and substance to the Grantor, the Trustee and the Pledged Securities Intermediary. Neither the Trustee nor any Holder of Notes shall be deemed, by any act, delay, indulgence, omission or otherwise, to have waived any right or remedy hereunder or to have acquiesced in any Event of Default or in any breach of any of the terms and conditions hereof. Failure of the Trustee or any Holder of Notes to exercise, or delay in exercising, any right, power or privilege hereunder shall not preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Trustee or any Holder of Notes of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy that the Trustee or such Holder would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

Section 15.8. Interpretation of Agreement. To the fullest extent permitted by applicable law, acceptance of or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection.

Section 15.9. Continuing Security Interest; Termination.

(a) This Agreement shall create a continuing security interest in and to the Collateral and shall, unless otherwise provided in this Agreement, remain in full force and effect until the payment in full in cash of the Secured Obligations. This Agreement shall be binding upon the Grantor, its transferees, successors and assigns, and shall inure, together with the rights and remedies of the Trustee hereunder, to the benefit of the Trustee, the Holders of the Notes, the Pledged Securities Intermediary and their respective successors, transferees and assigns.

(b) This Agreement (other than Grantor's obligations under Sections 12 and 14) shall terminate upon the earlier of (i) the payment in full in cash of the Secured Obligations and (ii) the payment in full in cash of the first six scheduled interest payments on all of the Notes. At such time, the Trustee shall, pursuant to an Issuer Order, direct the Pledged Securities Intermediary to promptly transfer to the Grantor all of the Collateral hereunder that has not been sold, disposed of, retained or applied by or on behalf of the Trustee in accordance with the terms

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of this Agreement and the Indenture and take all other actions that are necessary to release the security interest created by this Agreement in and to the Collateral, including the execution and delivery of all termination statements necessary to terminate any financing or continuation statements filed with respect to the Collateral. Such transfer shall be without warranty by or recourse to the Trustee in its capacity as such, except as to the absence of any liens on the Collateral created by or arising through the Trustee, and shall be at the expense of the Grantor.

Section 15.10. Survival of Representations and Covenants. All representations, warranties and covenants of the Grantor contained herein shall survive the execution and delivery of this Agreement and the termination of this Agreement.

Section 15.11. Waivers. The Grantor, to the fullest extent permitted by applicable law, waives presentment and demand for payment of any of the Obligations, protest and notice of dishonor or default with respect to any of the Obligations, and all other notices to which the Grantor might otherwise be entitled, except as otherwise expressly provided herein or in the Indenture.

Section 15.12. Authority of the Trustee.

(a) The Trustee shall have and be entitled to exercise all powers hereunder that are specifically granted to it by the terms hereof, together with such powers as are reasonably incident thereto. The Trustee may perform any of its duties hereunder or in connection with the Collateral by or through agents or employees and shall be entitled to retain counsel and to act in reliance upon the advice of counsel concerning all such matters. Except as otherwise expressly provided in this Agreement or the Indenture, neither the Trustee nor any director, officer, employee, attorney or agent of the Trustee shall be liable to the Grantor for any action taken or omitted to be taken by the Trustee, in its capacity as Trustee, hereunder, except for its own bad faith, gross negligence or willful misconduct, and the Trustee shall not be responsible for the validity, effectiveness or sufficiency hereof or of any document or security furnished pursuant hereto. The Trustee and its directors, officers, employees, attorneys and agents shall be entitled to rely on any communication, instrument or document reasonably believed by it or them to be genuine and correct and to have been signed or sent by the proper person or persons.

(b) The Grantor acknowledges that the rights and responsibilities of the Trustee under this Agreement with respect to any action taken by the Trustee or the exercise or non-exercise by the Trustee of any option, right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Trustee and the Holders of the Notes, be governed by the Indenture and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Trustee and the Grantor, the Trustee shall be conclusively presumed to be acting as agent for the Holders of the Notes with full and valid authority so to act or refrain from acting, and the Grantor shall not be obligated or entitled to make any inquiry respecting such authority.

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Section 15.13. Final Expression. This Agreement, together with the Indenture and any other agreement executed in connection herewith, is intended by the parties as a final expression of this Agreement and is intended as a complete and exclusive statement of the terms and conditions thereof.

Section 15.14. Rights of Holders of the Notes. No Holder of Notes shall have any independent rights hereunder other than those rights granted to individual Holders of the Notes pursuant to the Indenture; *provided that* nothing in this subsection shall limit any rights granted to the Trustee under the Notes or the Indenture.

Section 15.15. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial; Waiver of Damages.

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED UNDER THE LAWS OF THE STATE OF NEW YORK.

(b) ANYTHING CONTAINED IN THIS AGREEMENT OR IN ANY OTHER AGREEMENT BETWEEN THE TRUSTEE AND THE PLEDGED SECURITIES INTERMEDIARY TO THE CONTRARY NOTWITHSTANDING, THE "PLEDGED SECURITIES INTERMEDIARY'S JURISDICTION" WITH RESPECT TO THE PLEDGED SECURITIES FOR PURPOSES OF SECTIONS 8-110(e), 9-305(a)(3) AND 9-304(b)(1) OF THE UCC SHALL BE THE STATE OF NEW YORK.

(c) FOR ANY SUIT, ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT, THE GRANTOR HEREBY AGREES TO SUBMIT TO THE JURISDICTION OF ANY FEDERAL OR STATE COURT LOCATED IN THE CITY OF NEW YORK.

(d) THE GRANTOR AGREES THAT THE TRUSTEE SHALL, IN ITS CAPACITY AS TRUSTEE OR IN THE NAME AND ON BEHALF OF ANY HOLDER OF NOTES, HAVE THE RIGHT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW (AND TO THE EXTENT THE TRUSTEE HAS RECEIVED INDEMNITY DEEMED SATISFACTORY TO IT AND HAS AGREED TO DO SO), TO PROCEED AGAINST THE GRANTOR OR THE COLLATERAL IN A COURT IN ANY LOCATION REASONABLY SELECTED IN GOOD FAITH (AND HAVING PERSONAL OR IN REM JURISDICTION OVER THE GRANTOR OR THE COLLATERAL, AS THE CASE MAY BE) TO ENABLE THE TRUSTEE TO REALIZE ON SUCH COLLATERAL, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER ENTERED IN FAVOR OF THE TRUSTEE. THE GRANTOR AGREES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THAT IT WILL NOT ASSERT ANY COUNTERCLAIMS, SETOFFS OR CROSSCLAIMS IN ANY PROCEEDING BROUGHT BY THE TRUSTEE TO REALIZE ON SUCH PROPERTY OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE TRUSTEE, EXCEPT FOR SUCH COUNTERCLAIMS, SETOFFS OR CROSSCLAIMS WHICH, IF NOT ASSERTED IN ANY SUCH PROCEEDING, COULD NOT OTHERWISE BE BROUGHT OR

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ASSERTED. THE GRANTOR WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY HAVE TO THE LOCATION OF THE COURT IN THE CITY OF NEW YORK IN THE BOROUGH OF MANHATTAN ONCE THE TRUSTEE HAS COMMENCED A PROCEEDING DESCRIBED IN THIS PARAGRAPH INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS.

(e) THE GRANTOR AGREES THAT NONE OF ANY HOLDER OF NOTES, (EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT OR THE INDENTURE) THE TRUSTEE IN ITS CAPACITY AS TRUSTEE, OR J.P. MORGAN IN ITS CAPACITY AS PLEDGED SECURITIES INTERMEDIARY SHALL HAVE ANY LIABILITY TO THE GRANTOR (WHETHER ARISING IN TORT, CONTRACT OR OTHERWISE) FOR LOSSES SUFFERED BY THE GRANTOR IN CONNECTION WITH, ARISING OUT OF, OR IN ANY WAY RELATED TO, THE TRANSACTIONS CONTEMPLATED AND THE RELATIONSHIP ESTABLISHED BY THIS AGREEMENT, OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH, UNLESS SUCH LOSSES WERE THE RESULT OF ACTS OR OMISSIONS ON THE PART OF THE TRUSTEE OR SUCH HOLDERS OF NOTES, AS THE CASE MAY BE, CONSTITUTING BAD FAITH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(f) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE GRANTOR WAIVES THE POSTING OF ANY BOND OTHERWISE REQUIRED OF THE TRUSTEE OR ANY HOLDER OF NOTES IN CONNECTION WITH ANY JUDICIAL PROCESS OR PROCEEDING TO ENFORCE ANY JUDGMENT OR OTHER COURT ORDER PERTAINING TO THIS AGREEMENT OR ANY RELATED AGREEMENT OR DOCUMENT ENTERED IN FAVOR OF THE TRUSTEE OR ANY HOLDER OF NOTES, OR TO ENFORCE BY SPECIFIC PERFORMANCE, TEMPORARY RESTRAINING ORDER OR PRELIMINARY OR PERMANENT INJUNCTION, THIS AGREEMENT OR ANY RELATED AGREEMENT OR DOCUMENT BETWEEN THE GRANTOR ON THE ONE HAND AND THE TRUSTEE AND/OR THE HOLDERS OF THE NOTES ON THE OTHER HAND.

