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): January 13, 2017

XTANT MEDICAL HOLDINGS, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of Incorporation)

001-34951	20-5313323
(Commission File Number)	(IRS Employer Identification No.)
664 Cruiser Lane Belgrade, Montana	59714
(Address of Principal Executive Offices)	(Zip Code)

(406) 388-0480
(Registrant's Telephone Number, Including Area Code)

Not applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement.

Eighth Amendment to Amended and Restated Credit Agreement

Effective January 13, 2017, Bacterin International, Inc. ("Bacterin"), a Nevada corporation and wholly-owned subsidiary of Xtant Medical Holdings, Inc. (the "Company"), as borrower, the Company, X-Spine Systems, Inc., an Ohio corporation and wholly-owned subsidiary of the Company, and Xtant Medical, Inc., a Delaware corporation and wholly-owned subsidiary of the Company, collectively as the guarantors, ROS Acquisition Offshore LP ("ROS") and OrbiMed Royalty Opportunities II, LP ("OrbiMed"), entered into the Eighth Amendment to Amended and Restated Credit Agreement (the "Amendment"), which amended the existing Amended and Restated Credit Agreement (the "Facility"). The Facility generally provided for the refinancing of approximately $24,000,000 in previously existing term loans and the borrowing of an additional $18,000,000 by Bacterin.

The seventh amendment to the Facility deferred Bacterin's accrued interest payment date for the fiscal quarter ended on December 31, 2016 until January 14, 2017. The Amendment further defers Bacterin's accrued interest payment date for the fiscal quarter ended until January 31, 2017. The interest due on January 31, 2017 will be $1,107,244.19, plus interest accrued on such interest from January 2, 2017 until paid at a rate equal to 14% plus the higher of the LIBO Rate (as defined in the Facility) for the fiscal quarter ended on December 31, 2016, or 1%.

Indenture Common Stock

On October 17, 2017 (the "Closing Date"), the Company entered into Securities Purchase Agreements (the "Indenture Common Stock SPAs") with Bruce Fund, Inc. ("Bruce Fund"), Park West Partners International, Limited ("PWPI"), Park West Investors Master Fund, Limited ("PWIMF"), and Telemetry Securities, L.L.C. ("Telemetry"), to satisfy interest obligations that the Company owed to Bruce Fund, PWPI, PWIMF and Telemetry under $16,000,000 of convertible promissory notes issued to them under the Indenture, dated as of July 31, 2015, between the Company and Wilmington Trust, National Association (the "Indenture").

Pursuant to the Indenture Common Stock SPAs, Bruce Fund, PWPI, PWIMF and Telemetry agreed to purchase from the Company a total of 843,289 shares of the Company's common stock, $0.000001 par value per share (the "Common Stock") at a price of $0.5692 per share.

The Common Stock offered in this offering was made pursuant to the Company's effective shelf registration statement on Form S-3 (Registration No. 333-194944) previously filed with the Securities and Exchange Commission (the "SEC") and a prospectus supplement and accompanying prospectus filed with the SEC. The Company issued the following shares of Common Stock on the Closing Date:

Entity	Shares of Common Stock
Park West Partners International, Limited	54,749
Park West Investors Master Fund, Limited	393,248
Telemetry Securities, L.L.C.	289,881
Bruce Fund, Inc.	105,411

On the Closing Date, the purchase price for the Common Stock was paid by Bruce Fund, PWPI, PWIMF and Telemetry by a dollar-for-dollar offset against all interest due to the Bruce Fund, PWPI, PWIMF and Telemetry as of the Closing Date under the convertible notes issued to them under the Indenture. The Indenture Common Stock SPAs contain customary representations, warranties and covenants.

Indenture Notes

On the Closing Date, the Company entered into a Securities Purchase Agreement (the "Indenture Notes SPA") and certain related documents (collectively, the "Indenture Notes Transaction Documents") with ROS and OrbiMed, to satisfy interest obligations that the Company owed to ROS and OrbiMed pursuant to $52,000,000 of convertible promissory notes issued to them under the Indenture. The Indenture Notes SPA and the Indenture Notes Transaction Documents as more fully described below.

Indenture Notes SPA

Pursuant to the Indenture Notes SPA, ROS and OrbiMed agreed to purchase from the Company a new series of 6% Convertible Senior Notes Due 2021 in the aggregate original principal amount of up to $1,560,000 (each, an "Indenture Note" and, collectively, the "Indenture Notes"). The Indenture Notes are convertible into Common Stock at a conversion price of $0.7589 per share, and mature on July 15, 2021 (the "Maturity Date") in accordance with the terms and conditions of the Indenture Notes, as more fully described below.

The Company issued the following Indenture Notes on the Closing Date:

- An Indenture Note in the aggregate original principal amount of $995,700 to ROS (the "ROS Indenture Convertible Note"); and

- An Indenture Note in the aggregate original principal amount of $564,300 to OrbiMed (the "OrbiMed Indenture Convertible Note").

On the Closing Date, the purchase price for the Indenture Notes were paid by ROS and OrbiMed by a dollar-for-dollar offset against all interest due to the ROS and OrbiMed as of the Closing Date under the convertible notes issued to them under the Indenture. The Indenture Notes SPA contains customary representations, warranties and covenants.

The Indenture Notes

As set forth above, on the Closing Date, the Company issued to ROS and OrbiMed, the ROS Indenture Convertible Note and the OrbiMed Indenture Convertible Note, respectively.

Interest under the Indenture Notes accrues at a rate of 6% per year and will be paid semi-annually in arrears through the addition of the amount of such interest to the then outstanding principal amount. Upon a default for failure to pay any amount due under the Indenture Notes, interest will accrue at a rate equal to 6.00% per annum plus 100 basis points.

Pursuant to the Indenture Notes, if a fundamental change occurs at any time prior to the Maturity Date, ROS or OrbiMed may require the Company to repurchase the Indenture Note at a price equal to 100% of the principal amount of the Indenture Note, plus accrued and unpaid interest. Fundamental changes under the Indenture Notes include, among others: a change in control of more than 50% of the voting power of the Company's common equity; a sale of substantially all of the consolidated assets of the Company; any transaction where all of the Common Stock is exchanged for the right to receive other securities; and if the Company's stockholders approve any plan or proposal for the liquidation or dissolution of the Company.

ROS and OrbiMed may cause the redemption and acceleration of an Indenture Note upon any event of default by the Company. Events of default under the Indenture Notes include, among others, a failure by the Company to pay principal and interest on an Indenture Note when due; a failure by the Company to give a fundamental change notice when due; failure by the Company to convert an Indenture Note upon proper notice by ROS or OrbiMed; an acceleration of any other indebtedness of the Company in excess of $1 million; a bankruptcy of the Company; a judgment against the Company in excess of $1 million; and a material breach by the Company of a covenant or other term or condition in an Indenture Note.

The Indenture Notes are convertible at ROS's or OrbiMed's election into shares of Common Stock at a conversion price of $0.7589 per share at any time prior to the close of business on the second business day immediately preceding the Maturity Date.

Indenture Notes Registration Rights Agreement

In connection with the offering of the Indenture Notes and certain requirements in the Indenture Notes SPA, on the Closing Date, the Company, ROS and OrbiMed, entered into the Registration Rights Agreement (the "Indenture Notes Registration Rights Agreement"). Under the Indenture Notes Registration Rights Agreement, the Company will file a shelf registration statement providing for the registration of the offer and sale of the Indenture Notes by ROS and OrbiMed and will use its best efforts to cause such shelf registration statement to become effective no later than the 180th day after the Closing Date. The Company agrees to use its best efforts to keep the shelf registration statement continuously effective in order to permit the related prospectus to be usable by ROS and OrbiMed from the date the shelf registration statement becomes effective until the earlier of (i) the 60th trading day following the Maturity Date or (ii) the date upon which there are no longer any outstanding registrable securities.

PIK Notes

On the Closing Date, the Company also entered into a Securities Purchase Agreement (the "PIK Notes SPA") and certain related documents (collectively, the "PIK Notes Transaction Documents") with ROS and OrbiMed, to satisfy interest obligations that the Company owed to ROS and OrbiMed pursuant to $2,238,166.45 of convertible promissory notes issued under the Securities Purchase Agreement, dated as of April 14, 2016, by and among the Company, ROS and OrbiMed (the "2016 SPA"). The PIK Notes SPA and the PIK Notes Transaction Documents as more fully described below.

PIK Notes SPA

Pursuant to the PIK Notes SPA, ROS and OrbiMed agreed to purchase from the Company a new series of 6% Convertible Senior Notes Due 2021 in the aggregate original principal amount of up to $1,560,000 (each, a "PIK Note" and, collectively, the "PIK Notes"). The PIK Notes are convertible into Common Stock at a conversion price of $0.7589 per share, and mature on the Maturity Date in accordance with the terms and conditions of the PIK Notes, as more fully described below.

The Company issued the following PIK Notes on the Closing Date:

- A PIK Note in the aggregate original principal amount of $42,856.59 to ROS (the "ROS PIK Convertible Note"); and
- A PIK Note in the aggregate original principal amount of $24,288.41 to OrbiMed (the "OrbiMed PIK Convertible Note").

On the Closing Date, the purchase price for the PIK Notes were paid by ROS and OrbiMed by a dollar-for-dollar offset against all interest due to the ROS and OrbiMed as of the Closing Date under the convertible notes issued under the 2016 SPA. The PIK Notes SPA contains customary representations, warranties and covenants.

The PIK Notes

As set forth above, on the Closing Date, the Company issued to ROS and OrbiMed, the ROS PIK Convertible Note and the Orbimed PIK Convertible Note, respectively.

Interest under the PIK Notes accrues at a rate of 6% per year and will be paid semi-annually in arrears through the addition of the amount of such interest to the then outstanding principal amount. Upon a default for failure to pay any amount due under the PIK Notes, interest will accrue at a rate equal to 6.00% per annum plus 100 basis points.

Pursuant to the PIK Notes, if a fundamental change occurs at any time prior to the Maturity Date, ROS or OrbiMed may require the Company to repurchase the PIK Note at a price equal to 100% of the principal amount of the PIK Note, plus accrued and unpaid interest. Fundamental changes under the PIK Notes include, among others: a change in control of more than 50% of the voting power of the Company's common equity; a sale of substantially all of the consolidated assets of the Company; any transaction where all of the Common Stock is exchanged for the right to receive other securities; and if the Company's stockholders approve any plan or proposal for the liquidation or dissolution of the Company.

ROS and OrbiMed may cause the redemption and acceleration of a PIK Note upon any event of default by the Company. Events of default under the PIK Notes include, among others, a failure by the Company to pay principal and interest on a PIK Note when due; a failure by the Company to give a fundamental change notice when due; failure by the Company to convert a PIK Note upon proper notice by ROS or OrbiMed; an acceleration of any other indebtedness of the Company in excess of $1 million; a bankruptcy of the Company; a judgment against the Company in excess of $1 million; and a material breach by the Company of a covenant or other term or condition in a PIK Note.

The PIK Notes are convertible at ROS's or OrbiMed's election into shares of the Common Stock at a conversion price of $0.7589 per share at any time prior to the close of business on the second business day immediately preceding the Maturity Date.

PIK Notes Registration Rights Agreement

In connection with the offering of the PIK Notes and certain requirements in the PIK Notes SPA, on the Closing Date, the Company, ROS and OrbiMed, entered into the Registration Rights Agreement (the "PIK Notes Registration Rights Agreement"). Under the PIK Notes Registration Rights Agreement, the Company will file a shelf registration statement providing for the registration of the offer and sale of the PIK Notes by ROS and OrbiMed and will use its best efforts to cause such shelf registration statement to become effective no later than the 180th day after the Closing Date. The Company agrees to use its best efforts to keep the shelf registration statement continuously effective in order to permit the related prospectus to be usable by ROS and OrbiMed from the date the shelf registration statement becomes effective until the earlier of (i) the 60th trading day following the Maturity Date or (ii) the date upon which there are no longer any outstanding registrable securities.

The foregoing descriptions of the Amendment, the Indenture Common Stock SPAs, the Indenture Notes SPA, the Indenture Notes, the Indenture Notes Registration Rights Agreement, the PIK Notes SPA, the PIK Notes, and the PIK Notes Registration Rights Agreement do not purport to be complete and are qualified in their entirety by reference to the Amendment, the Indenture Common Stock SPAs, the Indenture Notes SPA, the Indenture Notes, the Indenture Notes Registration Rights Agreement, the PIK Notes SPA, the PIK Notes, and the PIK Notes Registration Rights Agreement, which are attached hereto as Exhibits 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7, 10.8, 10.9, 10.10, 10.11, 10.12 and 10.13 respectively, and are incorporated by reference herein.

Item 2.03. Creation of Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement.

The disclosure set forth above under Item 1.01 is hereby incorporated by reference into this Item 2.03.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	Eighth Amendment to Amended and Restated Credit Agreement, dated as of January 13, 2017, by and among Bacterin International, Inc., Xtant Medical Holdings, Inc., X-Spine Systems, Inc., Xtant Medical, Inc., ROS Acquisition Offshore LP and OrbiMed Royalty Opportunities II, LP.
10.2	Securities Purchase Agreement, dated January 17, 2017, between Xtant Medical Holdings, Inc. and Bruce Fund, Inc.
10.3	Securities Purchase Agreement, dated January 17, 2017, between Xtant Medical Holdings, Inc. and Park West Partners International, Limited.
10.4	Securities Purchase Agreement, dated January 17, 2017, between Xtant Medical Holdings, Inc. and Park West Investors Master Fund, Limited.
10.5	Securities Purchase Agreement, dated January 17, 2017, between Xtant Medical Holdings, Inc. and Telemetry Securities, L.L.C.
10.6	Securities Purchase Agreement (for sale of the Indenture Notes), dated January 17, 2017, among Xtant Medical Holdings, Inc., ROS Acquisition Offshore LP and OrbiMed Royalty Opportunities II, LP.
10.7	Convertible Promissory Note in the principal amount of $995,700, dated January 17, 2017, made by Xtant Medical Holdings, Inc. in favor of ROS Acquisition Offshore LP.
10.8	Convertible Promissory Note in the principal amount of $564,300, dated January 17, 2017, made by Xtant Medical Holdings, Inc. in favor of OrbiMed Royalty Opportunities II, LP.
10.9	Registration Rights Agreement (for Common Stock underlying the Indenture Notes), dated January 17, 2017, among Xtant Medical Holdings, Inc., ROS Acquisition Offshore LP and OrbiMed Royalty Opportunities II, LP.
10.10	Securities Purchase Agreement (for sale of the PIK Notes), dated January 17, 2017, among Xtant Medical Holdings, Inc., ROS Acquisition Offshore LP and OrbiMed Royalty Opportunities II, LP.
10.11	Convertible Promissory Note in the principal amount of $42,856.59, dated January 17, 2017, made by Xtant Medical Holdings, Inc. in favor of ROS Acquisition Offshore LP.
10.12	Convertible Promissory Note in the principal amount of $24,288.41, dated January 17, 2017, made by Xtant Medical Holdings, Inc. in favor of OrbiMed Royalty Opportunities II, LP.
10.13	Registration Rights Agreement (for Common Stock underlying the PIK Notes), dated January 17, 2017, among Xtant Medical Holdings, Inc., ROS Acquisition Offshore LP and OrbiMed Royalty Opportunities II, LP.

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.

Dated: January 20, 2017

XTANT MEDICAL HOLDINGS, INC.

By: /s/ John Gandolfo
Name: John Gandolfo
Title: Chief Financial Officer

EXHIBIT INDEX

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10.13	Registration Rights Agreement (for Common Stock underlying the PIK Notes), dated January 17, 2017, among Xtant Medical Holdings, Inc., ROS Acquisition Offshore LP and OrbiMed Royalty Opportunities II, LP.

EXHIBIT 10.1

EIGHTH AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT

This **EIGHTH AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT** (this "Amendment") is made and entered into as of January 13, 2017 (the "Amendment Closing Date") by and among **BACTERIN INTERNATIONAL, INC.**, a Nevada corporation (the "Borrower"), **ROS ACQUISITION OFFSHORE LP**, a Cayman Islands Exempted Limited Partnership ("ROS"), OrbiMed Royalty Opportunities II, LP, a Delaware limited partnership ("Royalty Opportunities"), and, in their capacity as Guarantors under the Credit Agreement (as defined below), **XTANT MEDICAL HOLDINGS, INC.**, a Delaware corporation ("Holdings"), **X-SPINE SYSTEMS, INC.**, an Ohio corporation ("X-Spine") and **XTANT MEDICAL, INC.**, a Delaware corporation ("Xtant" and, along with Holdings and X-Spine, collectively, the "Guarantors").

WHEREAS, the Borrower, ROS and Royalty Opportunities are party to that certain Amended and Restated Credit Agreement, dated as of July 27, 2015, as amended by that certain First Amendment to Amended and Restated Credit Agreement, dated as of March 31, 2016, that certain Second Amendment to Amended and Restated Credit Agreement, dated as of May 25, 2016, that certain Third Amendment to Amended and Restated Credit Agreement, dated as of June 30, 2016, that certain Fourth Amendment to Amended and Restated Credit Agreement, dated as of July 29, 2016, that certain Fifth Amendment to the Amended and Restated Credit Agreement, dated as of August 12, 2016, that certain Sixth Amendment to the Amended and Restated Credit Agreement, dated as of September 27, 2016, and that certain Seventh Amendment to the Amended and Restated Credit Agreement, dated as of December 31, 2016 (the "Credit Agreement"), pursuant to which (i) ROS and Royalty Opportunities, as Lenders under the Credit Agreement, have extended credit to the Borrower on the terms set forth therein and (ii) each Lender has appointed ROS as the administrative agent (the "Administrative Agent") for the Lenders;

WHEREAS, the Guarantors and the Administrative Agent entered into an Amended and Restated Guarantee, dated as of July 31, 2015 and supplemented on September 11, 2015, pursuant to which the Guarantors have agreed to guarantee the Obligations of the Borrower under the Credit Agreement;

WHEREAS, pursuant to Section 11.1 of the Credit Agreement, the Credit Agreement may be amended by an instrument in writing signed by each of the Borrower and the Administrative Agent (acting on behalf of the Lenders);

WHEREAS, the Borrower and the Lenders desire to amend certain provisions of the Credit Agreement as provided in this Amendment.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions; Loan Document**. Capitalized terms used herein without definition shall have the meanings assigned to such terms in the Credit Agreement. This Amendment shall constitute a Loan Document for all purposes of the Credit Agreement and the other Loan Documents.

2. **Amendments to Section 3.6**. Section 3.6 of the Credit Agreement is hereby amended by deleting the last sentence from such Section 8.4(b) in its entirety and inserting the following as the last sentence thereof:

"Notwithstanding the foregoing, interest accrued on the Loans for the Fiscal Quarter ended on December 31, 2016 and otherwise required to be paid in cash on January 2, 2017, shall instead be required to be paid in cash on January 31, 2017, plus interest accrued on such interest from January 2, 2017 to the date of payment thereof at a rate equal to the Applicable Margin plus the higher of (i) the LIBO Rate for the Fiscal Quarter ended on December 31, 2016, and (ii) 1.00%."

3. **Conditions to Effectiveness of Amendment**. This Amendment shall become effective upon receipt by the Borrower, the Administrative Agent, the Lenders and the Guarantors of a counterpart signature of the others to this Amendment duly executed and delivered by each of the Borrower, the Lenders, the Administrative Agent and the Guarantors.

4. **Expenses**. The Borrower agrees to pay on demand all expenses of the Administrative Agent (including, without limitation, the fees and out-of-pocket expenses of Covington & Burling LLP, counsel to the Administrative Agent) incurred in connection with the Administrative Agent's review, consideration and evaluation of this Amendment, including the rights and remedies available to it in connection therewith, and the negotiation, preparation, execution and delivery of this Amendment.

5. **Representations and Warranties**. The Borrower and the Guarantors represent and warrant to each Lender as follows:

(a) After giving effect to this Amendment, the representations and warranties of the Borrower and the Guarantors contained in the Credit Agreement or any other Loan Document shall, (i) with respect to representations and warranties that contain a materiality qualification, be true and correct in all respects on and as of the date hereof, and (ii) with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects on and as of the date hereof, and except that the representations and warranties limited by their terms to a specific date shall be true and correct as of such date.

(b) After giving effect to this Amendment, no Default or Event of Default under the Credit Agreement will occur or be continuing.

6. **No Implied Amendment or Waiver**. Except as expressly set forth in this Amendment, this Amendment shall not, by implication or otherwise, limit, impair, constitute a waiver of or otherwise affect any rights or remedies of the Administrative Agent or the Lenders under the Credit Agreement or the other Loan Documents, or alter, modify, amend or in any way affect any of the terms, obligations or covenants contained in the Credit Agreement or the other Loan Documents, all of which shall continue in full force and effect. Nothing in this Amendment shall be construed to imply any willingness on the part of the Administrative Agent or the Lenders to agree to or grant any similar or future amendment, consent or waiver of any of the terms and conditions of the Credit Agreement or the other Loan Documents.

7. **Waiver and Release**. TO INDUCE THE ADMINISTRATIVE AGENT, ACTING ON BEHALF OF THE LENDERS, TO AGREE TO THE TERMS OF THIS AMENDMENT, THE BORROWER, THE GUARANTORS AND THEIR AFFILIATES (COLLECTIVELY, THE RELEASING PARTIES") REPRESENT AND WARRANT THAT AS OF THE DATE HEREOF THERE ARE NO CLAIMS OR OFFSETS AGAINST OR RIGHTS OF RECOUPMENT WITH RESPECT TO OR DEFENSES OR COUNTERCLAIMS TO THEIR OBLIGATIONS UNDER THE LOAN DOCUMENTS AND IN ACCORDANCE THEREWITH THEY:

(a) WAIVE ANY AND ALL SUCH CLAIMS, OFFSETS, RIGHTS OF RECOUPMENT, DEFENSES OR COUNTERCLAIMS, WHETHER KNOWN OR UNKNOWN, ARISING PRIOR TO THE DATE HEREOF; AND

(b) FOREVER RELEASE, RELIEVE, AND DISCHARGE THE ADMINISTRATIVE AGENT, THE LENDERS, THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PREDECESSORS, SUCCESSORS, ASSIGNS, ATTORNEYS, ACCOUNTANTS, AGENTS, EMPLOYEES, AND REPRESENTATIVES (COLLECTIVELY, THE "RELEASED PARTIES"), AND EACH OF THEM, FROM ANY AND ALL CLAIMS, LIABILITIES, DEMANDS, CAUSES OF ACTION, DEBTS, OBLIGATIONS, PROMISES, ACTS, AGREEMENTS, AND DAMAGES, OF WHATEVER KIND OR NATURE, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, CONTINGENT OR FIXED, LIQUIDATED OR UNLIQUIDATED, MATURED OR UNMATURED, WHETHER AT LAW OR IN EQUITY, WHICH THE RELEASING PARTIES EVER HAD, NOW HAVE, OR MAY, SHALL, OR CAN HEREAFTER HAVE, DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN ANY WAY BASED UPON, CONNECTED WITH, OR RELATED TO MATTERS, THINGS, ACTS, CONDUCT, AND/OR OMISSIONS AT ANY TIME FROM THE BEGINNING OF THE WORLD THROUGH AND INCLUDING THE DATE HEREOF, INCLUDING WITHOUT LIMITATION ANY AND ALL CLAIMS AGAINST THE RELEASED PARTIES ARISING UNDER OR RELATED TO THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY.

(c) IN CONNECTION WITH THE RELEASE CONTAINED HEREIN, THE RELEASING PARTIES ACKNOWLEDGE THAT THEY ARE AWARE THAT THEY MAY HEREAFTER DISCOVER CLAIMS PRESENTLY UNKNOWN OR UNSUSPECTED, OR FACTS IN ADDITION TO OR DIFFERENT FROM THOSE WHICH THEY KNOW OR BELIEVE TO BE TRUE, WITH RESPECT TO THE MATTERS RELEASED HEREIN. NEVERTHELESS, IT IS THE INTENTION OF THE RELEASING PARTIES, THROUGH THIS AGREEMENT AND WITH ADVICE OF COUNSEL, FULLY, FINALLY, AND FOREVER TO RELEASE ALL SUCH MATTERS, AND ALL CLAIMS RELATED THERETO, WHICH DO NOW EXIST, OR HERETOFORE HAVE EXISTED. IN FURTHERANCE OF SUCH INTENTION, THE RELEASES HEREIN GIVEN SHALL BE AND REMAIN IN EFFECT AS A FULL AND COMPLETE RELEASE OR WITHDRAWAL OF SUCH MATTERS NOTWITHSTANDING THE DISCOVERY OR EXISTENCE OF ANY SUCH ADDITIONAL OR DIFFERENT CLAIMS OR FACTS RELATED THERETO.

(d) THE RELEASING PARTIES COVENANT AND AGREE NOT TO BRING ANY CLAIM, ACTION, SUIT, OR PROCEEDING AGAINST THE RELEASED PARTIES, DIRECTLY OR INDIRECTLY, REGARDING OR RELATED IN ANY MANNER TO THE MATTERS RELEASED HEREBY, AND FURTHER COVENANT AND AGREE THAT THIS AGREEMENT IS A BAR TO ANY SUCH CLAIM, ACTION, SUIT, OR PROCEEDING.

(e) THE RELEASING PARTIES REPRESENT AND WARRANT TO THE RELEASED PARTIES THAT THEY HAVE NOT HERETOFORE ASSIGNED OR TRANSFERRED, OR PUPORTED TO ASSIGN OR TRANSFER, TO ANY PERSON OR ENTITY ANY CLAIMS OR OTHER MATTERS HEREIN RELEASED.

8. **Counterparts; Governing Law**. This Amendment may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of such when so executed and delivered shall be an original, but all of such counterparts shall together constitute but one and the same agreement. Delivery of an executed counterpart of a signature page of this Amendment by fax transmission or other electronic mail transmission (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Amendment. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK).

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

BACTERIN INTERNATIONAL, INC.,
as the Borrower

By: /s/ John Gandolfo
Name: John Gandolfo
Title: CFO

XTANT MEDICAL HOLDINGS, INC.,
(fka: Bacterin International Holdings, Inc.)
as a Guarantor

By: /s/ John Gandolfo
Name: John Gandolfo
Title: CFO

X-SPINE SYSTEMS, INC.,
as a Guarantor

By: /s/ John Gandolfo
Name: John Gandolfo
Title: CFO

XTANT MEDICAL, INC.,
as a Guarantor

By: /s/ John Gandolfo
Name: John Gandolfo
Title: CFO

ROS ACQUISITION OFFSHORE LP,
as a Lender and as the Administrative Agent

By OrbiMed Advisors LLC, solely in its
capacity as Investment Manager

By: /s/ W. Carter Neild
Name: W. Carter Neild
Title: Member

ORBIMED ROYALTY OPPORTUNITIES II, LP,
as a Lender

By OrbiMed ROF II LLC,
Its General Partner

By OrbiMed Advisors LLC,
its Managing Member

By: /s/ W. Carter Neild
Name: W. Carter Neild
Title: Member

EXHIBIT 10.2

SECURITIES PURCHASE AGREEMENT

Dated as of January 17, 2017

Xtant Medical Holdings, Inc.
664 Cruiser Lane
Belgrade, Montana 59714

Ladies and Gentlemen:

The undersigned hereby confirms its agreement with you as follows:

1. This Securities Purchase Agreement (this "**Agreement**") is made as of the date hereof between Xtant Medical Holdings, Inc., a Delaware corporation (the "**Company**"), and the Investor listed on the signature page hereto (the "**Investor**"). The Investor holds Convertible Promissory Notes issued by the Company pursuant to the Indenture, dated as of July 31, 2015, between the Company and Wilmington Trust, National Association (the "**Notes**"), in the aggregate principal amount of $2,000,000.00.

2. The Company is proposing to issue and sell to the Investor shares of the Company's common stock, par value $0.000001 per share (the "**Common Stock**"), in the aggregate amount of $60,000.00 (the "**Securities**"). The purchase price for the Securities shall be paid by a dollar-for-dollar offset against all interest due to the Investor as of the closing under the Notes.

3. The Investor acknowledges that the Company will be concurrently issuing shares of Common Stock to other investors on the same terms and conditions as described herein.

4. The Company and the Investor agree that, upon the terms and subject to the conditions set forth herein, the Investor will purchase from the Company and the Company will issue and sell to the Investor the aggregate principal amount of the Securities set forth below on the Investor's signature page for the aggregate purchase price set forth below on the Investor's signature page. The Securities shall be purchased pursuant to the Terms and Conditions for Purchase of Securities attached hereto as Annex A and incorporated herein by reference as if fully set forth herein.

Aggregate Amount of Securities the Investor Agrees to Purchase: 105,411

Aggregate Purchase Price of such Securities: $60,000.00

Please confirm that the foregoing correctly sets forth the agreement between us by signing in the space provided below for that purpose.

AGREED AND ACCEPTED BY:

Xtant Medical Holdings, Inc.
a Delaware corporation

By: /s/ Daniel Goldberger
Name: Daniel Goldberger
Title: Chief Executive Officer

Name of Investor: Bruce Fund, Inc.

By: /s/ R. Jeffrey Bruce
Print Name: R. Jeffrey Bruce
Title: V.P.

ANNEX A TO THE SECURITIES PURCHASE AGREEMENT
TERMS AND CONDITIONS FOR PURCHASE OF SECURITIES

1. Authorization and Sale of Securities. The Company is proposing to sell Common Stock, in the aggregate amount of $60,000.00 to the Investor.

2. Agreement to Sell and Purchase the Securities. Upon the terms and subject to the conditions hereinafter set forth, at the Closing (as defined in Section 3.1), the Company will sell to the Investor, and the Investor will purchase from the Company, the aggregate amount of Securities set forth on the Investor's signature page hereto at the purchase price set forth on such signature page.

3. Closings and Delivery of Securities and Funds.

3.1 The completion of the purchase and sale of the Securities (the "**Closing**") shall occur on January 17, 2017 (the "**Closing Date"**).

3.2 The Company's obligation to issue and sell the Securities to the Investor shall be subject to the following conditions, any one or more of which may be waived by the Company: (a) the accuracy of the representations and warranties made by the Investor and (b) the fulfillment of those undertakings of the Investor to be fulfilled prior to the Closing.

3.3 The Investor's obligation to accept delivery of the Securities and to pay for the Securities shall be subject to the following conditions: (a) each of the representations and warranties of the Company made in Section 4 shall be accurate in all material respects as of the Closing Date; (b) delivery of an officer's certificate dated as of the Closing Date regarding the accuracy in material respects of the Company's representations and warranties and addressing such other matters as are customarily addressed in closing certificates; (c) delivery to the Investor of a customary secretary's certificate in form reasonably acceptable to the Investor; and (d) the Company shall have furnished to the Investor such further documents as the Investor may reasonably request.

3.4 At the Closing, the purchase price for the Securities shall be paid by a dollar-for-dollar offset against all interest due to the Investor as of the Closing under the Notes. Such offset shall have the same effect as if the Investor paid cash to the Company for such Securities and the Company used such cash to pay to the Investor the interest so offset.

4. Representations, Warranties and Covenants of the Company.

The Company hereby represents and warrants to, and covenants with, the Investor that:

4.1 Each of the Company and its subsidiaries has been duly organized, is validly existing and in good standing as a corporation, partnership or limited liability company, as applicable, under the laws of its jurisdiction of organization and is duly qualified to do business and in good standing as a foreign corporation or other business entity in each jurisdiction in which its ownership or lease of property or the conduct of its businesses requires such qualification, except where the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to (i) have a material adverse effect on the condition (financial or otherwise), results of operations, stockholders' equity, properties, business or prospects of the Company and its subsidiaries taken as a whole or (ii) materially interfere with the consummation of the transactions contemplated hereby (collectively, a "**Material Adverse Effect**"). Each of the Company and its subsidiaries has all power and authority necessary to own or hold its properties and to conduct the businesses in which it is engaged. As of the date of this Agreement, the Company has no subsidiaries other than Bacterin International, Inc., X-spine Systems Inc. and Xtant Medical, Inc. and no "significant subsidiaries" (as defined in Rule 405 under the Securities Act) other than Bacterin International, Inc. and X-spine Systems Inc.

4.2 The Company has an authorized capitalization as set forth in the publicly available Annual Report on Form 10-K filed with the Securities and Exchange Commission (the "**Commission**") for the fiscal year ended December 31, 2015, and all of the issued shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable. All of the issued shares of capital stock or other ownership interest of each subsidiary of the Company have been duly authorized and validly issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims, except for such liens, encumbrances, equities or claims as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.3 The Company has all the requisite corporate power and authority to issue the Common Stock. The Common Stock has been duly and validly authorized by the Company and, and will be validly issued, fully paid and non-assessable, and the issuance of the Common Stock will not be subject to any preemptive or similar rights.

4.4 The Company has all requisite corporate power to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly and validly authorized, executed and delivered by the Company.

4.5 The issue and sale of the Common Stock, the execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby and thereby, will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, impose any lien, charge or encumbrance upon any property or assets of the Company or its subsidiaries, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, license, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which any of them is bound or to which any of their respective properties or assets is subject, (ii) result in any violation of the provisions of the charter or by-laws (or similar organizational documents) of the Company or any of its subsidiaries, or (iii) result in any violation of any statute or any judgment, order, decree, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their respective properties or assets, except, with respect to clauses (i) and (iii), conflicts or violations that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.6 Except for the filing of a prospectus supplement with the Commission respecting the Securities, no consent, approval, authorization or order of, or filing, registration or qualification with any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their respective properties or assets is required for the issuance of the Common Stock, the execution, delivery and performance by the Company of this Agreement, and the consummation of the transactions contemplated hereby.

4.7 The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")) that complies with the requirements of the Exchange Act and that has been designed by, or under the supervision of, the Company's principal executive and principal financial officers, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States. The Company maintains internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of the Company's financial statements in conformity with accounting principles generally accepted in the United States and to maintain accountability for its assets, (iii) access to the Company's assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for the Company's assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. As of the date of the most recent balance sheet of the Company and its consolidated subsidiaries reviewed or audited by EKS&H LLP and the audit committee of the board of directors of the Company, there were no material weaknesses in the Company's internal controls.

4.8 The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act), (ii) such disclosure controls and procedures are designed to ensure that the information required to be disclosed by the Company and its subsidiaries in the reports they file or submit under the Exchange Act is accumulated and communicated to management of the Company and its subsidiaries, including their respective principal executive officers and principal financial officers, as appropriate, to allow timely decisions regarding required disclosure to be made; and (iii) such disclosure controls and procedures are effective in all material respects to perform the functions for which they were established.

4.9 Since the date of the most recent balance sheet of the Company and its consolidated subsidiaries reviewed or audited by EKS&H LLP and the audit committee of the board of directors of the Company, (i) the Company has not been advised of or become aware of (A) any significant deficiencies in the design or operation of internal controls, that could adversely affect the ability of the Company or any of its subsidiaries to record, process, summarize and report financial data, or any material weaknesses in internal controls, and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Company and each of its subsidiaries; and (ii) there have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses.

4.10 There is and has been no failure on the part of the Company and any of its directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith.

4.11 Since the date of the latest audited financial statements included in the Public Disclosure Documents (as defined below) and except as disclosed therein, neither the Company nor any of its subsidiaries has (i) sustained any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or court or governmental action, order or decree, (ii) issued or granted any securities (other than pursuant to (x) employee benefit plans, qualified stock option plans, other employee compensation plans or non-employee director compensation programs in existence on the date hereof and described in the Public Disclosure Documents or (y) options, warrants or rights outstanding on the date hereof, (iii) incurred any liability or obligation, direct or contingent, other than liabilities and obligations that were incurred in the ordinary course of business, (iv) entered into any transaction not in the ordinary course of business (other than as described in the Public Disclosure Documents (without giving effect to any supplements or amendments thereto after the execution and delivery of this Agreement)), or (v) declared or paid any dividend on its capital stock, and, since such date, there has not been any change in the capital stock, partnership or limited liability company interests, as applicable, or long-term debt of the Company or any of its subsidiaries (other than as described in the Public Disclosure Documents (without giving effect to any supplements or amendments thereto after the execution and delivery of this Agreement)) or any adverse change, or any development involving a prospective adverse change, in or affecting the condition (financial or otherwise), results of operations, stockholders' equity, properties, management, business or prospects of the Company and its subsidiaries, taken as a whole, in each case except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The reports required to be filed by the Company under the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, together with any materials filed or furnished by the Company under the Exchange Act, whether or not any such reports were required, are referred to herein, collectively, as the "**Public Disclosure Documents**".

4.12 The Company and each of its subsidiaries has good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them, in each case free and clear of all liens, encumbrances and defects, except to the extent such liens, encumbrances and defects do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company or any of its subsidiaries. All assets held under lease by the Company or any of its subsidiaries are held by them under valid, subsisting and enforceable leases, with such exceptions as do not materially interfere with the use made and proposed to be made of such assets by the Company or any of its subsidiaries.

4.13 The Company and each of its subsidiaries have, and have operated in compliance with, such permits, licenses, patents, franchises, certificates of need, exemptions, clearances and other approvals or authorizations of governmental or regulatory authorities ("**Permits**") as are necessary under applicable law to own their properties and conduct their businesses in the manner described in the Public Disclosure Documents, except for any of the foregoing that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company and each of its subsidiaries have fulfilled and performed all of its obligations with respect to the Permits, and no event has occurred that allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other impairment of the rights of the holder or any such Permits, except for any of the foregoing that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company, nor any of its subsidiaries has received written notice of any revocation, termination or modification of any such Permits or otherwise has any reason to believe that any such Permits will be revoked, terminated or modified or not be renewed in the ordinary course.

4.14 The Company and its subsidiaries own, or have obtained valid and enforceable licenses for, or other rights to use, the inventions, patent applications, patents, trademarks (both registered and unregistered), tradenames, service names, copyrights, trade secrets and other proprietary information described in Public Disclosure Documents as being owned or licensed by them or which are necessary for the conduct of their respective businesses as currently conducted or as proposed to be conducted (including the commercialization of products or services described in the Public Disclosure Documents as under development), except where the failure to own, license or have such rights could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (collectively, "**Intellectual Property**"). Except as disclosed in Public Disclosure Documents, and except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) there are no third parties who have or, to the Company's knowledge, will be able to establish rights to any Intellectual Property, except for, and to the extent of, the ownership rights of the owners of the Intellectual Property which the Public Disclosure Documents disclose is licensed to the Company or any of its subsidiaries; (ii) to the Company's knowledge, there is no infringement by third parties of any Intellectual Property; (iii) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the Company's or its subsidiaries' rights in or to any Intellectual Property, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (iv) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the validity, enforceability or scope of any Intellectual Property, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (v) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company or any of its subsidiaries infringes or otherwise violates (or would, upon the commercialization of any product or service described in the Public Disclosure Documents as under development, infringe or violate) any patent, trademark, tradename, service name, copyright, trade secret or other proprietary rights of others, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (vi) the Company and its subsidiaries have complied with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company or any of its subsidiaries, and all such agreements are in full force and effect; (vii) to the Company's knowledge, there is no patent or patent application that contains claims that interfere with the issued or pending claims of any of the Intellectual Property or that challenges the validity, enforceability or scope of any of the Intellectual Property; and (viii) to the Company's knowledge, there is no prior art that may render any patent application within the Intellectual Property unpatentable that has not been disclosed to the U.S. Patent and Trademark Office.

4.15 There are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any property or assets of the Company or any of its subsidiaries is the subject that could, individually or in the aggregate, reasonably be expected to (i) have a Material Adverse Effect, except as described in the Public Disclosure Documents, or (ii) have a material adverse effect on the performance by the Company of this Agreement or on the consummation of any of the transactions contemplated hereby or thereby. To the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or others.

4.16 Neither the Company nor any of its subsidiaries: (i) is in violation of its charter or by-laws (or similar organizational documents), (ii) is in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant, condition or other obligation contained in any indenture, mortgage, deed of trust, loan agreement, license or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties or assets is subject, or (iii) is in violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over it or its property or assets or has failed to obtain any license, permit, certificate, franchise or other governmental authorization or permit necessary to the ownership of its property or to the conduct of its business, except in the case of clauses (ii) and (iii), to the extent any such default, violation or failure could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and except as set forth in the Public Disclosure Documents.

4.17 The Company and its subsidiaries and their respective properties, assets and operations are in compliance with, and the Company and each of its subsidiaries hold all permits, authorizations and approvals required under, Environmental Laws (as defined below), except to the extent that failure to so comply or to hold such permits, authorizations or approvals could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Company's knowledge, there are no past, present or reasonably anticipated future events, conditions, circumstances, activities, practices, actions, omissions or plans that, individually or in the aggregate, could reasonably be expected to give rise to any material costs or liabilities to the Company or any of its subsidiaries under, or to interfere with or prevent compliance by the Company or any of its subsidiaries with, Environmental Laws; except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, neither the Company nor any of its subsidiaries (i) is the subject of any investigation, (ii) has received any notice or claim, (iii) is a party to or affected by any pending or, to the Company's knowledge, threatened action, suit or proceeding, (iv) is bound by any judgment, decree or order or (v) has entered into any agreement, in each case relating to any alleged violation of any Environmental Law or any actual or alleged release or threatened release or cleanup at any location of any Hazardous Materials (as defined below) (as used herein, "**Environmental Law**" means any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, decree, judgment, injunction, permit, license, authorization or other binding requirement, or common law, relating to health, safety or the protection, cleanup or restoration of the environment or natural resources, including those relating to the distribution, processing, generation, treatment, storage, disposal, transportation, other handling or release or threatened release of Hazardous Materials, and "**Hazardous Materials**" means any material (including, without limitation, pollutants, contaminants, hazardous or toxic substances or wastes) that is regulated by or may give rise to liability under any Environmental Law).

4.18 The Company and each of its subsidiaries have filed all federal, state, local and foreign tax returns required to be filed through the date hereof, subject to permitted extensions, and have paid all taxes due, and no tax deficiency has been determined adversely to the Company or any of its subsidiaries, nor does the Company have any knowledge of any tax deficiencies that have been, or could reasonably be expected to be asserted against the Company and each of its subsidiaries, that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.19 Neither the Company nor any of its subsidiaries is, and, after giving effect to the offer and sale of the Securities and the application of the proceeds therefrom, none of them will be, an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder.

4.20 The Company and its affiliates have not taken, directly or indirectly, any action designed to or that has constituted or that could reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the offering of the Securities.

4.21 Neither the Company nor any of its subsidiaries, nor, to the knowledge of the Company, after due inquiry, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its subsidiaries, has in the course of its actions for, or on behalf of, the Company or any of its subsidiaries: (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official, "foreign office" (as defined in the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (collectively, the "**FCPA**")) or employee from corporate funds; (iii) violated or is in violation of any provision of the FCPA, the Bribery Act 2010 of the United Kingdom, as amended, or any other applicable anti-corruption or anti-bribery laws or statutes; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any domestic government official, foreign official or employee; and the Company and its subsidiaries and, to the knowledge of the Company, the Company's affiliates have conducted their respective businesses in compliance with the FCPA, the Bribery Act 2010 of the United Kingdom, as amended, and any other applicable anti-corruption or anti-bribery laws or statutes, and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

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

4.23 Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, after due inquiry, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries (i) is currently subject to or the target of any sanctions administered or enforced by the Office of Foreign Assets Control of the U.S. Treasury Department, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "**Sanctions**"); or (ii) located, organized or resident in a country that is the subject of Sanctions (including, without limitation, Cuba, Iran, North Korea, Sudan, and Syria); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person, or in any country or territory, that currently is the subject or target of Sanctions or in any other manner that will result in a violation by any person (including any person participating in the transaction whether as an underwriter, advisor, investor or otherwise) of Sanctions. The Company and its subsidiaries have not knowingly engaged in for the past five (5) years, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any individual or entity, or in any country or territory, that at the time of the dealing or transaction is or was the subject or target of Sanctions.

4.24 There are no contracts or other documents that would be required to be described in a registration statement filed under the Securities Act or filed as exhibits to a registration statement of the Company pursuant to Item 601(b)(10) of Regulation S-K that have not been described in the Public Disclosure Documents.

4.25 No relationship, direct or indirect, that would be required to be described in a registration statement of the Company pursuant to Item 404 of Regulation S-K, exists between or among the Company and its subsidiaries, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company and its subsidiaries, on the other hand, that has not been described in the Public Disclosure Documents.

4.26 No labor disturbance by or dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.27 None of the transactions contemplated by this Agreement (including, without limitation, the use of the proceeds from the sale of the Securities), will violate or result in a violation of Section 7 of the Exchange Act, or any regulation promulgated thereunder, including, without limitation, Regulations T, U and X of the Board of Governors of the Federal Reserve System.

4.28 The Company and each of its subsidiaries carry, or are covered by, insurance from insurers of recognized financial responsibility in such amounts and covering such risks as is adequate for the conduct of their respective businesses and the value of their respective properties and as is customary for companies engaged in similar businesses in similar industries. All policies of insurance of the Company and its subsidiaries are in full force and effect; the Company and each of its subsidiaries are in compliance with the terms of such policies in all material respects; and neither the Company nor any of its subsidiaries has received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance. Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there are no claims by the Company or any of its subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; and neither the Company nor any such subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.29 Each "employee benefit plan" (within the meaning of Section 3(3) of the Employee Retirement Security Act of 1974, as amended ("**ERISA**")) for which the Company or any member of its "Controlled Group" (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the "**Code**")) would have any liability (each a "**Plan**") has been maintained in compliance with its terms and with the requirements of all applicable statutes, rules and regulations including ERISA and the Code; (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Plan excluding transactions effected pursuant to a statutory or administrative exemption; (iii) with respect to each Plan subject to Title IV of ERISA: (A) no "reportable event" (within the meaning of Section 4043(c) of ERISA) has occurred or is reasonably expected to occur, (B) no Plan is or is reasonably expected to be "at risk" status (within the meaning of Section 430 of the Code or Section 303 of ERISA), (C) there has been no filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan or the receipt by the Company or any member of its Controlled Group from the Pension Benefit Guaranty Corporation or the plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (D) no conditions contained in Section 303(k)(1)(A) of ERISA for imposition of a lien shall have been met with respect to any Plan and (E) neither the Company or any member of its Controlled Group has incurred, or reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the Pension Benefit Guaranty Corporation in the ordinary course and without default) in respect of a Plan (including a "multiemployer plan", within the meaning of Section 4001(c)(3) of ERISA) ("**Multiemployer Plan**"); (iv) no Multiemployer Plan is, or is expected to be, "insolvent" (within the meaning of Section 4245 of ERISA), in "reorganization" (within the meaning of Section 4241 of ERISA), or in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 304 of ERISA); and (v) each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

4.30 No subsidiary of the Company is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock or other ownership interests, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's property or assets to the Company or any other subsidiary of the Company, except as described in the Public Disclosure Documents.

4.31 Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that could give rise to a valid claim against any of them for a brokerage commission, finder's fee or like payment in connection with the sale of the Securities.

4.32 Neither the Company nor any of its subsidiaries is in violation of or has received notice of any violation with respect to any federal or state law relating to discrimination in the hiring, promotion or pay of employees, nor any applicable federal or state wage and hour laws, nor any state law precluding the denial of credit due to the neighborhood in which a property is situated, the violation of any of which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.33 Except as described in the Public Disclosure Documents, and except, in each case, where such event could not, individually or in the aggregate, reasonably be expect to have a Material Adverse Effect, the Company and each of its subsidiaries: (i) has not received any unresolved U.S. Food and Drug Administration ("**FDA**") or similar governmental agency or body ("**Governmental Authority**") written notice of inspectional observations, Form 483, written notice of adverse filing, warning letter, untitled letter or other similar correspondence or notice from the FDA, or any other court or arbitrator or federal, state, local or foreign governmental or regulatory authority, alleging or asserting material noncompliance with the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), or received any written requests or requirements to make material changes to the Company products by the FDA or any other Governmental Authority, (ii) is and has been in compliance with applicable health care laws, including, the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the criminal False Claims Law (42 U.S.C. § 1320a-7b(a)), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h), all criminal laws relating to health care fraud and abuse, including but not limited to 18 U.S.C. Sections 286 and 287, and the health care fraud criminal provisions under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) ("**HIPAA**"), the exclusion laws (42 U.S.C. § 1320a-7), Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations promulgated pursuant to such laws, and comparable state laws, and all other foreign, federal, state and local laws relating to the regulation of the Company and its subsidiaries (collectively, "**Health Care Laws**"), (iii) has not engaged in activities which are, as applicable, cause for false claims liability, civil penalties, or mandatory or permissive exclusion from Medicare, Medicaid, or any other state health care program or federal health care program, (iv) possesses all Permits and supplements or amendments thereto required by any such Health Care Laws and/or to carry on its businesses as currently conducted as described in the Public Disclosure Documents ("**Authorizations**"), and such Authorizations are valid and in full force and effect and neither the Company nor any of its subsidiaries is in violation of any term of any such Authorizations, (v) has not received written notice of any ongoing claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any Governmental Authority alleging that any product, operation or activity is in material violation of any Health Care Laws or Authorizations and has no knowledge that any such Governmental Authority has threatened any such claim, litigation, arbitration, action, suit, investigation or proceeding, (vi) has not received written notice that any Governmental Authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorizations and has no knowledge that any such Governmental Authority has threatened such action, (vii) has filed, obtained, maintained or submitted all reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments thereto as required by any Health Care Laws or Authorizations and all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete, correct and not misleading on the date filed (or were corrected or supplemented by a subsequent submission), (viii) has not, either voluntarily or involuntarily, initiated, conducted, or issued or caused to be initiated, conducted or issued, any recall, market withdrawal or replacement, safety alert, post sale warning, "dear doctor" letter, or other notice or action relating to the alleged lack of safety, efficacy or regulatory compliance of any product or any alleged product defect or violation and, to the Company's knowledge, there are no facts which are reasonably likely to cause, and the Company has not received any written notice from the FDA or any other Governmental Authority regarding, a material recall, market withdrawal or replacement of any Company product sold or intended to be sold by the Company, a material change in the marketing classification or a material adverse change in the labeling of any such Company products, or a termination or suspension of the manufacturing, marketing, or distribution of such Company products, (ix) is not a party to any corporate integrity agreement, deferred prosecution agreement, monitoring agreement, consent decree, settlement order, or similar agreements, or has any reporting obligations pursuant to any such agreement, plan or correction or other remedial measure entered into with any Governmental Authority, (x) has not, nor has any officer, director, employee, agent or, to the knowledge of the Company, any distributor of the Company, made an untrue statement of a material fact or a fraudulent statement to the FDA or any other Governmental Authority, failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority, or committed an act, made a statement, or failed to make a statement, in each such case, related to the business of the Company that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991) or for the FDA or any other Governmental Authority to invoke any similar policy, (xi) has not, nor has any officer, director, employee, or, to the knowledge of the Company, any agent or distributor of the Company, been debarred or convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. § 335a(a) or any similar law or authorized by 21 U.S.C. § 335a(b) or any similar law applicable in other jurisdictions in which Company products or Company product candidates are sold or intended by the Company to be sold, and (xii) neither the Company, its subsidiaries nor their officers, directors, employees, agents or contractors has been or is currently debarred, suspended or excluded from participation in the Medicare and Medicaid programs or any other state or federal health care program.

4.34 The preclinical tests and clinical trials conducted or sponsored by, or on behalf of the Company and its subsidiaries were and, if still pending, are being conducted in all material respects in accordance with protocols filed with the appropriate regulatory authorities for each such test or trial, as the case may be, and with standard medical and scientific research procedures and applicable laws, regulations and Authorizations, including without limitation, those of the FDA; each description of the results of such tests and trials contained in the Public Disclosure Documents is accurate and complete in all material respects and fairly presents the data derived from such tests and trials, and the Company and its subsidiaries have no knowledge of any other studies or tests, the results of which are inconsistent with, or otherwise call into question, the results described or referred to in the Public Disclosure Documents; and neither the Company nor any of its subsidiaries has received any notices or other correspondence from the FDA, the U.S. Department of Health and Human Services or any committee thereof or from any other U.S. or foreign government or drug or medical device regulatory agency requiring the termination, suspension or modification of any clinical trials.

4.35 The Company and its affiliates will not take, directly or indirectly, any action designed to or that has constituted or that reasonably could be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the sale of the Securities.

5. Representations, Warranties and Covenants of the Investor.

Each Investor hereby represents and warrants to, and covenants with, the Company that:

5.1 When the Securities are issued in accordance with the terms of this Agreement, all interest obligations owed by the Company to the Investor on account of the Notes will be current.

5.2 The Investor has full right, power, authority and capacity to enter into this Agreement and to consummate the transactions contemplated hereby and has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and this Agreement constitutes a valid, binding and enforceable obligation of the Investor, except as the enforceability of the Agreement may be subject to or limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally.

5.3 The entry into and performance of this Agreement by the Investor and the consummation by the Investor of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of the Investor, (ii) conflict with, or constitute a default under, or give to others any rights of termination, amendment, acceleration or cancellation of any agreement, indenture or instrument to which the Investor is party, or (iii) result in the violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to the Investor, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Investor to perform its obligations hereunder.

5.4 The Investor understands that nothing in this Agreement, information the Company has filed with and furnished to the Commission or any other materials presented to the Investor in connection with the purchase and sale of the Securities constitutes legal, tax or investment advice. The Investor has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Securities and has made its own assessment and has satisfied itself concerning the relevant tax and other economic considerations relevant to its investment in the Securities.

6. Survival of Representations, Warranties and Agreements. Notwithstanding any investigation made by any party to this Agreement, all covenants, agreements, representations and warranties made by the Company and the Investor herein shall survive the execution of this Agreement, the delivery to the Investor of the Securities being purchased and the payment therefor.

7. Notices. All notices, requests, consents and other communications hereunder shall be in writing, shall be delivered (A) if within the domestic United States, by first-class registered or certified mail, or nationally recognized overnight express courier, postage prepaid, or by facsimile, or (B) otherwise by International Federal Express or facsimile, and shall be deemed given (i) if delivered by first-class registered or certified mail, three (3) business days after so mailed, (ii) if delivered by a nationally recognized overnight carrier, one business day after so mailed, (iii) if delivered by International Federal Express, two (2) business days after so mailed and (iv) if delivered by facsimile, upon electronic confirmation of receipt and shall be delivered as addressed as follows:

(a) if to the Company, to:

Xtant Medical Holdings, Inc.
600 Cruiser Lane
Belgrade, Montana 59714
Attention: President

(b) if to the Investor, at the Investor's address on the signature page hereto, or at such other address or addresses as may have been furnished to the Company in writing.

8. Changes. Except as contemplated herein, this Agreement may not be modified or amended except pursuant to an instrument in writing signed by the Company and the Investor.

9. Headings. The headings of the various sections of this Agreement have been inserted for convenience or reference only and shall not be deemed to be part of this Agreement.

10. Severability. In case any provision contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

11. Applicable Law; Venue. This Agreement will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York. Each of the Company and each Investor agrees that any suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted only in any State or U.S. federal court in The City of New York and County of New York and waives any objection that such party may now or hereafter have to the laying of venue of any such suit, action or proceeding, and irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

12. Waiver of Jury Trial. The Company and the Investor hereby irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

13. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

14. Payment of Expenses. The Company agrees to pay on demand all expenses of the Investor incurred in connection with the Investor's review, consideration and evaluation of this Agreement, including the rights and remedies available to it in connection therewith, and the negotiation, preparation, execution and delivery of this Agreement.

EXHIBIT 10.3

SECURITIES PURCHASE AGREEMENT

Dated as of January 17, 2017

Xtant Medical Holdings, Inc.
664 Cruiser Lane
Belgrade, Montana 59714

Ladies and Gentlemen:

The undersigned hereby confirms its agreement with you as follows:

1. This Securities Purchase Agreement (this "**Agreement**") is made as of the date hereof between Xtant Medical Holdings, Inc., a Delaware corporation (the "**Company**"), and the Investor listed on the signature page hereto (the "**Investor**"). The Investor holds Convertible Promissory Notes issued by the Company pursuant to the Indenture, dated as of July 31, 2015, between the Company and Wilmington Trust, National Association (the "**Notes**"), in the aggregate principal amount of $1,038,773.00.

2. The Company is proposing to issue and sell to the Investor shares of the Company's common stock, par value $0.000001 per share (the "**Common Stock**"), in the aggregate amount of $31,163.20 (the "**Securities**"). The purchase price for the Securities shall be paid by a dollar-for-dollar offset against all interest due to the Investor as of the closing under the Notes.

3. The Investor acknowledges that the Company will be concurrently issuing shares of Common Stock to other investors on the same terms and conditions as described herein.

4. The Company and the Investor agree that, upon the terms and subject to the conditions set forth herein, the Investor will purchase from the Company and the Company will issue and sell to the Investor the aggregate principal amount of the Securities set forth below on the Investor's signature page for the aggregate purchase price set forth below on the Investor's signature page. The Securities shall be purchased pursuant to the Terms and Conditions for Purchase of Securities attached hereto as Annex A and incorporated herein by reference as if fully set forth herein.

Aggregate Amount3 of Securities the Investor Agrees to Purchase: 54,749

Aggregate Purchase Price of such Securities: $31,163.20

Please confirm that the foregoing correctly sets forth the agreement between us by signing in the space provided below for that purpose.

AGREED AND ACCEPTED BY:

Xtant Medical Holdings, Inc.
a Delaware corporation

By: /s/ Daniel Goldberger
Name: Daniel Goldberger
Title: Chief Executive Officer

Name of Investor: Park West Partners International, Limited

By: /s/ Grace Jimenez
Print Name: Grace Jimenez
Title: Chief Financial Officer

ANNEX A TO THE SECURITIES PURCHASE AGREEMENT
TERMS AND CONDITIONS FOR PURCHASE OF SECURITIES

1. Authorization and Sale of Securities. The Company is proposing to sell Common Stock, in the aggregate amount of $31,163.20 to the Investor.

2. Agreement to Sell and Purchase the Securities. Upon the terms and subject to the conditions hereinafter set forth, at the Closing (as defined in Section 3.1), the Company will sell to the Investor, and the Investor will purchase from the Company, the aggregate amount of Securities set forth on the Investor's signature page hereto at the purchase price set forth on such signature page.

3. Closings and Delivery of Securities and Funds.

3.1 The completion of the purchase and sale of the Securities (the "**Closing**") shall occur on January 17, 2017 (the "**Closing Date"**).

3.2 The Company's obligation to issue and sell the Securities to the Investor shall be subject to the following conditions, any one or more of which may be waived by the Company: (a) the accuracy of the representations and warranties made by the Investor and (b) the fulfillment of those undertakings of the Investor to be fulfilled prior to the Closing.

3.3 The Investor's obligation to accept delivery of the Securities and to pay for the Securities shall be subject to the following conditions: (a) each of the representations and warranties of the Company made in Section 4 shall be accurate in all material respects as of the Closing Date; (b) delivery of an officer's certificate dated as of the Closing Date regarding the accuracy in material respects of the Company's representations and warranties and addressing such other matters as are customarily addressed in closing certificates; (c) delivery to the Investor of a customary secretary's certificate in form reasonably acceptable to the Investor; and (d) the Company shall have furnished to the Investor such further documents as the Investor may reasonably request.

3.4 At the Closing, the purchase price for the Securities shall be paid by a dollar-for-dollar offset against all interest due to the Investor as of the Closing under the Notes. Such offset shall have the same effect as if the Investor paid cash to the Company for such Securities and the Company used such cash to pay to the Investor the interest so offset.

4. Representations, Warranties and Covenants of the Company.

The Company hereby represents and warrants to, and covenants with, the Investor that:

4.1 Each of the Company and its subsidiaries has been duly organized, is validly existing and in good standing as a corporation, partnership or limited liability company, as applicable, under the laws of its jurisdiction of organization and is duly qualified to do business and in good standing as a foreign corporation or other business entity in each jurisdiction in which its ownership or lease of property or the conduct of its businesses requires such qualification, except where the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to (i) have a material adverse effect on the condition (financial or otherwise), results of operations, stockholders' equity, properties, business or prospects of the Company and its subsidiaries taken as a whole or (ii) materially interfere with the consummation of the transactions contemplated hereby (collectively, a "**Material Adverse Effect**"). Each of the Company and its subsidiaries has all power and authority necessary to own or hold its properties and to conduct the businesses in which it is engaged. As of the date of this Agreement, the Company has no subsidiaries other than Bacterin International, Inc., X-spine Systems Inc. and Xtant Medical, Inc. and no "significant subsidiaries" (as defined in Rule 405 under the Securities Act) other than Bacterin International, Inc. and X-spine Systems Inc.

4.2 The Company has an authorized capitalization as set forth in the publicly available Annual Report on Form 10-K filed with the Securities and Exchange Commission (the "**Commission**") for the fiscal year ended December 31, 2015, and all of the issued shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable. All of the issued shares of capital stock or other ownership interest of each subsidiary of the Company have been duly authorized and validly issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims, except for such liens, encumbrances, equities or claims as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.3 The Company has all the requisite corporate power and authority to issue the Common Stock. The Common Stock has been duly and validly authorized by the Company and, and will be validly issued, fully paid and non-assessable, and the issuance of the Common Stock will not be subject to any preemptive or similar rights.

4.4 The Company has all requisite corporate power to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly and validly authorized, executed and delivered by the Company.

4.5 The issue and sale of the Common Stock, the execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby and thereby, will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, impose any lien, charge or encumbrance upon any property or assets of the Company or its subsidiaries, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, license, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which any of them is bound or to which any of their respective properties or assets is subject, (ii) result in any violation of the provisions of the charter or by-laws (or similar organizational documents) of the Company or any of its subsidiaries, or (iii) result in any violation of any statute or any judgment, order, decree, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their respective properties or assets, except, with respect to clauses (i) and (iii), conflicts or violations that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.6 Except for the filing of a prospectus supplement with the Commission respecting the Securities, no consent, approval, authorization or order of, or filing, registration or qualification with any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their respective properties or assets is required for the issuance of the Common Stock, the execution, delivery and performance by the Company of this Agreement, and the consummation of the transactions contemplated hereby.

4.7 The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")) that complies with the requirements of the Exchange Act and that has been designed by, or under the supervision of, the Company's principal executive and principal financial officers, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States. The Company maintains internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of the Company's financial statements in conformity with accounting principles generally accepted in the United States and to maintain accountability for its assets, (iii) access to the Company's assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for the Company's assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. As of the date of the most recent balance sheet of the Company and its consolidated subsidiaries reviewed or audited by EKS&H LLP and the audit committee of the board of directors of the Company, there were no material weaknesses in the Company's internal controls.

4.8 The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act), (ii) such disclosure controls and procedures are designed to ensure that the information required to be disclosed by the Company and its subsidiaries in the reports they file or submit under the Exchange Act is accumulated and communicated to management of the Company and its subsidiaries, including their respective principal executive officers and principal financial officers, as appropriate, to allow timely decisions regarding required disclosure to be made; and (iii) such disclosure controls and procedures are effective in all material respects to perform the functions for which they were established.

4.9 Since the date of the most recent balance sheet of the Company and its consolidated subsidiaries reviewed or audited by EKS&H LLP and the audit committee of the board of directors of the Company, (i) the Company has not been advised of or become aware of (A) any significant deficiencies in the design or operation of internal controls, that could adversely affect the ability of the Company or any of its subsidiaries to record, process, summarize and report financial data, or any material weaknesses in internal controls, and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Company and each of its subsidiaries; and (ii) there have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses.

4.10 There is and has been no failure on the part of the Company and any of its directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith.

4.11 Since the date of the latest audited financial statements included in the Public Disclosure Documents (as defined below) and except as disclosed therein, neither the Company nor any of its subsidiaries has (i) sustained any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or court or governmental action, order or decree, (ii) issued or granted any securities (other than pursuant to (x) employee benefit plans, qualified stock option plans, other employee compensation plans or non-employee director compensation programs in existence on the date hereof and described in the Public Disclosure Documents or (y) options, warrants or rights outstanding on the date hereof, (iii) incurred any liability or obligation, direct or contingent, other than liabilities and obligations that were incurred in the ordinary course of business, (iv) entered into any transaction not in the ordinary course of business (other than as described in the Public Disclosure Documents (without giving effect to any supplements or amendments thereto after the execution and delivery of this Agreement)), or (v) declared or paid any dividend on its capital stock, and, since such date, there has not been any change in the capital stock, partnership or limited liability company interests, as applicable, or long-term debt of the Company or any of its subsidiaries (other than as described in the Public Disclosure Documents (without giving effect to any supplements or amendments thereto after the execution and delivery of this Agreement)) or any adverse change, or any development involving a prospective adverse change, in or affecting the condition (financial or otherwise), results of operations, stockholders' equity, properties, management, business or prospects of the Company and its subsidiaries, taken as a whole, in each case except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The reports required to be filed by the Company under the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, together with any materials filed or furnished by the Company under the Exchange Act, whether or not any such reports were required, are referred to herein, collectively, as the "**Public Disclosure Documents**".

4.12 The Company and each of its subsidiaries has good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them, in each case free and clear of all liens, encumbrances and defects, except to the extent such liens, encumbrances and defects do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company or any of its subsidiaries. All assets held under lease by the Company or any of its subsidiaries are held by them under valid, subsisting and enforceable leases, with such exceptions as do not materially interfere with the use made and proposed to be made of such assets by the Company or any of its subsidiaries.

4.13 The Company and each of its subsidiaries have, and have operated in compliance with, such permits, licenses, patents, franchises, certificates of need, exemptions, clearances and other approvals or authorizations of governmental or regulatory authorities ("**Permits**") as are necessary under applicable law to own their properties and conduct their businesses in the manner described in the Public Disclosure Documents, except for any of the foregoing that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company and each of its subsidiaries have fulfilled and performed all of its obligations with respect to the Permits, and no event has occurred that allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other impairment of the rights of the holder or any such Permits, except for any of the foregoing that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company, nor any of its subsidiaries has received written notice of any revocation, termination or modification of any such Permits or otherwise has any reason to believe that any such Permits will be revoked, terminated or modified or not be renewed in the ordinary course.

4.14 The Company and its subsidiaries own, or have obtained valid and enforceable licenses for, or other rights to use, the inventions, patent applications, patents, trademarks (both registered and unregistered), tradenames, service names, copyrights, trade secrets and other proprietary information described in Public Disclosure Documents as being owned or licensed by them or which are necessary for the conduct of their respective businesses as currently conducted or as proposed to be conducted (including the commercialization of products or services described in the Public Disclosure Documents as under development), except where the failure to own, license or have such rights could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (collectively, "**Intellectual Property**"). Except as disclosed in Public Disclosure Documents, and except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) there are no third parties who have or, to the Company's knowledge, will be able to establish rights to any Intellectual Property, except for, and to the extent of, the ownership rights of the owners of the Intellectual Property which the Public Disclosure Documents disclose is licensed to the Company or any of its subsidiaries; (ii) to the Company's knowledge, there is no infringement by third parties of any Intellectual Property; (iii) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the Company's or its subsidiaries' rights in or to any Intellectual Property, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (iv) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the validity, enforceability or scope of any Intellectual Property, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (v) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company or any of its subsidiaries infringes or otherwise violates (or would, upon the commercialization of any product or service described in the Public Disclosure Documents as under development, infringe or violate) any patent, trademark, tradename, service name, copyright, trade secret or other proprietary rights of others, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (vi) the Company and its subsidiaries have complied with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company or any of its subsidiaries, and all such agreements are in full force and effect; (vii) to the Company's knowledge, there is no patent or patent application that contains claims that interfere with the issued or pending claims of any of the Intellectual Property or that challenges the validity, enforceability or scope of any of the Intellectual Property; and (viii) to the Company's knowledge, there is no prior art that may render any patent application within the Intellectual Property unpatentable that has not been disclosed to the U.S. Patent and Trademark Office.

4.15 There are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any property or assets of the Company or any of its subsidiaries is the subject that could, individually or in the aggregate, reasonably be expected to (i) have a Material Adverse Effect, except as described in the Public Disclosure Documents, or (ii) have a material adverse effect on the performance by the Company of this Agreement or on the consummation of any of the transactions contemplated hereby or thereby. To the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or others.

4.16 Neither the Company nor any of its subsidiaries: (i) is in violation of its charter or by-laws (or similar organizational documents), (ii) is in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant, condition or other obligation contained in any indenture, mortgage, deed of trust, loan agreement, license or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties or assets is subject, or (iii) is in violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over it or its property or assets or has failed to obtain any license, permit, certificate, franchise or other governmental authorization or permit necessary to the ownership of its property or to the conduct of its business, except in the case of clauses (ii) and (iii), to the extent any such default, violation or failure could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and except as set forth in the Public Disclosure Documents.

4.17 The Company and its subsidiaries and their respective properties, assets and operations are in compliance with, and the Company and each of its subsidiaries hold all permits, authorizations and approvals required under, Environmental Laws (as defined below), except to the extent that failure to so comply or to hold such permits, authorizations or approvals could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Company's knowledge, there are no past, present or reasonably anticipated future events, conditions, circumstances, activities, practices, actions, omissions or plans that, individually or in the aggregate, could reasonably be expected to give rise to any material costs or liabilities to the Company or any of its subsidiaries under, or to interfere with or prevent compliance by the Company or any of its subsidiaries with, Environmental Laws; except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, neither the Company nor any of its subsidiaries (i) is the subject of any investigation, (ii) has received any notice or claim, (iii) is a party to or affected by any pending or, to the Company's knowledge, threatened action, suit or proceeding, (iv) is bound by any judgment, decree or order or (v) has entered into any agreement, in each case relating to any alleged violation of any Environmental Law or any actual or alleged release or threatened release or cleanup at any location of any Hazardous Materials (as defined below) (as used herein, "**Environmental Law**" means any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, decree, judgment, injunction, permit, license, authorization or other binding requirement, or common law, relating to health, safety or the protection, cleanup or restoration of the environment or natural resources, including those relating to the distribution, processing, generation, treatment, storage, disposal, transportation, other handling or release or threatened release of Hazardous Materials, and "**Hazardous Materials**" means any material (including, without limitation, pollutants, contaminants, hazardous or toxic substances or wastes) that is regulated by or may give rise to liability under any Environmental Law).

4.18 The Company and each of its subsidiaries have filed all federal, state, local and foreign tax returns required to be filed through the date hereof, subject to permitted extensions, and have paid all taxes due, and no tax deficiency has been determined adversely to the Company or any of its subsidiaries, nor does the Company have any knowledge of any tax deficiencies that have been, or could reasonably be expected to be asserted against the Company and each of its subsidiaries, that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.19 Neither the Company nor any of its subsidiaries is, and, after giving effect to the offer and sale of the Securities and the application of the proceeds therefrom, none of them will be, an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder.

4.20 The Company and its affiliates have not taken, directly or indirectly, any action designed to or that has constituted or that could reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the offering of the Securities.

4.21 Neither the Company nor any of its subsidiaries, nor, to the knowledge of the Company, after due inquiry, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its subsidiaries, has in the course of its actions for, or on behalf of, the Company or any of its subsidiaries: (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official, "foreign office" (as defined in the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (collectively, the "**FCPA**")) or employee from corporate funds; (iii) violated or is in violation of any provision of the FCPA, the Bribery Act 2010 of the United Kingdom, as amended, or any other applicable anti-corruption or anti-bribery laws or statutes; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any domestic government official, foreign official or employee; and the Company and its subsidiaries and, to the knowledge of the Company, the Company's affiliates have conducted their respective businesses in compliance with the FCPA, the Bribery Act 2010 of the United Kingdom, as amended, and any other applicable anti-corruption or anti-bribery laws or statutes, and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

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

4.23 Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, after due inquiry, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries (i) is currently subject to or the target of any sanctions administered or enforced by the Office of Foreign Assets Control of the U.S. Treasury Department, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "**Sanctions**"); or (ii) located, organized or resident in a country that is the subject of Sanctions (including, without limitation, Cuba, Iran, North Korea, Sudan, and Syria); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person, or in any country or territory, that currently is the subject or target of Sanctions or in any other manner that will result in a violation by any person (including any person participating in the transaction whether as an underwriter, advisor, investor or otherwise) of Sanctions. The Company and its subsidiaries have not knowingly engaged in for the past five (5) years, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any individual or entity, or in any country or territory, that at the time of the dealing or transaction is or was the subject or target of Sanctions.

4.24 There are no contracts or other documents that would be required to be described in a registration statement filed under the Securities Act or filed as exhibits to a registration statement of the Company pursuant to Item 601(b)(10) of Regulation S-K that have not been described in the Public Disclosure Documents.

4.25 No relationship, direct or indirect, that would be required to be described in a registration statement of the Company pursuant to Item 404 of Regulation S-K, exists between or among the Company and its subsidiaries, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company and its subsidiaries, on the other hand, that has not been described in the Public Disclosure Documents.

4.26 No labor disturbance by or dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.27 None of the transactions contemplated by this Agreement (including, without limitation, the use of the proceeds from the sale of the Securities), will violate or result in a violation of Section 7 of the Exchange Act, or any regulation promulgated thereunder, including, without limitation, Regulations T, U and X of the Board of Governors of the Federal Reserve System.

4.28 The Company and each of its subsidiaries carry, or are covered by, insurance from insurers of recognized financial responsibility in such amounts and covering such risks as is adequate for the conduct of their respective businesses and the value of their respective properties and as is customary for companies engaged in similar businesses in similar industries. All policies of insurance of the Company and its subsidiaries are in full force and effect; the Company and each of its subsidiaries are in compliance with the terms of such policies in all material respects; and neither the Company nor any of its subsidiaries has received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance. Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there are no claims by the Company or any of its subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; and neither the Company nor any such subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.29 Each "employee benefit plan" (within the meaning of Section 3(3) of the Employee Retirement Security Act of 1974, as amended ("**ERISA**")) for which the Company or any member of its "Controlled Group" (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the "**Code**")) would have any liability (each a "**Plan**") has been maintained in compliance with its terms and with the requirements of all applicable statutes, rules and regulations including ERISA and the Code; (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Plan excluding transactions effected pursuant to a statutory or administrative exemption; (iii) with respect to each Plan subject to Title IV of ERISA: (A) no "reportable event" (within the meaning of Section 4043(c) of ERISA) has occurred or is reasonably expected to occur, (B) no Plan is or is reasonably expected to be "at risk" status (within the meaning of Section 430 of the Code or Section 303 of ERISA), (C) there has been no filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan or the receipt by the Company or any member of its Controlled Group from the Pension Benefit Guaranty Corporation or the plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (D) no conditions contained in Section 303(k)(1)(A) of ERISA for imposition of a lien shall have been met with respect to any Plan and (E) neither the Company or any member of its Controlled Group has incurred, or reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the Pension Benefit Guaranty Corporation in the ordinary course and without default) in respect of a Plan (including a "multiemployer plan", within the meaning of Section 4001(c)(3) of ERISA) ("**Multiemployer Plan**"); (iv) no Multiemployer Plan is, or is expected to be, "insolvent" (within the meaning of Section 4245 of ERISA), in "reorganization" (within the meaning of Section 4241 of ERISA), or in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 304 of ERISA); and (v) each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

4.30 No subsidiary of the Company is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock or other ownership interests, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's property or assets to the Company or any other subsidiary of the Company, except as described in the Public Disclosure Documents.