SECTION 16. Provisions Relating to Additional Notes. The Grantor and the Trustee, on behalf of the Holders of the Notes originally issued on the date hereof (the "Initial Notes") and on behalf of the Holders of any additional Notes issued in one or more series from time to time after the date hereof in accordance with the provisions of the Indenture (the "Additional Notes"), hereby acknowledge that the Grantor may issue Additional Notes from time to time after the date hereof and that, pursuant to the terms of the Indenture, the Initial Notes and any Additional Notes will be treated as part of a single class for all purposes under the Indenture. Accordingly, anything contained herein to the contrary notwithstanding, (a) upon the issuance of any Additional Notes (i) for all purposes under this Agreement the term "Notes" shall thereafter include such Additional Notes; *provided that* any references herein to the first six scheduled interest payments due on the Notes shall mean, with respect to such Additional Notes, only such

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number, if any, of the first six scheduled interest payments on the Notes as shall then remain at the time such Additional Notes are originally issued (such number, if any, of the first six scheduled interest payments on the Notes that shall remain at such time being the "Covered Interest Payments" in respect of such Additional Notes), (ii) in the event that any Additional Notes are issued prior to such time as the first six scheduled interest payments on the Notes shall have been paid in full, the Grantor shall purchase or cause to be purchased, for the account of the Pledged Securities Intermediary for credit to the Pledge Account, additional security entitlements with respect to U. S. Government Securities (such security entitlements being, collectively, the "Additional Pledged Securities") in an amount that will be sufficient, upon receipt of the scheduled interest and principal payments in respect thereof, to provide for the payment of all Covered Interest Payments in respect of such Additional Notes, and (iii) for all purposes under this Agreement (including without limitation Section 4(b)) the term "Pledged Securities" shall thereafter include any such Additional Pledged Securities, and (b) as provided in Section 15.7, in connection with the issuance of any Additional Notes, the parties hereto shall be permitted to enter into such amendments or supplements to this Agreement as may be necessary or advisable in order to give effect to the provisions of this Section 16 without the consent of the Holders of the Initial Notes or the Holders of any Additional Notes that are outstanding at the time of such issuance. For the avoidance of doubt and without limiting the generality of the foregoing, the Grantor and the Trustee, on behalf of the Holders of the Notes, hereby acknowledge and agree that the Holders of the Initial Notes and the Holders of any Additional Notes shall be entitled to share ratably in the benefits of this Agreement. In the event that the Grantor shall issue Additional Notes on more than one occasion, then the provisions of this Section 16 shall apply to such successive issuances of Additional Notes, mutatis mutandis.

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IN WITNESS WHEREOF, the Grantor, the Trustee and the Pledged Securities Intermediary have each caused this Agreement to be duly executed and delivered as of the date first above written.

Grantor:

NEKTAR THERAPEUTICS

By: /s/ Ajit S. Gill

Name: Ajit S. Gill

Title: Chief Executive Officer and
President

Trustee:

J.P. MORGAN TRUST COMPANY,
NATIONAL ASSOCIATION

By: /s/ James Nagy

Name: James Nagy

Title: Assistant Vice President

Pledged Securities Intermediary:

J.P. MORGAN TRUST COMPANY,
NATIONAL ASSOCIATION

By: /s/ James Nagy

Name: James Nagy

Title: Assistant Vice President

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SCHEDULE I

PLEDGED SECURITIES

<u>SECURITY</u>	<u>CUSIP NO.</u>	<u>MATURITY</u>	<u>PRINCIPAL AMOUNT AT MATURITY</u>
United States Treasury	912820DJ3	11/15/03	227,000
United States Treasury	912833FU9	05/15/04	504,000
United States Treasury	912833FV7	11/15/04	504,000
United States Treasury	912833FW5	05/15/05	504,000
United States Treasury	912833FX3	11/15/05	504,000
United States Treasury	912833FY1	05/15/06	504,000
TOTAL			<u>2,747,000</u>

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EXCHANGE AGREEMENT

This EXCHANGE AGREEMENT (the “*Agreement*”) is made and entered into as of October 3, 2003, by and between NEKTAR THERAPEUTICS, a Delaware corporation (the “*Company*”) and the entities set forth on Appendix I hereto (each a “*Holder*” and collectively the “*Holder*s”).

RECITALS

WHEREAS, the Holders currently hold beneficial interests in an aggregate of \$27,500,000 in principal amount of the Company’s 3.5% Convertible Subordinated Notes due October 2007 (the “*Prior Notes*”);

WHEREAS, the Company has agreed to issue 3% Convertible Subordinated Notes due June 2010 (the “*New Notes*”) in substantially the form set forth in the Indenture (as defined below) to be dated as of the Closing Date (as defined below) by and between the Company and J.P. Morgan Trust Company, National Association, as trustee (the “*Trustee*”); and

WHEREAS, the Company and the Holders desire to exchange and cancel the Holders’ entire beneficial interest in the Prior Notes in consideration for the issuance by the Company to the Holder of the New Notes (the “*Exchange*”).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, representations and warranties hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. EXCHANGE.

1.1 Cancellation of Beneficial Interest in Prior Notes. Upon and subject to the terms of this Agreement, each Holder, severally and not jointly hereby agrees, at the Closing (as defined below), to exchange, transfer, cancel and assign all of its right, title, interest and beneficial interest in and to that portion of the Prior Notes set forth opposite the name of such Holder on Appendix I to the Company in exchange for the issuance of New Notes in the principal amount set forth opposite the name of such Holder on Appendix I hereto which in the aggregate amount as issued to all Holders shall equal \$18,472,000. After the cancellation, the Holders shall have no further right, title, interest or beneficial interest in the Prior Notes.

1.2 Purchase of New Notes. Upon and subject to the terms of this Agreement and in reliance of the representations and warranties set forth herein, the Company hereby agrees to issue to the Holders, and the Holders agree, severally and not jointly, to acquire from the Company, at the Closing, New Notes in the aggregate principal amount of \$18,472,000 in exchange for the cancellation of the Holders’ beneficial interests in the Prior Notes as described in Section 1.1 above.

2. CLOSING AND DELIVERY.

2.1 Closing. Subject to the terms and conditions set forth herein, the closing of the Exchange (the “*Closing*”) shall take place at 10:00 a.m. Pacific Time on the date which is four (4) business days following the date of this Agreement (the “*Scheduled Closing Time*”) at the offices of Cooley Godward LLP, 3175 Hanover Street, Palo Alto, CA 94304, or at such other time or place as agreed to by the Company and the Holder (the “*Closing Date*”).

2.2 Delivery.

(a) At the Closing, subject to the terms and conditions set forth herein, the Company will deliver to the Trustee, against evidence of cancellation of the Holders’ beneficial interests in the Prior Notes, one or more permanent global securities (the “*Global Notes*”), registered in the name of Cede & Co., as nominee for The Depository Trust Company (“*DTC*”). The Holders’ beneficial interests in the New Notes will be shown on records maintained in book-entry form by DTC and its participants.

(b) At the Closing, subject to the terms and conditions hereof, each Holder will cancel its beneficial interest in the Prior Notes and deliver to the Company evidence that the such beneficial interest has been cancelled on records maintained in book-entry form by DTC and its participants.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company hereby represents and warrants to the Holders as of the date of this Agreement and as of the Closing Date, as follows:

3.1 Organization, Good Standing and Qualification. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. The Company has all requisite corporate power and authority to execute and deliver this Agreement, the Indenture, to be dated as of the Closing Date, by and between the Company and the Trustee in substantially the form set forth as Exhibit A hereto (the “*Indenture*”), the Pledge Agreement, to be dated as of the Closing Date, by and between the Company and J.P. Morgan Trust Company, National Association, as collateral agent (the “*Collateral Agent*”) in the form set forth as Exhibit B hereto (the “*Pledge Agreement*”), and the Resale Registration Rights Agreement, to be dated as of the Closing Date, by and between the Company and the Holder in substantially the form set forth as Exhibit C hereto (the “*Rights Agreement*”) (collectively, with this Agreement and the New Notes, the “*Operative Documents*”), to issue the New Notes in consideration for the exchange and cancellation of the Holders’ beneficial interests in the Prior Notes and the shares of common stock, par value \$0.0001 per share, of the Company (the “*Common Stock*”) issuable upon conversion of the New Notes (the “*Conversion Shares*”) and to carry out the provisions of the Operative Documents.

3.2 Concerning the Conversion Shares. The Conversion Shares, which are authorized on the date hereof, have been duly and validly authorized and reserved for issuance upon conversion of the New Notes by all necessary corporate action and are free of preemptive rights; all Conversion Shares, when so issued and delivered upon such conversion in accordance with the terms of the Indenture, will be duly and validly authorized and issued, fully paid and

nonassessable and free and clear of all liens, encumbrances, equities or claims; and the issuance of such Conversion Shares upon such conversion will not be subject to the preemptive or other similar rights of any securityholder of the Company. The Company knows of no reason that the Conversion Shares will not be eligible for listing on The Nasdaq National Market.

3.3 Compliance with Other Instruments. The execution and delivery of the Operative Documents by the Company and the issuance of the New Notes and the proposed issuance of the Conversion Shares and the consummation of the transactions contemplated hereby will not (x) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a material default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which it or any of them are bound or to which any of the properties or assets of the Company or any subsidiary is subject, (y) result in any violation of the provisions of the certificate of incorporation or bylaws of the Company or any of its subsidiaries or (z) result in any violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any subsidiary or any of their properties or assets and except (i) with respect to the transactions contemplated by the Registration Rights Agreement or the Pledge Agreement, as may be required under the Securities Act and the rules and regulations promulgated thereunder and (ii) as required by the state securities or “blue sky” laws, no consent, approval, authorization or order of, or filing or registration with, any such court or governmental agency or body or the stockholders of the Company is required for the execution, delivery and performance of the Operative Documents by the Company, and the consummation of the transactions contemplated hereby and thereby.

3.4 Authorization and Binding Obligations of the Agreement. This Agreement has been duly authorized, executed and delivered by the Company and (assuming due authorization, execution and delivery by the Holders) constitutes a legally valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, subject to general principles of equity and to limitations on availability of equitable relief, including specific performance (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

3.5 Authorization and Binding Obligation of the Indenture. The Indenture has been duly authorized by the Company, and when the Indenture is duly executed and delivered by the Company (assuming due authorization, execution and delivery of the Indenture by the Trustee) will constitute a legally valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, subject to general principles of equity and to limitations on availability of equitable relief, including specific performance (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

3.6 Authorization and Binding Obligation of the Pledge Agreement. The Pledge Agreement and the transactions contemplated thereby have been duly authorized by the

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Company, and when the Pledge Agreement is duly executed and delivered by the Company (assuming due authorization, execution and delivery of the Pledge Agreement by the Collateral Agent) will constitute a legally valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, subject to general principles of equity and to limitations on availability of equitable relief, including specific performance (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

3.7 Authorization and Binding Obligation of the Rights Agreement. The Rights Agreement and the transactions contemplated thereby have been duly authorized by the Company, and when the Rights Agreement is duly executed and delivered by the Company (assuming due authorization, execution and delivery by the Holders), it will constitute a legally valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, subject to general principles of equity and to limitations on availability of equitable relief, including specific performance (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing, and except with respect to the rights of indemnification and contribution thereunder, where enforcement thereof may be limited by federal or state securities laws or the policies underlying such laws.

3.8 Authorization and Binding Obligation of the New Notes. The New Notes have been duly authorized by the Company, and when the New Notes are executed, authenticated and issued in accordance with the terms of the Indenture and subject to the terms and conditions set forth herein delivered pursuant to this Agreement at the Closing (assuming due authentication of the New Notes by the Trustee), such New Notes will constitute legally valid and binding obligations of the Company, entitled to the benefits of the Indenture and enforceable against the Company in accordance with their terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, subject to general principles of equity and to limitations on availability of equitable relief, including specific performance (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

3.9 Certain Securities Law Matters. Assuming the accuracy of the representations and warranties of the Holders contained in Section 4 hereof, the issuance of the New Notes and the Conversion Shares in accordance with the terms of the New Notes (collectively, the “*Securities*”) will be exempt from the registration requirements of the Securities Act of 1933, as amended (the “*Securities Act*”), and will have been registered or qualified (or are exempt from registration and qualification) under the registration, permit or qualification requirements of all applicable state securities laws.

3.10 Absence of Certain Proceedings. Except as disclosed in the reports (the “*SEC Reports*”) filed by the Company with the Securities and Exchange Commission (the “*SEC*”) pursuant to the Securities Exchange Act of 1934 (the “*Exchange Act*”) there are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or

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of which any of their respective properties or assets is the subject which, if determined adversely to the Company might reasonably be expected to materially and adversely affect the consummation of the transactions contemplated by the Operative Documents or the performance by the Company of its obligations under the Operative Documents and to the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or, except as set forth or contemplated in the SEC Reports, threatened by others.

3.11 No Event of Default. No event has occurred nor has any circumstance arisen which, had the New Notes been outstanding as of June 30, 2003, would constitute a default or an Event of Default (as such term is defined in the Indenture).

4. REPRESENTATIONS AND WARRANTIES OF THE HOLDER. Each Holder hereby represents and warrants to the Company as follows (provided that such representations and warranties do not lessen or obviate the representations and warranties of the Company set forth in this Agreement):

4.1 Requisite Power and Authority. The Holder has all necessary power and authority to to execute and deliver this Agreement carry out its provisions. All action on the Holder's part required for the lawful execution and delivery of this Agreement has been taken. Upon execution and delivery, this Agreement will be valid and binding obligations of the Holder, enforceable in accordance with its terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights and (b) as limited by general principles of equity that restrict the availability of equitable remedies.

4.2 Investment Representations. The Holder understands that the Securities have not been registered under the Securities Act. The Holder also understands that the Securities are being offered and sold pursuant to an exemption from registration contained in the Securities Act based in part upon the Holder's representations contained in the Agreement. Each Holder, hereby represents and warrants as follows:

(a) The Holder Bears Economic Risk. The Holder has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to the Company so that it is capable of evaluating the merits and risks of its investment in the Company and has the capacity to protect its own interests. The Holder must bear the economic risk of this investment indefinitely unless the Securities are registered pursuant to the Securities Act, or an exemption from registration is available. The Holder understands that, except as provided in the Rights Agreement, the Company has no intention of registering the Securities. The Holder also understands that there is no assurance that any exemption from registration under the Securities Act will be available and that, even if available, such exemption may not allow the Holder to transfer all or any portion of the Securities under the circumstances, in the amounts or at the times the Holder might propose.

(b) Acquisition for Own Account. The Holder is acquiring the Securities for the Holder's own account for investment only, and not with a view towards their distribution.

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(c) The Holder Can Protect Its Interest. The Holder represents that by reason of its, or of its management's, business or financial experience, the Holder has the capacity to protect its own interests in connection with the transactions contemplated in this Agreement. Further, the Holder is aware of no publication of any advertisement in connection with the transactions contemplated in the Agreement.

(d) Qualified Institutional Buyer. The Holder represents that it is a qualified institutional buyer as defined in Rule 144A under the Securities Act.

(e) Company Information. The Holder has had an opportunity to discuss the Company's business, management and financial affairs with directors, officers and management of the Company and has had the opportunity to review the Company's operations and facilities. The Holder has also had the opportunity to ask questions of and receive answers from, the Company and its management regarding the terms and conditions of this investment.

(f) Rule 144. The Holder acknowledges and agrees that the Securities are "restricted securities" as defined in Rule 144 promulgated under the Securities Act as in effect from time to time and must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. The Holder has been advised or is aware of the provisions of Rule 144, which permits limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including, among other things: the availability of certain current public information about the Company, the resale occurring following the required holding period under Rule 144 and certain volume limitations.

(g) Residence. The office or offices of the Holder in which its investment decision was made is located at the address or addresses of the Holder set forth on the signature page.

(h) Foreign Investors. If the Holder is not a United States person (as defined by Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended), the Holder hereby represents that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to subscribe for the Securities or any use of this Agreement, including (i) the legal requirements within its jurisdiction for the exchange of the Securities for the Prior Notes, (ii) any foreign exchange restrictions applicable to such exchange, (iii) any government or other consents that may need to be obtained, and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale or transfer of the Securities. The Exchange and the continued ownership by the Holder of the Securities will not violate any applicable securities or other laws of the Holder's jurisdiction.

(i) Transfer Restrictions. The Holder acknowledges and agrees that the Securities shall be subject to restrictions on transfer as set forth in the Indenture.

4.3 Sole Ownership. The Holder has all right, title and interest in its beneficial interest in the Prior Notes, and has not endorsed, assigned, sold, transferred, deposited under any agreement, hypothecated, pledged for any bank or brokerage loan, or otherwise in any manner disposed of the Holder's beneficial interest in the Prior Notes or any interest therein. No person

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or entity other than the Holder has any interest in the Holder's beneficial interest in the Prior Notes.

4.4 Non-Affiliate Status. The Holder is not an “affiliate” (as that term is defined under Rule 144(a) of the Securities Act and Rule 13e-3 of the Exchange Act of the Company. To the best of the Holder’s knowledge, the Holder did not acquire its beneficial interest in the Prior Notes from an “affiliate” of the Company.

4.5 Tax Advice. The Holder has had the opportunity to review with its own tax advisors the U.S. Federal, state, local and foreign tax consequences of the Exchange and the transactions contemplated by this Agreement. With respect to such tax matters, the Holder has relied and relies solely on such advisors and not on any statements or representations of the Company or any of its agents, written or oral. The Holder understands that it (and not the Company or any of its agents) shall be responsible for its own tax liability that may arise as a result of the Exchange and the transactions contemplated by this Agreement.

5. CONDITIONS TO CLOSING.

5.1 Conditions to the Holder’s Obligations at the Closing. Each Holder’s obligations to exchange and cancel its beneficial interest in the Prior Notes in exchange for the New Notes at the Closing are subject to the satisfaction, at or prior to the Closing Date, of the following conditions:

(a) **Representations and Warranties True; Performance of Obligations.** The representations and warranties made by the Company contained in this Agreement shall have been true and correct on the date of this Agreement and shall be true and correct as of the Closing Date with the same force and effect as if they had been made as of the Closing Date, and on or before the Closing Date the Company shall have performed all obligations and conditions herein required to be performed or observed by it on or prior to the Closing.

(b) **No Legal Action.** On the Closing Date, no legal action, suit or proceeding shall be pending or overtly threatened which seeks to restrain or prohibit the transactions contemplated by this Agreement.

(c) **No Event of Default.** No event which, if the New Notes were outstanding, would constitute an Event of Default under and as defined in the Indenture or which, with the giving of notice or the passage of time, or both, would constitute an Event of Default under and as defined in the Indenture shall have occurred and be continuing.

(d) **Compliance Certificate.** The Company shall have delivered to the Holders a Compliance Certificate, executed by an executive officer of the Company, dated the Closing Date, to the effect that the conditions specified in subsection (a), (b) and (c) of this Section 5.1 have been satisfied.