4.31 Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that could give rise to a valid claim against any of them for a brokerage commission, finder's fee or like payment in connection with the sale of the Securities.

4.32 Neither the Company nor any of its subsidiaries is in violation of or has received notice of any violation with respect to any federal or state law relating to discrimination in the hiring, promotion or pay of employees, nor any applicable federal or state wage and hour laws, nor any state law precluding the denial of credit due to the neighborhood in which a property is situated, the violation of any of which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.33 Except as described in the Public Disclosure Documents, and except, in each case, where such event could not, individually or in the aggregate, reasonably be expect to have a Material Adverse Effect, the Company and each of its subsidiaries: (i) has not received any unresolved U.S. Food and Drug Administration ("**FDA**") or similar governmental agency or body ("**Governmental Authority**") written notice of inspectional observations, Form 483, written notice of adverse filing, warning letter, untitled letter or other similar correspondence or notice from the FDA, or any other court or arbitrator or federal, state, local or foreign governmental or regulatory authority, alleging or asserting material noncompliance with the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), or received any written requests or requirements to make material changes to the Company products by the FDA or any other Governmental Authority, (ii) is and has been in compliance with applicable health care laws, including, the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the criminal False Claims Law (42 U.S.C. § 1320a-7b(a)), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h), all criminal laws relating to health care fraud and abuse, including but not limited to 18 U.S.C. Sections 286 and 287, and the health care fraud criminal provisions under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) ("**HIPAA**"), the exclusion laws (42 U.S.C. § 1320a-7), Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations promulgated pursuant to such laws, and comparable state laws, and all other foreign, federal, state and local laws relating to the regulation of the Company and its subsidiaries (collectively, "**Health Care Laws**"), (iii) has not engaged in activities which are, as applicable, cause for false claims liability, civil penalties, or mandatory or permissive exclusion from Medicare, Medicaid, or any other state health care program or federal health care program, (iv) possesses all Permits and supplements or amendments thereto required by any such Health Care Laws and/or to carry on its businesses as currently conducted as described in the Public Disclosure Documents ("**Authorizations**"), and such Authorizations are valid and in full force and effect and neither the Company nor any of its subsidiaries is in violation of any term of any such Authorizations, (v) has not received written notice of any ongoing claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any Governmental Authority alleging that any product, operation or activity is in material violation of any Health Care Laws or Authorizations and has no knowledge that any such Governmental Authority has threatened any such claim, litigation, arbitration, action, suit, investigation or proceeding, (vi) has not received written notice that any Governmental Authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorizations and has no knowledge that any such Governmental Authority has threatened such action, (vii) has filed, obtained, maintained or submitted all reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments thereto as required by any Health Care Laws or Authorizations and all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete, correct and not misleading on the date filed (or were corrected or supplemented by a subsequent submission), (viii) has not, either voluntarily or involuntarily, initiated, conducted, or issued or caused to be initiated, conducted or issued, any recall, market withdrawal or replacement, safety alert, post sale warning, "dear doctor" letter, or other notice or action relating to the alleged lack of safety, efficacy or regulatory compliance of any product or any alleged product defect or violation and, to the Company's knowledge, there are no facts which are reasonably likely to cause, and the Company has not received any written notice from the FDA or any other Governmental Authority regarding, a material recall, market withdrawal or replacement of any Company product sold or intended to be sold by the Company, a material change in the marketing classification or a material adverse change in the labeling of any such Company products, or a termination or suspension of the manufacturing, marketing, or distribution of such Company products, (ix) is not a party to any corporate integrity agreement, deferred prosecution agreement, monitoring agreement, consent decree, settlement order, or similar agreements, or has any reporting obligations pursuant to any such agreement, plan or correction or other remedial measure entered into with any Governmental Authority, (x) has not, nor has any officer, director, employee, agent or, to the knowledge of the Company, any distributor of the Company, made an untrue statement of a material fact or a fraudulent statement to the FDA or any other Governmental Authority, failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority, or committed an act, made a statement, or failed to make a statement, in each such case, related to the business of the Company that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991) or for the FDA or any other Governmental Authority to invoke any similar policy, (xi) has not, nor has any officer, director, employee, or, to the knowledge of the Company, any agent or distributor of the Company, been debarred or convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. § 335a(a) or any similar law or authorized by 21 U.S.C. § 335a(b) or any similar law applicable in other jurisdictions in which Company products or Company product candidates are sold or intended by the Company to be sold, and (xii) neither the Company, its subsidiaries nor their officers, directors, employees, agents or contractors has been or is currently debarred, suspended or excluded from participation in the Medicare and Medicaid programs or any other state or federal health care program.

4.34 The preclinical tests and clinical trials conducted or sponsored by, or on behalf of the Company and its subsidiaries were and, if still pending, are being conducted in all material respects in accordance with protocols filed with the appropriate regulatory authorities for each such test or trial, as the case may be, and with standard medical and scientific research procedures and applicable laws, regulations and Authorizations, including without limitation, those of the FDA; each description of the results of such tests and trials contained in the Public Disclosure Documents is accurate and complete in all material respects and fairly presents the data derived from such tests and trials, and the Company and its subsidiaries have no knowledge of any other studies or tests, the results of which are inconsistent with, or otherwise call into question, the results described or referred to in the Public Disclosure Documents; and neither the Company nor any of its subsidiaries has received any notices or other correspondence from the FDA, the U.S. Department of Health and Human Services or any committee thereof or from any other U.S. or foreign government or drug or medical device regulatory agency requiring the termination, suspension or modification of any clinical trials.

4.35 The Company and its affiliates will not take, directly or indirectly, any action designed to or that has constituted or that reasonably could be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the sale of the Securities.

5. Representations, Warranties and Covenants of the Investor.

Each Investor hereby represents and warrants to, and covenants with, the Company that:

5.1 When the Securities are issued in accordance with the terms of this Agreement, all interest obligations owed by the Company to the Investor on account of the Notes will be current.

5.2 The Investor has full right, power, authority and capacity to enter into this Agreement and to consummate the transactions contemplated hereby and has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and this Agreement constitutes a valid, binding and enforceable obligation of the Investor, except as the enforceability of the Agreement may be subject to or limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally.

5.3 The entry into and performance of this Agreement by the Investor and the consummation by the Investor of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of the Investor, (ii) conflict with, or constitute a default under, or give to others any rights of termination, amendment, acceleration or cancellation of any agreement, indenture or instrument to which the Investor is party, or (iii) result in the violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to the Investor, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Investor to perform its obligations hereunder.

5.4 The Investor understands that nothing in this Agreement, information the Company has filed with and furnished to the Commission or any other materials presented to the Investor in connection with the purchase and sale of the Securities constitutes legal, tax or investment advice. The Investor has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Securities and has made its own assessment and has satisfied itself concerning the relevant tax and other economic considerations relevant to its investment in the Securities.

6. Survival of Representations, Warranties and Agreements. Notwithstanding any investigation made by any party to this Agreement, all covenants, agreements, representations and warranties made by the Company and the Investor herein shall survive the execution of this Agreement, the delivery to the Investor of the Securities being purchased and the payment therefor.

7. Notices. All notices, requests, consents and other communications hereunder shall be in writing, shall be delivered (A) if within the domestic United States, by first-class registered or certified mail, or nationally recognized overnight express courier, postage prepaid, or by facsimile, or (B) otherwise by International Federal Express or facsimile, and shall be deemed given (i) if delivered by first-class registered or certified mail, three (3) business days after so mailed, (ii) if delivered by a nationally recognized overnight carrier, one business day after so mailed, (iii) if delivered by International Federal Express, two (2) business days after so mailed and (iv) if delivered by facsimile, upon electronic confirmation of receipt and shall be delivered as addressed as follows:

(a) if to the Company, to:

Xtant Medical Holdings, Inc.
600 Cruiser Lane
Belgrade, Montana 59714
Attention: President

(b) if to the Investor, at the Investor's address on the signature page hereto, or at such other address or addresses as may have been furnished to the Company in writing.

8. Changes. Except as contemplated herein, this Agreement may not be modified or amended except pursuant to an instrument in writing signed by the Company and the Investor.

9. Headings. The headings of the various sections of this Agreement have been inserted for convenience or reference only and shall not be deemed to be part of this Agreement.

10. Severability. In case any provision contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

11. Applicable Law; Venue. This Agreement will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York. Each of the Company and each Investor agrees that any suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted only in any State or U.S. federal court in The City of New York and County of New York and waives any objection that such party may now or hereafter have to the laying of venue of any such suit, action or proceeding, and irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

12. Waiver of Jury Trial. The Company and the Investor hereby irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

13. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

14. Payment of Expenses. The Company agrees to pay on demand all expenses of the Investor incurred in connection with the Investor's review, consideration and evaluation of this Agreement, including the rights and remedies available to it in connection therewith, and the negotiation, preparation, execution and delivery of this Agreement.

EXHIBIT 10.4

SECURITIES PURCHASE AGREEMENT

Dated as of January 17, 2017

Xtant Medical Holdings, Inc.
664 Cruiser Lane
Belgrade, Montana 59714

Ladies and Gentlemen:

The undersigned hereby confirms its agreement with you as follows:

1. This Securities Purchase Agreement (this "**Agreement**") is made as of the date hereof between Xtant Medical Holdings, Inc., a Delaware corporation (the "**Company**"), and the Investor listed on the signature page hereto (the "**Investor**"). The Investor holds Convertible Promissory Notes issued by the Company pursuant to the Indenture, dated as of July 31, 2015, between the Company and Wilmington Trust, National Association (the "**Notes**"), in the aggregate principal amount of $7,461,227.00.

2. The Company is proposing to issue and sell to the Investor shares of the Company's common stock, par value $0.000001 per share (the "**Common Stock**"), in the aggregate amount of $223,836.80 (the "**Securities**"). The purchase price for the Securities shall be paid by a dollar-for-dollar offset against all interest due to the Investor as of the closing under the Notes.

3. The Investor acknowledges that the Company will be concurrently issuing shares of Common Stock to other investors on the same terms and conditions as described herein.

4. The Company and the Investor agree that, upon the terms and subject to the conditions set forth herein, the Investor will purchase from the Company and the Company will issue and sell to the Investor the aggregate principal amount of the Securities set forth below on the Investor's signature page for the aggregate purchase price set forth below on the Investor's signature page. The Securities shall be purchased pursuant to the Terms and Conditions for Purchase of Securities attached hereto as Annex A and incorporated herein by reference as if fully set forth herein.

Aggregate Amount of Securities the Investor Agrees to Purchase: 393,248

Aggregate Purchase Price of such Securities: $223,836.80

Please confirm that the foregoing correctly sets forth the agreement between us by signing in the space provided below for that purpose.

AGREED AND ACCEPTED BY:

Xtant Medical Holdings, Inc.
a Delaware corporation

By: /s/ Daniel Goldberger
Name: Daniel Goldberger
Title: Chief Executive Officer

Name of Investor: Park West Investors Master Fund, Limited

By: /s/ Grace Jimenez
Print Name: Grace Jimenez
Title: Chief Financial Officer

ANNEX A TO THE SECURITIES PURCHASE AGREEMENT
TERMS AND CONDITIONS FOR PURCHASE OF SECURITIES

1. Authorization and Sale of Securities. The Company is proposing to sell Common Stock, in the aggregate amount of $223,836.80 to the Investor.

2. Agreement to Sell and Purchase the Securities. Upon the terms and subject to the conditions hereinafter set forth, at the Closing (as defined in Section 3.1), the Company will sell to the Investor, and the Investor will purchase from the Company, the aggregate amount of Securities set forth on the Investor's signature page hereto at the purchase price set forth on such signature page.

3. Closings and Delivery of Securities and Funds.

3.1 The completion of the purchase and sale of the Securities (the "**Closing**") shall occur on January 17, 2017 (the "**Closing Date"**).

3.2 The Company's obligation to issue and sell the Securities to the Investor shall be subject to the following conditions, any one or more of which may be waived by the Company: (a) the accuracy of the representations and warranties made by the Investor and (b) the fulfillment of those undertakings of the Investor to be fulfilled prior to the Closing.

3.3 The Investor's obligation to accept delivery of the Securities and to pay for the Securities shall be subject to the following conditions: (a) each of the representations and warranties of the Company made in Section 4 shall be accurate in all material respects as of the Closing Date; (b) delivery of an officer's certificate dated as of the Closing Date regarding the accuracy in material respects of the Company's representations and warranties and addressing such other matters as are customarily addressed in closing certificates; (c) delivery to the Investor of a customary secretary's certificate in form reasonably acceptable to the Investor; and (d) the Company shall have furnished to the Investor such further documents as the Investor may reasonably request.

3.4 At the Closing, the purchase price for the Securities shall be paid by a dollar-for-dollar offset against all interest due to the Investor as of the Closing under the Notes. Such offset shall have the same effect as if the Investor paid cash to the Company for such Securities and the Company used such cash to pay to the Investor the interest so offset.

4. Representations, Warranties and Covenants of the Company.

The Company hereby represents and warrants to, and covenants with, the Investor that:

4.1 Each of the Company and its subsidiaries has been duly organized, is validly existing and in good standing as a corporation, partnership or limited liability company, as applicable, under the laws of its jurisdiction of organization and is duly qualified to do business and in good standing as a foreign corporation or other business entity in each jurisdiction in which its ownership or lease of property or the conduct of its businesses requires such qualification, except where the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to (i) have a material adverse effect on the condition (financial or otherwise), results of operations, stockholders' equity, properties, business or prospects of the Company and its subsidiaries taken as a whole or (ii) materially interfere with the consummation of the transactions contemplated hereby (collectively, a "**Material Adverse Effect**"). Each of the Company and its subsidiaries has all power and authority necessary to own or hold its properties and to conduct the businesses in which it is engaged. As of the date of this Agreement, the Company has no subsidiaries other than Bacterin International, Inc., X-spine Systems Inc. and Xtant Medical, Inc. and no "significant subsidiaries" (as defined in Rule 405 under the Securities Act) other than Bacterin International, Inc. and X-spine Systems Inc.

4.2 The Company has an authorized capitalization as set forth in the publicly available Annual Report on Form 10-K filed with the Securities and Exchange Commission (the "**Commission**") for the fiscal year ended December 31, 2015, and all of the issued shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable. All of the issued shares of capital stock or other ownership interest of each subsidiary of the Company have been duly authorized and validly issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims, except for such liens, encumbrances, equities or claims as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.3 The Company has all the requisite corporate power and authority to issue the Common Stock. The Common Stock has been duly and validly authorized by the Company and, and will be validly issued, fully paid and non-assessable, and the issuance of the Common Stock will not be subject to any preemptive or similar rights.

4.4 The Company has all requisite corporate power to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly and validly authorized, executed and delivered by the Company.

4.5 The issue and sale of the Common Stock, the execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby and thereby, will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, impose any lien, charge or encumbrance upon any property or assets of the Company or its subsidiaries, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, license, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which any of them is bound or to which any of their respective properties or assets is subject, (ii) result in any violation of the provisions of the charter or by-laws (or similar organizational documents) of the Company or any of its subsidiaries, or (iii) result in any violation of any statute or any judgment, order, decree, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their respective properties or assets, except, with respect to clauses (i) and (iii), conflicts or violations that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.6 Except for the filing of a prospectus supplement with the Commission respecting the Securities, no consent, approval, authorization or order of, or filing, registration or qualification with any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their respective properties or assets is required for the issuance of the Common Stock, the execution, delivery and performance by the Company of this Agreement, and the consummation of the transactions contemplated hereby.

4.7 The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")) that complies with the requirements of the Exchange Act and that has been designed by, or under the supervision of, the Company's principal executive and principal financial officers, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States. The Company maintains internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of the Company's financial statements in conformity with accounting principles generally accepted in the United States and to maintain accountability for its assets, (iii) access to the Company's assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for the Company's assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. As of the date of the most recent balance sheet of the Company and its consolidated subsidiaries reviewed or audited by EKS&H LLP and the audit committee of the board of directors of the Company, there were no material weaknesses in the Company's internal controls.

4.8 The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act), (ii) such disclosure controls and procedures are designed to ensure that the information required to be disclosed by the Company and its subsidiaries in the reports they file or submit under the Exchange Act is accumulated and communicated to management of the Company and its subsidiaries, including their respective principal executive officers and principal financial officers, as appropriate, to allow timely decisions regarding required disclosure to be made; and (iii) such disclosure controls and procedures are effective in all material respects to perform the functions for which they were established.

4.9 Since the date of the most recent balance sheet of the Company and its consolidated subsidiaries reviewed or audited by EKS&H LLP and the audit committee of the board of directors of the Company, (i) the Company has not been advised of or become aware of (A) any significant deficiencies in the design or operation of internal controls, that could adversely affect the ability of the Company or any of its subsidiaries to record, process, summarize and report financial data, or any material weaknesses in internal controls, and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Company and each of its subsidiaries; and (ii) there have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses.

4.10 There is and has been no failure on the part of the Company and any of its directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith.

4.11 Since the date of the latest audited financial statements included in the Public Disclosure Documents (as defined below) and except as disclosed therein, neither the Company nor any of its subsidiaries has (i) sustained any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or court or governmental action, order or decree, (ii) issued or granted any securities (other than pursuant to (x) employee benefit plans, qualified stock option plans, other employee compensation plans or non-employee director compensation programs in existence on the date hereof and described in the Public Disclosure Documents or (y) options, warrants or rights outstanding on the date hereof, (iii) incurred any liability or obligation, direct or contingent, other than liabilities and obligations that were incurred in the ordinary course of business, (iv) entered into any transaction not in the ordinary course of business (other than as described in the Public Disclosure Documents (without giving effect to any supplements or amendments thereto after the execution and delivery of this Agreement)), or (v) declared or paid any dividend on its capital stock, and, since such date, there has not been any change in the capital stock, partnership or limited liability company interests, as applicable, or long-term debt of the Company or any of its subsidiaries (other than as described in the Public Disclosure Documents (without giving effect to any supplements or amendments thereto after the execution and delivery of this Agreement)) or any adverse change, or any development involving a prospective adverse change, in or affecting the condition (financial or otherwise), results of operations, stockholders' equity, properties, management, business or prospects of the Company and its subsidiaries, taken as a whole, in each case except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The reports required to be filed by the Company under the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, together with any materials filed or furnished by the Company under the Exchange Act, whether or not any such reports were required, are referred to herein, collectively, as the "**Public Disclosure Documents**".

4.12 The Company and each of its subsidiaries has good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them, in each case free and clear of all liens, encumbrances and defects, except to the extent such liens, encumbrances and defects do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company or any of its subsidiaries. All assets held under lease by the Company or any of its subsidiaries are held by them under valid, subsisting and enforceable leases, with such exceptions as do not materially interfere with the use made and proposed to be made of such assets by the Company or any of its subsidiaries.

4.13 The Company and each of its subsidiaries have, and have operated in compliance with, such permits, licenses, patents, franchises, certificates of need, exemptions, clearances and other approvals or authorizations of governmental or regulatory authorities ("**Permits**") as are necessary under applicable law to own their properties and conduct their businesses in the manner described in the Public Disclosure Documents, except for any of the foregoing that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company and each of its subsidiaries have fulfilled and performed all of its obligations with respect to the Permits, and no event has occurred that allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other impairment of the rights of the holder or any such Permits, except for any of the foregoing that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company, nor any of its subsidiaries has received written notice of any revocation, termination or modification of any such Permits or otherwise has any reason to believe that any such Permits will be revoked, terminated or modified or not be renewed in the ordinary course.

4.14 The Company and its subsidiaries own, or have obtained valid and enforceable licenses for, or other rights to use, the inventions, patent applications, patents, trademarks (both registered and unregistered), tradenames, service names, copyrights, trade secrets and other proprietary information described in Public Disclosure Documents as being owned or licensed by them or which are necessary for the conduct of their respective businesses as currently conducted or as proposed to be conducted (including the commercialization of products or services described in the Public Disclosure Documents as under development), except where the failure to own, license or have such rights could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (collectively, "**Intellectual Property**"). Except as disclosed in Public Disclosure Documents, and except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) there are no third parties who have or, to the Company's knowledge, will be able to establish rights to any Intellectual Property, except for, and to the extent of, the ownership rights of the owners of the Intellectual Property which the Public Disclosure Documents disclose is licensed to the Company or any of its subsidiaries; (ii) to the Company's knowledge, there is no infringement by third parties of any Intellectual Property; (iii) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the Company's or its subsidiaries' rights in or to any Intellectual Property, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (iv) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the validity, enforceability or scope of any Intellectual Property, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (v) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company or any of its subsidiaries infringes or otherwise violates (or would, upon the commercialization of any product or service described in the Public Disclosure Documents as under development, infringe or violate) any patent, trademark, tradename, service name, copyright, trade secret or other proprietary rights of others, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (vi) the Company and its subsidiaries have complied with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company or any of its subsidiaries, and all such agreements are in full force and effect; (vii) to the Company's knowledge, there is no patent or patent application that contains claims that interfere with the issued or pending claims of any of the Intellectual Property or that challenges the validity, enforceability or scope of any of the Intellectual Property; and (viii) to the Company's knowledge, there is no prior art that may render any patent application within the Intellectual Property unpatentable that has not been disclosed to the U.S. Patent and Trademark Office.

4.15 There are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any property or assets of the Company or any of its subsidiaries is the subject that could, individually or in the aggregate, reasonably be expected to (i) have a Material Adverse Effect, except as described in the Public Disclosure Documents, or (ii) have a material adverse effect on the performance by the Company of this Agreement or on the consummation of any of the transactions contemplated hereby or thereby. To the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or others.

4.16 Neither the Company nor any of its subsidiaries: (i) is in violation of its charter or by-laws (or similar organizational documents), (ii) is in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant, condition or other obligation contained in any indenture, mortgage, deed of trust, loan agreement, license or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties or assets is subject, or (iii) is in violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over it or its property or assets or has failed to obtain any license, permit, certificate, franchise or other governmental authorization or permit necessary to the ownership of its property or to the conduct of its business, except in the case of clauses (ii) and (iii), to the extent any such default, violation or failure could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and except as set forth in the Public Disclosure Documents.

4.17 The Company and its subsidiaries and their respective properties, assets and operations are in compliance with, and the Company and each of its subsidiaries hold all permits, authorizations and approvals required under, Environmental Laws (as defined below), except to the extent that failure to so comply or to hold such permits, authorizations or approvals could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Company's knowledge, there are no past, present or reasonably anticipated future events, conditions, circumstances, activities, practices, actions, omissions or plans that, individually or in the aggregate, could reasonably be expected to give rise to any material costs or liabilities to the Company or any of its subsidiaries under, or to interfere with or prevent compliance by the Company or any of its subsidiaries with, Environmental Laws; except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, neither the Company nor any of its subsidiaries (i) is the subject of any investigation, (ii) has received any notice or claim, (iii) is a party to or affected by any pending or, to the Company's knowledge, threatened action, suit or proceeding, (iv) is bound by any judgment, decree or order or (v) has entered into any agreement, in each case relating to any alleged violation of any Environmental Law or any actual or alleged release or threatened release or cleanup at any location of any Hazardous Materials (as defined below) (as used herein, "**Environmental Law**" means any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, decree, judgment, injunction, permit, license, authorization or other binding requirement, or common law, relating to health, safety or the protection, cleanup or restoration of the environment or natural resources, including those relating to the distribution, processing, generation, treatment, storage, disposal, transportation, other handling or release or threatened release of Hazardous Materials, and "**Hazardous Materials**" means any material (including, without limitation, pollutants, contaminants, hazardous or toxic substances or wastes) that is regulated by or may give rise to liability under any Environmental Law).

4.18 The Company and each of its subsidiaries have filed all federal, state, local and foreign tax returns required to be filed through the date hereof, subject to permitted extensions, and have paid all taxes due, and no tax deficiency has been determined adversely to the Company or any of its subsidiaries, nor does the Company have any knowledge of any tax deficiencies that have been, or could reasonably be expected to be asserted against the Company and each of its subsidiaries, that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.19 Neither the Company nor any of its subsidiaries is, and, after giving effect to the offer and sale of the Securities and the application of the proceeds therefrom, none of them will be, an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder.

4.20 The Company and its affiliates have not taken, directly or indirectly, any action designed to or that has constituted or that could reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the offering of the Securities.

4.21 Neither the Company nor any of its subsidiaries, nor, to the knowledge of the Company, after due inquiry, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its subsidiaries, has in the course of its actions for, or on behalf of, the Company or any of its subsidiaries: (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official, "foreign office" (as defined in the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (collectively, the "**FCPA**")) or employee from corporate funds; (iii) violated or is in violation of any provision of the FCPA, the Bribery Act 2010 of the United Kingdom, as amended, or any other applicable anti-corruption or anti-bribery laws or statutes; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any domestic government official, foreign official or employee; and the Company and its subsidiaries and, to the knowledge of the Company, the Company's affiliates have conducted their respective businesses in compliance with the FCPA, the Bribery Act 2010 of the United Kingdom, as amended, and any other applicable anti-corruption or anti-bribery laws or statutes, and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

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

4.23 Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, after due inquiry, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries (i) is currently subject to or the target of any sanctions administered or enforced by the Office of Foreign Assets Control of the U.S. Treasury Department, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "**Sanctions**"); or (ii) located, organized or resident in a country that is the subject of Sanctions (including, without limitation, Cuba, Iran, North Korea, Sudan, and Syria); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person, or in any country or territory, that currently is the subject or target of Sanctions or in any other manner that will result in a violation by any person (including any person participating in the transaction whether as an underwriter, advisor, investor or otherwise) of Sanctions. The Company and its subsidiaries have not knowingly engaged in for the past five (5) years, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any individual or entity, or in any country or territory, that at the time of the dealing or transaction is or was the subject or target of Sanctions.

4.24 There are no contracts or other documents that would be required to be described in a registration statement filed under the Securities Act or filed as exhibits to a registration statement of the Company pursuant to Item 601(b)(10) of Regulation S-K that have not been described in the Public Disclosure Documents.

4.25 No relationship, direct or indirect, that would be required to be described in a registration statement of the Company pursuant to Item 404 of Regulation S-K, exists between or among the Company and its subsidiaries, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company and its subsidiaries, on the other hand, that has not been described in the Public Disclosure Documents.

4.26 No labor disturbance by or dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.27 None of the transactions contemplated by this Agreement (including, without limitation, the use of the proceeds from the sale of the Securities), will violate or result in a violation of Section 7 of the Exchange Act, or any regulation promulgated thereunder, including, without limitation, Regulations T, U and X of the Board of Governors of the Federal Reserve System.

4.28 The Company and each of its subsidiaries carry, or are covered by, insurance from insurers of recognized financial responsibility in such amounts and covering such risks as is adequate for the conduct of their respective businesses and the value of their respective properties and as is customary for companies engaged in similar businesses in similar industries. All policies of insurance of the Company and its subsidiaries are in full force and effect; the Company and each of its subsidiaries are in compliance with the terms of such policies in all material respects; and neither the Company nor any of its subsidiaries has received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance. Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there are no claims by the Company or any of its subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; and neither the Company nor any such subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.29 Each "employee benefit plan" (within the meaning of Section 3(3) of the Employee Retirement Security Act of 1974, as amended ("**ERISA**")) for which the Company or any member of its "Controlled Group" (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the "**Code**")) would have any liability (each a "**Plan**") has been maintained in compliance with its terms and with the requirements of all applicable statutes, rules and regulations including ERISA and the Code; (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Plan excluding transactions effected pursuant to a statutory or administrative exemption; (iii) with respect to each Plan subject to Title IV of ERISA: (A) no "reportable event" (within the meaning of Section 4043(c) of ERISA) has occurred or is reasonably expected to occur, (B) no Plan is or is reasonably expected to be "at risk" status (within the meaning of Section 430 of the Code or Section 303 of ERISA), (C) there has been no filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan or the receipt by the Company or any member of its Controlled Group from the Pension Benefit Guaranty Corporation or the plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (D) no conditions contained in Section 303(k)(1)(A) of ERISA for imposition of a lien shall have been met with respect to any Plan and (E) neither the Company or any member of its Controlled Group has incurred, or reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the Pension Benefit Guaranty Corporation in the ordinary course and without default) in respect of a Plan (including a "multiemployer plan", within the meaning of Section 4001(c)(3) of ERISA) ("**Multiemployer Plan**"); (iv) no Multiemployer Plan is, or is expected to be, "insolvent" (within the meaning of Section 4245 of ERISA), in "reorganization" (within the meaning of Section 4241 of ERISA), or in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 304 of ERISA); and (v) each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

4.30 No subsidiary of the Company is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock or other ownership interests, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's property or assets to the Company or any other subsidiary of the Company, except as described in the Public Disclosure Documents.

4.31 Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that could give rise to a valid claim against any of them for a brokerage commission, finder's fee or like payment in connection with the sale of the Securities.

4.32 Neither the Company nor any of its subsidiaries is in violation of or has received notice of any violation with respect to any federal or state law relating to discrimination in the hiring, promotion or pay of employees, nor any applicable federal or state wage and hour laws, nor any state law precluding the denial of credit due to the neighborhood in which a property is situated, the violation of any of which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.33 Except as described in the Public Disclosure Documents, and except, in each case, where such event could not, individually or in the aggregate, reasonably be expect to have a Material Adverse Effect, the Company and each of its subsidiaries: (i) has not received any unresolved U.S. Food and Drug Administration ("**FDA**") or similar governmental agency or body ("**Governmental Authority**") written notice of inspectional observations, Form 483, written notice of adverse filing, warning letter, untitled letter or other similar correspondence or notice from the FDA, or any other court or arbitrator or federal, state, local or foreign governmental or regulatory authority, alleging or asserting material noncompliance with the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), or received any written requests or requirements to make material changes to the Company products by the FDA or any other Governmental Authority, (ii) is and has been in compliance with applicable health care laws, including, the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the criminal False Claims Law (42 U.S.C. § 1320a-7b(a)), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h), all criminal laws relating to health care fraud and abuse, including but not limited to 18 U.S.C. Sections 286 and 287, and the health care fraud criminal provisions under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) ("**HIPAA**"), the exclusion laws (42 U.S.C. § 1320a-7), Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations promulgated pursuant to such laws, and comparable state laws, and all other foreign, federal, state and local laws relating to the regulation of the Company and its subsidiaries (collectively, "**Health Care Laws**"), (iii) has not engaged in activities which are, as applicable, cause for false claims liability, civil penalties, or mandatory or permissive exclusion from Medicare, Medicaid, or any other state health care program or federal health care program, (iv) possesses all Permits and supplements or amendments thereto required by any such Health Care Laws and/or to carry on its businesses as currently conducted as described in the Public Disclosure Documents ("**Authorizations**"), and such Authorizations are valid and in full force and effect and neither the Company nor any of its subsidiaries is in violation of any term of any such Authorizations, (v) has not received written notice of any ongoing claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any Governmental Authority alleging that any product, operation or activity is in material violation of any Health Care Laws or Authorizations and has no knowledge that any such Governmental Authority has threatened any such claim, litigation, arbitration, action, suit, investigation or proceeding, (vi) has not received written notice that any Governmental Authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorizations and has no knowledge that any such Governmental Authority has threatened such action, (vii) has filed, obtained, maintained or submitted all reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments thereto as required by any Health Care Laws or Authorizations and all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete, correct and not misleading on the date filed (or were corrected or supplemented by a subsequent submission), (viii) has not, either voluntarily or involuntarily, initiated, conducted, or issued or caused to be initiated, conducted or issued, any recall, market withdrawal or replacement, safety alert, post sale warning, "dear doctor" letter, or other notice or action relating to the alleged lack of safety, efficacy or regulatory compliance of any product or any alleged product defect or violation and, to the Company's knowledge, there are no facts which are reasonably likely to cause, and the Company has not received any written notice from the FDA or any other Governmental Authority regarding, a material recall, market withdrawal or replacement of any Company product sold or intended to be sold by the Company, a material change in the marketing classification or a material adverse change in the labeling of any such Company products, or a termination or suspension of the manufacturing, marketing, or distribution of such Company products, (ix) is not a party to any corporate integrity agreement, deferred prosecution agreement, monitoring agreement, consent decree, settlement order, or similar agreements, or has any reporting obligations pursuant to any such agreement, plan or correction or other remedial measure entered into with any Governmental Authority, (x) has not, nor has any officer, director, employee, agent or, to the knowledge of the Company, any distributor of the Company, made an untrue statement of a material fact or a fraudulent statement to the FDA or any other Governmental Authority, failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority, or committed an act, made a statement, or failed to make a statement, in each such case, related to the business of the Company that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991) or for the FDA or any other Governmental Authority to invoke any similar policy, (xi) has not, nor has any officer, director, employee, or, to the knowledge of the Company, any agent or distributor of the Company, been debarred or convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. § 335a(a) or any similar law or authorized by 21 U.S.C. § 335a(b) or any similar law applicable in other jurisdictions in which Company products or Company product candidates are sold or intended by the Company to be sold, and (xii) neither the Company, its subsidiaries nor their officers, directors, employees, agents or contractors has been or is currently debarred, suspended or excluded from participation in the Medicare and Medicaid programs or any other state or federal health care program.

4.34 The preclinical tests and clinical trials conducted or sponsored by, or on behalf of the Company and its subsidiaries were and, if still pending, are being conducted in all material respects in accordance with protocols filed with the appropriate regulatory authorities for each such test or trial, as the case may be, and with standard medical and scientific research procedures and applicable laws, regulations and Authorizations, including without limitation, those of the FDA; each description of the results of such tests and trials contained in the Public Disclosure Documents is accurate and complete in all material respects and fairly presents the data derived from such tests and trials, and the Company and its subsidiaries have no knowledge of any other studies or tests, the results of which are inconsistent with, or otherwise call into question, the results described or referred to in the Public Disclosure Documents; and neither the Company nor any of its subsidiaries has received any notices or other correspondence from the FDA, the U.S. Department of Health and Human Services or any committee thereof or from any other U.S. or foreign government or drug or medical device regulatory agency requiring the termination, suspension or modification of any clinical trials.

4.35 The Company and its affiliates will not take, directly or indirectly, any action designed to or that has constituted or that reasonably could be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the sale of the Securities.

5. Representations, Warranties and Covenants of the Investor.

Each Investor hereby represents and warrants to, and covenants with, the Company that:

5.1 When the Securities are issued in accordance with the terms of this Agreement, all interest obligations owed by the Company to the Investor on account of the Notes will be current.

5.2 The Investor has full right, power, authority and capacity to enter into this Agreement and to consummate the transactions contemplated hereby and has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and this Agreement constitutes a valid, binding and enforceable obligation of the Investor, except as the enforceability of the Agreement may be subject to or limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally.

5.3 The entry into and performance of this Agreement by the Investor and the consummation by the Investor of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of the Investor, (ii) conflict with, or constitute a default under, or give to others any rights of termination, amendment, acceleration or cancellation of any agreement, indenture or instrument to which the Investor is party, or (iii) result in the violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to the Investor, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Investor to perform its obligations hereunder.

5.4 The Investor understands that nothing in this Agreement, information the Company has filed with and furnished to the Commission or any other materials presented to the Investor in connection with the purchase and sale of the Securities constitutes legal, tax or investment advice. The Investor has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Securities and has made its own assessment and has satisfied itself concerning the relevant tax and other economic considerations relevant to its investment in the Securities.

6. Survival of Representations, Warranties and Agreements. Notwithstanding any investigation made by any party to this Agreement, all covenants, agreements, representations and warranties made by the Company and the Investor herein shall survive the execution of this Agreement, the delivery to the Investor of the Securities being purchased and the payment therefor.

7. Notices. All notices, requests, consents and other communications hereunder shall be in writing, shall be delivered (A) if within the domestic United States, by first-class registered or certified mail, or nationally recognized overnight express courier, postage prepaid, or by facsimile, or (B) otherwise by International Federal Express or facsimile, and shall be deemed given (i) if delivered by first-class registered or certified mail, three (3) business days after so mailed, (ii) if delivered by a nationally recognized overnight carrier, one business day after so mailed, (iii) if delivered by International Federal Express, two (2) business days after so mailed and (iv) if delivered by facsimile, upon electronic confirmation of receipt and shall be delivered as addressed as follows:

(a) if to the Company, to:

Xtant Medical Holdings, Inc.
600 Cruiser Lane
Belgrade, Montana 59714
Attention: President

(b) if to the Investor, at the Investor's address on the signature page hereto, or at such other address or addresses as may have been furnished to the Company in writing.

8. Changes. Except as contemplated herein, this Agreement may not be modified or amended except pursuant to an instrument in writing signed by the Company and the Investor.

9. Headings. The headings of the various sections of this Agreement have been inserted for convenience or reference only and shall not be deemed to be part of this Agreement.

10. Severability. In case any provision contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

11. Applicable Law; Venue. This Agreement will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York. Each of the Company and each Investor agrees that any suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted only in any State or U.S. federal court in The City of New York and County of New York and waives any objection that such party may now or hereafter have to the laying of venue of any such suit, action or proceeding, and irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

12. Waiver of Jury Trial. The Company and the Investor hereby irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

13. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

14. Payment of Expenses. The Company agrees to pay on demand all expenses of the Investor incurred in connection with the Investor's review, consideration and evaluation of this Agreement, including the rights and remedies available to it in connection therewith, and the negotiation, preparation, execution and delivery of this Agreement.

EXHIBIT 10.5

SECURITIES PURCHASE AGREEMENT

Dated as of January 17, 2017

Xtant Medical Holdings, Inc.
664 Cruiser Lane
Belgrade, Montana 59714

Ladies and Gentlemen:

The undersigned hereby confirms its agreement with you as follows:

1. This Securities Purchase Agreement (this "**Agreement**") is made as of the date hereof between Xtant Medical Holdings, Inc., a Delaware corporation (the "**Company**"), and the Investor listed on the signature page hereto (the "**Investor**"). The Investor holds Convertible Promissory Notes issued by the Company pursuant to the Indenture, dated as of July 31, 2015, between the Company and Wilmington Trust, National Association (the "**Notes**"), in the aggregate principal amount of $5,500,000.

2. The Company is proposing to issue and sell to the Investor shares of the Company's common stock, par value $0.000001 per share (the "**Common Stock**"), in the aggregate amount of $165,000.00 (the "**Securities**"). The purchase price for the Securities shall be paid by a dollar-for-dollar offset against all interest due to the Investor as of the closing under the Notes.

3. The Investor acknowledges that the Company will be concurrently issuing shares of Common Stock to other investors on the same terms and conditions as described herein.

4. The Company and the Investor agree that, upon the terms and subject to the conditions set forth herein, the Investor will purchase from the Company and the Company will issue and sell to the Investor the aggregate principal amount of the Securities set forth below on the Investor's signature page for the aggregate purchase price set forth below on the Investor's signature page. The Securities shall be purchased pursuant to the Terms and Conditions for Purchase of Securities attached hereto as Annex A and incorporated herein by reference as if fully set forth herein.

Aggregate Amount of Shares the Investor Agrees to Purchase: 289,881

Aggregate Purchase Price of such Securities: $165,000.00

Please confirm that the foregoing correctly sets forth the agreement between us by signing in the space provided below for that purpose.

AGREED AND ACCEPTED BY:

Xtant Medical Holdings, Inc.
a Delaware corporation

By: /s/ Daniel Goldberger
Name: Daniel Goldberger
Title: Chief Executive Officer

Name of Investor: Telemetry Securities, L.L.C.

By: /s/ Dan Sommers
Print Name: Dan Sommers
Title: Portfolio Manager

ANNEX A TO THE SECURITIES PURCHASE AGREEMENT
TERMS AND CONDITIONS FOR PURCHASE OF SECURITIES

1. Authorization and Sale of Securities. The Company is proposing to sell Common Stock, in the aggregate amount of $165,000.00 to the Investor.

2. Agreement to Sell and Purchase the Securities. Upon the terms and subject to the conditions hereinafter set forth, at the Closing (as defined in Section 3.1), the Company will sell to the Investor, and the Investor will purchase from the Company, the aggregate amount of Securities set forth on the Investor's signature page hereto at the purchase price set forth on such signature page.

3. Closings and Delivery of Securities and Funds.

3.1 The completion of the purchase and sale of the Securities (the "**Closing**") shall occur on January 17, 2017 (the "**Closing Date"**).

3.2 The Company's obligation to issue and sell the Securities to the Investor shall be subject to the following conditions, any one or more of which may be waived by the Company: (a) the accuracy of the representations and warranties made by the Investor and (b) the fulfillment of those undertakings of the Investor to be fulfilled prior to the Closing.

3.3 The Investor's obligation to accept delivery of the Securities and to pay for the Securities shall be subject to the following conditions: (a) each of the representations and warranties of the Company made in Section 4 shall be accurate in all material respects as of the Closing Date; (b) delivery of an officer's certificate dated as of the Closing Date regarding the accuracy in material respects of the Company's representations and warranties and addressing such other matters as are customarily addressed in closing certificates; (c) delivery to the Investor of a customary secretary's certificate in form reasonably acceptable to the Investor; and (d) the Company shall have furnished to the Investor such further documents as the Investor may reasonably request.

3.4 At the Closing, the purchase price for the Securities shall be paid by a dollar-for-dollar offset against all interest due to the Investor as of the Closing under the Notes. Such offset shall have the same effect as if the Investor paid cash to the Company for such Securities and the Company used such cash to pay to the Investor the interest so offset.

4. Representations, Warranties and Covenants of the Company.

The Company hereby represents and warrants to, and covenants with, the Investor that:

4.1 Each of the Company and its subsidiaries has been duly organized, is validly existing and in good standing as a corporation, partnership or limited liability company, as applicable, under the laws of its jurisdiction of organization and is duly qualified to do business and in good standing as a foreign corporation or other business entity in each jurisdiction in which its ownership or lease of property or the conduct of its businesses requires such qualification, except where the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to (i) have a material adverse effect on the condition (financial or otherwise), results of operations, stockholders' equity, properties, business or prospects of the Company and its subsidiaries taken as a whole or (ii) materially interfere with the consummation of the transactions contemplated hereby (collectively, a "**Material Adverse Effect**"). Each of the Company and its subsidiaries has all power and authority necessary to own or hold its properties and to conduct the businesses in which it is engaged. As of the date of this Agreement, the Company has no subsidiaries other than Bacterin International, Inc., X-spine Systems Inc. and Xtant Medical, Inc. and no "significant subsidiaries" (as defined in Rule 405 under the Securities Act) other than Bacterin International, Inc. and X-spine Systems Inc.

4.2 The Company has an authorized capitalization as set forth in the publicly available Annual Report on Form 10-K filed with the Securities and Exchange Commission (the "**Commission**") for the fiscal year ended December 31, 2015, and all of the issued shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable. All of the issued shares of capital stock or other ownership interest of each subsidiary of the Company have been duly authorized and validly issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims, except for such liens, encumbrances, equities or claims as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.3 The Company has all the requisite corporate power and authority to issue the Common Stock. The Common Stock has been duly and validly authorized by the Company and, and will be validly issued, fully paid and non-assessable, and the issuance of the Common Stock will not be subject to any preemptive or similar rights.

4.4 The Company has all requisite corporate power to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly and validly authorized, executed and delivered by the Company.

4.5 The issue and sale of the Common Stock, the execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby and thereby, will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, impose any lien, charge or encumbrance upon any property or assets of the Company or its subsidiaries, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, license, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which any of them is bound or to which any of their respective properties or assets is subject, (ii) result in any violation of the provisions of the charter or by-laws (or similar organizational documents) of the Company or any of its subsidiaries, or (iii) result in any violation of any statute or any judgment, order, decree, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their respective properties or assets, except, with respect to clauses (i) and (iii), conflicts or violations that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.6 Except for the filing of a prospectus supplement with the Commission respecting the Securities, no consent, approval, authorization or order of, or filing, registration or qualification with any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their respective properties or assets is required for the issuance of the Common Stock, the execution, delivery and performance by the Company of this Agreement, and the consummation of the transactions contemplated hereby.

4.7 The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")) that complies with the requirements of the Exchange Act and that has been designed by, or under the supervision of, the Company's principal executive and principal financial officers, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States. The Company maintains internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of the Company's financial statements in conformity with accounting principles generally accepted in the United States and to maintain accountability for its assets, (iii) access to the Company's assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for the Company's assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. As of the date of the most recent balance sheet of the Company and its consolidated subsidiaries reviewed or audited by EKS&H LLP and the audit committee of the board of directors of the Company, there were no material weaknesses in the Company's internal controls.

4.8 The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act), (ii) such disclosure controls and procedures are designed to ensure that the information required to be disclosed by the Company and its subsidiaries in the reports they file or submit under the Exchange Act is accumulated and communicated to management of the Company and its subsidiaries, including their respective principal executive officers and principal financial officers, as appropriate, to allow timely decisions regarding required disclosure to be made; and (iii) such disclosure controls and procedures are effective in all material respects to perform the functions for which they were established.

4.9 Since the date of the most recent balance sheet of the Company and its consolidated subsidiaries reviewed or audited by EKS&H LLP and the audit committee of the board of directors of the Company, (i) the Company has not been advised of or become aware of (A) any significant deficiencies in the design or operation of internal controls, that could adversely affect the ability of the Company or any of its subsidiaries to record, process, summarize and report financial data, or any material weaknesses in internal controls, and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Company and each of its subsidiaries; and (ii) there have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses.

4.10 There is and has been no failure on the part of the Company and any of its directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith.

4.11 Since the date of the latest audited financial statements included in the Public Disclosure Documents (as defined below) and except as disclosed therein, neither the Company nor any of its subsidiaries has (i) sustained any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or court or governmental action, order or decree, (ii) issued or granted any securities (other than pursuant to (x) employee benefit plans, qualified stock option plans, other employee compensation plans or non-employee director compensation programs in existence on the date hereof and described in the Public Disclosure Documents or (y) options, warrants or rights outstanding on the date hereof, (iii) incurred any liability or obligation, direct or contingent, other than liabilities and obligations that were incurred in the ordinary course of business, (iv) entered into any transaction not in the ordinary course of business (other than as described in the Public Disclosure Documents (without giving effect to any supplements or amendments thereto after the execution and delivery of this Agreement)), or (v) declared or paid any dividend on its capital stock, and, since such date, there has not been any change in the capital stock, partnership or limited liability company interests, as applicable, or long-term debt of the Company or any of its subsidiaries (other than as described in the Public Disclosure Documents (without giving effect to any supplements or amendments thereto after the execution and delivery of this Agreement)) or any adverse change, or any development involving a prospective adverse change, in or affecting the condition (financial or otherwise), results of operations, stockholders' equity, properties, management, business or prospects of the Company and its subsidiaries, taken as a whole, in each case except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The reports required to be filed by the Company under the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, together with any materials filed or furnished by the Company under the Exchange Act, whether or not any such reports were required, are referred to herein, collectively, as the "**Public Disclosure Documents**".

4.12 The Company and each of its subsidiaries has good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them, in each case free and clear of all liens, encumbrances and defects, except to the extent such liens, encumbrances and defects do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company or any of its subsidiaries. All assets held under lease by the Company or any of its subsidiaries are held by them under valid, subsisting and enforceable leases, with such exceptions as do not materially interfere with the use made and proposed to be made of such assets by the Company or any of its subsidiaries.

4.13 The Company and each of its subsidiaries have, and have operated in compliance with, such permits, licenses, patents, franchises, certificates of need, exemptions, clearances and other approvals or authorizations of governmental or regulatory authorities ("**Permits**") as are necessary under applicable law to own their properties and conduct their businesses in the manner described in the Public Disclosure Documents, except for any of the foregoing that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company and each of its subsidiaries have fulfilled and performed all of its obligations with respect to the Permits, and no event has occurred that allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other impairment of the rights of the holder or any such Permits, except for any of the foregoing that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company, nor any of its subsidiaries has received written notice of any revocation, termination or modification of any such Permits or otherwise has any reason to believe that any such Permits will be revoked, terminated or modified or not be renewed in the ordinary course.

4.14 The Company and its subsidiaries own, or have obtained valid and enforceable licenses for, or other rights to use, the inventions, patent applications, patents, trademarks (both registered and unregistered), tradenames, service names, copyrights, trade secrets and other proprietary information described in Public Disclosure Documents as being owned or licensed by them or which are necessary for the conduct of their respective businesses as currently conducted or as proposed to be conducted (including the commercialization of products or services described in the Public Disclosure Documents as under development), except where the failure to own, license or have such rights could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (collectively, "**Intellectual Property**"). Except as disclosed in Public Disclosure Documents, and except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) there are no third parties who have or, to the Company's knowledge, will be able to establish rights to any Intellectual Property, except for, and to the extent of, the ownership rights of the owners of the Intellectual Property which the Public Disclosure Documents disclose is licensed to the Company or any of its subsidiaries; (ii) to the Company's knowledge, there is no infringement by third parties of any Intellectual Property; (iii) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the Company's or its subsidiaries' rights in or to any Intellectual Property, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (iv) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the validity, enforceability or scope of any Intellectual Property, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (v) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company or any of its subsidiaries infringes or otherwise violates (or would, upon the commercialization of any product or service described in the Public Disclosure Documents as under development, infringe or violate) any patent, trademark, tradename, service name, copyright, trade secret or other proprietary rights of others, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (vi) the Company and its subsidiaries have complied with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company or any of its subsidiaries, and all such agreements are in full force and effect; (vii) to the Company's knowledge, there is no patent or patent application that contains claims that interfere with the issued or pending claims of any of the Intellectual Property or that challenges the validity, enforceability or scope of any of the Intellectual Property; and (viii) to the Company's knowledge, there is no prior art that may render any patent application within the Intellectual Property unpatentable that has not been disclosed to the U.S. Patent and Trademark Office.

4.15 There are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any property or assets of the Company or any of its subsidiaries is the subject that could, individually or in the aggregate, reasonably be expected to (i) have a Material Adverse Effect, except as described in the Public Disclosure Documents, or (ii) have a material adverse effect on the performance by the Company of this Agreement or on the consummation of any of the transactions contemplated hereby or thereby. To the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or others.

4.16 Neither the Company nor any of its subsidiaries: (i) is in violation of its charter or by-laws (or similar organizational documents), (ii) is in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant, condition or other obligation contained in any indenture, mortgage, deed of trust, loan agreement, license or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties or assets is subject, or (iii) is in violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over it or its property or assets or has failed to obtain any license, permit, certificate, franchise or other governmental authorization or permit necessary to the ownership of its property or to the conduct of its business, except in the case of clauses (ii) and (iii), to the extent any such default, violation or failure could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and except as set forth in the Public Disclosure Documents.

4.17 The Company and its subsidiaries and their respective properties, assets and operations are in compliance with, and the Company and each of its subsidiaries hold all permits, authorizations and approvals required under, Environmental Laws (as defined below), except to the extent that failure to so comply or to hold such permits, authorizations or approvals could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Company's knowledge, there are no past, present or reasonably anticipated future events, conditions, circumstances, activities, practices, actions, omissions or plans that, individually or in the aggregate, could reasonably be expected to give rise to any material costs or liabilities to the Company or any of its subsidiaries under, or to interfere with or prevent compliance by the Company or any of its subsidiaries with, Environmental Laws; except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, neither the Company nor any of its subsidiaries (i) is the subject of any investigation, (ii) has received any notice or claim, (iii) is a party to or affected by any pending or, to the Company's knowledge, threatened action, suit or proceeding, (iv) is bound by any judgment, decree or order or (v) has entered into any agreement, in each case relating to any alleged violation of any Environmental Law or any actual or alleged release or threatened release or cleanup at any location of any Hazardous Materials (as defined below) (as used herein, "**Environmental Law**" means any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, decree, judgment, injunction, permit, license, authorization or other binding requirement, or common law, relating to health, safety or the protection, cleanup or restoration of the environment or natural resources, including those relating to the distribution, processing, generation, treatment, storage, disposal, transportation, other handling or release or threatened release of Hazardous Materials, and "**Hazardous Materials**" means any material (including, without limitation, pollutants, contaminants, hazardous or toxic substances or wastes) that is regulated by or may give rise to liability under any Environmental Law).

4.18 The Company and each of its subsidiaries have filed all federal, state, local and foreign tax returns required to be filed through the date hereof, subject to permitted extensions, and have paid all taxes due, and no tax deficiency has been determined adversely to the Company or any of its subsidiaries, nor does the Company have any knowledge of any tax deficiencies that have been, or could reasonably be expected to be asserted against the Company and each of its subsidiaries, that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.19 Neither the Company nor any of its subsidiaries is, and, after giving effect to the offer and sale of the Securities and the application of the proceeds therefrom, none of them will be, an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder.

4.20 The Company and its affiliates have not taken, directly or indirectly, any action designed to or that has constituted or that could reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the offering of the Securities.

4.21 Neither the Company nor any of its subsidiaries, nor, to the knowledge of the Company, after due inquiry, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its subsidiaries, has in the course of its actions for, or on behalf of, the Company or any of its subsidiaries: (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official, "foreign office" (as defined in the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (collectively, the "**FCPA**")) or employee from corporate funds; (iii) violated or is in violation of any provision of the FCPA, the Bribery Act 2010 of the United Kingdom, as amended, or any other applicable anti-corruption or anti-bribery laws or statutes; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any domestic government official, foreign official or employee; and the Company and its subsidiaries and, to the knowledge of the Company, the Company's affiliates have conducted their respective businesses in compliance with the FCPA, the Bribery Act 2010 of the United Kingdom, as amended, and any other applicable anti-corruption or anti-bribery laws or statutes, and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

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

4.23 Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, after due inquiry, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries (i) is currently subject to or the target of any sanctions administered or enforced by the Office of Foreign Assets Control of the U.S. Treasury Department, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "**Sanctions**"); or (ii) located, organized or resident in a country that is the subject of Sanctions (including, without limitation, Cuba, Iran, North Korea, Sudan, and Syria); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person, or in any country or territory, that currently is the subject or target of Sanctions or in any other manner that will result in a violation by any person (including any person participating in the transaction whether as an underwriter, advisor, investor or otherwise) of Sanctions. The Company and its subsidiaries have not knowingly engaged in for the past five (5) years, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any individual or entity, or in any country or territory, that at the time of the dealing or transaction is or was the subject or target of Sanctions.

4.24 There are no contracts or other documents that would be required to be described in a registration statement filed under the Securities Act or filed as exhibits to a registration statement of the Company pursuant to Item 601(b)(10) of Regulation S-K that have not been described in the Public Disclosure Documents.

4.25 No relationship, direct or indirect, that would be required to be described in a registration statement of the Company pursuant to Item 404 of Regulation S-K, exists between or among the Company and its subsidiaries, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company and its subsidiaries, on the other hand, that has not been described in the Public Disclosure Documents.

4.26 No labor disturbance by or dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.27 None of the transactions contemplated by this Agreement (including, without limitation, the use of the proceeds from the sale of the Securities), will violate or result in a violation of Section 7 of the Exchange Act, or any regulation promulgated thereunder, including, without limitation, Regulations T, U and X of the Board of Governors of the Federal Reserve System.

4.28 The Company and each of its subsidiaries carry, or are covered by, insurance from insurers of recognized financial responsibility in such amounts and covering such risks as is adequate for the conduct of their respective businesses and the value of their respective properties and as is customary for companies engaged in similar businesses in similar industries. All policies of insurance of the Company and its subsidiaries are in full force and effect; the Company and each of its subsidiaries are in compliance with the terms of such policies in all material respects; and neither the Company nor any of its subsidiaries has received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance. Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there are no claims by the Company or any of its subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; and neither the Company nor any such subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.29 Each "employee benefit plan" (within the meaning of Section 3(3) of the Employee Retirement Security Act of 1974, as amended ("**ERISA**")) for which the Company or any member of its "Controlled Group" (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the "**Code**")) would have any liability (each a "**Plan**") has been maintained in compliance with its terms and with the requirements of all applicable statutes, rules and regulations including ERISA and the Code; (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Plan excluding transactions effected pursuant to a statutory or administrative exemption; (iii) with respect to each Plan subject to Title IV of ERISA: (A) no "reportable event" (within the meaning of Section 4043(c) of ERISA) has occurred or is reasonably expected to occur, (B) no Plan is or is reasonably expected to be "at risk" status (within the meaning of Section 430 of the Code or Section 303 of ERISA), (C) there has been no filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan or the receipt by the Company or any member of its Controlled Group from the Pension Benefit Guaranty Corporation or the plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (D) no conditions contained in Section 303(k)(1)(A) of ERISA for imposition of a lien shall have been met with respect to any Plan and (E) neither the Company or any member of its Controlled Group has incurred, or reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the Pension Benefit Guaranty Corporation in the ordinary course and without default) in respect of a Plan (including a "multiemployer plan", within the meaning of Section 4001(c)(3) of ERISA) ("**Multiemployer Plan**"); (iv) no Multiemployer Plan is, or is expected to be, "insolvent" (within the meaning of Section 4245 of ERISA), in "reorganization" (within the meaning of Section 4241 of ERISA), or in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 304 of ERISA); and (v) each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

4.30 No subsidiary of the Company is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock or other ownership interests, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's property or assets to the Company or any other subsidiary of the Company, except as described in the Public Disclosure Documents.

4.31 Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that could give rise to a valid claim against any of them for a brokerage commission, finder's fee or like payment in connection with the sale of the Securities.

4.32 Neither the Company nor any of its subsidiaries is in violation of or has received notice of any violation with respect to any federal or state law relating to discrimination in the hiring, promotion or pay of employees, nor any applicable federal or state wage and hour laws, nor any state law precluding the denial of credit due to the neighborhood in which a property is situated, the violation of any of which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.33 Except as described in the Public Disclosure Documents, and except, in each case, where such event could not, individually or in the aggregate, reasonably be expect to have a Material Adverse Effect, the Company and each of its subsidiaries: (i) has not received any unresolved U.S. Food and Drug Administration ("**FDA**") or similar governmental agency or body ("**Governmental Authority**") written notice of inspectional observations, Form 483, written notice of adverse filing, warning letter, untitled letter or other similar correspondence or notice from the FDA, or any other court or arbitrator or federal, state, local or foreign governmental or regulatory authority, alleging or asserting material noncompliance with the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), or received any written requests or requirements to make material changes to the Company products by the FDA or any other Governmental Authority, (ii) is and has been in compliance with applicable health care laws, including, the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the criminal False Claims Law (42 U.S.C. § 1320a-7b(a)), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h), all criminal laws relating to health care fraud and abuse, including but not limited to 18 U.S.C. Sections 286 and 287, and the health care fraud criminal provisions under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) ("**HIPAA**"), the exclusion laws (42 U.S.C. § 1320a-7), Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations promulgated pursuant to such laws, and comparable state laws, and all other foreign, federal, state and local laws relating to the regulation of the Company and its subsidiaries (collectively, "**Health Care Laws**"), (iii) has not engaged in activities which are, as applicable, cause for false claims liability, civil penalties, or mandatory or permissive exclusion from Medicare, Medicaid, or any other state health care program or federal health care program, (iv) possesses all Permits and supplements or amendments thereto required by any such Health Care Laws and/or to carry on its businesses as currently conducted as described in the Public Disclosure Documents ("**Authorizations**"), and such Authorizations are valid and in full force and effect and neither the Company nor any of its subsidiaries is in violation of any term of any such Authorizations, (v) has not received written notice of any ongoing claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any Governmental Authority alleging that any product, operation or activity is in material violation of any Health Care Laws or Authorizations and has no knowledge that any such Governmental Authority has threatened any such claim, litigation, arbitration, action, suit, investigation or proceeding, (vi) has not received written notice that any Governmental Authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorizations and has no knowledge that any such Governmental Authority has threatened such action, (vii) has filed, obtained, maintained or submitted all reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments thereto as required by any Health Care Laws or Authorizations and all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete, correct and not misleading on the date filed (or were corrected or supplemented by a subsequent submission), (viii) has not, either voluntarily or involuntarily, initiated, conducted, or issued or caused to be initiated, conducted or issued, any recall, market withdrawal or replacement, safety alert, post sale warning, "dear doctor" letter, or other notice or action relating to the alleged lack of safety, efficacy or regulatory compliance of any product or any alleged product defect or violation and, to the Company's knowledge, there are no facts which are reasonably likely to cause, and the Company has not received any written notice from the FDA or any other Governmental Authority regarding, a material recall, market withdrawal or replacement of any Company product sold or intended to be sold by the Company, a material change in the marketing classification or a material adverse change in the labeling of any such Company products, or a termination or suspension of the manufacturing, marketing, or distribution of such Company products, (ix) is not a party to any corporate integrity agreement, deferred prosecution agreement, monitoring agreement, consent decree, settlement order, or similar agreements, or has any reporting obligations pursuant to any such agreement, plan or correction or other remedial measure entered into with any Governmental Authority, (x) has not, nor has any officer, director, employee, agent or, to the knowledge of the Company, any distributor of the Company, made an untrue statement of a material fact or a fraudulent statement to the FDA or any other Governmental Authority, failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority, or committed an act, made a statement, or failed to make a statement, in each such case, related to the business of the Company that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991) or for the FDA or any other Governmental Authority to invoke any similar policy, (xi) has not, nor has any officer, director, employee, or, to the knowledge of the Company, any agent or distributor of the Company, been debarred or convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. § 335a(a) or any similar law or authorized by 21 U.S.C. § 335a(b) or any similar law applicable in other jurisdictions in which Company products or Company product candidates are sold or intended by the Company to be sold, and (xii) neither the Company, its subsidiaries nor their officers, directors, employees, agents or contractors has been or is currently debarred, suspended or excluded from participation in the Medicare and Medicaid programs or any other state or federal health care program.

4.34 The preclinical tests and clinical trials conducted or sponsored by, or on behalf of the Company and its subsidiaries were and, if still pending, are being conducted in all material respects in accordance with protocols filed with the appropriate regulatory authorities for each such test or trial, as the case may be, and with standard medical and scientific research procedures and applicable laws, regulations and Authorizations, including without limitation, those of the FDA; each description of the results of such tests and trials contained in the Public Disclosure Documents is accurate and complete in all material respects and fairly presents the data derived from such tests and trials, and the Company and its subsidiaries have no knowledge of any other studies or tests, the results of which are inconsistent with, or otherwise call into question, the results described or referred to in the Public Disclosure Documents; and neither the Company nor any of its subsidiaries has received any notices or other correspondence from the FDA, the U.S. Department of Health and Human Services or any committee thereof or from any other U.S. or foreign government or drug or medical device regulatory agency requiring the termination, suspension or modification of any clinical trials.

4.35 The Company and its affiliates will not take, directly or indirectly, any action designed to or that has constituted or that reasonably could be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the sale of the Securities.

5. Representations, Warranties and Covenants of the Investor.

Each Investor hereby represents and warrants to, and covenants with, the Company that:

5.1 When the Securities are issued in accordance with the terms of this Agreement, all interest obligations owed by the Company to the Investor on account of the Notes will be current.

5.2 The Investor has full right, power, authority and capacity to enter into this Agreement and to consummate the transactions contemplated hereby and has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and this Agreement constitutes a valid, binding and enforceable obligation of the Investor, except as the enforceability of the Agreement may be subject to or limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally.

5.3 The entry into and performance of this Agreement by the Investor and the consummation by the Investor of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of the Investor, (ii) conflict with, or constitute a default under, or give to others any rights of termination, amendment, acceleration or cancellation of any agreement, indenture or instrument to which the Investor is party, or (iii) result in the violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to the Investor, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Investor to perform its obligations hereunder.

5.4 The Investor understands that nothing in this Agreement, information the Company has filed with and furnished to the Commission or any other materials presented to the Investor in connection with the purchase and sale of the Securities constitutes legal, tax or investment advice. The Investor has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Securities and has made its own assessment and has satisfied itself concerning the relevant tax and other economic considerations relevant to its investment in the Securities.

6. Survival of Representations, Warranties and Agreements. Notwithstanding any investigation made by any party to this Agreement, all covenants, agreements, representations and warranties made by the Company and the Investor herein shall survive the execution of this Agreement, the delivery to the Investor of the Securities being purchased and the payment therefor.

7. Notices. All notices, requests, consents and other communications hereunder shall be in writing, shall be delivered (A) if within the domestic United States, by first-class registered or certified mail, or nationally recognized overnight express courier, postage prepaid, or by facsimile, or (B) otherwise by International Federal Express or facsimile, and shall be deemed given (i) if delivered by first-class registered or certified mail, three (3) business days after so mailed, (ii) if delivered by a nationally recognized overnight carrier, one business day after so mailed, (iii) if delivered by International Federal Express, two (2) business days after so mailed and (iv) if delivered by facsimile, upon electronic confirmation of receipt and shall be delivered as addressed as follows:

(a) if to the Company, to:

Xtant Medical Holdings, Inc.
600 Cruiser Lane
Belgrade, Montana 59714
Attention: President

(b) if to the Investor, at the Investor's address on the signature page hereto, or at such other address or addresses as may have been furnished to the Company in writing.

8. Changes. Except as contemplated herein, this Agreement may not be modified or amended except pursuant to an instrument in writing signed by the Company and the Investor.

9. Headings. The headings of the various sections of this Agreement have been inserted for convenience or reference only and shall not be deemed to be part of this Agreement.

10. Severability. In case any provision contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

11. Applicable Law; Venue. This Agreement will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York. Each of the Company and each Investor agrees that any suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted only in any State or U.S. federal court in The City of New York and County of New York and waives any objection that such party may now or hereafter have to the laying of venue of any such suit, action or proceeding, and irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

12. Waiver of Jury Trial. The Company and the Investor hereby irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

13. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

14. Payment of Expenses. The Company agrees to pay on demand all expenses of the Investor incurred in connection with the Investor's review, consideration and evaluation of this Agreement, including the rights and remedies available to it in connection therewith, and the negotiation, preparation, execution and delivery of this Agreement.

SECURITIES PURCHASE AGREEMENT

Dated as of January 17, 2017

Xtant Medical Holdings, Inc.
600 Cruiser Lane
Belgrade, Montana 59714

Ladies and Gentlemen:

Each of the undersigned hereby confirms its agreement with you as follows:

1. This Securities Purchase Agreement (this "**Agreement**") is made as of the date hereof between Xtant Medical Holdings, Inc., a Delaware corporation (the "**Company**"), and the Investors listed on the signature pages hereto (the "**Investors**"). The Investors hold Convertible Promissory Notes issued by the Company pursuant to the Indenture, dated as of July 31, 2015, between the Company and Wilmington Trust, National Association (the "**Notes**"), in the aggregate principal amount of $52,000,000.

2. The Company is proposing to issue and sell to the Investors $1,560,000 aggregate principal amount of convertible senior notes due 2021 (the "**Securities**"), which are convertible into shares of the Company's common stock, par value $0.000001 per share (the "**Common Stock**"). The Securities will be entitled to the benefits of a Registration Rights Agreement (the "**Registration Rights Agreement**"), to be entered into among the Company and the Investors, pursuant to which the Company will agree, among other things, to file and cause to become effective under the Securities Act of 1933, as amended (the "**Securities Act**"), a registration statement covering the resale of the Securities and the Common Stock issuable upon conversion of the Securities.

3. The purchase price for the Securities shall be paid by a dollar-for-dollar offset against all interest due to the Investors as of the closing under the Notes.

4. The Securities shall have the terms set forth in each of the convertible promissory notes (the "**Notes**") in the form attached hereto as Exhibit A, to be issued on the date hereof to each of the Investors.

5. The Company and each Investor agrees that, upon the terms and subject to the conditions set forth herein, each Investor will purchase from the Company and the Company will issue and sell to each Investor the aggregate principal amount of the Securities set forth below on such Investor's signature page for the aggregate purchase price set forth below on such Investor's signature page. The Securities shall be purchased pursuant to the Terms and Conditions for Purchase of Securities attached hereto as Annex A and incorporated herein by reference as if fully set forth herein.

Aggregate Principal Amount of Securities the Investor Agrees to Purchase:

$995,700.00

Aggregate Purchase Price of such Securities: $995,700.00

Please confirm that the foregoing correctly sets forth the agreement between us by signing in the space provided below for that purpose.

AGREED AND ACCEPTED BY:

Xtant Medical Holdings, Inc. a Delaware corporation	Name of Investor: ROS Acquisition Offshore LP By OrbiMed Advisors LLC, solely in its capacity as Investment Manager
By: /s/ Daniel Goldberger	By: /s/ W. Carter Neild
Name: Daniel Goldberger	Print Name: W. Carter Neild
Title: Chief Executive Officer	Title: Member

Aggregate Principal Amount of Securities the Investor Agrees to Purchase:

$564,300.00

Aggregate Purchase Price of such Securities: $564,300.00

Please confirm that the foregoing correctly sets forth the agreement between us by signing in the space provided below for that purpose.

AGREED AND ACCEPTED BY:

Xtant Medical Holdings, Inc.
a Delaware corporation

By: /s/ Daniel Goldberger
Name: Daniel Goldberger
Title: Chief Executive Officer

Name of Investor:
OrbiMed Royalty Opportunities II, LP

By OrbiMed ROF II LLC,
Its General Partner

By OrbiMed Advisors LLC,
its Managing Member

By: /s/ W. Carter Neild
Print Name: W. Carter Neild
Title: Member

ANNEX A TO THE SECURITIES PURCHASE AGREEMENT
TERMS AND CONDITIONS FOR PURCHASE OF SECURITIES

1. Authorization and Sale of Securities. The Company is proposing to sell $1,560,000 aggregate principal amount of the Securities to the Investors.

2. Agreement to Sell and Purchase the Securities. Upon the terms and subject to the conditions hereinafter set forth, at the Closing (as defined in Section 3.1), the Company will sell to each Investor, and each Investor will purchase from the Company, the aggregate principal amount of Securities set forth on such Investor's signature page hereto at the purchase price set forth on such signature page.

3. Closings and Delivery of Securities and Funds.

3.1 The completion of the purchase and sale of the Securities (the "**Closing**") shall occur on January 17, 2017 (the "**Closing Date"**).

3.2 The Company's obligation to issue and sell the Securities to the Investors shall be subject to the following conditions, any one or more of which may be waived by the Company: (a) the accuracy of the representations and warranties made by the Investors and (b) the fulfillment of those undertakings of the Investors to be fulfilled prior to the Closing.

3.3 Each Investor's obligation to accept delivery of the Securities and to pay for the Securities shall be subject to the following conditions, any one or more of which may be waived by such Investor: (a) each of the representations and warranties of the Company made in Section 4 shall be accurate in all material respects as of the Closing Date; (b) delivery of an officer's certificate dated as of the Closing Date regarding the accuracy in material respects of the Company's representations and warranties and addressing such other matters as are customarily addressed in closing certificates; (c) delivery to the Investors of a customary secretary's certificate in form reasonably acceptable to the Investors; (d) the Company and the Investors shall have executed the Registration Rights Agreement; (e) the Company shall have issued a Note, in the form attached hereto as Exhibit A, to each of the Investors and (f) the Company shall have furnished to the Investors such further documents as the Investors may reasonably request.

3.4 At the Closing, the purchase price for the Securities shall be paid by each Investor by a dollar-for-dollar offset against all interest due to the Investor as of the Closing under the Notes. Such offset shall have the same affect as if the Investor paid cash to the Company for such Securities and the Company used such cash to pay to the Investor the interest so offset.

4. Representations, Warranties and Covenants of the Company.

The Company hereby represents and warrants to, and covenants with, each Investor that:

4.1 When the Notes are issued and delivered pursuant to this Agreement, such Notes will not be of the same class (within the meaning of Rule 144A under the Securities Act) as securities of the Company that are listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), or that are quoted in a U.S. automated inter-dealer quotation system.

4.2 Assuming the accuracy of each Investor's representations and warranties in Section 5, the purchase and resale of the Notes pursuant hereto are exempt from the registration requirements of the Securities Act.

4.3 No form of general solicitation or general advertising within the meaning of Regulation D under the Securities Act (including, but not limited to, advertisements, articles, notices or other communications published in any newspaper, magazine or similar medium or broadcast over television or radio, or any seminar or meeting whose attendees have been invited by any general solicitation or general advertising) was used by the Company, any of its affiliates or any of its representatives (other than you, as to whom the Company makes no representation) in connection with the offer and sale of the Notes.

4.4 None of the Company or any other person acting on its behalf has sold or issued any securities that would be integrated with the offering of the Notes contemplated by this Agreement pursuant to the Securities Act, the rules and regulations thereunder or the interpretations thereof by the Securities and Exchange Commission (the "**Commission**") in a manner that would require the registration, under the Securities Act, of the sale of the Notes contemplated by this Agreement.

4.5 Each of the Company and its subsidiaries has been duly organized, is validly existing and in good standing as a corporation, partnership or limited liability company, as applicable, under the laws of its jurisdiction of organization and is duly qualified to do business and in good standing as a foreign corporation or other business entity in each jurisdiction in which its ownership or lease of property or the conduct of its businesses requires such qualification, except where the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to (i) have a material adverse effect on the condition (financial or otherwise), results of operations, stockholders' equity, properties, business or prospects of the Company and its subsidiaries taken as a whole or (ii) materially interfere with the consummation of the transactions contemplated hereby (collectively, a "**Material Adverse Effect**"). Each of the Company and its subsidiaries has all power and authority necessary to own or hold its properties and to conduct the businesses in which it is engaged. As of the date of this Agreement, the Company has no subsidiaries other than Bacterin International, Inc., X-spine Systems Inc. and Xtant Medical, Inc. and no "significant subsidiaries" (as defined in Rule 405 under the Securities Act) other than Bacterin International, Inc. and X-spine Systems Inc.

4.6 The Company has an authorized capitalization as set forth in the publicly available Annual Report on Form 10-K filed with the Commission for the fiscal year ended December 31, 2015, and all of the issued shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable. All of the issued shares of capital stock or other ownership interest of each subsidiary of the Company have been duly authorized and validly issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims, except for such liens, encumbrances, equities or claims as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.7 The Company has all requisite corporate power and authority to execute, issue, sell and perform its obligations under the Notes. The Notes have been duly authorized by the Company and, when duly executed by the Company, will be validly issued and delivered and will constitute valid and binding obligations of the Company entitled to the benefits of the Registration Rights Agreement, enforceable against the Company in accordance with their terms, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.8 The Company has all requisite corporate power and authority to execute, deliver and perform its obligations under the Registration Rights Agreement. The Registration Rights Agreement has been duly and validly authorized by the Company, and upon its execution and delivery and, assuming due authorization, execution and delivery by the other parties thereto, will constitute the valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.9 The Company has all the requisite corporate power and authority to issue the Common Stock issuable upon conversion of the Notes (the "**Underlying Common Stock**"). The Underlying Common Stock has been duly and validly authorized by the Company and, and when issued upon conversion of the Notes, in accordance with the terms of the Notes, will be validly issued, fully paid and non-assessable, and the issuance of the Underlying Common Stock will not be subject to any preemptive or similar rights.