(e) **No Suspension of Trading.** On the Closing Date (i) trading in securities on the New York Stock Exchange, Inc., the American Stock Exchange, Inc. or The Nasdaq National Market shall not have been suspended or materially limited and (ii) a general

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moratorium on commercial banking activities in the State of New York shall not have been declared by either federal or state authorities.

(f) **Legal Investment.** On the Closing Date, the issuance of the New Notes and the proposed issuance of the Conversion Shares shall be legally permitted by all laws and regulations to which the Holders and the Company are subject.

(g) **Indenture.** The Indenture shall have been duly executed and delivered by the Company and the Trustee and the New Notes shall have been duly executed and delivered by the Company and duly authenticated by the Trustee.

(h) **Pledge Agreement.** The Company and the Collateral Agent shall have executed and delivered the Pledge Agreement and the Pledge Agreement shall be in full force and effect.

(i) **Rights Agreement.** The Company shall have executed and delivered the Rights Agreement and the Rights Agreement shall be in full force and effect.

5.2 Conditions to the Company’s Obligations at the Closing. The Company’s obligations to issue the New Notes at the Closing is subject to the satisfaction, at or prior to the Closing Date, of the following conditions:

(a) **Representations and Warranties True; Performance of Obligations.** The representations and warranties of each Holder contained in this Agreement shall have been true and correct on the date of this Agreement and shall be true and correct as of the Closing Date with the same force and effect as if they had been made as of the Closing Date, and on or before the Closing Date each Holder shall have performed all obligations and conditions herein required to be performed or observed by it on or prior to the Closing.

(b) **Evidence of Cancellation of Beneficial Interest in the Prior Notes.** The Company shall have received confirmation to its reasonable satisfaction that each Holder’s beneficial interest in the Prior Notes has been cancelled.

(c) **No Legal Action.** On the Closing Date, no legal action, suit or proceeding shall be pending or overtly threatened which seeks to restrain or prohibit the transactions contemplated by this Agreement.

(d) **Legal Investment.** On the Closing Date, the issuance of the New Notes and the proposed issuance of the Conversion Shares shall be legally permitted by all laws and regulations to which the Holders and the Company are subject.

(e) **Indenture and New Notes.** The Trustee shall have duly executed and delivered the Indenture, and duly authenticated the New Notes.

(f) **Pledge Agreement.** The Collateral Agent shall have executed and delivered the Pledge Agreement and the Pledge Agreement shall be in full force and effect.

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(g) **Rights Agreement.** Each Holder shall have executed and delivered the Rights Agreement and the Rights Agreement shall be in full force and effect.

(h) **No Suspension of Trading.** On the Closing Date (i) trading in securities on the New York Stock Exchange, Inc., the American Stock Exchange, Inc. or The Nasdaq National Market shall not have been suspended or materially limited and (ii) a general moratorium on commercial banking activities in the State of New York shall not have been declared by either federal or state authorities.

6. COVENANTS OF THE PARTIES

6.1 Rule 144. The parties agree that pursuant to Rule 144 promulgated under the Securities Act ("**Rule 144**"), interpretations thereof by the SEC and "no-action" letters from the staff of the SEC, the Holders should be entitled to relate back (i.e., tack) the holding period of the New Notes and the Conversion Shares to the holding period of the Prior Notes and, so long as (x) the aggregate period during which the Prior Notes and the New Notes and the Conversion Shares are held is at least two years and (y) at the time of determination such Holder is not and has not for the preceding three months been an "affiliate" (as such term is defined in Rule 144) of the Company, the New Notes and the Conversion Shares may be sold pursuant to Rule 144(k) (the "**Rule 144 Interpretation**"). The Company shall not, directly or indirectly, dispute or otherwise interfere with any claim by the Holders that the holding period of the New Notes and the Conversion Shares for purposes of Rule 144 tacks to the holding period for the Prior Notes; provided, however, that nothing contained in this Section 6.1 shall obligate the Company or its legal counsel to take a position that is inconsistent with the provisions of applicable law or regulations and the administrative and judicial interpretations thereof in effect from time to time (collectively, the "**Applicable Law**"); nor shall the covenants set forth in this Section 6.1 be construed as any representation or warranty by the Company or to limit any Holder's representations or warranties to the effect that (A) the Rule 144 Interpretation is consistent with or does not conflict with the Applicable Law, or (B) any Holder has demonstrated that the Securities have been acquired with investment intent and not with a view towards their distribution. The parties agree and acknowledge that the foregoing covenants shall in no way (A) limit the transfer restrictions to which the Securities are subject as set forth in the Indenture; or (B) require the Company to take any action to authorize the transfer of any Securities if a Holder has not demonstrated to the Company's reasonable satisfaction that the Securities have been acquired with investment intent and not with a view towards their distribution.

6.2 Best Efforts. Each of the parties shall use its best efforts timely to satisfy each of the conditions to the other party's obligations set forth in Section 5.1 or 5.2, as the case may be, of this Agreement on or before the Closing Date.

6.3 Settlement of Interest on the Prior Notes. Each of the parties agree and acknowledge that the Holders are Holders of record of the Prior Notes as of October 2, 2003 and consequently will receive a payment of interest due on October 17, 2003 (the "**Interest Payment Date**") with respect to the Prior Notes held by such Holders (the "**Interest Payment**"). The parties hereby agree that the payment of the Interest Payment shall be in lieu of and deemed to satisfy and obligation by the Company to pay accrued and unpaid interest on the Prior Notes at the Closing and that the Company may deduct from any Interest Payment paid to the Holders an

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amount equal to any interest on the Prior Notes deemed to accrue on the Prior Notes or after the Closing Date. In the event that any Holder shall receive an Interest Payment which includes the payment of interest accrued on or after the Closing Date (an "**Excess Interest Payment**"), such Holder shall immediately remit to the Company in immediately available funds an amount equal to such Excess Interest Payment.

7. MISCELLANEOUS.

7.1 Governing Law. This Agreement shall be governed by and construed under the laws of the State of New York.

7.2 Survival. The representations, warranties, covenants and agreements made herein shall survive the closing of the transactions contemplated hereby. The representations, warranties, covenants and obligations of the Company, and the rights and remedies that may be exercised by the Holders, shall not be limited or otherwise affected by or as a result of any information furnished to, or any investigation made by or knowledge of, the Holders or any of their representatives.

7.3 Successors and Assigns. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon the parties hereto and their respective successors, assigns, heirs, executors and administrators.

7.4 Entire Agreement. This Agreement and the other Operative Documents delivered pursuant hereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and no party shall be liable or bound to any other in any manner by any oral or written representations, warranties, covenants and agreements except as specifically set forth herein and therein. Each party expressly represents and warrants that it is not relying on any oral or written representations, warranties, covenants or agreements outside of the Operative Documents.

7.5 Severability. In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

7.6 Amendment and Waiver. This Agreement may be amended or modified only upon the written consent of the Company and the Holders holding a majority in interest of the Prior Notes.

7.7 Delays or Omissions. It is agreed that no delay or omission to exercise any right, power or remedy accruing to any party, upon any breach, default or noncompliance by another party under this Agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on any party's part of any breach, default or noncompliance under this Agreement or any waiver on such party's part of any provisions or conditions of the Agreement must be in writing and shall be

effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by law, or otherwise afforded to any party, shall be cumulative and not alternative.

7.8 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail, telex or facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the Company at the address as set forth on the signature page hereof and to the Holder at the address set forth on the signature page or at such other address or electronic mail address as the Company or the Holder may designate by ten (10) days advance written notice to the other parties hereto.

7.9 Expenses. Each party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of the Agreement.

7.10 Attorneys' Fees. In the event that any suit or action is instituted under or in relation to this Agreement, including, without limitation, to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

7.11 Titles and Subtitles. The titles of the sections and subsections of the Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

7.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

7.13 Broker's Fees. Each party hereto represents and warrants that no agent, broker, investment banker, person or firm acting on behalf of or under the authority of such party hereto is or will be entitled to any broker's or finder's fee or any other commission directly or indirectly in connection with the transactions contemplated herein. Each party hereto further agrees to indemnify each other party for any claims, losses or expenses incurred by such other party as a result of the representation in this Section 7.13 being untrue.

7.14 Pronouns. All pronouns contained herein, and any variations thereof, shall be deemed to refer to the masculine, feminine or neutral, singular or plural, as to the identity of the parties hereto may require.

7.15 Further Assurances. Each party to this Agreement will perform any and all acts and execute any and all documents as may be necessary and proper under the circumstances in order to accomplish the intents and purposes of this Agreement and to carry out its provisions.

7.16 Termination.

(a) Termination Events. This Agreement may be terminated prior to the Closing:

(i) By Holders holding a majority in interest of the Prior Notes at or after the Scheduled Closing Time if any condition set forth in Section 5.1 has not been satisfied by the Scheduled Closing Time (other than as a result of any failure on the part of any Holder to comply with or perform any covenant or obligation of the Holders set forth in this Agreement);

(ii) By the Company at or after the Scheduled Closing Time if any condition set forth in Section 5.2 has not been satisfied by the Scheduled Closing Time (other than as a result of any failure on the part of the Company to comply with or perform any covenant or obligation of the Company set forth in this Agreement);

(iii) By Holders holding a majority in interest in of the Prior Notes or the Company if the Closing has not taken place on or before October 13, 2003 (other than as a result of any failure on the part of the party seeking to terminate this Agreement to comply with or perform any covenant or obligation of such party set forth in this Agreement);

(iv) By mutual consent of Holders holding a majority in interest of the Prior Notes and the Company

(b) Termination Procedures. If the Holders wish to terminate this Agreement pursuant to Section 7.16(a)(i) or Section 7.16(iii), the Holders shall deliver to the Company a written notice stating that the Holders are terminating this Agreement and setting forth a brief description of the basis on which the Holders are terminating this Agreement. If the Company wishes to terminate this Agreement pursuant to Section 7.16(a)(ii) or Section 7.16(iii), the Company shall deliver to the Holders a written notice stating that the Company is terminating this Agreement and setting forth a brief description of the basis on which the Company is terminating this Agreement.

(c) Effect of Termination. If this Agreement is terminated pursuant to Section 7.16(a), this Agreement shall be of no further force or effect (and, except as provided in this Section 7.16(c), there shall be no liability or obligation hereunder on the part of any of the parties hereto or their respective officers, directors, stockholders or affiliates); provided, however, that Section 7, including without limitation, this Section 7.16, shall survive the termination of this Agreement and shall remain in full force and effect, and the termination of this Agreement shall not relieve any party from any liability for any willful breach of any representation, warranty or covenant contained in this Agreement.

7.17 Public Statements, Press Releases, Etc. The Company and the Holders holding a majority in interest of the New Notes shall have the right to approve before issuance any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, that the Company shall be entitled, without the prior approval of the Holders, to make any press release or other public disclosure with respect to such transactions that it deems appropriate pursuant to applicable law and regulations, including the Exchange Act and the rules and regulations promulgated thereunder.

[Remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this **EXCHANGE AGREEMENT** as of the date set forth in the first paragraph hereof.

COMPANY:

NEKTAR THERAPEUTICS

Signature: /s/ Ajit S. Gill
 Ajit S. Gill
 President, Chief Executive
 Officer and Director

Address: 150 Industrial Road
 San Carlos, CA 94070

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HOLDERS:

Salomon Brothers Qualified Investor Portfolios Multi-Strategy Arbitrage Portfolio
 Salomon Brothers Diversified Arbitrage Strategies Fund Ltd.
 Salomon Brothers Enhanced Arbitrage Strategies Fund
 CEBT - Comingled Employee Benefit Trust – Capital Structure Arbitrage
 General Motors Employees Global Group Pension Trust
 General Motors Welfare Benefits Trust
 Salomon Brothers Market Neutral Arbitrage Fund L.P.

BY:

SALOMON BROTHERS ASSET MANAGEMENT, INC.,
 the investment manager of each of the above listed Holders.

Signature: /s/ Kenneth Lee

Print Name: Kenneth Lee

Title: Director/Portfolio Manager

Address: 399 Park Avenue, 7th Floor
 New York, NY 10022

Copies to: Salomon Brothers Asset Management
 P.O. Box 1080
 Church Street Station
 New York, NY 10008-1080
 ATTN: SBAM/Citigroup LIBRA

Exchange Agreement
 Signature Page

APPENDIX I

HOLDERS	PRIOR NOTES	NEW NOTES
Salomon Brothers Qualified Investor Portfolios Multi-Strategy Arbitrage Portfolio	\$ 17,946,000	\$ 12,057,000

Salomon Brothers Diversified Arbitrage Strategies Fund Ltd.	\$	4,596,000	\$	3,087,000
Salomon Brothers Enhanced Arbitrage Strategies Fund	\$	907,000	\$	609,000
CEBT - Comingled Employee Benefit Trust – Capital Structure Arbitrage	\$	884,000	\$	593,000
General Motors Employees Global Group Pension Trust	\$	458,000	\$	307,000
General Motors Welfare Benefits Trust	\$	1,380,000	\$	927,000
Salomon Brothers Market Neutral Arbitrage Fund L.P.	\$	1,329,000	\$	892,000
TOTAL:	\$	27,500,000.00	\$	18,472,000.00

EXCHANGE AGREEMENT

This EXCHANGE AGREEMENT (the “*Agreement*”) is made and entered into as of October 3, 2003, by and between NEKTAR THERAPEUTICS, a Delaware corporation (the “*Company*”) and the entities set forth on Appendix I hereto (each a “*Holder*” and collectively the “*Holder*s”).

RECITALS

WHEREAS, the Holders currently hold beneficial interests in an aggregate of \$22,500,000 in principal amount of the Company’s 3.5% Convertible Subordinated Notes due October 2007 (the “*Prior Notes*”);

WHEREAS, the Company has agreed to issue 3% Convertible Subordinated Notes due June 2010 (the “*New Notes*”) in substantially the form set forth in the Indenture (as defined below) to be dated as of the Closing Date (as defined below) by and between the Company and J.P. Morgan Trust Company, National Association, as trustee (the “*Trustee*”); and

WHEREAS, the Company and the Holders desire to exchange and cancel the Holders’ entire beneficial interest in the Prior Notes in consideration for the issuance by the Company to the Holder of the New Notes (the “*Exchange*”).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, representations and warranties hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. EXCHANGE.

1.1 Cancellation of Beneficial Interest in Prior Notes. Upon and subject to the terms of this Agreement, each Holder, severally and not jointly hereby agrees, at the Closing (as defined below), to exchange, transfer, cancel and assign all of its right, title, interest and beneficial interest in and to that portion of the Prior Notes set forth opposite the name of such Holder on Appendix I to the Company in exchange for the issuance of New Notes in the principal amount set forth opposite the name of such Holder on Appendix I hereto which in the aggregate amount as issued to all Holders shall equal \$15,119,000. After the cancellation, the Holders shall have no further right, title, interest or beneficial interest in the Prior Notes.

1.2 Purchase of New Notes. Upon and subject to the terms of this Agreement and in reliance of the representations and warranties set forth herein, the Company hereby agrees to issue to the Holders, and the Holders agree, severally and not jointly, to acquire from the Company, at the Closing, New Notes in the aggregate principal amount of \$15,119,000 in exchange for the cancellation of the Holders’ beneficial interests in the Prior Notes as described in Section 1.1 above.

2. CLOSING AND DELIVERY.

2.1 Closing. Subject to the terms and conditions set forth herein, the closing of the Exchange (the “*Closing*”) shall take place at 10:00 a.m. Pacific Time on the date which is four (4) business days following the date of this Agreement (the “*Scheduled Closing Time*”) at the offices of Cooley Godward LLP, 3175 Hanover Street, Palo Alto, CA 94304, or at such other time or place as agreed to by the Company and the Holder (the “*Closing Date*”).

2.2 Delivery.

(a) At the Closing, subject to the terms and conditions set forth herein, the Company will deliver to the Trustee, against evidence of cancellation of the Holders’ beneficial interests in the Prior Notes, one or more permanent global securities (the “*Global Notes*”), registered in the name of Cede & Co., as nominee for The Depository Trust Company (“*DTC*”). The Holders’ beneficial interests in the New Notes will be shown on records maintained in book-entry form by DTC and its participants.

(b) At the Closing, subject to the terms and conditions hereof, each Holder will cancel its beneficial interest in the Prior Notes and deliver to the Company evidence that the such beneficial interest has been cancelled on records maintained in book-entry form by DTC and its participants.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company hereby represents and warrants to the Holders as of the date of this Agreement and as of the Closing Date, as follows:

3.1 Organization, Good Standing and Qualification. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. The Company has all requisite corporate power and authority to execute and deliver this Agreement, the Indenture, to be dated as of the Closing Date, by and between the Company and the Trustee in substantially the form set forth as **Exhibit A** hereto (the “*Indenture*”), the Pledge Agreement, to be dated as of the Closing Date, by and between the Company and J.P. Morgan Trust Company, National Association, as collateral agent (the “*Collateral Agent*”) in the form set forth as **Exhibit B** hereto (the “*Pledge Agreement*”), and the Resale Registration Rights Agreement, to be dated as of the Closing Date, by and between the Company and the Holder in substantially the form set forth as **Exhibit C** hereto (the “*Rights Agreement*”) (collectively, with this Agreement and the New Notes, the “*Operative Documents*”), to issue the New Notes in consideration for the exchange and cancellation of the Holders’ beneficial interests in the Prior Notes and the shares of common stock, par value \$0.0001 per share, of the Company (the “*Common Stock*”) issuable upon conversion of the New Notes (the “*Conversion Shares*”) and to carry out the provisions of the Operative Documents.

3.2 Concerning the Conversion Shares. The Conversion Shares, which are authorized on the date hereof, have been duly and validly authorized and reserved for issuance upon conversion of the New Notes by all necessary corporate action and are free of preemptive rights; all Conversion Shares, when so issued and delivered upon such conversion in accordance with the terms of the Indenture, will be duly and validly authorized and issued, fully paid and

nonassessable and free and clear of all liens, encumbrances, equities or claims; and the issuance of such Conversion Shares upon such conversion will not be subject to the preemptive or other similar rights of any securityholder of the Company. The Company knows of no reason that the Conversion Shares will not be eligible for listing on The Nasdaq National Market.

3.3 Compliance with Other Instruments. The execution and delivery of the Operative Documents by the Company and the issuance of the New Notes and the proposed issuance of the Conversion Shares and the consummation of the transactions contemplated hereby will not (x) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a material default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which it or any of them are bound or to which any of the properties or assets of the Company or any subsidiary is subject, (y) result in any violation of the provisions of the certificate of incorporation or bylaws of the Company or any of its subsidiaries or (z) result in any violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any subsidiary or any of their properties or assets and except (i) with respect to the transactions contemplated by the Registration Rights Agreement or the Pledge Agreement, as may be required under the Securities Act and the rules and regulations promulgated thereunder and (ii) as required by the state securities or “blue sky” laws, no consent, approval, authorization or order of, or filing or registration with, any such court or governmental agency or body or the stockholders of the Company is required for the execution, delivery and performance of the Operative Documents by the Company, and the consummation of the transactions contemplated hereby and thereby.