4.10 The Company has all requisite corporate power to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly and validly authorized, executed and delivered by the Company.

4.11 The issue and sale of the Notes, the issuance of the Underlying Common Stock upon conversion of the Notes, the execution, delivery and performance by the Company of the Notes, the Registration Rights Agreement and this Agreement and the consummation of the transactions contemplated hereby and thereby, will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, impose any lien, charge or encumbrance upon any property or assets of the Company or its subsidiaries, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, license, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which any of them is bound or to which any of their respective properties or assets is subject, (ii) result in any violation of the provisions of the charter or by-laws (or similar organizational documents) of the Company or any of its subsidiaries, or (iii) result in any violation of any statute or any judgment, order, decree, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their respective properties or assets, except, with respect to clauses (i) and (iii), conflicts or violations that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and except as set forth in the Public Disclosure Documents.

4.12 No consent, approval, authorization or order of, or filing, registration or qualification with any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their respective properties or assets is required for the issue and sale of the Notes, the issuance of the Underlying Common Stock upon conversion of the Notes, the execution, delivery and performance by the Company of the Notes, the Registration Rights Agreement and this Agreement, and the consummation of the transactions contemplated hereby, except for such consents, approvals, authorizations, orders, filings, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase of the Notes.

4.13 The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) of the Exchange Act) that complies with the requirements of the Exchange Act and that has been designed by, or under the supervision of, the Company's principal executive and principal financial officers, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States. The Company maintains internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of the Company's financial statements in conformity with accounting principles generally accepted in the United States and to maintain accountability for its assets, (iii) access to the Company's assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for the Company's assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. As of the date of the most recent balance sheet of the Company and its consolidated subsidiaries reviewed or audited by EKS&H LLP and the audit committee of the board of directors of the Company, there were no material weaknesses in the Company's internal controls.

4.14 The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act), (ii) such disclosure controls and procedures are designed to ensure that the information required to be disclosed by the Company and its subsidiaries in the reports they file or submit under the Exchange Act is accumulated and communicated to management of the Company and its subsidiaries, including their respective principal executive officers and principal financial officers, as appropriate, to allow timely decisions regarding required disclosure to be made; and (iii) such disclosure controls and procedures are effective in all material respects to perform the functions for which they were established.

4.15 Since the date of the most recent balance sheet of the Company and its consolidated subsidiaries reviewed or audited by EKS&H LLP and the audit committee of the board of directors of the Company, (i) the Company has not been advised of or become aware of (A) any significant deficiencies in the design or operation of internal controls, that could adversely affect the ability of the Company or any of its subsidiaries to record, process, summarize and report financial data, or any material weaknesses in internal controls, and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Company and each of its subsidiaries; and (ii) there have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses.

4.16 There is and has been no failure on the part of the Company and any of its directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith.

4.17 Since the date of the latest audited financial statements included in the Public Disclosure Documents (as defined below) and except as disclosed therein, neither the Company nor any of its subsidiaries has (i) sustained any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or court or governmental action, order or decree, (ii) issued or granted any securities (other than pursuant to (x) employee benefit plans, qualified stock option plans, other employee compensation plans or non-employee director compensation programs in existence on the date hereof and described in the Public Disclosure Documents or (y) options, warrants or rights outstanding on the date hereof, (iii) incurred any liability or obligation, direct or contingent, other than liabilities and obligations that were incurred in the ordinary course of business, (iv) entered into any transaction not in the ordinary course of business (other than as described in the Public Disclosure Documents (without giving effect to any supplements or amendments thereto after the execution and delivery of this Agreement)), or (v) declared or paid any dividend on its capital stock, and, since such date, there has not been any change in the capital stock, partnership or limited liability company interests, as applicable, or long-term debt of the Company or any of its subsidiaries (other than as described in the Public Disclosure Documents (without giving effect to any supplements or amendments thereto after the execution and delivery of this Agreement)) or any adverse change, or any development involving a prospective adverse change, in or affecting the condition (financial or otherwise), results of operations, stockholders' equity, properties, management, business or prospects of the Company and its subsidiaries, taken as a whole, in each case except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The reports required to be filed by the Company under the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, together with any materials filed or furnished by the Company under the Exchange Act, whether or not any such reports were required, are referred to herein, collectively, as the "**Public Disclosure Documents**".

4.18 The Company and each of its subsidiaries has good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them, in each case free and clear of all liens, encumbrances and defects, except to the extent such liens, encumbrances and defects do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company or any of its subsidiaries. All assets held under lease by the Company or any of its subsidiaries are held by them under valid, subsisting and enforceable leases, with such exceptions as do not materially interfere with the use made and proposed to be made of such assets by the Company or any of its subsidiaries.

4.19 The Company and each of its subsidiaries have, and have operated in compliance with, such permits, licenses, patents, franchises, certificates of need, exemptions, clearances and other approvals or authorizations of governmental or regulatory authorities ("**Permits**") as are necessary under applicable law to own their properties and conduct their businesses in the manner described in the Public Disclosure Documents, except for any of the foregoing that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company and each of its subsidiaries have fulfilled and performed all of its obligations with respect to the Permits, and no event has occurred that allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other impairment of the rights of the holder or any such Permits, except for any of the foregoing that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company, nor any of its subsidiaries has received written notice of any revocation, termination or modification of any such Permits or otherwise has any reason to believe that any such Permits will be revoked, terminated or modified or not be renewed in the ordinary course.

4.20 The Company and its subsidiaries own, or have obtained valid and enforceable licenses for, or other rights to use, the inventions, patent applications, patents, trademarks (both registered and unregistered), tradenames, service names, copyrights, trade secrets and other proprietary information described in Public Disclosure Documents as being owned or licensed by them or which are necessary for the conduct of their respective businesses as currently conducted or as proposed to be conducted (including the commercialization of products or services described in the Public Disclosure Documents as under development), except where the failure to own, license or have such rights could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (collectively, "**Intellectual Property**"). Except as disclosed in Public Disclosure Documents, and except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) there are no third parties who have or, to the Company's knowledge, will be able to establish rights to any Intellectual Property, except for, and to the extent of, the ownership rights of the owners of the Intellectual Property which the Public Disclosure Documents disclose is licensed to the Company or any of its subsidiaries; (ii) to the Company's knowledge, there is no infringement by third parties of any Intellectual Property; (iii) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the Company's or its subsidiaries' rights in or to any Intellectual Property, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (iv) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the validity, enforceability or scope of any Intellectual Property, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (v) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company or any of its subsidiaries infringes or otherwise violates (or would, upon the commercialization of any product or service described in the Public Disclosure Documents as under development, infringe or violate) any patent, trademark, tradename, service name, copyright, trade secret or other proprietary rights of others, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (vi) the Company and its subsidiaries have complied with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company or any of its subsidiaries, and all such agreements are in full force and effect; (vii) to the Company's knowledge, there is no patent or patent application that contains claims that interfere with the issued or pending claims of any of the Intellectual Property or that challenges the validity, enforceability or scope of any of the Intellectual Property; and (viii) to the Company's knowledge, there is no prior art that may render any patent application within the Intellectual Property unpatentable that has not been disclosed to the U.S. Patent and Trademark Office.

4.21 There are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any property or assets of the Company or any of its subsidiaries is the subject that could, individually or in the aggregate, reasonably be expected to (i) have a Material Adverse Effect, except as described in the Public Disclosure Documents, or (ii) have a material adverse effect on the performance by the Company of this Agreement, the Notes or the Registration Rights Agreement or on the consummation of any of the transactions contemplated hereby or thereby. To the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or others.

4.22 Neither the Company nor any of its subsidiaries: (i) is in violation of its charter or by-laws (or similar organizational documents), (ii) is in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant, condition or other obligation contained in any indenture, mortgage, deed of trust, loan agreement, license or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties or assets is subject, or (iii) is in violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over it or its property or assets or has failed to obtain any license, permit, certificate, franchise or other governmental authorization or permit necessary to the ownership of its property or to the conduct of its business, except in the case of clauses (ii) and (iii), to the extent any such default, violation or failure could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.23 The Company and its subsidiaries and their respective properties, assets and operations are in compliance with, and the Company and each of its subsidiaries hold all permits, authorizations and approvals required under, Environmental Laws (as defined below), except to the extent that failure to so comply or to hold such permits, authorizations or approvals could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Company's knowledge, there are no past, present or reasonably anticipated future events, conditions, circumstances, activities, practices, actions, omissions or plans that, individually or in the aggregate, could reasonably be expected to give rise to any material costs or liabilities to the Company or any of its subsidiaries under, or to interfere with or prevent compliance by the Company or any of its subsidiaries with, Environmental Laws; except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, neither the Company nor any of its subsidiaries (i) is the subject of any investigation, (ii) has received any notice or claim, (iii) is a party to or affected by any pending or, to the Company's knowledge, threatened action, suit or proceeding, (iv) is bound by any judgment, decree or order or (v) has entered into any agreement, in each case relating to any alleged violation of any Environmental Law or any actual or alleged release or threatened release or cleanup at any location of any Hazardous Materials (as defined below) (as used herein, "**Environmental Law**" means any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, decree, judgment, injunction, permit, license, authorization or other binding requirement, or common law, relating to health, safety or the protection, cleanup or restoration of the environment or natural resources, including those relating to the distribution, processing, generation, treatment, storage, disposal, transportation, other handling or release or threatened release of Hazardous Materials, and "**Hazardous Materials**" means any material (including, without limitation, pollutants, contaminants, hazardous or toxic substances or wastes) that is regulated by or may give rise to liability under any Environmental Law).

4.24 The Company and each of its subsidiaries have filed all federal, state, local and foreign tax returns required to be filed through the date hereof, subject to permitted extensions, and have paid all taxes due, and no tax deficiency has been determined adversely to the Company or any of its subsidiaries, nor does the Company have any knowledge of any tax deficiencies that have been, or could reasonably be expected to be asserted against the Company and each of its subsidiaries, that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.25 Neither the Company nor any of its subsidiaries is, and, after giving effect to the offer and sale of the Notes and the application of the proceeds therefrom, none of them will be, an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder.

4.26 The Company and its affiliates have not taken, directly or indirectly, any action designed to or that has constituted or that could reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the offering of the Notes.

4.27 Neither the Company nor any of its subsidiaries, nor, to the knowledge of the Company, after due inquiry, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its subsidiaries, has in the course of its actions for, or on behalf of, the Company or any of its subsidiaries: (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official, "foreign office" (as defined in the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (collectively, the "**FCPA**")) or employee from corporate funds; (iii) violated or is in violation of any provision of the FCPA, the Bribery Act 2010 of the United Kingdom, as amended, or any other applicable anti-corruption or anti-bribery laws or statutes; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any domestic government official, foreign official or employee; and the Company and its subsidiaries and, to the knowledge of the Company, the Company's affiliates have conducted their respective businesses in compliance with the FCPA, the Bribery Act 2010 of the United Kingdom, as amended, and any other applicable anti-corruption or anti-bribery laws or statutes, and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

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

4.29 Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, after due inquiry, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries (i) is currently subject to or the target of any sanctions administered or enforced by the Office of Foreign Assets Control of the U.S. Treasury Department, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "**Sanctions**"); or (ii) located, organized or resident in a country that is the subject of Sanctions (including, without limitation, Cuba, Iran, North Korea, Sudan, and Syria); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person, or in any country or territory, that currently is the subject or target of Sanctions or in any other manner that will result in a violation by any person (including any person participating in the transaction whether as an underwriter, advisor, investor or otherwise) of Sanctions. The Company and its subsidiaries have not knowingly engaged in for the past five (5) years, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any individual or entity, or in any country or territory, that at the time of the dealing or transaction is or was the subject or target of Sanctions.

4.30 There are no contracts or other documents that would be required to be described in a registration statement filed under the Securities Act or filed as exhibits to a registration statement of the Company pursuant to Item 601(b)(10) of Regulation S-K that have not been described in the Public Disclosure Documents.

4.31 No relationship, direct or indirect, that would be required to be described in a registration statement of the Company pursuant to Item 404 of Regulation S-K, exists between or among the Company and its subsidiaries, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company and its subsidiaries, on the other hand, that has not been described in the Public Disclosure Documents.

4.32 No labor disturbance by or dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.33 None of the transactions contemplated by this Agreement (including, without limitation, the use of the proceeds from the sale of the Notes), will violate or result in a violation of Section 7 of the Exchange Act, or any regulation promulgated thereunder, including, without limitation, Regulations T, U and X of the Board of Governors of the Federal Reserve System.

4.34 The Company and each of its subsidiaries carry, or are covered by, insurance from insurers of recognized financial responsibility in such amounts and covering such risks as is adequate for the conduct of their respective businesses and the value of their respective properties and as is customary for companies engaged in similar businesses in similar industries. All policies of insurance of the Company and its subsidiaries are in full force and effect; the Company and each of its subsidiaries are in compliance with the terms of such policies in all material respects; and neither the Company nor any of its subsidiaries has received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance. Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there are no claims by the Company or any of its subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; and neither the Company nor any such subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.35 Each "employee benefit plan" (within the meaning of Section 3(3) of the Employee Retirement Security Act of 1974, as amended ("**ERISA**")) for which the Company or any member of its "Controlled Group" (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the "**Code**")) would have any liability (each a "**Plan**") has been maintained in compliance with its terms and with the requirements of all applicable statutes, rules and regulations including ERISA and the Code; (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Plan excluding transactions effected pursuant to a statutory or administrative exemption; (iii) with respect to each Plan subject to Title IV of ERISA: (A) no "reportable event" (within the meaning of Section 4043(c) of ERISA) has occurred or is reasonably expected to occur, (B) no Plan is or is reasonably expected to be "at risk" status (within the meaning of Section 430 of the Code or Section 303 of ERISA), (C) there has been no filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan or the receipt by the Company or any member of its Controlled Group from the Pension Benefit Guaranty Corporation or the plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (D) no conditions contained in Section 303(k)(1)(A) of ERISA for imposition of a lien shall have been met with respect to any Plan and (E) neither the Company or any member of its Controlled Group has incurred, or reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the Pension Benefit Guaranty Corporation in the ordinary course and without default) in respect of a Plan (including a "multiemployer plan", within the meaning of Section 4001(c)(3) of ERISA) ("**Multiemployer Plan**"); (iv) no Multiemployer Plan is, or is expected to be, "insolvent" (within the meaning of Section 4245 of ERISA), in "reorganization" (within the meaning of Section 4241 of ERISA), or in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 304 of ERISA); and (v) each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

4.36 No subsidiary of the Company is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock or other ownership interests, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's property or assets to the Company or any other subsidiary of the Company, except as described in the Public Disclosure Documents.

4.37 Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that could give rise to a valid claim against any of them for a brokerage commission, finder's fee or like payment in connection with the sale of the Notes.

4.38 Neither the Company nor any of its subsidiaries is in violation of or has received notice of any violation with respect to any federal or state law relating to discrimination in the hiring, promotion or pay of employees, nor any applicable federal or state wage and hour laws, nor any state law precluding the denial of credit due to the neighborhood in which a property is situated, the violation of any of which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.39 Except as described in the Public Disclosure Documents, and except, in each case, where such event could not, individually or in the aggregate, reasonably be expect to have a Material Adverse Effect, the Company and each of its subsidiaries: (i) has not received any unresolved U.S. Food and Drug Administration ("**FDA**") or similar governmental agency or body ("**Governmental Authority**") written notice of inspectional observations, Form 483, written notice of adverse filing, warning letter, untitled letter or other similar correspondence or notice from the FDA, or any other court or arbitrator or federal, state, local or foreign governmental or regulatory authority, alleging or asserting material noncompliance with the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), or received any written requests or requirements to make material changes to the Company products by the FDA or any other Governmental Authority, (ii) is and has been in compliance with applicable health care laws, including, the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the criminal False Claims Law (42 U.S.C. § 1320a-7b(a)), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h), all criminal laws relating to health care fraud and abuse, including but not limited to 18 U.S.C. Sections 286 and 287, and the health care fraud criminal provisions under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) ("**HIPAA**"), the exclusion laws (42 U.S.C. § 1320a-7), Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations promulgated pursuant to such laws, and comparable state laws, and all other foreign, federal, state and local laws relating to the regulation of the Company and its subsidiaries (collectively, "**Health Care Laws**"), (iii) has not engaged in activities which are, as applicable, cause for false claims liability, civil penalties, or mandatory or permissive exclusion from Medicare, Medicaid, or any other state health care program or federal health care program, (iv) possesses all Permits and supplements or amendments thereto required by any such Health Care Laws and/or to carry on its businesses as currently conducted as described in the Public Disclosure Documents ("**Authorizations**"), and such Authorizations are valid and in full force and effect and neither the Company nor any of its subsidiaries is in violation of any term of any such Authorizations, (v) has not received written notice of any ongoing claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any Governmental Authority alleging that any product, operation or activity is in material violation of any Health Care Laws or Authorizations and has no knowledge that any such Governmental Authority has threatened any such claim, litigation, arbitration, action, suit, investigation or proceeding, (vi) has not received written notice that any Governmental Authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorizations and has no knowledge that any such Governmental Authority has threatened such action, (vii) has filed, obtained, maintained or submitted all reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments thereto as required by any Health Care Laws or Authorizations and all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete, correct and not misleading on the date filed (or were corrected or supplemented by a subsequent submission), (viii) has not, either voluntarily or involuntarily, initiated, conducted, or issued or caused to be initiated, conducted or issued, any recall, market withdrawal or replacement, safety alert, post sale warning, "dear doctor" letter, or other notice or action relating to the alleged lack of safety, efficacy or regulatory compliance of any product or any alleged product defect or violation and, to the Company's knowledge, there are no facts which are reasonably likely to cause, and the Company has not received any written notice from the FDA or any other Governmental Authority regarding, a material recall, market withdrawal or replacement of any Company product sold or intended to be sold by the Company, a material change in the marketing classification or a material adverse change in the labeling of any such Company products, or a termination or suspension of the manufacturing, marketing, or distribution of such Company products, (ix) is not a party to any corporate integrity agreement, deferred prosecution agreement, monitoring agreement, consent decree, settlement order, or similar agreements, or has any reporting obligations pursuant to any such agreement, plan or correction or other remedial measure entered into with any Governmental Authority, (x) has not, nor has any officer, director, employee, agent or, to the knowledge of the Company, any distributor of the Company, made an untrue statement of a material fact or a fraudulent statement to the FDA or any other Governmental Authority, failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority, or committed an act, made a statement, or failed to make a statement, in each such case, related to the business of the Company that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991) or for the FDA or any other Governmental Authority to invoke any similar policy, (xi) has not, nor has any officer, director, employee, or, to the knowledge of the Company, any agent or distributor of the Company, been debarred or convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. § 335a(a) or any similar law or authorized by 21 U.S.C. § 335a(b) or any similar law applicable in other jurisdictions in which Company products or Company product candidates are sold or intended by the Company to be sold, and (xii) neither the Company, its subsidiaries nor their officers, directors, employees, agents or contractors has been or is currently debarred, suspended or excluded from participation in the Medicare and Medicaid programs or any other state or federal health care program.

4.40 The preclinical tests and clinical trials conducted or sponsored by, or on behalf of the Company and its subsidiaries were and, if still pending, are being conducted in all material respects in accordance with protocols filed with the appropriate regulatory authorities for each such test or trial, as the case may be, and with standard medical and scientific research procedures and applicable laws, regulations and Authorizations, including without limitation, those of the FDA; each description of the results of such tests and trials contained in the Public Disclosure Documents is accurate and complete in all material respects and fairly presents the data derived from such tests and trials, and the Company and its subsidiaries have no knowledge of any other studies or tests, the results of which are inconsistent with, or otherwise call into question, the results described or referred to in the Public Disclosure Documents; and neither the Company nor any of its subsidiaries has received any notices or other correspondence from the FDA, the U.S. Department of Health and Human Services or any committee thereof or from any other U.S. or foreign government or drug or medical device regulatory agency requiring the termination, suspension or modification of any clinical trials..

4.41 So long as any of the Notes or the Underlying Common Stock are outstanding, the Company will furnish at its expense, upon request, to the holders of the Notes or the Underlying Common Stock and prospective purchasers of the Notes or the Underlying Common Stock the information, if any, required by Rule 144A(d)(4) under the Securities Act.

4.42 The Company and its affiliates will not take, directly or indirectly, any action designed to or that has constituted or that reasonably could be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the sale of the Notes.

4.43 The Company agrees not to sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any "security" (as defined in the Securities Act) that would be integrated with the sale of the Notes in a manner that would require the registration under the Securities Act of the sale of the Notes to the Investors. The Company will take any reasonable precautions designed to insure that any offer or sale, direct or indirect of any Notes or any substantially similar security issued by the Company, within six months subsequent to the date on which the distribution of the Notes has been completed, is made under restrictions and other circumstances reasonably designed not to affect the status of the sale of the Notes contemplated by this Agreement, as transactions exempt from the registration provisions of the Securities Act, including any sales pursuant to Rule 144A under, or Regulation D of, the Securities Act.

4.44 In connection with any offer or sale of the Notes, the Company will not engage, and will cause its affiliates and any person acting on its behalf not to engage in any form of general solicitation or general advertising (within the meaning of Regulation D of the Securities Act), or any "public offering" within the meaning of Section 4(a)(2) of the Securities Act in connection with any sale of the Notes.

4.45 The Company agrees to reserve and keep available at all times, free of preemptive rights, a sufficient number of Underlying Common Stock to enable the Company to satisfy any obligations to issue Underlying Common Stock upon conversion of the Notes.

4.46 On and after the date hereof to, and including, the Closing Date, the Company will not do or authorize any act that would result in an adjustment of the conversion rate of the Notes.

5. Representations, Warranties and Covenants of the Investors.

Each Investor hereby represents and warrants to, and covenants with, the Company that:

5.1 (1) Each Investor is (a) either a QIB as defined in Rule 144A under the Securities Act, or an institutional accredited investor as defined in Rule 501(a)(1), (a)(2), (a)(3), or (a)(7) under the Securities Act, as presently in effect, (b) aware that the sale to it is being made in reliance on a private placement exemption from registration under the Securities Act, and (c) acquiring the Securities for its own account or for the account of a QIB or an institutional accredited investor.

(2) Each Investor understands and agrees on behalf of itself and on behalf of any investor account for which it is purchasing the Securities and Common Stock issuable upon conversion of the Securities, that the Securities and Common Stock issuable upon conversion of the Securities are being offered in a transaction not involving any public offering within the meaning of the Securities Act, that the Securities and Common Stock issuable upon conversion of the Securities have not been, and will not be, registered under the Securities Act and that (a) if it decides to offer, resell, pledge or otherwise transfer any of the Securities or Common Stock issued upon conversion of the Securities, such Securities and Common Stock may be offered, resold, pledged or otherwise transferred only (i) to a person whom the seller reasonably believes is a QIB in a transaction meeting the requirements of Rule 144A, (ii) pursuant to any other exemption from the registration requirements of the Securities Act, including Rule 144 under the Securities Act (if available), (iii) pursuant to an effective registration statement under the Securities Act, or (iv) to the Company, or one of its subsidiaries, in each of cases (i) through (iv) in accordance with any applicable securities laws of any state of the United States.

(3) Each Investor understands that the Securities and Common Stock issued upon conversion of the Securities will, unless sold pursuant to a registration statement that has been declared effective under the Securities Act or in compliance with Rule 144, and will bear a legend that reflects the restricted nature of the securities.

(4) Each Investor:

(a) is able to fend for itself in the transactions contemplated hereby;

(b) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its prospective investment in the Securities; and

(c) has the ability to bear the economic risks of its prospective investment and can afford the complete loss of such investment.

(5) Each Investor acknowledges that (a) it has conducted its own investigation of the Company and the terms of the Securities, (b) it has had access to, and has had an adequate opportunity to review, (i) all information the Company has filed with and furnished to the Commission, (ii) all information set forth in such filings and (iii) such financial and other information as it deems necessary to make its decision to purchase the Securities, and (c) it has been offered the opportunity to ask questions of the Company, and received such answers thereto, as it deemed necessary in connection with the decision to purchase the Securities.

(6) Each Investor understands that the Company, and others will rely upon the truth and accuracy of the foregoing representations, acknowledgements and agreements and agrees that if any of the representations and acknowledgements deemed to have been made by its purchase of the Securities are no longer accurate, such Investor shall promptly notify the Company. If such Investor is acquiring the Securities as a fiduciary or agent for one or more investor accounts, it represents that it has sole investment discretion with respect to each such account and it has full power to make the foregoing representations, acknowledgements and agreements on behalf of such account.

5.2 Each Investor acknowledges that no action has been or will be taken in any jurisdiction outside the United States by the Company that would permit an offering of the Securities, or possession or distribution of offering materials in connection with the issuance of the Securities (including any filing of a registration statement), in any jurisdiction outside the United States where action for that purpose is required. Each Investor outside the United States will comply with all applicable laws and regulations in each foreign jurisdiction in which it purchases, offers, sells or delivers Securities or has in its possession or distributes any offering material, in all cases at its own expense.

5.3 When the Securities are issued in accordance with the terms of this Agreement, all interest obligations owed by the Company to such Investor on account of the Investor's Notes will be current.

5.4 Each Investor has full right, power, authority and capacity to enter into this Agreement and to consummate the transactions contemplated hereby and has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and this Agreement constitutes a valid, binding and enforceable obligation of such Investor, except as the enforceability of the Agreement may be subject to or limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally.

5.5 The entry into and performance of this Agreement by each Investor and the consummation by such Investor of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of Investor, (ii) conflict with, or constitute a default under, or give to others any rights of termination, amendment, acceleration or cancellation of any agreement, indenture or instrument to which such Investor is party, or (iii) result in the violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Investor, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Investor to perform its obligations hereunder.

5.6 Each Investor understands that nothing in this Agreement, information the Company has filed with and furnished to the Commission or any other materials presented to such Investor in connection with the purchase and sale of the Securities constitutes legal, tax or investment advice. Each Investor has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Securities and has made its own assessment and has satisfied itself concerning the relevant tax and other economic considerations relevant to its investment in the Securities.

6. Survival of Representations, Warranties and Agreements. Notwithstanding any investigation made by any party to this Agreement, all covenants, agreements, representations and warranties made by the Company and the Investors herein shall survive the execution of this Agreement, the delivery to the Investors of the Securities being purchased and the payment therefor.

7. Notices. All notices, requests, consents and other communications hereunder shall be in writing, shall be delivered (A) if within the domestic United States, by first-class registered or certified mail, or nationally recognized overnight express courier, postage prepaid, or by facsimile, or (B) otherwise by International Federal Express or facsimile, and shall be deemed given (i) if delivered by first-class registered or certified mail, three (3) business days after so mailed, (ii) if delivered by a nationally recognized overnight carrier, one business day after so mailed, (iii) if delivered by International Federal Express, two (2) business days after so mailed and (iv) if delivered by facsimile, upon electronic confirmation of receipt and shall be delivered as addressed as follows:

if to the Company, to:

Xtant Medical Holdings, Inc.
600 Cruiser Lane
Belgrade, Montana 59714
Attention: President

if to the Investors, at each Investor's address on the signature page hereto, or at such other address or addresses as may have been furnished to the Company in writing.

8. Changes. Except as contemplated herein, this Agreement may not be modified or amended except pursuant to an instrument in writing signed by the Company and each Investor.

9. Headings. The headings of the various sections of this Agreement have been inserted for convenience or reference only and shall not be deemed to be part of this Agreement.

10. Severability. In case any provision contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

11. Applicable Law; Venue. This Agreement will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York. Each of the Company and each Investor agrees that any suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted only in any State or U.S. federal court in The City of New York and County of New York and waives any objection that such party may now or hereafter have to the laying of venue of any such suit, action or proceeding, and irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

12. Waiver of Jury Trial. Each of the Company and each Investor hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

13. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

14. Payment of Expenses. The Company agrees to pay on demand all expenses of the Investors incurred in connection with the Investors' review, consideration and evaluation of this Agreement, the Securities and the Registration Rights Agreement, including the rights and remedies available to it in connection therewith, and the negotiation, preparation, execution and delivery of this Agreement, the Securities and the Registration Rights Agreement.

Exhibit A

Form of Convertible Promissory Note

[See Attached.]

THE SALE OF THIS NOTE HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, THIS NOTE (AND ANY BENEFICIAL INTEREST HEREIN) MAY NOT BE OFFERED, RESOLD OR OTHERWISE TRANSFERRED, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF;

(B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT; OR

(C) UNDER ANY AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (INCLUDING, IF AVAILABLE, THE EXEMPTION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT).

PRIOR TO ANY TRANSFER PURSUANT TO THE FOREGOING CLAUSE (C), THE COMPANY RESERVES THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE COMPANY MAY REASONABLY REQUIRE AND MAY RELY UPON 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 APPLICABLE SECURITIES LAWS OF ANY OTHER JURISDICTION. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

XTANT MEDICAL HOLDINGS, INC.

CONVERTIBLE PROMISSORY NOTE

$995,700.00 Date of Issuance: January 17, 2017

FOR VALUE RECEIVED, Xtant Medical Holdings, Inc., a Delaware corporation (the "**Company**"), promises to pay to ROS Acquisition Offshore LP, and its assigns, (the "**Holder**") the principal sum of $995,700.00 (the "**Principal Amount**"), in the manner provided herein. Commencing on the date hereof, and continuing until such time as the Principal Amount is repaid in full, interest shall accrue on the Principal Amount outstanding at the rate of six percent (6.00%) per annum. This Note is one of a series of notes of the Company issued on the date hereof (the "**Series**"). This Note is subject to the following terms and conditions.

TABLE OF CONTENTS

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 *Definitions.*

"**Additional Interest**" has the meaning ascribed to it in the Registration Rights Agreement.

"**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 or cause the direction of 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, United States Code, or any similar U.S. federal, state or non-U.S. law for the relief of debtors.

"**Board of Directors**" means the board of directors of the Company or a committee of such board duly authorized to act for it.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

"**Capital Stock**" means, for any Person, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of, or interests in (however designated), the equity of such Person, but excluding any debt securities convertible into such equity.

"**Close of Business**" means 5:00 p.m., New York City time.

"**Common Stock**" means the shares of the common stock of the Company, $0.000001 par value per share.

"**Company**" means the party named as such in the first paragraph of this Note until a successor or assignee replaces it pursuant to the applicable provisions hereof and, thereafter, means the successor or assignee.

"**Conversion Price**" means, at any time, (i) $1,000 *divided by* (ii) the Conversion Rate in effect at such time.

"**Conversion Rate**" means, initially, 1,317.70 shares of Common Stock per $1,000 principal amount of this Note, subject to adjustment as provided herein, or in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata number of shares.

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

"**Default**" means any event which is (or after notice, passage of time or both would be) an Event of Default.

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

"**Fundamental Change**" means an event that will be deemed to occur if any of the following occurs:

(a) a "person" or "group" within the meaning of Section 13(d) of the Exchange Act, other than the Company or the Subsidiaries, has become the direct or indirect "beneficial owner" (as defined below) of shares of the Company's common equity representing more than 50% of the voting power of the Company's common equity;

(b) the consummation of:

(i) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and the Subsidiaries to any person; or

(ii) any transaction or series of related transactions in connection with which (whether by means of exchange, liquidation, consolidation, merger, combination, reclassification, recapitalization, acquisition or otherwise) all of the Common Stock is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, other property, assets or cash, but excluding any merger, consolidation, share exchange or acquisition of the Company with or by another Person pursuant to which the Persons that "beneficially owned" (as defined below), directly or indirectly, the shares of the Company's Voting Stock immediately prior to such transaction beneficially own, directly or indirectly, immediately after such transaction, shares of the surviving, continuing or acquiring corporation's Voting Stock representing more than 50% of the total outstanding voting power of all outstanding classes of Voting Stock of the surviving, continuing or acquiring corporation in substantially the same proportions vis-à-vis each other as immediately prior to such transaction; or

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

A transaction or event described in clause (a) or (b) above will not constitute a Fundamental Change, however, if at least 90% of the consideration received or to be received by the holders of the Common Stock, excluding cash payments for fractional shares or dissenters rights, in connection with the transaction or transactions, consists of shares of common stock traded on any of the NASDAQ Capital Market, the NASDAQ Global Market, the NASDAQ Global Select Market, the NYSE MKT LLC or the New York Stock Exchange (or any of their respective successors) or which will be so traded or quoted when issued or exchanged in connection with such transaction or event and as a result of such transaction or event, this Note become convertible or exchangeable solely into such consideration (excluding cash payable in lieu of any fractional share) in accordance with Section 8.08.

For the purposes of this definition of "Fundamental Change," whether a person is a "**beneficial owner**" or whether shares are "**beneficially owned**" will be determined in accordance with Rule 13d-3 under the Exchange Act.

"**Holder**" means the party named as such in the first paragraph of this Note.

"**Issue Date**" means January 17, 2017.

"**Last Reported Sale Price**" of the Common Stock on any date means the closing sale or trading price (or, if no closing sale or trading price is reported, the average of the last bid and last ask prices or, if more than one in either case, the average of the average last bid and the average last ask prices) per share on such date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is traded. If the Common Stock is not listed for trading on a U.S. national or regional securities exchange on such date, the "Last Reported Sale Price" of the Common Stock will be the last quoted bid price per share for the Common Stock in the over-the-counter market on such date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted, the "Last Reported Sale Price" will be the average of the mid-point of the last bid and last ask prices per share for the Common Stock on the relevant date from each of at least three (3) nationally recognized independent investment banking firms selected by the Company for this purpose. The "Last Reported Sale Price" will be determined without regard to after-hours trading or any other trading outside of regular trading session hours.

"**Market Disruption Event**" means the occurrence or existence during the one-half hour period ending on the scheduled close of trading on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"**Officer**" means the Chairman of the Board, the Vice Chairman, the Chief Executive Officer, the President, the Chief Financial Officer, any Executive Vice President, any Senior Vice President, any Vice President, the Treasurer or the Secretary of the Company.

"**Officers' Certificate**" means a written certificate containing the information specified in Sections 4.05, 5.01(c), signed in the name of the Company by any two Officers, and delivered to the Holder; *provided*, that, if such certificate is given pursuant to Section 4.05, one of the Officers signing such certificate must be the Chief Financial Officer of the Company.

"**Open of Business**" means 9:00 a.m., New York City time.

"**Opinion of Counsel**" means a written opinion containing the information specified in Section 5.01(c), from legal counsel satisfactory to holders of a majority of the Series. The counsel may be an employee of, or counsel to, the Company who is satisfactory to holders of a majority of the Series.

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

"**Registration Rights Agreement**" means the Registration Rights Agreement, dated as of the date hereof, among the Company and the holders of the notes of the Series.

"**Rule 144**" means Rule 144 under the Securities Act (or any successor provision), as it may be amended from time to time.

"**Rule 144A**" means Rule 144A under the Securities Act (or any successor provision), as it may be amended from time to time.

"**SEC**" means the Securities and Exchange Commission.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Significant Subsidiary**" means any Subsidiary that is a "significant subsidiary" of the Company within the meaning of Rule 1-02(w) of Regulation S-X promulgated under the Exchange Act.

"**Stock Price**" means, for any Make-Whole Fundamental Change, (i) if the holders of the Common Stock receive only cash in consideration for their shares of Common Stock in such Make-Whole Fundamental Change and such Make-Whole Fundamental Change is of the type described in clause (b) of the definition of Fundamental Change, the amount of cash paid per share of the Common Stock in such Make-Whole Fundamental Change; and (ii) otherwise, the average of the Last Reported Sale Price per share of the Common Stock over the five consecutive Trading Days ending on, and including, the Trading Day immediately preceding the Make-Whole Fundamental Change Effective Date for such Make-Whole Fundamental Change.

"**Subsidiary**" means a Person 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 of the Company, or by the Company and one or more other Subsidiaries of the Company.

"**Trading Day**" means a day on which (i) trading in the Common Stock (or other security for which a Last Reported Sale Price must be determined) generally occurs on the NYSE MKT or, if the Common Stock (or such other security) is not then listed on the NYSE MKT, on the principal other U.S. national or regional securities exchange on which the Common Stock (or such other security) is then listed or, if the Common Stock (or such other security) is not then listed on a U.S. national or regional securities exchange, on the principal other market (including, without limitation, the OTCQX marketplace) on which the Common Stock (or such other security) is then listed or admitted for trading; and (ii) there is no Market Disruption Event; *provided*, *however*, that if the Common Stock (or such other security) is not so listed or traded, then "Trading Day" means a Business Day.

"**Uniform Commercial Code**" means the New York Uniform Commercial Code as in effect on the Issue Date.

"**Voting Stock**" of a Person means Capital Stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the board of directors, managers or trustees of such Person (irrespective of whether or not at the time Capital Stock of any other class or classes will have or might have voting power by reason of the happening of any contingency).

Section 1.02 *Other Definitions.*

Term:	**Section Defined in:**
"**Additional Shares**"	8.07(a)
"**Averaging Period**"	8.05(e)
"**Common Stock Change Event**"	8.08
"**Conversion Consideration**"	8.03(a)(i)
"**Conversion Date**"	8.02(a)
"**Conversion Notice**"	8.02(a)
"**Defaulted Amount**"	2.01(b)
"**Default Interest**"	2.01(b)
"**Effective Date**"	8.05(l)(i)(III)
"**Event of Default**"	6.01(a)
"**Ex-Dividend Date**"	8.05(l)(i)(IV)
"**Expiration Date**"	8.05(e)
"**Expiration Time**"	8.05(e)
"**Fundamental Change Notice**"	3.02(a)
"**Fundamental Change Notice Date**"	3.02(a)
"**Fundamental Change Repurchase Date**"	3.01(c)
"**Fundamental Change Repurchase Notice**"	3.03(a)(i)
"**Fundamental Change Repurchase Price**"	3.01(b)
"**Interest Payment Date**"	2.01(a)(ii)
"**Make-Whole Fundamental Change**"	8.07(a)
"**Make-Whole Fundamental Change Effective Date**"	8.07(b)
"**Maturity Date**"	2.01(a)(i)
"**Principal Amount**"	Introductory Paragraph
"**Reference Property**"	8.08(a)
"**Reference Property Unit**"	8.08(a)
"**Regular Record Date**"	2.01(a)(ii)
"**Reorganization Event**"	5.01
"**Reorganization Successor Corporation**"	5.01(a)(ii)
"**Reporting Event of Default**"	6.04(a)
"**Series**"	Introductory Paragraph
"**Special Interest**"	6.04(a)
"**Spin-Off**"	8.05(c)(ii)
"**Valuation Period**"	8.05(c)(ii)

Section 1.03 *Rules of Construction*. In this Note:

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

(b) an accounting term not otherwise defined has the meaning assigned to it and will be construed in accordance with U.S. generally accepted accounting principles;

(c) "**or**" is not exclusive;

(d) "**including**" means including, without limitation;

(e) words in the singular include the plural, and words in the plural include the singular, unless the context requires otherwise;

(f) "**herein**," "**hereof**" and other words of similar import refer to this Note as a whole and not to any particular Article, Section or other subdivision of this Note, unless the context requires otherwise;

(g) all references to $, dollars, cash payments or money refer to United States currency; and

(h) unless the context requires otherwise, all references to interest on this Note will (i) include any Additional Interest payable pursuant to the Registration Rights Agreement and any Special Interest payable pursuant to Section 6.04; and (ii) for the avoidance of doubt, not include any Default Interest payable on a Defaulted Amount pursuant to Article 2.

ARTICLE 2
PAYMENT TERMS, TRANSFER RESTRICTIONS AND NOTE REPLACEMENT

Section 2.01 *Payments.*

(a) *General.*

(i) *Payment at Maturity.* Unless earlier paid or deemed paid pursuant to any of Sections 3.05 or 8.03, this Note will mature on July 15, 2021 (the "**Maturity Date**") and, on the Maturity Date, the Company will pay the Holder $1,000 in cash for each $1,000 principal amount of this Note (and in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata amount), together with accrued and unpaid interest to, but not including, the Maturity Date (with such interest to be payable to the Holder as of the Close of Business on the Regular Record Date immediately preceding the Maturity Date).

(ii) *Payment of Interest.* This Note will accrue interest at a rate equal to 6.00% per annum from the most recent date to which interest has been paid or duly provided for, or, if no interest has been paid or duly provided for, the Issue Date until, subject to Section 2.01(b), the date the principal amount of this Note is paid or deemed to be paid, as the case may be, pursuant to clause (i) of this Section 2.01(a) or any of Sections 3.05 or 8.03. Additional Interest will accrue on this Note to the extent provided in the Registration Rights Agreement and Special Interest will accrue on this Note to the extent provided in Section 6.04, in each case in addition to interest accruing on this Note pursuant to the immediately preceding sentence. Except as otherwise provided herein (including Section 3.01(b) and Section 8.02(d)), interest will be payable semi-annually in arrears on January 15 and July 15 of each year (each, an "**Interest Payment Date**") to the Holder as of the Close of Business on the January 1 or July 1, as the case may be, and whether or not on a Business Day, immediately preceding the applicable Interest Payment Date (each such date, a "**Regular Record Date**"). Interest on this Note that has been converted or repurchased after a Regular Record Date and on or before the related Interest Payment Date will be paid in the manner set forth in Section 3.01(b) and Section 8.02(d), as applicable. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

(iii) *Method of Payment.* The Company will pay the principal of and the Fundamental Change Repurchase Price for this Note by check or wire transfer, in the manner set forth below, to the Holder on the relevant payment date upon surrender thereof to the Company and, if applicable, satisfaction of any other requirements therefor set forth in Article 3. The Company will pay interest due, on an Interest Payment Date, on (and, subject to the immediately preceding sentence, the principal of or the Fundamental Change Repurchase Price for) this Note to the Holder (i) by check mailed to the Holder's registered address; or (ii) if the Holder delivers, not later than the Regular Record Date relating to such Interest Payment Date (or, with respect to the payment of the principal of or the Fundamental Change Repurchase Price for such Note, the date that is fifteen (15) days immediately preceding the Maturity Date or related Fundamental Change Repurchase Date, as applicable), a written request to the Company that the Company make such payments by wire transfer to an account of the Holder within the United States, by wire transfer of immediately available funds to such account, which request shall remain in effect until the Holder notifies the Company, in writing, to the contrary.

(b) *Defaulted Amounts*. Whenever any amount payable on this Note (including, the principal of, the Fundamental Change Repurchase Price for, and interest on, this Note) has become due and payable, but the Company fails to punctually pay or to duly provide for such amount (any such amount, a "**Defaulted Amount**"), in each case regardless of whether such failure constitutes an Event of Default, then such Defaulted Amount will accrue interest ("**Default Interest**") at a rate equal to 6.00% per annum plus 100 basis points from, and including, such payment date and to, but excluding, the date on which such Defaulted Amount is paid by the Company, which Default Interest shall be payable by the Company on demand.

(c) *Acknowledgement and Agreement by the Holder*. The Holder, by accepting this Note, acknowledges and agrees to comply with the restrictions set forth in this Note's legend.

Section 2.02 *Replacement Note*. If (a)(i) this Note is mutilated and surrendered to the Company; or (ii) the Holder claims that this Note has been lost, destroyed or stolen and provides the Company with (A) evidence of such loss, theft or destruction that is reasonably satisfactory to the Company; and (B) any amount or kind of security or indemnity that the Company requests to protect itself from any loss that it may suffer upon replacement of this Note; and, in either case, (b) such Holder satisfies any other reasonable requirements of the Company, including the payment of any tax or other governmental charge that may be imposed in connection with the replacement of this Note, then, unless the Company receives notice that this Note has been acquired by a bona fide purchaser, the Company will promptly execute and deliver to the Holder a replacement Note having the same aggregate principal amount as this Note that was mutilated or claimed to be lost, destroyed or stolen.

Every new Note issued pursuant to this Section 2.02 in exchange for a mutilated Note, or in lieu of a destroyed, lost or stolen Note, will constitute an original contractual obligation of the Company and any other obligor upon this Note, regardless of whether the mutilated, destroyed, lost or stolen Note will be at any time enforceable by anyone, and will be entitled to all of the benefits, and subject to all the limitations, set forth herein.

ARTICLE 3
REPURCHASE AT THE OPTION OF THE HOLDER

Section 3.01 *Fundamental Change Permits Holder to Require the Company to Repurchase this Note*.

(a) *General*. If a Fundamental Change occurs at any time prior to the Maturity Date, the Holder will have the right, at its option, to require the Company to repurchase this Note, or any portion thereof, on the Fundamental Change Repurchase Date for such Fundamental Change for an amount of cash equal to the Fundamental Change Repurchase Price for such Fundamental Change Repurchase Date and this Note.

(b) *Fundamental Change Repurchase Price*. The "**Fundamental Change Repurchase Price**" means, for this Note to be repurchased on any Fundamental Change Repurchase Date, a price equal to 100% of the principal amount of this Note, plus accrued and unpaid interest, if any, on this Note to, but excluding, such Fundamental Change Repurchase Date; *provided*, *however*, that if such Fundamental Change Repurchase Date occurs after a Regular Record Date, but on or prior to the Interest Payment Date corresponding to such Regular Record Date, the Fundamental Change Repurchase Price for this Note will be 100% of the principal amount of this Note, and accrued and unpaid interest, if any, on this Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that this Note remained outstanding through such Interest Payment Date) will be payable, on such Fundamental Change Repurchase Date, to the Holder as of the Close of Business on such Regular Record Date.

(c) *Fundamental Change Repurchase Date*. The "**Fundamental Change Repurchase Date**" means, for any Fundamental Change, the date specified by the Company in the Fundamental Change Notice for such Fundamental Change, which date will be not less than twenty (20) Business Days, nor more than thirty five (35) Business Days, immediately following the Fundamental Change Notice Date for such Fundamental Change.

Section 3.02 *Fundamental Change Notice*.

(a) *General*. On or before the Business Day immediately following the effective date of a Fundamental Change, the Company will deliver to the Holder written notice of such Fundamental Change and of the resulting repurchase right (the "**Fundamental Change Notice**", and the date of such delivery, the "**Fundamental Change Notice Date**").

The Fundamental Change Notice for each Fundamental Change will specify, as applicable:

(A) briefly, the events causing such Fundamental Change;

(B) the effective date of such Fundamental Change;

(C) the last date on which the Holder may exercise its right to require the Company to repurchase this Note as a result of such Fundamental Change under this Article 3;

(D) the procedures that the Holder must follow to require the Company to repurchase this Note;

(E) the Fundamental Change Repurchase Price for each $1,000 principal amount this Note for such Fundamental Change (and in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, the equivalent pro rata amount);

(F) the Fundamental Change Repurchase Date for such Fundamental Change;

(G) in the event that a Fundamental Change Repurchase Notice has been duly tendered in respect of this Note and not validly withdrawn, the Fundamental Change Repurchase Price which will be paid promptly following the later of the Fundamental Change Repurchase Date and the time this Note is surrendered for repurchase;

(H) the Conversion Rate in effect on the Fundamental Change Notice Date for such Fundamental Change and the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Fundamental Change Notice Date;

(I) if applicable, any adjustments that will be made to the Conversion Rate as a result of such Fundamental Change, including any Additional Shares by which the Conversion Rate will be increased pursuant to Section 8.07 in the event that the Holder converts this Note "in connection with" such Fundamental Change;

(J) that in the event that a Fundamental Change Repurchase Notice has been delivered by the Holder, this Note may be converted only if the Holder withdraws such Fundamental Change Repurchase Notice in accordance with the terms of this Note or to the extent any portion of this Note are not subject to such Fundamental Change Repurchase Notice;

(K) the procedures for withdrawing a Fundamental Change Repurchase Notice;

(L) that if this Note or portion of this Note is subject to a validly delivered Fundamental Change Repurchase Notice, unless the Company defaults in paying the Fundamental Change Repurchase Price for this Note or portion of this Note, interest, if any, on this Note or portion of this Note will cease to accrue on and after the Fundamental Change Repurchase Date; and

(b) *Failure or Defect*. Notwithstanding anything provided elsewhere in this Note, neither the failure of the Company to deliver a Fundamental Change Notice nor a defect in a Fundamental Change Notice delivered by the Company will limit the repurchase rights of the Holder under this Article 3 or impair or otherwise affect the validity of any proceedings relating to the repurchase of this Note pursuant to this Article 3.

Section 3.03 *Fundamental Change Repurchase Notice*.

(a) *General*. To exercise its repurchase rights under Section 3.01(a) with respect to this Note pursuant to a Fundamental Change, the Holder must:

(i) deliver to the Company, by the Close of Business on the second (2nd) Business Day immediately preceding the Fundamental Change Repurchase Date, subject to extension to comply with applicable law, a duly completed Fundamental Change Repurchase notice, substantially in the form set forth in Exhibit B hereto (a "**Fundamental Change Repurchase Notice**") setting forth that the Holder is tendering this Note for repurchase; and

(ii) deliver this Note to the Company by physical delivery together with any endorsements or other documents reasonably requested by the Company.

(b) *Contents of Fundamental Change Repurchase Notice*. The Fundamental Change Repurchase Notice for this Note must state:

(i) if this Note is to be repurchased in part, the portion of the principal amount of this Note to be repurchased; and

(ii) that this Note will be repurchased by the Company pursuant to the provisions of this Article 3.

(c) *Effect of Improper Notice*. Unless and until the Company receives a validly delivered Fundamental Change Repurchase Notice with respect to this Note, together with this Note, in a form that conforms in all material aspects with the description contained in such Fundamental Change Repurchase Notice, the Holder will not be entitled to receive the Fundamental Change Repurchase Price for this Note.

Section 3.04 *Withdrawal of Fundamental Change Repurchase Notice*

(a) *General*. After the Holder delivers a Fundamental Change Repurchase Notice with respect to this Note, the Holder may withdraw such Fundamental Change Repurchase Notice (in whole or in part) with respect to this Note or any portion of this Note by delivering to the Company a written notice of withdrawal prior to the Close of Business on the second (2nd) Business Day immediately preceding the Fundamental Change Repurchase Date. Any such withdrawal notice must state the principal amount of this Note, if any, that remains subject to the Fundamental Change Repurchase Notice.

(b) *Return of Note*. Upon receipt of a validly delivered withdrawal notice, the Company will promptly return this Note or portion of this Note to the Holder, in the amount specified in such withdrawal notice.

Section 3.05 *Effect of Fundamental Change Repurchase Notice*.

(a) *General*. If the Holder validly delivers to the Company a Fundamental Change Repurchase Notice (together with all necessary endorsements) with respect to this Note, the Holder may no longer convert this Note unless and until the Holder validly withdraws such Fundamental Change Repurchase Notice in accordance with Section 3.04.

(b) *Timing of Payment*. Upon the Company's receipt of (i) a valid Fundamental Change Repurchase Notice (together with all necessary endorsements); and (ii) this Note to which such Fundamental Change Repurchase Notice pertains, the Holder will be entitled, except to the extent the Holder has validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 3.04, to receive the Fundamental Change Repurchase Price with respect to this Note on the later of the following (subject to extension to comply with applicable law): (x) the Fundamental Change Repurchase Date; and (y) the date of delivery of this Note to the Company, duly endorsed.

(c) *Effect of Payment*. Upon receipt by the Holder of the Fundamental Change Repurchase Price:

(A) this Note will cease to be outstanding and interest (except Default Interest) will cease to accrue on this Note, except to the extent provided in the proviso to Section 3.01(b); and

(B) all other rights of the Holder with respect to this Note (other than the right to receive payment of the Fundamental Change Repurchase Price upon delivery or transfer of this Note and any Defaulted Amounts or Default Interest with respect to this Note, and other than as provided in the proviso to Section 3.01(b)) will terminate.

Section 3.06 *Note Repurchased in Part*. If this Note is to be repurchased only in part, the Holder must surrender this Note to the Company, whereupon the Company will promptly deliver to the Holder a new Note of any denomination or denominations equal to the portion of the principal amount of this Note so surrendered which is not repurchased.

Section 3.07 *Covenant to Comply With Securities Laws Upon Repurchase of Note*. In connection with any repurchase offer pursuant to a Fundamental Change Repurchase Notice under this Article 3, the Company will comply with any applicable United States federal and state securities laws so as to permit the Holder to exercise its rights and obligations under this Article 3 in the time and in the manner specified in Sections 3.01 and 3.03.

ARTICLE 4
COVENANTS

Section 4.01 *Payment of Note.* The Company will pay or cause to be paid the principal of, Fundamental Change Repurchase Price for, and any accrued and unpaid interest (including, for the avoidance of doubt, any Additional Interest or Special Interest) on, this Note on the dates and in the manner required under this Note. To the extent lawful, the Company will also pay Default Interest on any Defaulted Amounts in accordance with Section 2.01.

Section 4.02 *144A Information* Whenever the Company is not subject to Section 13 or Section 15(d) of the Exchange Act, if this Note or shares of Common Stock, if any, issuable upon the conversion of this Note constitute "restricted securities" within the meaning of Rule 144, the Company will, upon the request of the Holder or beneficial owner of this Note, or a holder or beneficial owner of the Common Stock, if any, issuable upon the conversion of this Note, (i) promptly furnish or cause to be furnished to the applicable Holder, beneficial owner, or any prospective purchaser designated by the applicable Holder or beneficial owner, of this Note, or any holder, beneficial owner, or any prospective purchaser designated by the applicable holder or beneficial owner, of the Common Stock, as applicable, all of the information that a prospective purchaser of this Note or the Common Stock, as applicable, is required to receive under Rule 144A(d)(4) of the Securities Act for this Note or shares of Common Stock, as applicable, to be resold to such prospective purchaser pursuant to the exemption from registration provided by Rule 144A and (ii) make publicly available such information as necessary to permit sales pursuant to Rule 144, as the case may be.

Section 4.03 *Reports*. The Company will deliver to the Holder copies of all quarterly and annual reports that the Company is required to deliver to the SEC on Forms 10-Q and 10-K, respectively, and any other documents, information or other reports that the Company is required to file with the SEC under Sections 13 or 15(d) of the Exchange Act no later than the date that the Company is required to file such quarterly and annual reports, other documents, information or other reports with the SEC (after giving effect to any grace period provided by Rule 12b-25 under the Exchange Act). Any document filed by the Company with the SEC via the EDGAR system (or any successor thereto) will be deemed to be delivered to the Holder at the time such document is filed via the EDGAR system (or such successor). Notwithstanding anything to the contrary in the foregoing, nothing in this paragraph shall require the Company to deliver to any Holder any material for which the Company has sought and received, or is seeking and has not been denied, confidential treatment by the SEC.

Section 4.04 *Additional Interest.*

(a) *General*. Additional Interest will accrue on this Note to the extent provided in the Registration Rights Agreement, and the Company's obligation to pay any such Additional Interest will be deemed to be obligations under this Note with the same force and effect as if the relevant provisions of the Registration Rights Agreement were reproduced in this Note.

Section 4.05 *Compliance Certificate*.

(a) *Annual Compliance Certificate*. Within ninety (90) days after the end of each fiscal year of the Company, beginning with the fiscal year ending on December 31, 2017, the Company will deliver to the Holder an Officers' Certificate, which Officers' Certificate will state (i) that the Officers signing such Officers' Certificate have supervised a review of the activities of the Company and the Subsidiaries with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Note during the preceding fiscal year; and (ii) to the best knowledge of each of the Officers signing such Officers' Certificate, (A) whether the Company has kept, observed, performed and fulfilled each and every covenant contained in this Note and is not in default in the performance or observance of any of the terms, provisions and conditions of this Note (without regard to any period of grace or requirement of notice provided under this Note) or, if one or more Defaults or Events of Default have occurred, what events triggered such Defaults or Events of Default and what actions the Company is taking or proposes to take with respect to such Defaults or Events of Default; and (B) whether any event has occurred and remains in existence by reason of which any payment of the principal of, the Fundamental Change Repurchase Price for, or interest on, or any delivery of any of the consideration due upon conversion of, this Note is prohibited, and, if any such event has occurred and remains in existence, a description, in reasonable detail, of such event or events and what actions the Company is taking or proposes to take with respect to such event or events.

(b) *Certificate of Default or Event of Default*. Within five (5) Business Days after a Default or Event of Default occurs, the Company will deliver to the Holder an Officers' Certificate describing such Default or Event of Default, its status and a description, in reasonable detail, of what action the Company is taking or proposes to take with respect to such Default or Event of Default.

Section 4.06 *Corporate Existence*. Subject to Article 5, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect:

(a) its corporate existence, and the corporate, partnership or other existence of each of the Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company or any such Subsidiary; and

(b) the rights (charter and statutory), licenses and franchises of the Company and the Subsidiaries;

provided, however, that the Company will not be required to preserve or keep in full force and effect any such right, license or franchise, or the corporate, partnership or other existence of any of the Subsidiaries, if the Board of Directors determines that the preservation thereof is no longer desirable in the conduct of the business of the Company and the Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holder.

Section 4.07 *Par Value Limitation.* The Company will not take any action that, after giving effect to any adjustment pursuant to Section 8.05 or 8.07, would result in the Conversion Price becoming less than the par value of one share of Common Stock. In addition, the Company will not engage in any transaction that would require an adjustment to the Conversion Rate pursuant to Section 8.06 that would cause the Conversion Price to be less than the par value of one share of Common Stock.

Section 4.08 *Stay, Extension and Usury Laws*. The Company covenants that, to the extent that it may lawfully do so, it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Note.

Section 4.09 *Further Instruments and Acts*. Upon request of the Holder, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the terms of this Note.

ARTICLE 5
CONSOLIDATION, MERGER AND SALE OF ASSETS

Section 5.01 *Company May Consolidate, Merge or Sell Its Assets Only on Certain Terms*. The Company will not (1) consolidate with or merge with or into; or (2) sell, lease or otherwise transfer all or substantially all of the consolidated assets of the Company and its Subsidiaries to, another Person (any such transaction, a "**Reorganization Event**"), unless:

(a) either:

(i) the Company is the surviving corporation; or

(ii) the resulting, surviving or transferee Person (if other than the Company) of such Reorganization Event (the "**Reorganization Successor Corporation**"):

(I) 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

(II) expressly assumes all of the obligations of the Company under this Note;

(b) immediately after giving effect to such Reorganization Event, no Default will have occurred and be continuing; and

(c) prior to the effective date of such Reorganization Event, the Company delivers to the Holder an Officers' Certificate and an Opinion of Counsel, each stating that:

(i) such Reorganization Event complies with Section 5.01(a);

(ii) all conditions precedent to such Reorganization Event provided in this Note have been satisfied; and

(iii) this Note constitutes the legal, valid and binding obligation of the Reorganization Successor Corporation (subject to customary limitations);

Section 5.02 *Successor Substituted*. If any Reorganization Event occurs that complies with Sections 5.01(a)(ii) and 5.01(b), and the Company has complied with Section 5.01(c):

(a) from and after the date of such Reorganization Event, the Reorganization Successor Corporation for such Reorganization Event will succeed to, and be substituted for, and may exercise every right and power of, and shall assume all obligations of, the Company under this Note with the same effect as if such Reorganization Successor Corporation had been named as the Company herein.

(b) except in the case of a Reorganization Event that is a conveyance, transfer or lease of all or substantially all of the Company's assets, the Person named as the "Company" in the first paragraph of this Note or any successor (other than such Reorganization Successor Corporation that will thereafter have become such in the manner prescribed in this Article 5) will be discharged from its obligations under this Note and may be dissolved, wound up and liquidated at any time.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default.*

(a) *General*. Each of the following events will be an "**Event of Default**":

(i) the Company fails to pay the principal of this Note (including any Fundamental Change Repurchase Price) when due at maturity or upon repurchase upon a Fundamental Change or declaration of acceleration or otherwise;

(ii) the Company fails to pay any interest on this Note when due and such failure continues for a period of thirty (30) days after the applicable due date;

(iii) the Company fails to give any Fundamental Change Notice or notice of a Make-Whole Fundamental Change, in each case, when due;

(iv) the Company fails to comply with its obligation to convert this Note in accordance with Article 8 upon the Holder's exercise of its conversion rights with respect to this Note;

(v) the Company fails to comply with its obligations under Article 5;

(vi) the Company fails to perform or observe any of its covenants or warranties in this Note (other than a covenant or agreement specifically addressed in clauses (i) through (v) above) and such failure continues for a period of sixty (60) days after days after written notice to the Company by holders of at least 25% of the Series then outstanding;

(vii) the default by the Company or any Subsidiary with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed by the Company and/or any Subsidiary in excess of one million dollars ($1,000,000) in the aggregate, whether such indebtedness exists as of the Issue Date or is later created, if that default:

(A) results in such indebtedness becoming or being declared due and payable (prior to its express maturity); or

(B) constitutes a failure to pay the principal of, or interest on, such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, and after the expiration of any applicable grace period,

and, such acceleration shall not have been rescinded or annulled or such failure to pay shall not have been cured, as the case may be, within thirty (30) days after written notice to the Company by the holders of at least 25% of the Series then outstanding;

(viii) a final judgment for the payment of in excess of one million dollars ($1,000,000) (excluding any amounts covered by insurance) is rendered against the Company or any Subsidiary, and such judgment is not discharged or stayed within sixty (60) days after (i) the date on which all rights to appeal such judgment have expired if no appeal has commenced; or (ii) the date on which all rights to appeal have been extinguished;

(ix) the Company or any Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case;

(B) consents to the entry of an order for relief against it in an involuntary case;

(C) consents to the appointment of a Custodian of it or for any substantial part of its property;

(D) makes a general assignment for the benefit of its creditors;

(E) takes any comparable action under any foreign laws relating to insolvency; or

(F) generally is not paying its debts as they become due; or

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

(A) is for relief against Company or any Significant Subsidiary in an involuntary case or proceeding;

(B) appoints a Custodian of the Company or any Significant Subsidiary, or for any substantial part of the property of the Company or any Significant Subsidiary;

(C) orders the winding up or liquidation of the Company or any Significant Subsidiary; or

(D) grants any similar relief under any foreign laws,

and, in each such case, the order or decree remains unstayed and in effect for sixty (60) days.

(b) *Cause Irrelevant*. Each of the events enumerated in Section 6.01(a) will constitute an Event of Default whatever the cause and regardless of whether voluntary or involuntary or 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.

Section 6.02 *Acceleration*.

(a) *Automatic Acceleration in Certain Circumstances*. If an Event of Default specified in Sections 6.01(a)(ix) or 6.01(a)(x) occurs with respect to the Company, the principal amount of, and all accrued and unpaid interest, if any, on this Note will immediately become due and payable without any further action or notice by any party.

(b) *Optional Acceleration*. If any Event of Default other than an Event of Default specified in Section 6.01(a)(ix) or 6.01(a)(x) occurs and is continuing, the holders of at least 25% of the aggregate principal amount of the Series then outstanding, by delivering a written notice to the Company, may declare the principal amount of, and all accrued and unpaid interest, if any, on all then outstanding notes in the Series immediately due and payable, and upon such declaration, the principal amount of, and all accrued and unpaid interest, if any, on all then outstanding notes in the Series will immediately become due and payable.

(c) *Rescission of Acceleration*. Notwithstanding anything to the contrary in this Note, holders of a majority of the aggregate principal amount of the Series then outstanding may, on behalf of the holders of all then outstanding notes in the Series, rescind any acceleration of such notes and its consequences hereunder by delivering written notice to the Company if (i) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and (ii) all existing Events of Default (other than the nonpayment of the principal of, interest, if any, on, or the Fundamental Change Repurchase Price for, the notes in the Series that have become due solely as a result of acceleration) have been cured or waived. No such rescission will affect any subsequent Default or impair any right consequent thereto.

Section 6.03 *Other Remedies*. If an Event of Default occurs and is continuing, the Holder may pursue any available remedy to collect the payment of principal, accrued and unpaid interest, if any, or payment of the Fundamental Change Repurchase Price for, this Note or to enforce the performance of any provision of this Note regarding any other matter.

A delay or omission by the Holder in exercising any right or remedy accruing upon an Event of Default will not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 6.04 *Sole Remedy for Failure to Report.*

(a) *General*. Notwithstanding anything to the contrary in this Note, the Company may elect that the sole remedy for any Event of Default specified in Section 6.01(a)(vi) relating to the Company's failure to comply with Section 4.03 (a "**Reporting Event of Default**") will, for the period beginning on the date on which such Reporting Event of Default first occurred and ending on the earlier of (A) the date on which such Reporting Event of Default (i) is cured; or (ii) is validly waived in accordance with Section 6.05; and (B) the sixtieth (60th) calendar day immediately following the date on which such Reporting Event of Default first occurred, consist exclusively of the right to receive additional interest (the "**Special Interest**") on this Note at a rate equal to 0.50% per annum on the principal amount of this Note. Any Special Interest will be payable in the same manner and on the same dates as the stated interest payable on this Note and will accrue in addition to any Additional Interest that the Company is obligated to pay.

(b) *Limitation on Remedy*. If (i) a Reporting Event of Default occurs and the Company elects that the sole remedy with respect to such Reporting Event of Default will be the Special Interest; and (ii) on the sixty first (61st) day immediately following, and including, the date on which such Reporting Event of Default first occurred, such Reporting Event of Default has not been cured or validly waived in accordance with Section 6.05, then this Note will become subject to acceleration under Section 6.02(a) on account of such Reporting Event of Default. For the avoidance of doubt, Special Interest will cease to accrue from such sixty first (61st) day, without limiting the generality of this Section 6.04 as it may apply to any subsequent Reporting Event of Default.

(c) *Company Election Notice*. To elect to pay the Special Interest as the sole remedy for a Reporting Event of Default, the Company must deliver written notice of such election to the Holder prior to the date on which such Reporting Event of Default first occurs. Any such notice must include a brief description of the report that the Company failed, or will fail, to file, a statement that the Company is electing to pay the Special Interest and the date on which such Reporting Event of Default will occur. If a Reporting Event of Default occurs and the Company fails to timely deliver such notice for such Reporting Event of Default or fails to pay the Special Interest, this Note will be subject to acceleration under Section 6.02(a) on account of such Reporting Event of Default.

(d) *Other Events of Default*. Notwithstanding anything to the contrary herein, if the Company elects to pay Special Interest with respect to any Reporting Event of Default, the Company's election will not affect the rights of the Holder with respect to any other Event of Default, including with respect to any other Reporting Event of Default; *provided*, that, for the avoidance of doubt, in no event will the Company be obligated to pay Special Interest at a rate greater than 0.50% per annum on the principal amount of this Note.

Section 6.05 *Waiver of Past Defaults*. If an Event of Default described in Sections 6.01(a)(i), 6.01(a)(ii), 6.01(a)(iv) or 6.01(a)(vi) (which, in the case of Section 6.01(a)(vi) only, relates to a covenant that cannot be amended without the consent of each affected holder of a note in the Series) or a Default that would lead to such an Event of Default occurs and is continuing, such Event of Default or Default may be waived only with the consent of each affected holder of a note in the Series. Every other Event of Default or Default may be waived by the holders of a majority of the aggregate principal amount of the outstanding Series (including consents obtained in connection with a repurchase of, or tender offer or exchange offer for, notes in the Series). Whenever any Event of Default is so waived, it will cease to exist, and whenever any Default is so waived, it will be deemed cured and any Event of Default arising therefrom will be deemed not to occur. However, no such waiver will extend to any subsequent or other Default or Event of Default or impair any consequent right

ARTICLE 7
SATISFACTION AND DISCHARGE

Section 7.01 *Discharge of Liability on Note*. When (a) this Note becomes due and payable, and the Company delivers to the Holder, as applicable, cash (or, solely to satisfy amounts due and owing as a result of conversions of this Note, Conversion Consideration), sufficient to pay all amounts due and owing on this Note and (b) the Company pays all other sums payable by it under this Note, this Note will cease to be of further effect and the Holder will acknowledge the satisfaction and discharge of this Note.

ARTICLE 8
CONVERSIONS

Section 8.01 *Right To Convert*.

(a) *In General*. Subject to, and upon compliance with, the provisions of this Article 8, at any time prior to the Close of Business on the second (2nd) Business Day immediately preceding the Maturity Date, the Holder may, at its option, convert this Note (or any portion thereof) into Conversion Consideration, as provided in this Article 8. This Note may not be converted after the Close of Business on the second (2nd) Business Day immediately preceding the Maturity Date.

(b) *Closed Periods*. Notwithstanding anything to the contrary in this Note, if the Holder tenders a Repurchase Notice with respect to this Note in accordance with Article 3, this Note may not be converted except to the extent (i) this Note is not subject to such Repurchase Notice, (ii) such Repurchase Notice is withdrawn in accordance with Article 3 or (iii) the Company fails to pay the Fundamental Change Repurchase Price for this Note in accordance with Section 3.05(b).

Section 8.02 *Conversion Procedures*.

(a) *General*. To exercise its conversion right with respect to this Note, the Holder must (i) complete and manually sign a conversion notice in the form set forth in Exhibit A hereto, or a facsimile of such conversion notice (such notice, or such facsimile, the "**Conversion Notice**"); (ii) deliver such signed and completed Conversion Notice, which shall be irrevocable, and this Note to the Company; (iii) furnish any endorsements and transfer documents that the Company may require; and (iv) pay any amounts due pursuant to Section 8.02(d) or 8.02(e). The first Business Day on which the Holder satisfies the foregoing requirements with respect to this Note and on which conversion of this Note is not otherwise prohibited hereunder will be the "**Conversion Date**" for this Note. If the Holder has delivered a Fundamental Change Repurchase Notice with respect to this Note, the Holder may not surrender this Note for conversion until the Holder has withdrawn such Fundamental Change Repurchase Notice in accordance with Section 3.04. The conversion of this Note will be deemed to occur at the Close of Business on the Conversion Date for this Note, and this converted Note or portion thereof will cease to be outstanding upon conversion.

(b) *Holder of Record.* If the Holder surrenders the entire principal amount of this Note for conversion, the Holder will no longer be the Holder of this Note as of the Close of Business on the Conversion Date for this Note. The person in whose name any shares of Common Stock are issuable upon conversion of this Note will become the holder of record of such shares as of the Close of Business on the Conversion Date for such conversion.

(c) *Conversions in Part*. If the Holder surrenders only a portion of the principal amount of this Note for conversion, promptly after the Conversion Date for such portion, the Company will deliver to the Holder a new Note, having a principal amount equal to the aggregate principal amount of the unconverted portion of the Note surrendered for conversion.

(d) *Reimbursement of Interest upon Conversion*. If the Holder converts this Note after the Close of Business on a Regular Record Date, but prior to the Open of Business on the Interest Payment Date corresponding to such Regular Record Date, then (x) the Holder at the Close of Business on such Regular Record Date shall be entitled, notwithstanding such conversion, to receive, on the date the Company delivers (or is required to deliver) the Conversion Consideration due in respect of such conversion, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date); and (y) the Holder must, upon surrender of this Note for conversion, accompany this Note with an amount of cash equal to the amount of such interest referred to in clause (x) above; *provided, however*, that the Holder need not make such payment (A) for conversions following the Regular Record Date immediately preceding the Maturity Date; (B) if the Company has specified a Fundamental Change Repurchase Date that is after such Regular Record Date and on or prior to the Business Day immediately following such Interest Payment Date; or (C) to the extent of any overdue interest, if any overdue interest exists at the time of conversion with respect to this Note. For the avoidance of doubt, the Holder at the Close of Business on the Regular Record Date immediately preceding the Maturity Date will be entitled to receive interest that accrues (or would have accrued) on this Note to, but excluding, the Maturity Date notwithstanding any conversion of this Note.

(e) *Taxes and Duties.* If the Holder converts this Note, the Company will pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of the Common Stock upon the conversion; *provided*, *however*, that if any tax is due because the Holder requested that shares of Common Stock be issued in a name other than its own, the Holder will pay such tax and the Company, until having received a sum sufficient to pay such tax, may refuse to deliver any certificates representing the shares of Common Stock being issued in a name other than that of the Holder.

(f) *Restrictions on Conversion*. Notwithstanding anything to the contrary in this Note, this Note will not be convertible by the Holder, and the Company will not effect any conversion of this Note, in each case to the extent (and only to the extent) that such convertibility or conversion would result in the Holder or any of its Affiliates beneficially owning in excess of 9.99% of the then-outstanding shares of Common Stock. For these purposes, beneficial ownership and all determinations and calculations (including with respect to calculations of percentage ownership) will be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For the avoidance of doubt, if the convertibility of this Note is restricted pursuant to this Section 8.02(f), this Note will continue to be outstanding, and its convertibility will be reinstated if and when the convertibility and conversion will not violate the limitations set forth in this Section 8.02(f).

Section 8.03 *Settlement Upon Conversion*.

(a) *Conversion Obligation.*

(i) *Conversion Consideration*. Subject to the terms hereof, upon conversion of this Note, the consideration (the "**Conversion Consideration**") due in respect of each $1,000 principal amount of this Note to be converted will consist of (I) a whole number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such conversion (which, if not a whole number, will be rounded down to the nearest whole number); (II) in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata number of shares and (III) if such Conversion Rate is not a whole number, cash in lieu of the related fractional share in an amount equal to the product of (x) the Last Reported Sale Price per share of Common Stock on such Conversion Date (or, if such Conversion Date is not a Trading Day, the immediately preceding Trading Day) and (y) the fractional portion of such Conversion Rate.

(ii) *Delivery of Conversion Consideration*. Except as set forth in Section 8.05, the Company will pay or deliver, as the case may be, the Conversion Consideration due upon the conversion of this Note to the Holder on the third (3rd) Business Day immediately following the Conversion Date for such conversion.

(b) *Settlement of Accrued Interest and Deemed Payment of Principal*. If the Holder converts this Note, the Company will not adjust the Conversion Rate to account for any accrued and unpaid interest on this Note, and, except as provided in Section 8.02(d), the Company's delivery of the Conversion Consideration due upon such conversion will be deemed to satisfy and discharge in full the Company's obligation to pay the principal of this Note and accrued and unpaid interest, if any, on, this Note to, but excluding the Conversion Date. As a result, except as provided in Section 8.02(d), any accrued and unpaid interest with respect to this Note, in the event that it is converted, will be deemed to be paid in full rather than cancelled, extinguished or forfeited.

Section 8.04 *Common Stock Issued Upon Conversion.*

(a) The Company will reserve out of its authorized but unissued shares of Common Stock, and keep available to satisfy conversion of this Note, a number of shares of Common Stock sufficient to permit the conversion this Note, after giving effect to the largest number of Additional Shares that may from time to time be added to the Conversion Rate as provided in Section 8.07.