3.4 Authorization and Binding Obligations of the Agreement. This Agreement has been duly authorized, executed and delivered by the Company and (assuming due authorization, execution and delivery by the Holders) constitutes a legally valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, subject to general principles of equity and to limitations on availability of equitable relief, including specific performance (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

3.5 Authorization and Binding Obligation of the Indenture. The Indenture has been duly authorized by the Company, and when the Indenture is duly executed and delivered by the Company (assuming due authorization, execution and delivery of the Indenture by the Trustee) will constitute a legally valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, subject to general principles of equity and to limitations on availability of equitable relief, including specific performance (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

3.6 Authorization and Binding Obligation of the Pledge Agreement. The Pledge Agreement and the transactions contemplated thereby have been duly authorized by the

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Company, and when the Pledge Agreement is duly executed and delivered by the Company (assuming due authorization, execution and delivery of the Pledge Agreement by the Collateral Agent) will constitute a legally valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, subject to general principles of equity and to limitations on availability of equitable relief, including specific performance (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

3.7 Authorization and Binding Obligation of the Rights Agreement. The Rights Agreement and the transactions contemplated thereby have been duly authorized by the Company, and when the Rights Agreement is duly executed and delivered by the Company (assuming due authorization, execution and delivery by the Holders), it will constitute a legally valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, subject to general principles of equity and to limitations on availability of equitable relief, including specific performance (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing, and except with respect to the rights of indemnification and contribution thereunder, where enforcement thereof may be limited by federal or state securities laws or the policies underlying such laws.

3.8 Authorization and Binding Obligation of the New Notes. The New Notes have been duly authorized by the Company, and when the New Notes are executed, authenticated and issued in accordance with the terms of the Indenture and subject to the terms and conditions set forth herein delivered pursuant to this Agreement at the Closing (assuming due authentication of the New Notes by the Trustee), such New Notes will constitute legally valid and binding obligations of the Company, entitled to the benefits of the Indenture and enforceable against the Company in accordance with their terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, subject to general principles of equity and to limitations on availability of equitable relief, including specific performance (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

3.9 Certain Securities Law Matters. Assuming the accuracy of the representations and warranties of the Holders contained in Section 4 hereof, the issuance of the New Notes and the Conversion Shares in accordance with the terms of the New Notes (collectively, the “*Securities*”) will be exempt from the registration requirements of the Securities Act of 1933, as amended (the “*Securities Act*”), and will have been registered or qualified (or are exempt from registration and qualification) under the registration, permit or qualification requirements of all applicable state securities laws.

3.10 Absence of Certain Proceedings. Except as disclosed in the reports (the “*SEC Reports*”) filed by the Company with the Securities and Exchange Commission (the “*SEC*”) pursuant to the Securities Exchange Act of 1934 (the “*Exchange Act*”) there are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or

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of which any of their respective properties or assets is the subject which, if determined adversely to the Company might reasonably be expected to materially and adversely affect the consummation of the transactions contemplated by the Operative Documents or the performance by the Company of its obligations under the Operative Documents and to the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or, except as set forth or contemplated in the SEC Reports, threatened by others.

3.11 No Event of Default. No event has occurred nor has any circumstance arisen which, had the New Notes been outstanding as of June 30, 2003, would constitute a default or an Event of Default (as such term is defined in the Indenture).

4. REPRESENTATIONS AND WARRANTIES OF THE HOLDER. Each Holder hereby represents and warrants to the Company as follows (provided that such representations and warranties do not lessen or obviate the representations and warranties of the Company set forth in this Agreement):

4.1 Requisite Power and Authority. The Holder has all necessary power and authority to to execute and deliver this Agreement carry out its provisions. All action on the Holder's part required for the lawful execution and delivery of this Agreement has been taken. Upon execution and delivery, this Agreement will be valid and binding obligations of the Holder, enforceable in accordance with its terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights and (b) as limited by general principles of equity that restrict the availability of equitable remedies.

4.2 Investment Representations. The Holder understands that the Securities have not been registered under the Securities Act. The Holder also understands that the Securities are being offered and sold pursuant to an exemption from registration contained in the Securities Act based in part upon the Holder's representations contained in the Agreement. Each Holder, hereby represents and warrants as follows:

(a) The Holder Bears Economic Risk. The Holder has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to the Company so that it is capable of evaluating the merits and risks of its investment in the Company and has the capacity to protect its own interests. The Holder must bear the economic risk of this investment indefinitely unless the Securities are registered pursuant to the Securities Act, or an exemption from registration is available. The Holder understands that, except as provided in the Rights Agreement, the Company has no intention of registering the Securities. The Holder also understands that there is no assurance that any exemption from registration under the Securities Act will be available and that, even if available, such exemption may not allow the Holder to transfer all or any portion of the Securities under the circumstances, in the amounts or at the times the Holder might propose.

(b) Acquisition for Own Account. The Holder is acquiring the Securities for the Holder's own account for investment only, and not with a view towards their distribution.

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(c) The Holder Can Protect Its Interest. The Holder represents that by reason of its, or of its management's, business or financial experience, the Holder has the capacity to protect its own interests in connection with the transactions contemplated in this Agreement. Further, the Holder is aware of no publication of any advertisement in connection with the transactions contemplated in the Agreement.

(d) Qualified Institutional Buyer. The Holder represents that it is a qualified institutional buyer as defined in Rule 144A under the Securities Act.

(e) Company Information. The Holder has had an opportunity to discuss the Company's business, management and financial affairs with directors, officers and management of the Company and has had the opportunity to review the Company's operations and facilities. The Holder has also had the opportunity to ask questions of and receive answers from, the Company and its management regarding the terms and conditions of this investment.

(f) Rule 144. The Holder acknowledges and agrees that the Securities are "restricted securities" as defined in Rule 144 promulgated under the Securities Act as in effect from time to time and must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. The Holder has been advised or is aware of the provisions of Rule 144, which permits limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including, among other things: the availability of certain current public information about the Company, the resale occurring following the required holding period under Rule 144 and certain volume limitations.

(g) Residence. The office or offices of the Holder in which its investment decision was made is located at the address or addresses of the Holder set forth on the signature page.

(h) Foreign Investors. If the Holder is not a United States person (as defined by Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended), the Holder hereby represents that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to subscribe for the Securities or any use of this Agreement, including (i) the legal requirements within its jurisdiction for the exchange of the Securities for the Prior Notes, (ii) any foreign exchange restrictions applicable to such exchange, (iii) any government or other consents that may need to be obtained, and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale or transfer of the Securities. The Exchange and the continued ownership by the Holder of the Securities will not violate any applicable securities or other laws of the Holder's jurisdiction.

(i) Transfer Restrictions. The Holder acknowledges and agrees that the Securities shall be subject to restrictions on transfer as set forth in the Indenture.

4.3 Sole Ownership. The Holder has all right, title and interest in its beneficial interest in the Prior Notes, and has not endorsed, assigned, sold, transferred, deposited under any agreement, hypothecated, pledged for any bank or brokerage loan, or otherwise in any manner disposed of the Holder's beneficial interest in the Prior Notes or any interest therein. No person

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or entity other than the Holder has any interest in the Holder's beneficial interest in the Prior Notes.

4.4 Non-Affiliate Status. The Holder is not an “affiliate” (as that term is defined under Rule 144(a) of the Securities Act and Rule 13e-3 of the Exchange Act of the Company. To the best of the Holder’s knowledge, the Holder did not acquire its beneficial interest in the Prior Notes from an “affiliate” of the Company.

4.5 Tax Advice. The Holder has had the opportunity to review with its own tax advisors the U.S. Federal, state, local and foreign tax consequences of the Exchange and the transactions contemplated by this Agreement. With respect to such tax matters, the Holder has relied and relies solely on such advisors and not on any statements or representations of the Company or any of its agents, written or oral. The Holder understands that it (and not the Company or any of its agents) shall be responsible for its own tax liability that may arise as a result of the Exchange and the transactions contemplated by this Agreement.

5. CONDITIONS TO CLOSING.

5.1 Conditions to the Holder’s Obligations at the Closing. Each Holder’s obligations to exchange and cancel its beneficial interest in the Prior Notes in exchange for the New Notes at the Closing are subject to the satisfaction, at or prior to the Closing Date, of the following conditions:

(a) **Representations and Warranties True; Performance of Obligations.** The representations and warranties made by the Company contained in this Agreement shall have been true and correct on the date of this Agreement and shall be true and correct as of the Closing Date with the same force and effect as if they had been made as of the Closing Date, and on or before the Closing Date the Company shall have performed all obligations and conditions herein required to be performed or observed by it on or prior to the Closing.

(b) **No Legal Action.** On the Closing Date, no legal action, suit or proceeding shall be pending or overtly threatened which seeks to restrain or prohibit the transactions contemplated by this Agreement.

(c) **No Event of Default.** No event which, if the New Notes were outstanding, would constitute an Event of Default under and as defined in the Indenture or which, with the giving of notice or the passage of time, or both, would constitute an Event of Default under and as defined in the Indenture shall have occurred and be continuing.

(d) **Compliance Certificate.** The Company shall have delivered to the Holders a Compliance Certificate, executed by an executive officer of the Company, dated the Closing Date, to the effect that the conditions specified in subsection (a), (b) and (c) of this Section 5.1 have been satisfied.