(b) Any shares of Common Stock delivered upon the conversion of this Note will be newly issued shares or treasury shares, duly and validly issued, fully paid, nonassessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of the Holder or other Person to whom such shares of Common Stock will be delivered). In addition, the Company will endeavor to comply promptly with all federal and state securities laws regulating the offer and delivery of any shares of Common Stock issuable upon conversion of this Note. The Company will also use its best efforts to cause any shares of Common Stock issuable upon conversion of this Note to be listed on whatever stock exchange(s) the Common Stock is listed on the date the Holder becomes a record holder of such Common Stock.

Section 8.05 *Adjustment of Conversion Rate*. The Company will adjust the Conversion Rate from time to time as described in this Section 8.05, except that the Company will not make an adjustment to the Conversion Rate if the Holder participates (other than in a share split or share combination), at the same time and upon the same terms as holders of the Common Stock, and solely as a result of holding this Note, in the relevant transaction described in this Section 8.05 without having to convert its Note and as if it held a number of shares of the Common Stock equal to the product of (i) the Conversion Rate in effect on the applicable record date, Effective Date or expiration date; and (ii) the aggregate principal amount of this Note (expressed in thousands) on such date.

(a) *Stock Dividends and Share Splits*. If the Company exclusively issues to all or substantially all holders of the Common Stock shares of Common Stock as a dividend or distribution on shares of the outstanding Common Stock, or if the Company effects a share split of the Common Stock or a share combination of the Common Stock (excluding an issuance solely pursuant to a Common Stock Change Event, as to which the provisions set forth in Section 8.08(a) will apply), the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where:

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the Open of Business on the Effective Date of such share split or share combination, as applicable;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date or Effective Date, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date or Effective Date, as applicable; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination, as applicable.

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date or Effective Date, as applicable. If any dividend, distribution, share split or share combination of the type described in this Section 8.05(a) is declared, but not so paid or made, the Conversion Rate will be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or to effect such share split or share combination, to the Conversion Rate that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

(b) *Rights, Options and Warrants*. If the Company issues, to all or substantially all holders of its outstanding Common Stock, rights, options or warrants entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such issuance, to subscribe for, or purchase, shares of Common Stock, at a price per share less than the average of the Last Reported Sale Prices per share of the Common Stock for the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, then, subject to the provisions described below with respect to rights issued pursuant to a stockholder rights plan, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS + X}{OS + Y}$$

where:

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such issuance;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

OS = the number of shares of Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date;

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

Y = the number of shares of Common Stock equal to the quotient of (i) the aggregate price payable to exercise such rights, options or warrants, over (ii) the average of the Last Reported Sale Prices per share of the Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants, including because the issued rights, options or warrants were not exercised, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect if the Ex-Dividend Date for such issuance had not occurred.

For purposes of this Section 8.05(b), in determining whether any rights, options or warrants entitle holders of the Common Stock to subscribe for, or purchase, shares of Common Stock at a price per share less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement for an issuance, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) *Spin-Offs and Other Distributed Property*.

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

(A) dividends, distributions, rights, options or warrants for which an adjustment was effected pursuant to Section 8.05(a) or 8.05(b), as applicable;

(B) dividends or distributions paid exclusively in cash for which an adjustment was effected pursuant to Section 8.05(d);

(C) Spin-Offs for which the provisions described in Section 8.05(c)(ii) will apply; and

(D) an issuance solely pursuant to a Common Stock Change Event, as to which the provisions set forth in Section 8.08(a) will apply,

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

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where:

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

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

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

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

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date. Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than the "SP_0" (as defined above), in lieu of the foregoing increase, the Holder will receive, for each $1,000 principal amount of this Note outstanding on the record date for the distribution, at the same time and upon the same terms as holders of the Common Stock, the amount and kind of shares of Capital Stock, evidences of indebtedness, assets or property, rights, options or warrants or other securities that the Holder would have received if the Holder had owned a number of shares of Common Stock equal to the Conversion Rate in effect on the record date for such distribution (or in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata amount).

If any distribution of the type described in this Section 8.05(c)(i) is not so paid or made, or if any rights, options or warrants are not exercised before their expiration date, the Conversion Rate will be readjusted to be the Conversion Rate that would then be in effect if such distribution had not been declared.

(ii) With respect to an adjustment pursuant to this Section 8.05(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to an Affiliate, a Subsidiary or other business unit of the Company, and such Capital Stock or similar equity interest is listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a national securities exchange or a reasonably comparable non-U.S. equivalent (a "**Spin-Off**"), but excluding an issuance solely pursuant to a Common Stock Change Event as to which the provisions described in Section 8.08(a) apply, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where:

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

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

FMV_0 = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of Common Stock (determined for purposes of the definition of Last Reported Sale Price as if such Capital Stock or similar equity interest were the Common Stock) over the first ten (10) consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the "**Valuation Period**"); and

MP_0 = the average of the Last Reported Sale Prices per share of the Common Stock over the Valuation Period.

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date. The adjustment to the Conversion Rate under this Section 8.05(c)(ii) will be calculated as of the Close of Business on the last Trading Day of the Valuation Period but will be given effect as of immediately after the Open of Business on the Ex-Dividend Date of the Spin-Off. Notwithstanding anything to the contrary herein or in this Note, if necessary, the Company shall delay the settlement of any conversion of this Note where the Conversion Date occurs during the Valuation Period until the third (3rd) Business Day after the last day of the Valuation Period. If any distribution of the type described in this Section 8.05(c)(ii) is declared but not so made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to make such distribution, to the Conversion Rate that would then be in effect if such distribution had not been declared.

(d) *Cash Dividends or Distributions*. If any cash dividend or distribution (other than a distribution as to which an adjustment to the Conversion Rate was effected pursuant to Section 8.05(e)) is made to all or substantially all holders of the Common Stock, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where:

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

CR_1 = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution;

SP_0 = the Last Reported Sale Price per share of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

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

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, the Holder will receive, for each $1,000 principal amount of this Note outstanding on the record date for such cash dividend or distribution, at the same time and upon the same terms as holders of the Common Stock, the amount of cash that the Holder would have received if the Holder had owned a number of shares of Common Stock equal to the Conversion Rate in effect on such record date (or in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata number of shares). If any dividend or distribution of the type described in this Section 10.05(d) is declared but not so paid or made, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(e) *Tender Offers or Exchange Offers*. If the Company or any Subsidiary makes a payment in respect of a tender offer or exchange offer for the Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the Last Reported Sale Price per share of the Common Stock on the Trading Day next succeeding the last date (the "**Expiration Date**") on which tenders or exchanges may be made pursuant to such tender offer or exchange offer (as it may be amended), the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where:

CR_0 = the Conversion Rate in effect immediately prior to the Expiration Time (as defined below);

CR_1 = the Conversion Rate in effect immediately after the Expiration Time;

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

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

OS_1 = the number of shares of Common Stock outstanding immediately after the Expiration Time (after giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer); and

SP_1 = the average of the Last Reported Sale Prices per share of the Common Stock over the ten (10) consecutive Trading Day period (the "**Averaging Period**") commencing on the Trading Day next succeeding the Expiration Date.

The adjustment to the Conversion Rate pursuant to this Section 8.05(e) will be calculated as of the Close of Business on the last Trading Day of the Averaging Period but will be given effect as of immediately after the Expiration Time. Notwithstanding anything to the contrary herein, if necessary, the Company shall delay the settlement of any conversion of this Note where the Conversion Date occurs during the Averaging Period until the third (3rd) Business Day after the last day of the Averaging Period.

(f) *Successive Adjustments*. After an adjustment to the Conversion Rate under this Article 8, any subsequent event requiring an adjustment under this Article 8 will cause an adjustment to the Conversion Rate as so adjusted, without duplication.

(g) *Limitations Imposed by Stock Market Listing Standards.* The Company will not enter into any transaction, or take any other voluntary action, that would result in an adjustment to the Conversion Rate that would violate the listing standards of any securities exchange on which any securities of the Company may be then listed, without complying, if applicable, with the requirements of such listing standards.

(h) *Special Settlement Provisions*. Notwithstanding anything to the contrary herein, if:

(i) this Note is to be converted and, as of the Conversion Date for such conversion, any transaction or other event that requires an adjustment to the Conversion Rate pursuant to Sections 8.05(a) through (e) has occurred but has not yet resulted in an adjustment to the Conversion Rate;

(ii) the consideration due upon such conversion consists of any shares of Common Stock; and

(iii) such shares of Common Stock are not entitled to participate in such transaction or event because they were not held on the related record date or otherwise, then, solely for purpose of such conversion, the Company shall, without duplication, give effect to such adjustment on such Conversion Date.

In addition, notwithstanding anything to the contrary herein, if:

(i) a Conversion Rate adjustment for any transaction or other event becomes effective on any Ex-Dividend Date pursuant to Sections 8.05(a) through (e);

(ii) this Note is to be converted;

(iii) the Conversion Date for such conversion occurs on or after such Ex-Dividend Date and on or before the related record date;

(iv) the consideration due upon such conversion includes any whole shares of Common Stock; and

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

then such Conversion Rate adjustment shall not be given effect for such conversion. Instead, the Holder will be treated as if the Holder were, as of such record date, the record holder of such shares of Common Stock on an unadjusted basis and will participate in such transaction or event.

(i) *Shareholder Rights Plans*. If the Company has a rights plan in effect when the Holder converts this Note, the Company will deliver to the Holder, to the extent the Holder receives any shares of Common Stock upon such conversion of this Note, any rights that, under the rights plan, would be applicable to a share of Common Stock, unless prior to the Conversion Date for this Note, the rights have separated from the Common Stock, in which case, and only in such case, the Conversion Rate will be adjusted pursuant to Section 8.05(c)(i) as if, at the time of such separation, the Company had distributed to all holders of the Common Stock shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities, subject to readjustment in the event of the expiration, termination or redemption of such rights.

(j) *Other Adjustments.* Whenever any provision of this Note requires the calculation of the Last Reported Sale Price or a function thereof over a period of multiple days (including the Stock Price for purposes of a Make-Whole Fundamental Change), the Company will make appropriate adjustments to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Effective Date or expiration date of the event occurs, at any time during such period.

(k) *Restrictions on Adjustments*. Except as a result of a reverse share split or a share combination subject to Section 8.05(a), and except for readjustments pursuant to the last paragraph of Section 8.05(a), readjustments pursuant to the penultimate paragraph of Section 8.05(b), readjustments pursuant to the last paragraph of Section 8.05(c)(i), readjustments pursuant to the penultimate paragraph of Section 8.05(c)(ii) and readjustments pursuant to Section 8.05(d), in no event will the Conversion Rate be adjusted downward pursuant to Section 8.05(a), (b), (c), (d) or (e). In addition, notwithstanding anything to the contrary elsewhere in this Note, the Conversion Rate will not be adjusted:

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

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

(iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in the preceding clause and outstanding as of the date of the Issue Date;

(iv) upon the repurchase of any shares of Common Stock pursuant to an open-market share repurchase program or other buy-back transaction that is not a tender offer or exchange offer subject to Section 10.05(e);

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

(vi) for accrued and unpaid interest.

(l) *Miscellaneous*.

(i) *Certain Definitions.*

(II) For purposes of this Section 8.05, the number of shares outstanding at any time will include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; but, so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, will not include shares of Common Stock held in the treasury of the Company.

(III) For purposes of this Section 8.05, the term "**Effective Date**" will mean the first date on which the Common Stock trades on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

(IV) For purposes of this Article 8, the term "**Ex-Dividend Date**" will mean the first date on which the shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

(ii) *Notices*. Whenever the Company adjusts (or is required to adjust) the Conversion Rate pursuant to this Section 8.05, the Company will promptly deliver to the Holder a written notice, which notice will include (i) a brief description of the event requiring adjustment to the Conversion Rate pursuant to this Section 8.05; (ii) the effective time of such adjustment; (iii) the Conversion Rate in effect immediately after such adjustment is made; and (iv) a schedule explaining, in reasonable detail, how the Company calculated such adjustment.

(iii) All calculations and other determinations in respect of the Conversion Rate will be made by the Company to the nearest 1/10,000th of a share, with 5/100,000ths rounded upward.

Section 8.06 *Voluntary Adjustments*.

(a) *Best Interest Increases*. The Company may, from time to time, to the extent permitted by law and the applicable rules of any exchange on which the Common Stock is listed, increase the Conversion Rate by any amount if (i) the Board of Directors determines that such increase is in the best interest of the Company; (ii) such increase is in effect for a period of at least twenty (20) Business Days; and (iii) during such period, such increase is irrevocable.

(b) *Tax-Related Increases*. To the extent permitted by law and the applicable rules of any exchange on which the Common Stock is listed, the Company may (but is not required to) increase the Conversion Rate if the Board of Directors determines that such increase is advisable to avoid, or diminish, any income tax imposed on holders of the Common Stock or rights to purchase the Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) or similar event treated as such for U.S. federal income tax purposes.

(c) *Notices*. Whenever the Board of Directors determines that the Company will increase the Conversion Rate pursuant to this Section 8.06, the Company will deliver to the Holder notice of such increase at least fifteen (15) Business Days before such increase will take effect, which notice will state the increase to be made and the period during which such increase will be in effect.

Section 8.07 *Adjustments Upon Certain Fundamental Changes*.

(a) *General*. If a Fundamental Change (determined after giving effect to the penultimate paragraph of the definition thereof, but without regard to the exclusion in clause (b)(ii) of the definition thereof) occurs (a "**Make-Whole Fundamental Change**"), and the Holder converts this Note "in connection with" such Make-Whole Fundamental Change, the Company will, in the circumstances described in this Section 8.07, increase the Conversion Rate for this Note by the number of additional shares of Common Stock (the "**Additional Shares**") set forth in this Section 8.07. For purposes of this Section 8.07, a conversion of this Note will be deemed to be "in connection with" a Make-Whole Fundamental Change if the applicable Conversion Date occurs during the period from, and including, the effective date of the Make-Whole Fundamental Change up to, and including, the Business Day immediately prior to the related Fundamental Change Repurchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the exclusion in clause (b)(ii) of the definition thereof, the thirty fifth (35th) Trading Day immediately following the effective date of such Make-Whole Fundamental Change). As promptly as practicable, but in no event later than the Business Day after the effective date of a Make-Whole Fundamental Change, the Company will notify the Holder of such effective date.

(b) *Determination of Additional Shares*. The number of Additional Shares, if any, by which the Conversion Rate will be increased if the Holder converts this Note in connection with a Make-Whole Fundamental Change will be determined by reference to the table below, and will be based on the Make-Whole Fundamental Change Effective Date and the Stock Price for such Make-Whole Fundamental Change. For any Make-Whole Fundamental Change, the "**Make-Whole Fundamental Change Effective Date**" will mean the date on which such Make-Whole Fundamental Change occurs or becomes effective.

(c) *Adjustment of Stock Prices and Additional Shares*. The Stock Prices set forth in the first row (*i.e.*, the column headers) of the table below will be adjusted on each date on which the Conversion Rate must be adjusted pursuant to Section 8.05. The adjusted Stock Prices will equal the Stock Prices in effect immediately prior to such adjustment, multiplied by a fraction, (i) the numerator of which is the Conversion Rate in effect immediately prior to the adjustment giving rise to the share price adjustment; and (ii) the denominator of which is the Conversion Rate in effect immediately after the adjustment. The numbers of Additional Shares set forth in the table below will be adjusted in the same manner, at the same time and for the same events for which the Conversion Rate is adjusted pursuant to Section 8.05.

(d) *Additional Shares Table*. The following table sets forth hypothetical Make-Whole Fundamental Change Effective Dates, Stock Prices and the number of Additional Shares by which the Conversion Rate will be increased per $1,000 principal amount of this Note for the Holder that converts this Note in connection with a Make-Whole Fundamental Change having such Make-Whole Fundamental Change Effective Date and Stock Price. In the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, the Conversion Rate will be increased by an equivalent pro rata number of shares.

	Stock Price									
Effective Date	$0.60	$0.76	$2.90	$3.50	$3.88	$5.00	$6.00	$8.00	$12.00	$16.00
January 17, 2017	355.4918	236.8878	162.5063	130.9858	70.8763	39.1640	21.6412	0.0000	0.0000	0.0000
January 17, 2018	355.4918	201.4220	132.1653	105.7891	57.5709	31.9951	16.7018	0.0000	0.0000	0.0000
January 17, 2019	355.4918	159.9914	95.7987	75.8657	41.7694	25.8873	11.4030	0.0000	0.0000	0.0000
January 17, 2020	355.4918	109.1105	51.7587	40.7040	23.0112	13.2302	5.9770	0.0000	0.0000	0.0000
January 17, 2021	355.4918	2.0122	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

(e) *Use of Additional Shares Table*. If the Stock Price and/or Make-Whole Fundamental Change Effective Date for a Make-Whole Fundamental Change are not set forth in the table above, then:

(A) if the Stock Price is between two Stock Prices in the table or the Make-Whole Fundamental Change Effective Date is between two Make-Whole Fundamental Change Effective Dates in the table, the number of Additional Shares by which the Conversion Rate will be increased for the Holder that converts this Note in connection with such Make-Whole Fundamental Change will be determined by a straight-line interpolation between the numbers of Additional Shares set forth for the higher and lower Stock Prices listed in the table and the earlier and later Make-Whole Fundamental Change Effective Dates listed in the table, as applicable, based on a 365- or 366-day year, as applicable;

(B) if the Stock Price is greater than $8.00, subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table, no Additional Shares will be added to the Conversion Rate; and

(C) if the Stock Price is less than $0.60 per share, subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table, no Additional Shares will be added to the Conversion Rate.

Notwithstanding the foregoing, in no event will the Conversion Rate be increased as a result of this Section 8.07 to exceed 1,673.1918 shares of Common Stock per $1,000 principal amount of this Note, subject to adjustment in the same manner, at the same time and for the same events for which the Conversion Rate must be adjusted as set forth in Section 8.05.

(f) *Settlement or Conversion*. If the Holder converts this Note in connection with a Make-Whole Fundamental Change, the Company will settle such conversion by delivering Conversion Consideration in accordance with Section 8.03; *provided*, *however*, that notwithstanding anything to the contrary in Section 8.03, if the Holder converts this Note in connection with a Make-Whole Fundamental Change described in clause (b)(ii) of the definition of Fundamental Change in which the holders of the Common Stock receive only cash in consideration for their shares of Common Stock, the Company will settle such conversion by delivering to the Holder, on the third (3rd) Business Day immediately following the Conversion Date for this Note, an amount of cash, for each $1,000 principal amount of this Note so converted, equal to the product of (i) the Conversion Rate on the Conversion Date applicable to this Note (including any Additional Shares added to such Conversion Rate pursuant to this Section 8.07) and (ii) the Stock Price for such Make-Whole Fundamental Change, or in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata amount.

Section 8.08 *Effect of Recapitalization, Reclassification, Consolidation, Merger or Sale*.

(a) *General*. If any of the following events occur:

(1) any recapitalization, reclassification or change of Common Stock (other than (x) a change only in par value, from par value to no par value or no par value to par value; or (y) changes resulting from a stock split or combination not involving the issuance of any other class or series of securities);

(2) any consolidation, merger, combination or similar transaction involving the Company;

(3) any sale, lease or other transfer to a third party of all or substantially all of the consolidated assets of the Company and its Subsidiaries substantially as an entirety; or

(4) any statutory share exchange,

and, in each case, as a result of which the Common Stock would be converted into, or exchanged for, or represent solely the right to receive, stock (including one or more series of the Common Stock), other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Common Stock Change Event**" and such stock, other securities, other property or assets, the "**Reference Property**", and the amount and kind of Reference Property that a holder of one share of Common Stock would be entitled to receive on account of such Common Stock Change Event, a "**Reference Property Unit**"), then, notwithstanding anything to the contrary, at the effective time of such transaction, the consideration due upon a conversion of this Note will be determined in the same manner as if each reference to any number of shares of Common Stock in this Article 8 were instead a reference to the same number of Reference Property Units. For these purposes, the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration (determined based in part upon any form of stockholder election), then the composition of the Reference Property Unit shall be deemed to be (a) the weighted average, per share of Common Stock, of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election; or (b) if no holders of the Common Stock affirmatively make such an election, the types and amounts of consideration actually received, per share of Common Stock, by the holders of the Common Stock. The Company shall notify the Holder of such weighted average (if applicable) as soon as practicable after such determination is made.

None of the foregoing provisions will affect the right of the Holder to convert this Note as set forth in Section 8.01 and 8.02 prior to the effective date of such Common Stock Change Event.

(b) *Notices*.

(i) As soon as practicable upon learning of the anticipated or actual effective date of any Common Stock Change Event, the Company will deliver written notice of such Common Stock Change Event to the Holder. Such Notice will include:

(A) a brief description of such Common Stock Change Event;

(B) the Conversion Rate in effect on the date the Company delivers such notice;

(C) the anticipated effective date for the Common Stock Change Event;

(D) that, on and after the effective date for the Common Stock Change Event, this Note will be convertible into Reference Property Units and cash in lieu of fractional Reference Property Units; and

(E) the composition of the Reference Property Unit for such Common Stock Change Event.

(c) *Successive Common Stock Change Events.* If more than one Common Stock Change Event occurs, this Section 8.08 will apply successively to each Common Stock Change Event.

(d) *Compliance Covenant*. The Company will not become a party to any Common Stock Change Event unless its terms are consistent with this Section 8.08.

ARTICLE 9
NO RIGHT OF REDEMPTION AT THE OPTION OF THE COMPANY

This Note will not be redeemable prior to the Maturity Date at the Company's election, and no sinking fund will be provided for this Note.

ARTICLE 10
MISCELLANEOUS

Section 10.01 *Notices*. Any request, demand, authorization, notice, waiver, consent or communication will be in writing and delivered in Person or mailed by first-class mail, postage prepaid, addressed as follows or transmitted by electronic transmission or other similar means of unsecured electronic methods to the following:

if to the Company:

Xtant Medical Holdings, Inc.
600 Cruiser Lane
Belgrade, MT 59714
Facsimile: (406) 388-9724
Attn: President

If to the Holder:

ROS Acquisition Offshore LP
c/o OrbiMed Advisors LLC
601 Lexington Avenue, 54th Floor
New York, NY 10022
Attention: Tadd Wessel and Christopher LiPuma

The Company or the Holder, by notice given to the other in the manner provided above, may designate additional or different addresses for subsequent notices or communications. Any notice, direction, request or demand hereunder to or upon the Holder shall be deemed to have been sufficiently given or made, for all purposes, if it is in writing and actually received by the Holder, addressed as provided above or sent electronically in PDF format.

Section 10.02 *Separability Clause*. In case any provision in this Note will be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

Section 10.03 *Governing Law and Waiver of Jury Trial*. THIS NOTE WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. THE COMPANY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 10.04 *No Recourse Against Others*. A director, officer, employee or stockholder, as such, of the Company will not have any liability for any obligations of the Company under this Note for for any claim based on, in respect of or by reason of such obligations or their creation. By accepting this Note, the Holder will waive and release all such liability. The waiver and release will be part of the consideration for the issuance of this Note.

Section 10.05 *Calculations*. Except as otherwise provided in this Note, the Company will be responsible for making all calculations called for under this Note. These calculations include, but are not limited to, determinations of the Last Reported Sale Price of the Common Stock or any other security, accrued interest (including, for the avoidance of doubt, any Additional Interest, Default Interest or Special Interest) payable on this Note and the Conversion Rate in effect on any Conversion Date.

The Company will make all calculations in good faith and, absent manifest error, its calculations will be final and binding on the Holder. The Company will provide a schedule of its calculations to the Holder, and the Holder is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification.

All calculations will be made to the nearest cent or to the nearest 1/10,000th of a share, as the case may be, with 5/100,000ths rounded upward.

Section 10.06 *Successors*. All agreements of the Company in this Note will bind its successors.

Section 10.07 *Table of Contents; Headings*. The table of contents and headings of the articles and sections of this Note have been inserted for convenience of reference only, are not intended to be considered a part hereof, and will not modify or restrict any of the terms or provisions hereof.

Section 10.08 *Submission to Jurisdiction*. The Company: (a) agrees that any suit, action or proceeding against it arising out of or relating to this Note as the case may be, may be instituted in any U.S. federal court with applicable subject matter jurisdiction sitting in The City of New York; (b) waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding, and any claim that any suit, action or proceeding in such a court has been brought in an inconvenient forum; and (c) submits to the nonexclusive jurisdiction of such courts in any suit, action or proceeding.

Section 10.09 *Legal Holidays*. If the Maturity Date or any Interest Payment Date or Fundamental Change Repurchase Date is not a Business Day (which, solely for the purposes of any payment required to be made on this Note on any such date will be deemed not to include any day on which the office where the place of payment is authorized or required by law to close), then any action to be taken on such date need not be taken on such date, but may be taken on the immediately following Business Day, and no interest on such payment will accrue as a result of such delay.

Section 10.10 *No Security Interest Created*. Nothing in this Note, expressed or implied, will be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 10.11 *Benefits of Note*. Nothing in this Note, expressed or implied, will give to any Person, other than the parties hereto, and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Note.

Section 10.12 *Withholding Taxes*. The Holder agrees, and each beneficial owner of an interest in this Note, by its acquisition of such interest, is deemed to agree, that if the Company or other applicable withholding agent pays withholding taxes or backup withholding on behalf of the Holder or beneficial owner, as applicable, as a result of an adjustment to the Conversion Rate, then the Company or other applicable withholding agent, as applicable, may, at its option, set off such payments against payments of cash and shares of Common Stock on this Note.

Section 10.13 *Amendment and Waiver*. With the written consent of the holders of at least a majority of the Series then outstanding (including consents obtained in connection with a repurchase of, or tender offer or exchange offer for, notes of the Series), the Company, may amend the notes of the Series or waive compliance with any provision of the notes of the Series; *provided*, *however*, that, without the consent of each affected holder, no amendment to the notes of the Series, or waiver of any provision of the notes of the Series, may:

(a) reduce the principal amount of, or change the Maturity Date of, any note of the Series;

(b) reduce the rate of, or extend the stated time for payment of, interest on any note of the Series;

(c) reduce the Fundamental Change Repurchase Price of any note of the Series or change the time at which, or the circumstances under which, the notes of the Series may, or will be, repurchased;

(d) impair the right of any holder to institute suit for any payment on any note of the Series, including with respect to any consideration due upon conversion of a note of the Series;

(e) make any note of the Series payable in a currency other than that stated in such note;

(f) make any change that impairs or adversely affects the conversion rights of any holder under Section 8 or otherwise reduces the number of shares of Common Stock, the amount of cash or any other property receivable by a holder upon conversion;

(g) change the ranking of the notes of the Series;

(h) make any change to any amendment, modification or waiver of a provision of a note of the Series that requires the consent of each affected holder of notes of the Series; or

(i) reduce the percentage of the aggregate principal amount of then outstanding notes of the Series whose holders must consent to an amendment or modification of any note of the Series or a waiver of a past Default.

It will not be necessary for the consent of the holders under this Section 10.13 to approve the particular form of any proposed amendment or modification, but it will be sufficient if such consent approves the substance of such proposed amendment or modification.

[*Remainder of Page Intentionally Left Blank; Signature Page Follows*]

IN WITNESS WHEREOF, the undersigned have executed this Note as of the day and year first written above.

XTANT MEDICAL HOLDINGS, INC.

By: /s/ Daniel Goldberger
Name: Daniel Goldberger
Title: Chief Executive Officer

[Signature Page to Convertible Promissory Note]

EXHIBIT A

CONVERSION NOTICE

XTANT MEDICAL HOLDINGS, INC.
6.00% CONVERTIBLE SENIOR NOTE DUE 2021

To convert this Note, check the box ☐

To convert the entire principal amount of this Note, check the box ☐

To convert only a portion of the principal amount of this Note, check the box ☐ and here specify the principal amount to be converted:

$ _____

ROS ACQUISITION OFFSHORE LP

By: _____
Authorized Signatory

EXHIBIT B

FUNDAMENTAL CHANGE REPURCHASE NOTICE

Xtant Medical Holdings, Inc.
600 Cruiser Lane
Belgrade, MT 59714
Attention: General Counsel

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Xtant Medical Holdings, Inc. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the Holder hereof in accordance with the applicable provisions of this Note (1) the entire principal amount of this Note, or the portion thereof below designated; and (2) if such Fundamental Change Repurchase Date does not occur during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Fundamental Change Repurchase Date.

Principal amount to be repaid (if less than all): $_____,000

ROS ACQUISITION OFFSHORE LP

By: _____
Authorized Signatory

THE SALE OF THIS NOTE HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, THIS NOTE (AND ANY BENEFICIAL INTEREST HEREIN) MAY NOT BE OFFERED, RESOLD OR OTHERWISE TRANSFERRED, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF;

(B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT; OR

(C) UNDER ANY AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (INCLUDING, IF AVAILABLE, THE EXEMPTION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT).

PRIOR TO ANY TRANSFER PURSUANT TO THE FOREGOING CLAUSE (C), THE COMPANY RESERVES THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE COMPANY MAY REASONABLY REQUIRE AND MAY RELY UPON 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 APPLICABLE SECURITIES LAWS OF ANY OTHER JURISDICTION. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

XTANT MEDICAL HOLDINGS, INC.

CONVERTIBLE PROMISSORY NOTE

$564,300.00 Date of Issuance: January 17, 2017

FOR VALUE RECEIVED, Xtant Medical Holdings, Inc., a Delaware corporation (the "**Company**"), promises to pay to OrbiMed Royalty Opportunities II, LP, and its assigns, (the "**Holder**") the principal sum of $564,300.00 (the "**Principal Amount**"), in the manner provided herein. Commencing on the date hereof, and continuing until such time as the Principal Amount is repaid in full, interest shall accrue on the Principal Amount outstanding at the rate of six percent (6.00%) per annum. This Note is one of a series of notes of the Company issued on the date hereof (the "**Series**"). This Note is subject to the following terms and conditions.

TABLE OF CONTENTS

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 *Definitions*.

"**Additional Interest**" has the meaning ascribed to it in the Registration Rights Agreement.

"**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 or cause the direction of 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, United States Code, or any similar U.S. federal, state or non-U.S. law for the relief of debtors.

"**Board of Directors**" means the board of directors of the Company or a committee of such board duly authorized to act for it.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

"**Capital Stock**" means, for any Person, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of, or interests in (however designated), the equity of such Person, but excluding any debt securities convertible into such equity.

"**Close of Business**" means 5:00 p.m., New York City time.

"**Common Stock**" means the shares of the common stock of the Company, $0.000001 par value per share.

"**Company**" means the party named as such in the first paragraph of this Note until a successor or assignee replaces it pursuant to the applicable provisions hereof and, thereafter, means the successor or assignee.

"**Conversion Price**" means, at any time, (i) $1,000 *divided by* (ii) the Conversion Rate in effect at such time.

"**Conversion Rate**" means, initially, 1,317.70 shares of Common Stock per $1,000 principal amount of this Note, subject to adjustment as provided herein, or in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata number of shares.

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

"**Default**" means any event which is (or after notice, passage of time or both would be) an Event of Default.

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

"**Fundamental Change**" means an event that will be deemed to occur if any of the following occurs:

(a) a "person" or "group" within the meaning of Section 13(d) of the Exchange Act, other than the Company or the Subsidiaries, has become the direct or indirect "beneficial owner" (as defined below) of shares of the Company's common equity representing more than 50% of the voting power of the Company's common equity;

(b) the consummation of:

(i) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and the Subsidiaries to any person; or

(ii) any transaction or series of related transactions in connection with which (whether by means of exchange, liquidation, consolidation, merger, combination, reclassification, recapitalization, acquisition or otherwise) all of the Common Stock is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, other property, assets or cash, but excluding any merger, consolidation, share exchange or acquisition of the Company with or by another Person pursuant to which the Persons that "beneficially owned" (as defined below), directly or indirectly, the shares of the Company's Voting Stock immediately prior to such transaction beneficially own, directly or indirectly, immediately after such transaction, shares of the surviving, continuing or acquiring corporation's Voting Stock representing more than 50% of the total outstanding voting power of all outstanding classes of Voting Stock of the surviving, continuing or acquiring corporation in substantially the same proportions vis-à-vis each other as immediately prior to such transaction; or

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

A transaction or event described in clause (a) or (b) above will not constitute a Fundamental Change, however, if at least 90% of the consideration received or to be received by the holders of the Common Stock, excluding cash payments for fractional shares or dissenters rights, in connection with the transaction or transactions, consists of shares of common stock traded on any of the NASDAQ Capital Market, the NASDAQ Global Market, the NASDAQ Global Select Market, the NYSE MKT LLC or the New York Stock Exchange (or any of their respective successors) or which will be so traded or quoted when issued or exchanged in connection with such transaction or event and as a result of such transaction or event, this Note become convertible or exchangeable solely into such consideration (excluding cash payable in lieu of any fractional share) in accordance with Section 8.08.

For the purposes of this definition of "Fundamental Change," whether a person is a "**beneficial owner**" or whether shares are "**beneficially owned**" will be determined in accordance with Rule 13d-3 under the Exchange Act.

"**Holder**" means the party named as such in the first paragraph of this Note.

"**Issue Date**" means January 17, 2017.

"**Last Reported Sale Price**" of the Common Stock on any date means the closing sale or trading price (or, if no closing sale or trading price is reported, the average of the last bid and last ask prices or, if more than one in either case, the average of the average last bid and the average last ask prices) per share on such date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is traded. If the Common Stock is not listed for trading on a U.S. national or regional securities exchange on such date, the "Last Reported Sale Price" of the Common Stock will be the last quoted bid price per share for the Common Stock in the over-the-counter market on such date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted, the "Last Reported Sale Price" will be the average of the mid-point of the last bid and last ask prices per share for the Common Stock on the relevant date from each of at least three (3) nationally recognized independent investment banking firms selected by the Company for this purpose. The "Last Reported Sale Price" will be determined without regard to after-hours trading or any other trading outside of regular trading session hours.

"**Market Disruption Event**" means the occurrence or existence during the one-half hour period ending on the scheduled close of trading on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"**Officer**" means the Chairman of the Board, the Vice Chairman, the Chief Executive Officer, the President, the Chief Financial Officer, any Executive Vice President, any Senior Vice President, any Vice President, the Treasurer or the Secretary of the Company.

"**Officers' Certificate**" means a written certificate containing the information specified in Sections 4.05, 5.01(c), signed in the name of the Company by any two Officers, and delivered to the Holder; *provided*, that, if such certificate is given pursuant to Section 4.05, one of the Officers signing such certificate must be the Chief Financial Officer of the Company.

"**Open of Business**" means 9:00 a.m., New York City time.

"**Opinion of Counsel**" means a written opinion containing the information specified in Section 5.01(c), from legal counsel satisfactory to holders of a majority of the Series. The counsel may be an employee of, or counsel to, the Company who is satisfactory to holders of a majority of the Series.

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

"**Registration Rights Agreement**" means the Registration Rights Agreement, dated as of the date hereof, among the Company and the holders of the notes of the Series.

"**Rule 144**" means Rule 144 under the Securities Act (or any successor provision), as it may be amended from time to time.

"**Rule 144A**" means Rule 144A under the Securities Act (or any successor provision), as it may be amended from time to time.

"**SEC**" means the Securities and Exchange Commission.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Significant Subsidiary**" means any Subsidiary that is a "significant subsidiary" of the Company within the meaning of Rule 1-02(w) of Regulation S-X promulgated under the Exchange Act.

"**Stock Price**" means, for any Make-Whole Fundamental Change, (i) if the holders of the Common Stock receive only cash in consideration for their shares of Common Stock in such Make-Whole Fundamental Change and such Make-Whole Fundamental Change is of the type described in clause (b) of the definition of Fundamental Change, the amount of cash paid per share of the Common Stock in such Make-Whole Fundamental Change; and (ii) otherwise, the average of the Last Reported Sale Price per share of the Common Stock over the five consecutive Trading Days ending on, and including, the Trading Day immediately preceding the Make-Whole Fundamental Change Effective Date for such Make-Whole Fundamental Change.

"**Subsidiary**" means a Person 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 of the Company, or by the Company and one or more other Subsidiaries of the Company.

"**Trading Day**" means a day on which (i) trading in the Common Stock (or other security for which a Last Reported Sale Price must be determined) generally occurs on the NYSE MKT or, if the Common Stock (or such other security) is not then listed on the NYSE MKT, on the principal other U.S. national or regional securities exchange on which the Common Stock (or such other security) is then listed or, if the Common Stock (or such other security) is not then listed on a U.S. national or regional securities exchange, on the principal other market (including, without limitation, the OTCQX marketplace) on which the Common Stock (or such other security) is then listed or admitted for trading; and (ii) there is no Market Disruption Event; *provided*, *however*, that if the Common Stock (or such other security) is not so listed or traded, then "Trading Day" means a Business Day.

"**Uniform Commercial Code**" means the New York Uniform Commercial Code as in effect on the Issue Date.

"**Voting Stock**" of a Person means Capital Stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the board of directors, managers or trustees of such Person (irrespective of whether or not at the time Capital Stock of any other class or classes will have or might have voting power by reason of the happening of any contingency).

Section 1.02 *Other Definitions*.