(e) **No Suspension of Trading.** On the Closing Date (i) trading in securities on the New York Stock Exchange, Inc., the American Stock Exchange, Inc. or The Nasdaq National Market shall not have been suspended or materially limited and (ii) a general

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moratorium on commercial banking activities in the State of New York shall not have been declared by either federal or state authorities.

(f) **Legal Investment.** On the Closing Date, the issuance of the New Notes and the proposed issuance of the Conversion Shares shall be legally permitted by all laws and regulations to which the Holders and the Company are subject.

(g) **Indenture.** The Indenture shall have been duly executed and delivered by the Company and the Trustee and the New Notes shall have been duly executed and delivered by the Company and duly authenticated by the Trustee.

(h) **Pledge Agreement.** The Company and the Collateral Agent shall have executed and delivered the Pledge Agreement and the Pledge Agreement shall be in full force and effect.

(i) **Rights Agreement.** The Company shall have executed and delivered the Rights Agreement and the Rights Agreement shall be in full force and effect.

5.2 Conditions to the Company’s Obligations at the Closing. The Company’s obligations to issue the New Notes at the Closing is subject to the satisfaction, at or prior to the Closing Date, of the following conditions:

(a) **Representations and Warranties True; Performance of Obligations.** The representations and warranties of each Holder contained in this Agreement shall have been true and correct on the date of this Agreement and shall be true and correct as of the Closing Date with the same force and effect as if they had been made as of the Closing Date, and on or before the Closing Date each Holder shall have performed all obligations and conditions herein required to be performed or observed by it on or prior to the Closing.

(b) **Evidence of Cancellation of Beneficial Interest in the Prior Notes.** The Company shall have received confirmation to its reasonable satisfaction that each Holder’s beneficial interest in the Prior Notes has been cancelled.

(c) **No Legal Action.** On the Closing Date, no legal action, suit or proceeding shall be pending or overtly threatened which seeks to restrain or prohibit the transactions contemplated by this Agreement.

(d) **Legal Investment.** On the Closing Date, the issuance of the New Notes and the proposed issuance of the Conversion Shares shall be legally permitted by all laws and regulations to which the Holders and the Company are subject.

(e) **Indenture and New Notes.** The Trustee shall have duly executed and delivered the Indenture, and duly authenticated the New Notes.

(f) **Pledge Agreement.** The Collateral Agent shall have executed and delivered the Pledge Agreement and the Pledge Agreement shall be in full force and effect.

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(g) **Rights Agreement.** Each Holder shall have executed and delivered the Rights Agreement and the Rights Agreement shall be in full force and effect.

(h) **No Suspension of Trading.** On the Closing Date (i) trading in securities on the New York Stock Exchange, Inc., the American Stock Exchange, Inc. or The Nasdaq National Market shall not have been suspended or materially limited and (ii) a general moratorium on commercial banking activities in the State of New York shall not have been declared by either federal or state authorities.

6. COVENANTS OF THE PARTIES

6.1 Rule 144. The parties agree that pursuant to Rule 144 promulgated under the Securities Act ("**Rule 144**"), interpretations thereof by the SEC and "no-action" letters from the staff of the SEC, the Holders should be entitled to relate back (i.e., tack) the holding period of the New Notes and the Conversion Shares to the holding period of the Prior Notes and, so long as (x) the aggregate period during which the Prior Notes and the New Notes and the Conversion Shares are held is at least two years and (y) at the time of determination such Holder is not and has not for the preceding three months been an "affiliate" (as such term is defined in Rule 144) of the Company, the New Notes and the Conversion Shares may be sold pursuant to Rule 144(k) (the "**Rule 144 Interpretation**"). The Company shall not, directly or indirectly, dispute or otherwise interfere with any claim by the Holders that the holding period of the New Notes and the Conversion Shares for purposes of Rule 144 tacks to the holding period for the Prior Notes; provided, however, that nothing contained in this Section 6.1 shall obligate the Company or its legal counsel to take a position that is inconsistent with the provisions of applicable law or regulations and the administrative and judicial interpretations thereof in effect from time to time (collectively, the "**Applicable Law**"); nor shall the covenants set forth in this Section 6.1 be construed as any representation or warranty by the Company or to limit any Holder's representations or warranties to the effect that (A) the Rule 144 Interpretation is consistent with or does not conflict with the Applicable Law, or (B) any Holder has demonstrated that the Securities have been acquired with investment intent and not with a view towards their distribution. The parties agree and acknowledge that the foregoing covenants shall in no way (A) limit the transfer restrictions to which the Securities are subject as set forth in the Indenture; or (B) require the Company to take any action to authorize the transfer of any Securities if a Holder has not demonstrated to the Company's reasonable satisfaction that the Securities have been acquired with investment intent and not with a view towards their distribution.

6.2 Best Efforts. Each of the parties shall use its best efforts timely to satisfy each of the conditions to the other party's obligations set forth in Section 5.1 or 5.2, as the case may be, of this Agreement on or before the Closing Date.

6.3 Settlement of Interest on the Prior Notes. Each of the parties agree and acknowledge that the Holders are Holders of record of the Prior Notes as of October 2, 2003 and consequently will receive a payment of interest due on October 17, 2003 (the "**Interest Payment Date**") with respect to the Prior Notes held by such Holders (the "**Interest Payment**"). The parties hereby agree that the payment of the Interest Payment shall be in lieu of and deemed to satisfy and obligation by the Company to pay accrued and unpaid interest on the Prior Notes at the Closing and that the Company may deduct from any Interest Payment paid to the Holders an

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amount equal to any interest on the Prior Notes deemed to accrue on the Prior Notes or after the Closing Date. In the event that any Holder shall receive an Interest Payment which includes the payment of interest accrued on or after the Closing Date (an "**Excess Interest Payment**"), such Holder shall immediately remit to the Company in immediately available funds an amount equal to such Excess Interest Payment.

7. MISCELLANEOUS.

7.1 Governing Law. This Agreement shall be governed by and construed under the laws of the State of New York.

7.2 Survival. The representations, warranties, covenants and agreements made herein shall survive the closing of the transactions contemplated hereby. The representations, warranties, covenants and obligations of the Company, and the rights and remedies that may be exercised by the Holders, shall not be limited or otherwise affected by or as a result of any information furnished to, or any investigation made by or knowledge of, the Holders or any of their representatives.

7.3 Successors and Assigns. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon the parties hereto and their respective successors, assigns, heirs, executors and administrators.

7.4 Entire Agreement. This Agreement and the other Operative Documents delivered pursuant hereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and no party shall be liable or bound to any other in any manner by any oral or written representations, warranties, covenants and agreements except as specifically set forth herein and therein. Each party expressly represents and warrants that it is not relying on any oral or written representations, warranties, covenants or agreements outside of the Operative Documents.

7.5 Severability. In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

7.6 Amendment and Waiver. This Agreement may be amended or modified only upon the written consent of the Company and the Holders holding a majority in interest of the Prior Notes.

7.7 Delays or Omissions. It is agreed that no delay or omission to exercise any right, power or remedy accruing to any party, upon any breach, default or noncompliance by another party under this Agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on any party's part of any breach, default or noncompliance under this Agreement or any waiver on such party's part of any provisions or conditions of the Agreement must be in writing and shall be

effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by law, or otherwise afforded to any party, shall be cumulative and not alternative.

7.8 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail, telex or facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the Company at the address as set forth on the signature page hereof and to the Holder at the address set forth on the signature page or at such other address or electronic mail address as the Company or the Holder may designate by ten (10) days advance written notice to the other parties hereto.

7.9 Expenses. Each party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of the Agreement.

7.10 Attorneys' Fees. In the event that any suit or action is instituted under or in relation to this Agreement, including, without limitation, to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

7.11 Titles and Subtitles. The titles of the sections and subsections of the Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

7.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

7.13 Broker's Fees. Each party hereto represents and warrants that no agent, broker, investment banker, person or firm acting on behalf of or under the authority of such party hereto is or will be entitled to any broker's or finder's fee or any other commission directly or indirectly in connection with the transactions contemplated herein. Each party hereto further agrees to indemnify each other party for any claims, losses or expenses incurred by such other party as a result of the representation in this Section 7.13 being untrue.

7.14 Pronouns. All pronouns contained herein, and any variations thereof, shall be deemed to refer to the masculine, feminine or neutral, singular or plural, as to the identity of the parties hereto may require.

7.15 Further Assurances. Each party to this Agreement will perform any and all acts and execute any and all documents as may be necessary and proper under the circumstances in order to accomplish the intents and purposes of this Agreement and to carry out its provisions.

7.16 Termination.

(a) Termination Events. This Agreement may be terminated prior to the Closing:

(i) By Holders holding a majority in interest of the Prior Notes at or after the Scheduled Closing Time if any condition set forth in Section 5.1 has not been satisfied by the Scheduled Closing Time (other than as a result of any failure on the part of any Holder to comply with or perform any covenant or obligation of the Holders set forth in this Agreement);

(ii) By the Company at or after the Scheduled Closing Time if any condition set forth in Section 5.2 has not been satisfied by the Scheduled Closing Time (other than as a result of any failure on the part of the Company to comply with or perform any covenant or obligation of the Company set forth in this Agreement);

(iii) By Holders holding a majority in interest in of the Prior Notes or the Company if the Closing has not taken place on or before October 13, 2003 (other than as a result of any failure on the part of the party seeking to terminate this Agreement to comply with or perform any covenant or obligation of such party set forth in this Agreement);

(iv) By mutual consent of Holders holding a majority in interest of the Prior Notes and the Company

(b) Termination Procedures. If the Holders wish to terminate this Agreement pursuant to Section 7.16(a)(i) or Section 7.16(iii), the Holders shall deliver to the Company a written notice stating that the Holders are terminating this Agreement and setting forth a brief description of the basis on which the Holders are terminating this Agreement. If the Company wishes to terminate this Agreement pursuant to Section 7.16(a)(ii) or Section 7.16(iii), the Company shall deliver to the Holders a written notice stating that the Company is terminating this Agreement and setting forth a brief description of the basis on which the Company is terminating this Agreement.

(c) Effect of Termination. If this Agreement is terminated pursuant to Section 7.16(a), this Agreement shall be of no further force or effect (and, except as provided in this Section 7.16(c), there shall be no liability or obligation hereunder on the part of any of the parties hereto or their respective officers, directors, stockholders or affiliates); provided, however, that Section 7, including without limitation, this Section 7.16, shall survive the termination of this Agreement and shall remain in full force and effect, and the termination of this Agreement shall not relieve any party from any liability for any willful breach of any representation, warranty or covenant contained in this Agreement.

7.17 Public Statements, Press Releases, Etc. The Company and the Holders holding a majority in interest of the New Notes shall have the right to approve before issuance any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, that the Company shall be entitled, without the prior approval of the Holders, to make any press release or other public disclosure with respect to such transactions that it deems appropriate pursuant to applicable law and regulations, including the Exchange Act and the rules and regulations promulgated thereunder.

[Remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this EXCHANGE AGREEMENT as of the date set forth in the first paragraph hereof.

COMPANY:**NEKTAR THERAPEUTICS**

Signature: /s/ Ajit S. Gill
 Ajit S. Gill
 President, Chief Executive
 Officer and Director

Address: 150 Industrial Road
 San Carlos, CA 94070

Exchange Agreement
 Signature Page

HOLDERS:**ALEXANDRA GLOBAL MASTER FUND LTD.**

By: ALEXANDRA INVESTMENT MANAGEMENT, LLC,
 as Investment Advisor

Signature: /s/ Mikhail Filimonov

Print Name: Mikhail Filimonov

Title: Chairman, CEO & Chief Investment Officer

Address:

c/o Alexandra Investment Management, LLC
 767 Third Avenue
 39th Floor
 New York, New York 10017
 Facsimile No.: (212) 301-1810

Exchange Agreement
 Signature Page

APPENDIX I

HOLDERS	PRIOR NOTES	NEW NOTES
ALEXANDRA GLOBAL MASTER FUND LTD.	\$ 22,500,000	\$ 15,119,000
TOTAL:	\$ 22,500,000	\$ 15,119,000

**AMENDMENT NO. 1 TO
EXCHANGE AGREEMENT**

This Amendment Number 1 (the "Amendment") is made and entered into as of October 9, 2003, by and between **NEKTAR THERAPEUTICS**, a Delaware corporation (the "**Company**") and the entities set forth on Appendix I hereto (each a "**Holder**" and collectively the "**Holders**").

RECITALS

WHEREAS, the Company and the Holders entered into an Exchange Agreement dated October 3, 2003 (the "**Agreement**") pursuant to which the Holders shall exchange and cancel the Holders' entire beneficial interest in the Company's 3.5% Convertible Subordinated Notes due 2007 (the "**Prior Notes**") in consideration for the issuance by the Company to the Holders of the Company's 3% Convertible Subordinated Notes due 2010 (the "**New Notes**") (the "**Exchange**"); and

WHEREAS, the Company and the Holders desire to enter into this Amendment to amend the Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements, covenants and considerations contained herein, the receipt of which are hereby acknowledged, the undersigned hereby agree as follows:

1. **SECTION 2.2.** Section 2.2 is hereby amended, restated and replaced with the following:

(a) At the Closing, subject to the terms and conditions set forth herein, the Company shall issue and deliver to each Holder, against evidence of cancellation of such Holder's beneficial interests in the Prior Notes, a note (the "**Note**") in favor of such Holder, payable in the principal amount set forth opposite such Holder's name in Appendix I.

(b) At the Closing, subject to the terms and conditions hereof, each Holder will cancel its beneficial interest in the Prior Notes and deliver to the Company evidence that the such beneficial interest has been cancelled on records maintained in book-entry form by The Depository Trust Company ("**DTC**") and its participants.

2. **SECTION 6.4.** A new Section 6.4 shall be added to the Agreement as follows:

Section 6.4 **The Depository Trust Company Eligibility.** The Company covenants that it shall use its commercially reasonable efforts to cause the New Notes to be deposited with DTC and the Holders' ownership to be reflected in book entry-form as soon as reasonably practicable in accordance with DTC policies and procedures, following the effective date of a registration statement covering the resale of the New Notes by the Holder.

3. **COUNTERPARTS.** This Amendment may be executed in any number of counterparts, each of which shall be an original, and all of which shall constitute one instrument.

4. **FULL FORCE AND EFFECT.** The provisions of the Agreement shall remain in full force and effect, except as set forth herein.

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IN WITNESS WHEREOF, the parties hereto have executed this **AMENDMENT** as of the date set forth in the first paragraph hereof.

COMPANY:

NEKTAR THERAPEUTICS

Signature: /s/ Ajit S. Gill
Ajit S. Gill
President, Chief Executive
Officer and Director

Address: 150 Industrial Road
San Carlos, CA 94070

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HOLDERS:

Salomon Brothers Qualified Investor Portfolios Multi-Strategy Arbitrage Portfolio
Salomon Brothers Diversified Arbitrage Strategies Fund Ltd.
Salomon Brothers Enhanced Arbitrage Strategies Fund
CEBT – Comingled Employee Benefit Trust – Capital Structure Arbitrage

General Motors Employees Global Group Pension Trust
General Motors Welfare Benefits Trust
Salomon Brothers Market Neutral Arbitrage Fund L.P.

By: Salomon Brothers Asset Management, Inc.,
the investment manager of each of the above listed Holders.

Signature: /s/ Kenneth Lee

Print Name: Kenneth Lee

Title: Director/Portfolio Manager

Address: 399 Park Avenue, 7th Floor
New York, NY 10022

Copies to: Salomon Brothers Asset Management
P.O. Box 1080
Church Street Station
New York, NY 10008-1080
ATTN: SBAM/Citigroup LIBRA

**AMENDMENT NO. 1 TO
EXCHANGE AGREEMENT**

This Amendment Number 1 (the "Amendment") is made and entered into as of October 9, 2003, by and between **NEKTAR THERAPEUTICS**, a Delaware corporation (the "**Company**") and the entities set forth on Appendix I hereto (each a "**Holder**" and collectively the "**Holders**").

RECITALS

WHEREAS, the Company and the Holders entered into an Exchange Agreement dated October 3, 2003 (the "**Agreement**") pursuant to which the Holders shall exchange and cancel a portion of the Holders' beneficial interest in the Company's 3.5% Convertible Subordinated Notes due 2007 (the "**Prior Notes**") in consideration for the issuance by the Company to the Holders of the Company's 3% Convertible Subordinated Notes due 2010 (the "**New Notes**") (the "**Exchange**"); and

WHEREAS, the Company and the Holders desire to enter into this Amendment to amend the Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements, covenants and considerations contained herein, the receipt of which are hereby acknowledged, the undersigned hereby agree as follows:

1. **SECTION 2.2.** Section 2.2 is hereby amended, restated and replaced with the following:

(a) At the Closing, subject to the terms and conditions set forth herein, the Company shall issue and deliver to each Holder, against evidence of cancellation of such Holder's beneficial interests in the Prior Notes, a note (the "**Note**") in favor of such Holder, payable in the principal amount set forth opposite such Holder's name in Appendix I.

(b) At the Closing, subject to the terms and conditions hereof, each Holder will cancel its beneficial interest in the Prior Notes and deliver to the Company evidence that the such beneficial interest has been cancelled on records maintained in book-entry form by The Depository Trust Company ("**DTC**") and its participants.

2. **SECTION 6.4.** A new Section 6.4 shall be added to the Agreement as follows:

Section 6.4 **The Depository Trust Company Eligibility.** The Company covenants that it shall use its commercially reasonable efforts to cause the New Notes to be deposited with DTC and the Holders' ownership to be reflected in book entry-form as soon as reasonably practicable in accordance with DTC policies and procedures, following the effective date of a registration statement covering the resale of the New Notes by the Holder.

3. **COUNTERPARTS.** This Amendment may be executed in any number of counterparts, each of which shall be an original, and all of which shall constitute one instrument.

4. **FULL FORCE AND EFFECT.** The provisions of the Agreement shall remain in full force and effect, except as set forth herein.

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IN WITNESS WHEREOF, the parties hereto have executed this **AMENDMENT** as of the date set forth in the first paragraph hereof.

COMPANY:

NEKTAR THERAPEUTICS

Signature: /s/ Ajit S. Gill
Ajit S. Gill
President, Chief Executive
Officer and Director

Address: 150 Industrial Road
 San Carlos, CA 94070

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HOLDERS:

ALEXANDRA GLOBAL MASTER FUND LTD.

By: Alexandra Investment Management, LLC,
 as Investment Advisor

Signature: /s/ Dimitri Sogoloff

Print Name: Dimitri Sogoloff

Title: President

Address:

c/o Alexandra Investment Management, LLC
767 Third Avenue
39th Floor
New York, New York 10017
Facsimile No.: (212) 301-1810