Term:	**Section Defined in:**
"**Additional Shares**"	8.07(a)
"**Averaging Period**"	8.05(e)
"**Common Stock Change Event**"	8.08
"**Conversion Consideration**"	8.03(a)(i)
"**Conversion Date**"	8.02(a)
"**Conversion Notice**"	8.02(a)
"**Defaulted Amount**"	2.01(b)
"**Default Interest**"	2.01(b)
"**Effective Date**"	8.05(l)(i)(III)
"**Event of Default**"	6.01(a)
"**Ex-Dividend Date**"	8.05(l)(i)(IV)
"**Expiration Date**"	8.05(e)
"**Expiration Time**"	8.05(e)
"**Fundamental Change Notice**"	3.02(a)
"**Fundamental Change Notice Date**"	3.02(a)
"**Fundamental Change Repurchase Date**"	3.01(c)
"**Fundamental Change Repurchase Notice**"	3.03(a)(i)
"**Fundamental Change Repurchase Price**"	3.01(b)
"**Interest Payment Date**"	2.01(a)(ii)
"**Make-Whole Fundamental Change**"	8.07(a)
"**Make-Whole Fundamental Change Effective Date**"	8.07(b)
"**Maturity Date**"	2.01(a)(i)
"**Principal Amount**"	Introductory Paragraph
"**Reference Property**"	8.08(a)
"**Reference Property Unit**"	8.08(a)
"**Regular Record Date**"	2.01(a)(ii)
"**Reorganization Event**"	5.01
"**Reorganization Successor Corporation**"	5.01(a)(ii)
"**Reporting Event of Default**"	6.04(a)
"**Series**"	Introductory Paragraph
"**Special Interest**"	6.04(a)
"**Spin-Off**"	8.05(c)(ii)
"**Valuation Period**"	8.05(c)(ii)

Section 1.03 *Rules of Construction*. In this Note:

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

(b) an accounting term not otherwise defined has the meaning assigned to it and will be construed in accordance with U.S. generally accepted accounting principles;

(c) "**or**" is not exclusive;

(d) "**including**" means including, without limitation;

(e) words in the singular include the plural, and words in the plural include the singular, unless the context requires otherwise;

(f) "**herein**," "**hereof**" and other words of similar import refer to this Note as a whole and not to any particular Article, Section or other subdivision of this Note, unless the context requires otherwise;

(g) all references to $, dollars, cash payments or money refer to United States currency; and

(h) unless the context requires otherwise, all references to interest on this Note will (i) include any Additional Interest payable pursuant to the Registration Rights Agreement and any Special Interest payable pursuant to Section 6.04; and (ii) for the avoidance of doubt, not include any Default Interest payable on a Defaulted Amount pursuant to Article 2.

ARTICLE 2
PAYMENT TERMS, TRANSFER RESTRICTIONS AND NOTE REPLACEMENT

Section 2.01 *Payments*.

(a) *General.*

(i) *Payment at Maturity.* Unless earlier paid or deemed paid pursuant to any of Sections 3.05 or 8.03, this Note will mature on July 15, 2021 (the "**Maturity Date**") and, on the Maturity Date, the Company will pay the Holder $1,000 in cash for each $1,000 principal amount of this Note (and in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata amount), together with accrued and unpaid interest to, but not including, the Maturity Date (with such interest to be payable to the Holder as of the Close of Business on the Regular Record Date immediately preceding the Maturity Date).

(ii) *Payment of Interest.* This Note will accrue interest at a rate equal to 6.00% per annum from the most recent date to which interest has been paid or duly provided for, or, if no interest has been paid or duly provided for, the Issue Date until, subject to Section 2.01(b), the date the principal amount of this Note is paid or deemed to be paid, as the case may be, pursuant to clause (i) of this Section 2.01(a) or any of Sections 3.05 or 8.03. Additional Interest will accrue on this Note to the extent provided in the Registration Rights Agreement and Special Interest will accrue on this Note to the extent provided in Section 6.04, in each case in addition to interest accruing on this Note pursuant to the immediately preceding sentence. Except as otherwise provided herein (including Section 3.01(b) and Section 8.02(d)), interest will be payable semi-annually in arrears on January 15 and July 15 of each year (each, an "**Interest Payment Date**") to the Holder as of the Close of Business on the January 1 or July 1, as the case may be, and whether or not on a Business Day, immediately preceding the applicable Interest Payment Date (each such date, a "**Regular Record Date**"). Interest on this Note that has been converted or repurchased after a Regular Record Date and on or before the related Interest Payment Date will be paid in the manner set forth in Section 3.01(b) and Section 8.02(d), as applicable. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

(iii) *Method of Payment.* The Company will pay the principal of and the Fundamental Change Repurchase Price for this Note by check or wire transfer, in the manner set forth below, to the Holder on the relevant payment date upon surrender thereof to the Company and, if applicable, satisfaction of any other requirements therefor set forth in Article 3. The Company will pay interest due, on an Interest Payment Date, on (and, subject to the immediately preceding sentence, the principal of or the Fundamental Change Repurchase Price for) this Note to the Holder (i) by check mailed to the Holder's registered address; or (ii) if the Holder delivers, not later than the Regular Record Date relating to such Interest Payment Date (or, with respect to the payment of the principal of or the Fundamental Change Repurchase Price for such Note, the date that is fifteen (15) days immediately preceding the Maturity Date or related Fundamental Change Repurchase Date, as applicable), a written request to the Company that the Company make such payments by wire transfer to an account of the Holder within the United States, by wire transfer of immediately available funds to such account, which request shall remain in effect until the Holder notifies the Company, in writing, to the contrary.

(b) *Defaulted Amounts*. Whenever any amount payable on this Note (including, the principal of, the Fundamental Change Repurchase Price for, and interest on, this Note) has become due and payable, but the Company fails to punctually pay or to duly provide for such amount (any such amount, a "**Defaulted Amount**"), in each case regardless of whether such failure constitutes an Event of Default, then such Defaulted Amount will accrue interest ("**Default Interest**") at a rate equal to 6.00% per annum plus 100 basis points from, and including, such payment date and to, but excluding, the date on which such Defaulted Amount is paid by the Company, which Default Interest shall be payable by the Company on demand.

(c) *Acknowledgement and Agreement by the Holder*. The Holder, by accepting this Note, acknowledges and agrees to comply with the restrictions set forth in this Note's legend.

Section 2.02 *Replacement Note*. If (a)(i) this Note is mutilated and surrendered to the Company; or (ii) the Holder claims that this Note has been lost, destroyed or stolen and provides the Company with (A) evidence of such loss, theft or destruction that is reasonably satisfactory to the Company; and (B) any amount or kind of security or indemnity that the Company requests to protect itself from any loss that it may suffer upon replacement of this Note; and, in either case, (b) such Holder satisfies any other reasonable requirements of the Company, including the payment of any tax or other governmental charge that may be imposed in connection with the replacement of this Note, then, unless the Company receives notice that this Note has been acquired by a bona fide purchaser, the Company will promptly execute and deliver to the Holder a replacement Note having the same aggregate principal amount as this Note that was mutilated or claimed to be lost, destroyed or stolen.

Every new Note issued pursuant to this Section 2.02 in exchange for a mutilated Note, or in lieu of a destroyed, lost or stolen Note, will constitute an original contractual obligation of the Company and any other obligor upon this Note, regardless of whether the mutilated, destroyed, lost or stolen Note will be at any time enforceable by anyone, and will be entitled to all of the benefits, and subject to all the limitations, set forth herein.

ARTICLE 3
REPURCHASE AT THE OPTION OF THE HOLDER

Section 3.01 *Fundamental Change Permits Holder to Require the Company to Repurchase this Note*.

(a) *General*. If a Fundamental Change occurs at any time prior to the Maturity Date, the Holder will have the right, at its option, to require the Company to repurchase this Note, or any portion thereof, on the Fundamental Change Repurchase Date for such Fundamental Change for an amount of cash equal to the Fundamental Change Repurchase Price for such Fundamental Change Repurchase Date and this Note.

(b) *Fundamental Change Repurchase Price*. The "**Fundamental Change Repurchase Price**" means, for this Note to be repurchased on any Fundamental Change Repurchase Date, a price equal to 100% of the principal amount of this Note, plus accrued and unpaid interest, if any, on this Note to, but excluding, such Fundamental Change Repurchase Date; *provided*, *however*, that if such Fundamental Change Repurchase Date occurs after a Regular Record Date, but on or prior to the Interest Payment Date corresponding to such Regular Record Date, the Fundamental Change Repurchase Price for this Note will be 100% of the principal amount of this Note, and accrued and unpaid interest, if any, on this Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that this Note remained outstanding through such Interest Payment Date) will be payable, on such Fundamental Change Repurchase Date, to the Holder as of the Close of Business on such Regular Record Date.

(c) *Fundamental Change Repurchase Date*. The "**Fundamental Change Repurchase Date**" means, for any Fundamental Change, the date specified by the Company in the Fundamental Change Notice for such Fundamental Change, which date will be not less than twenty (20) Business Days, nor more than thirty five (35) Business Days, immediately following the Fundamental Change Notice Date for such Fundamental Change.

Section 3.02 *Fundamental Change Notice*.

(a) *General*. On or before the Business Day immediately following the effective date of a Fundamental Change, the Company will deliver to the Holder written notice of such Fundamental Change and of the resulting repurchase right (the "**Fundamental Change Notice**", and the date of such delivery, the "**Fundamental Change Notice Date**").

The Fundamental Change Notice for each Fundamental Change will specify, as applicable:

(A) briefly, the events causing such Fundamental Change;

(B) the effective date of such Fundamental Change;

(C) the last date on which the Holder may exercise its right to require the Company to repurchase this Note as a result of such Fundamental Change under this Article 3;

(D) the procedures that the Holder must follow to require the Company to repurchase this Note;

(E) the Fundamental Change Repurchase Price for each $1,000 principal amount this Note for such Fundamental Change (and in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, the equivalent pro rata amount);

(F) the Fundamental Change Repurchase Date for such Fundamental Change;

(G) in the event that a Fundamental Change Repurchase Notice has been duly tendered in respect of this Note and not validly withdrawn, the Fundamental Change Repurchase Price which will be paid promptly following the later of the Fundamental Change Repurchase Date and the time this Note is surrendered for repurchase;

(H) the Conversion Rate in effect on the Fundamental Change Notice Date for such Fundamental Change and the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Fundamental Change Notice Date;

(I) if applicable, any adjustments that will be made to the Conversion Rate as a result of such Fundamental Change, including any Additional Shares by which the Conversion Rate will be increased pursuant to Section 8.07 in the event that the Holder converts this Note "in connection with" such Fundamental Change;

(J) that in the event that a Fundamental Change Repurchase Notice has been delivered by the Holder, this Note may be converted only if the Holder withdraws such Fundamental Change Repurchase Notice in accordance with the terms of this Note or to the extent any portion of this Note are not subject to such Fundamental Change Repurchase Notice;

(K) the procedures for withdrawing a Fundamental Change Repurchase Notice;

(L) that if this Note or portion of this Note is subject to a validly delivered Fundamental Change Repurchase Notice, unless the Company defaults in paying the Fundamental Change Repurchase Price for this Note or portion of this Note, interest, if any, on this Note or portion of this Note will cease to accrue on and after the Fundamental Change Repurchase Date; and

(b) *Failure or Defect*. Notwithstanding anything provided elsewhere in this Note, neither the failure of the Company to deliver a Fundamental Change Notice nor a defect in a Fundamental Change Notice delivered by the Company will limit the repurchase rights of the Holder under this Article 3 or impair or otherwise affect the validity of any proceedings relating to the repurchase of this Note pursuant to this Article 3.

Section 3.03 *Fundamental Change Repurchase Notice*.

(a) *General*. To exercise its repurchase rights under Section 3.01(a) with respect to this Note pursuant to a Fundamental Change, the Holder must:

(i) deliver to the Company, by the Close of Business on the second (2nd) Business Day immediately preceding the Fundamental Change Repurchase Date, subject to extension to comply with applicable law, a duly completed Fundamental Change Repurchase notice, substantially in the form set forth in Exhibit B hereto (a "**Fundamental Change Repurchase Notice**") setting forth that the Holder is tendering this Note for repurchase; and

(ii) deliver this Note to the Company by physical delivery together with any endorsements or other documents reasonably requested by the Company.

(b) *Contents of Fundamental Change Repurchase Notice*. The Fundamental Change Repurchase Notice for this Note must state:

(i) if this Note is to be repurchased in part, the portion of the principal amount of this Note to be repurchased; and

(ii) that this Note will be repurchased by the Company pursuant to the provisions of this Article 3.

(c) *Effect of Improper Notice*. Unless and until the Company receives a validly delivered Fundamental Change Repurchase Notice with respect to this Note, together with this Note, in a form that conforms in all material aspects with the description contained in such Fundamental Change Repurchase Notice, the Holder will not be entitled to receive the Fundamental Change Repurchase Price for this Note.

Section 3.04 *Withdrawal of Fundamental Change Repurchase Notice*.

(a) *General*. After the Holder delivers a Fundamental Change Repurchase Notice with respect to this Note, the Holder may withdraw such Fundamental Change Repurchase Notice (in whole or in part) with respect to this Note or any portion of this Note by delivering to the Company a written notice of withdrawal prior to the Close of Business on the second (2nd) Business Day immediately preceding the Fundamental Change Repurchase Date. Any such withdrawal notice must state the principal amount of this Note, if any, that remains subject to the Fundamental Change Repurchase Notice.

(b) *Return of Note*. Upon receipt of a validly delivered withdrawal notice, the Company will promptly return this Note or portion of this Note to the Holder, in the amount specified in such withdrawal notice.

Section 3.05 *Effect of Fundamental Change Repurchase Notice*

(a) *General*. If the Holder validly delivers to the Company a Fundamental Change Repurchase Notice (together with all necessary endorsements) with respect to this Note, the Holder may no longer convert this Note unless and until the Holder validly withdraws such Fundamental Change Repurchase Notice in accordance with Section 3.04.

(b) *Timing of Payment*. Upon the Company's receipt of (i) a valid Fundamental Change Repurchase Notice (together with all necessary endorsements); and (ii) this Note to which such Fundamental Change Repurchase Notice pertains, the Holder will be entitled, except to the extent the Holder has validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 3.04, to receive the Fundamental Change Repurchase Price with respect to this Note on the later of the following (subject to extension to comply with applicable law): (x) the Fundamental Change Repurchase Date; and (y) the date of delivery of this Note to the Company, duly endorsed.

(c) *Effect of Payment*. Upon receipt by the Holder of the Fundamental Change Repurchase Price:

(A) this Note will cease to be outstanding and interest (except Default Interest) will cease to accrue on this Note, except to the extent provided in the proviso to Section 3.01(b); and

(B) all other rights of the Holder with respect to this Note (other than the right to receive payment of the Fundamental Change Repurchase Price upon delivery or transfer of this Note and any Defaulted Amounts or Default Interest with respect to this Note, and other than as provided in the proviso to Section 3.01(b)) will terminate.

Section 3.06 *Note Repurchased in Part*. If this Note is to be repurchased only in part, the Holder must surrender this Note to the Company, whereupon the Company will promptly deliver to the Holder a new Note of any denomination or denominations equal to the portion of the principal amount of this Note so surrendered which is not repurchased.

Section 3.07 *Covenant to Comply With Securities Laws Upon Repurchase of Note*. In connection with any repurchase offer pursuant to a Fundamental Change Repurchase Notice under this Article 3, the Company will comply with any applicable United States federal and state securities laws so as to permit the Holder to exercise its rights and obligations under this Article 3 in the time and in the manner specified in Sections 3.01 and 3.03.

ARTICLE 4
COVENANTS

Section 4.01 *Payment of Note.*The Company will pay or cause to be paid the principal of, Fundamental Change Repurchase Price for, and any accrued and unpaid interest (including, for the avoidance of doubt, any Additional Interest or Special Interest) on, this Note on the dates and in the manner required under this Note. To the extent lawful, the Company will also pay Default Interest on any Defaulted Amounts in accordance with Section 2.01.

Section 4.02 *144A Information* Whenever the Company is not subject to Section 13 or Section 15(d) of the Exchange Act, if this Note or shares of Common Stock, if any, issuable upon the conversion of this Note constitute "restricted securities" within the meaning of Rule 144, the Company will, upon the request of the Holder or beneficial owner of this Note, or a holder or beneficial owner of the Common Stock, if any, issuable upon the conversion of this Note, (i) promptly furnish or cause to be furnished to the applicable Holder, beneficial owner, or any prospective purchaser designated by the applicable Holder or beneficial owner, of this Note, or any holder, beneficial owner, or any prospective purchaser designated by the applicable holder or beneficial owner, of the Common Stock, as applicable, all of the information that a prospective purchaser of this Note or the Common Stock, as applicable, is required to receive under Rule 144A(d)(4) of the Securities Act for this Note or shares of Common Stock, as applicable, to be resold to such prospective purchaser pursuant to the exemption from registration provided by Rule 144A and (ii) make publicly available such information as necessary to permit sales pursuant to Rule 144, as the case may be.

Section 4.03 *Reports*. The Company will deliver to the Holder copies of all quarterly and annual reports that the Company is required to deliver to the SEC on Forms 10-Q and 10-K, respectively, and any other documents, information or other reports that the Company is required to file with the SEC under Sections 13 or 15(d) of the Exchange Act no later than the date that the Company is required to file such quarterly and annual reports, other documents, information or other reports with the SEC (after giving effect to any grace period provided by Rule 12b-25 under the Exchange Act). Any document filed by the Company with the SEC via the EDGAR system (or any successor thereto) will be deemed to be delivered to the Holder at the time such document is filed via the EDGAR system (or such successor). Notwithstanding anything to the contrary in the foregoing, nothing in this paragraph shall require the Company to deliver to any Holder any material for which the Company has sought and received, or is seeking and has not been denied, confidential treatment by the SEC.

Section 4.04 *Additional Interest*.

(a) *General.* Additional Interest will accrue on this Note to the extent provided in the Registration Rights Agreement, and the Company's obligation to pay any such Additional Interest will be deemed to be obligations under this Note with the same force and effect as if the relevant provisions of the Registration Rights Agreement were reproduced in this Note.

Section 4.05 *Compliance Certificate*.

(a) *Annual Compliance Certificate*. Within ninety (90) days after the end of each fiscal year of the Company, beginning with the fiscal year ending on December 31, 2017, the Company will deliver to the Holder an Officers' Certificate, which Officers' Certificate will state (i) that the Officers signing such Officers' Certificate have supervised a review of the activities of the Company and the Subsidiaries with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Note during the preceding fiscal year; and (ii) to the best knowledge of each of the Officers signing such Officers' Certificate, (A) whether the Company has kept, observed, performed and fulfilled each and every covenant contained in this Note and is not in default in the performance or observance of any of the terms, provisions and conditions of this Note (without regard to any period of grace or requirement of notice provided under this Note) or, if one or more Defaults or Events of Default have occurred, what events triggered such Defaults or Events of Default and what actions the Company is taking or proposes to take with respect to such Defaults or Events of Default; and (B) whether any event has occurred and remains in existence by reason of which any payment of the principal of, the Fundamental Change Repurchase Price for, or interest on, or any delivery of any of the consideration due upon conversion of, this Note is prohibited, and, if any such event has occurred and remains in existence, a description, in reasonable detail, of such event or events and what actions the Company is taking or proposes to take with respect to such event or events.

(b) *Certificate of Default or Event of Default*. Within five (5) Business Days after a Default or Event of Default occurs, the Company will deliver to the Holder an Officers' Certificate describing such Default or Event of Default, its status and a description, in reasonable detail, of what action the Company is taking or proposes to take with respect to such Default or Event of Default.

Section 4.06 *Corporate Existence*. Subject to Article 5, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect:

(a) its corporate existence, and the corporate, partnership or other existence of each of the Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company or any such Subsidiary; and

(b) the rights (charter and statutory), licenses and franchises of the Company and the Subsidiaries;

provided, however, that the Company will not be required to preserve or keep in full force and effect any such right, license or franchise, or the corporate, partnership or other existence of any of the Subsidiaries, if the Board of Directors determines that the preservation thereof is no longer desirable in the conduct of the business of the Company and the Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holder.

Section 4.07 *Par Value Limitation.* The Company will not take any action that, after giving effect to any adjustment pursuant to Section 8.05 or 8.07, would result in the Conversion Price becoming less than the par value of one share of Common Stock. In addition, the Company will not engage in any transaction that would require an adjustment to the Conversion Rate pursuant to Section 8.06 that would cause the Conversion Price to be less than the par value of one share of Common Stock.

Section 4.08 *Stay, Extension and Usury Laws*. The Company covenants that, to the extent that it may lawfully do so, it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Note.

Section 4.09 *Further Instruments and Acts*. Upon request of the Holder, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the terms of this Note.

ARTICLE 5
CONSOLIDATION, MERGER AND SALE OF ASSETS

Section 5.01 *Company May Consolidate, Merge or Sell Its Assets Only on Certain Terms*. The Company will not (1) consolidate with or merge with or into; or (2) sell, lease or otherwise transfer all or substantially all of the consolidated assets of the Company and its Subsidiaries to, another Person (any such transaction, a "**Reorganization Event**"), unless:

(a) either:

(i) the Company is the surviving corporation; or

(ii) the resulting, surviving or transferee Person (if other than the Company) of such Reorganization Event (the "**Reorganization Successor Corporation**"):

(I) 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

(II) expressly assumes all of the obligations of the Company under this Note;

(b) immediately after giving effect to such Reorganization Event, no Default will have occurred and be continuing; and

(c) prior to the effective date of such Reorganization Event, the Company delivers to the Holder an Officers' Certificate and an Opinion of Counsel, each stating that:

(i) such Reorganization Event complies with Section 5.01(a);

(ii) all conditions precedent to such Reorganization Event provided in this Note have been satisfied; and

(iii) this Note constitutes the legal, valid and binding obligation of the Reorganization Successor Corporation (subject to customary limitations);

Section 5.02 *Successor Substituted*. If any Reorganization Event occurs that complies with Sections 5.01(a)(ii) and 5.01(b), and the Company has complied with Section 5.01(c):

(a) from and after the date of such Reorganization Event, the Reorganization Successor Corporation for such Reorganization Event will succeed to, and be substituted for, and may exercise every right and power of, and shall assume all obligations of, the Company under this Note with the same effect as if such Reorganization Successor Corporation had been named as the Company herein.

(b) except in the case of a Reorganization Event that is a conveyance, transfer or lease of all or substantially all of the Company's assets, the Person named as the "Company" in the first paragraph of this Note or any successor (other than such Reorganization Successor Corporation that will thereafter have become such in the manner prescribed in this Article 5) will be discharged from its obligations under this Note and may be dissolved, wound up and liquidated at any time.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default*.

(a) *General*. Each of the following events will be an "**Event of Default**":

(i) the Company fails to pay the principal of this Note (including any Fundamental Change Repurchase Price) when due at maturity or upon repurchase upon a Fundamental Change or declaration of acceleration or otherwise;

(ii) the Company fails to pay any interest on this Note when due and such failure continues for a period of thirty (30) days after the applicable due date;

(iii) the Company fails to give any Fundamental Change Notice or notice of a Make-Whole Fundamental Change, in each case, when due;

(iv) the Company fails to comply with its obligation to convert this Note in accordance with Article 8 upon the Holder's exercise of its conversion rights with respect to this Note;

(v) the Company fails to comply with its obligations under Article 5;

(vi) the Company fails to perform or observe any of its covenants or warranties in this Note (other than a covenant or agreement specifically addressed in clauses (i) through (v) above) and such failure continues for a period of sixty (60) days after days after written notice to the Company by holders of at least 25% of the Series then outstanding;

(vii) the default by the Company or any Subsidiary with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed by the Company and/or any Subsidiary in excess of one million dollars ($1,000,000) in the aggregate, whether such indebtedness exists as of the Issue Date or is later created, if that default:

(A) results in such indebtedness becoming or being declared due and payable (prior to its express maturity); or

(B) constitutes a failure to pay the principal of, or interest on, such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, and after the expiration of any applicable grace period,

and, such acceleration shall not have been rescinded or annulled or such failure to pay shall not have been cured, as the case may be, within thirty (30) days after written notice to the Company by the holders of at least 25% of the Series then outstanding;

(viii) a final judgment for the payment of in excess of one million dollars ($1,000,000) (excluding any amounts covered by insurance) is rendered against the Company or any Subsidiary, and such judgment is not discharged or stayed within sixty (60) days after (i) the date on which all rights to appeal such judgment have expired if no appeal has commenced; or (ii) the date on which all rights to appeal have been extinguished;

(ix) the Company or any Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case;

(B) consents to the entry of an order for relief against it in an involuntary case;

(C) consents to the appointment of a Custodian of it or for any substantial part of its property;

(D) makes a general assignment for the benefit of its creditors;

(E) takes any comparable action under any foreign laws relating to insolvency; or

(F) generally is not paying its debts as they become due; or

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

(A) is for relief against Company or any Significant Subsidiary in an involuntary case or proceeding;

(B) appoints a Custodian of the Company or any Significant Subsidiary, or for any substantial part of the property of the Company or any Significant Subsidiary;

(C) orders the winding up or liquidation of the Company or any Significant Subsidiary; or

(D) grants any similar relief under any foreign laws,

and, in each such case, the order or decree remains unstayed and in effect for sixty (60) days.

(b) *Cause Irrelevant*. Each of the events enumerated in Section 6.01(a) will constitute an Event of Default whatever the cause and regardless of whether voluntary or involuntary or 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.

Section 6.02 *Acceleration*.

(a) *Automatic Acceleration in Certain Circumstances*. If an Event of Default specified in Sections 6.01(a)(ix) or 6.01(a)(x) occurs with respect to the Company, the principal amount of, and all accrued and unpaid interest, if any, on this Note will immediately become due and payable without any further action or notice by any party.

(b) *Optional Acceleration*. If any Event of Default other than an Event of Default specified in Section 6.01(a)(ix) or 6.01(a)(x) occurs and is continuing, the holders of at least 25% of the aggregate principal amount of the Series then outstanding, by delivering a written notice to the Company, may declare the principal amount of, and all accrued and unpaid interest, if any, on all then outstanding notes in the Series immediately due and payable, and upon such declaration, the principal amount of, and all accrued and unpaid interest, if any, on all then outstanding notes in the Series will immediately become due and payable.

(c) *Rescission of Acceleration*. Notwithstanding anything to the contrary in this Note, holders of a majority of the aggregate principal amount of the Series then outstanding may, on behalf of the holders of all then outstanding notes in the Series, rescind any acceleration of such notes and its consequences hereunder by delivering written notice to the Company if (i) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and (ii) all existing Events of Default (other than the nonpayment of the principal of, interest, if any, on, or the Fundamental Change Repurchase Price for, the notes in the Series that have become due solely as a result of acceleration) have been cured or waived. No such rescission will affect any subsequent Default or impair any right consequent thereto.

Section 6.03 *Other Remedies*. If an Event of Default occurs and is continuing, the Holder may pursue any available remedy to collect the payment of principal, accrued and unpaid interest, if any, or payment of the Fundamental Change Repurchase Price for, this Note or to enforce the performance of any provision of this Note regarding any other matter.

A delay or omission by the Holder in exercising any right or remedy accruing upon an Event of Default will not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 6.04 *Sole Remedy for Failure to Report*.

(a) *General*. Notwithstanding anything to the contrary in this Note, the Company may elect that the sole remedy for any Event of Default specified in Section 6.01(a)(vi) relating to the Company's failure to comply with Section 4.03 (a "**Reporting Event of Default**") will, for the period beginning on the date on which such Reporting Event of Default first occurred and ending on the earlier of (A) the date on which such Reporting Event of Default (i) is cured; or (ii) is validly waived in accordance with Section 6.05; and (B) the sixtieth (60th) calendar day immediately following the date on which such Reporting Event of Default first occurred, consist exclusively of the right to receive additional interest (the "**Special Interest**") on this Note at a rate equal to 0.50% per annum on the principal amount of this Note. Any Special Interest will be payable in the same manner and on the same dates as the stated interest payable on this Note and will accrue in addition to any Additional Interest that the Company is obligated to pay.

(b) *Limitation on Remedy*. If (i) a Reporting Event of Default occurs and the Company elects that the sole remedy with respect to such Reporting Event of Default will be the Special Interest; and (ii) on the sixty first (61st) day immediately following, and including, the date on which such Reporting Event of Default first occurred, such Reporting Event of Default has not been cured or validly waived in accordance with Section 6.05, then this Note will become subject to acceleration under Section 6.02(a) on account of such Reporting Event of Default. For the avoidance of doubt, Special Interest will cease to accrue from such sixty first (61st) day, without limiting the generality of this Section 6.04 as it may apply to any subsequent Reporting Event of Default.

(c) *Company Election Notice*. To elect to pay the Special Interest as the sole remedy for a Reporting Event of Default, the Company must deliver written notice of such election to the Holder prior to the date on which such Reporting Event of Default first occurs. Any such notice must include a brief description of the report that the Company failed, or will fail, to file, a statement that the Company is electing to pay the Special Interest and the date on which such Reporting Event of Default will occur. If a Reporting Event of Default occurs and the Company fails to timely deliver such notice for such Reporting Event of Default or fails to pay the Special Interest, this Note will be subject to acceleration under Section 6.02(a) on account of such Reporting Event of Default.

(d) *Other Events of Default*. Notwithstanding anything to the contrary herein, if the Company elects to pay Special Interest with respect to any Reporting Event of Default, the Company's election will not affect the rights of the Holder with respect to any other Event of Default, including with respect to any other Reporting Event of Default; *provided*, that, for the avoidance of doubt, in no event will the Company be obligated to pay Special Interest at a rate greater than 0.50% per annum on the principal amount of this Note.

Section 6.05 *Waiver of Past Defaults*. If an Event of Default described in Sections 6.01(a)(i), 6.01(a)(ii), 6.01(a)(iv) or 6.01(a)(vi) (which, in the case of Section 6.01(a)(vi) only, relates to a covenant that cannot be amended without the consent of each affected holder of a note in the Series) or a Default that would lead to such an Event of Default occurs and is continuing, such Event of Default or Default may be waived only with the consent of each affected holder of a note in the Series. Every other Event of Default or Default may be waived by the holders of a majority of the aggregate principal amount of the outstanding Series (including consents obtained in connection with a repurchase of, or tender offer or exchange offer for, notes in the Series). Whenever any Event of Default is so waived, it will cease to exist, and whenever any Default is so waived, it will be deemed cured and any Event of Default arising therefrom will be deemed not to occur. However, no such waiver will extend to any subsequent or other Default or Event of Default or impair any consequent right

ARTICLE 7
SATISFACTION AND DISCHARGE

Section 7.01 *Discharge of Liability on Note*. When (a) this Note becomes due and payable, and the Company delivers to the Holder, as applicable, cash (or, solely to satisfy amounts due and owing as a result of conversions of this Note, Conversion Consideration), sufficient to pay all amounts due and owing on this Note and (b) the Company pays all other sums payable by it under this Note, this Note will cease to be of further effect and the Holder will acknowledge the satisfaction and discharge of this Note.

ARTICLE 8
CONVERSIONS

Section 8.01 *Right To Convert*.

(a) *In General*. Subject to, and upon compliance with, the provisions of this Article 8, at any time prior to the Close of Business on the second (2nd) Business Day immediately preceding the Maturity Date, the Holder may, at its option, convert this Note (or any portion thereof) into Conversion Consideration, as provided in this Article 8. This Note may not be converted after the Close of Business on the second (2nd) Business Day immediately preceding the Maturity Date.

(b) *Closed Periods*. Notwithstanding anything to the contrary in this Note, if the Holder tenders a Repurchase Notice with respect to this Note in accordance with Article 3, this Note may not be converted except to the extent (i) this Note is not subject to such Repurchase Notice, (ii) such Repurchase Notice is withdrawn in accordance with Article 3 or (iii) the Company fails to pay the Fundamental Change Repurchase Price for this Note in accordance with Section 3.05(b).

Section 8.02 *Conversion Procedures*.

(a) *General*. To exercise its conversion right with respect to this Note, the Holder must (i) complete and manually sign a conversion notice in the form set forth in Exhibit A hereto, or a facsimile of such conversion notice (such notice, or such facsimile, the "**Conversion Notice**"); (ii) deliver such signed and completed Conversion Notice, which shall be irrevocable, and this Note to the Company; (iii) furnish any endorsements and transfer documents that the Company may require; and (iv) pay any amounts due pursuant to Section 8.02(d) or 8.02(e). The first Business Day on which the Holder satisfies the foregoing requirements with respect to this Note and on which conversion of this Note is not otherwise prohibited hereunder will be the "**Conversion Date**" for this Note. If the Holder has delivered a Fundamental Change Repurchase Notice with respect to this Note, the Holder may not surrender this Note for conversion until the Holder has withdrawn such Fundamental Change Repurchase Notice in accordance with Section 3.04. The conversion of this Note will be deemed to occur at the Close of Business on the Conversion Date for this Note, and this converted Note or portion thereof will cease to be outstanding upon conversion.

(b) *Holder of Record.* If the Holder surrenders the entire principal amount of this Note for conversion, the Holder will no longer be the Holder of this Note as of the Close of Business on the Conversion Date for this Note. The person in whose name any shares of Common Stock are issuable upon conversion of this Note will become the holder of record of such shares as of the Close of Business on the Conversion Date for such conversion.

(c) *Conversions in Part.* If the Holder surrenders only a portion of the principal amount of this Note for conversion, promptly after the Conversion Date for such portion, the Company will deliver to the Holder a new Note, having a principal amount equal to the aggregate principal amount of the unconverted portion of the Note surrendered for conversion.

(d) *Reimbursement of Interest upon Conversion*. If the Holder converts this Note after the Close of Business on a Regular Record Date, but prior to the Open of Business on the Interest Payment Date corresponding to such Regular Record Date, then (x) the Holder at the Close of Business on such Regular Record Date shall be entitled, notwithstanding such conversion, to receive, on the date the Company delivers (or is required to deliver) the Conversion Consideration due in respect of such conversion, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date); and (y) the Holder must, upon surrender of this Note for conversion, accompany this Note with an amount of cash equal to the amount of such interest referred to in clause (x) above; *provided, however*, that the Holder need not make such payment (A) for conversions following the Regular Record Date immediately preceding the Maturity Date; (B) if the Company has specified a Fundamental Change Repurchase Date that is after such Regular Record Date and on or prior to the Business Day immediately following such Interest Payment Date; or (C) to the extent of any overdue interest, if any overdue interest exists at the time of conversion with respect to this Note. For the avoidance of doubt, the Holder at the Close of Business on the Regular Record Date immediately preceding the Maturity Date will be entitled to receive interest that accrues (or would have accrued) on this Note to, but excluding, the Maturity Date notwithstanding any conversion of this Note.

(e) *Taxes and Duties.* If the Holder converts this Note, the Company will pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of the Common Stock upon the conversion; *provided, however*, that if any tax is due because the Holder requested that shares of Common Stock be issued in a name other than its own, the Holder will pay such tax and the Company, until having received a sum sufficient to pay such tax, may refuse to deliver any certificates representing the shares of Common Stock being issued in a name other than that of the Holder.

(f) *Restrictions on Conversion*. Notwithstanding anything to the contrary in this Note, this Note will not be convertible by the Holder, and the Company will not effect any conversion of this Note, in each case to the extent (and only to the extent) that such convertibility or conversion would result in the Holder or any of its Affiliates beneficially owning in excess of 9.99% of the then-outstanding shares of Common Stock. For these purposes, beneficial ownership and all determinations and calculations (including with respect to calculations of percentage ownership) will be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For the avoidance of doubt, if the convertibility of this Note is restricted pursuant to this Section 8.02(f), this Note will continue to be outstanding, and its convertibility will be reinstated if and when the convertibility and conversion will not violate the limitations set forth in this Section 8.02(f).

Section 8.03 *Settlement Upon Conversion*.

(a) *Conversion Obligation.*

(i) *Conversion Consideration*. Subject to the terms hereof, upon conversion of this Note, the consideration (the "**Conversion Consideration**") due in respect of each $1,000 principal amount of this Note to be converted will consist of (I) a whole number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such conversion (which, if not a whole number, will be rounded down to the nearest whole number); (II) in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata number of shares and (III) if such Conversion Rate is not a whole number, cash in lieu of the related fractional share in an amount equal to the product of (x) the Last Reported Sale Price per share of Common Stock on such Conversion Date (or, if such Conversion Date is not a Trading Day, the immediately preceding Trading Day) and (y) the fractional portion of such Conversion Rate.

(ii) *Delivery of Conversion Consideration*. Except as set forth in Section 8.05, the Company will pay or deliver, as the case may be, the Conversion Consideration due upon the conversion of this Note to the Holder on the third (3rd) Business Day immediately following the Conversion Date for such conversion.

(b) *Settlement of Accrued Interest and Deemed Payment of Principal*. If the Holder converts this Note, the Company will not adjust the Conversion Rate to account for any accrued and unpaid interest on this Note, and, except as provided in Section 8.02(d), the Company's delivery of the Conversion Consideration due upon such conversion will be deemed to satisfy and discharge in full the Company's obligation to pay the principal of this Note and accrued and unpaid interest, if any, on, this Note to, but excluding the Conversion Date. As a result, except as provided in Section 8.02(d), any accrued and unpaid interest with respect to this Note, in the event that it is converted, will be deemed to be paid in full rather than cancelled, extinguished or forfeited.

Section 8.04 *Common Stock Issued Upon Conversion*.

(a) The Company will reserve out of its authorized but unissued shares of Common Stock, and keep available to satisfy conversion of this Note, a number of shares of Common Stock sufficient to permit the conversion this Note, after giving effect to the largest number of Additional Shares that may from time to time be added to the Conversion Rate as provided in Section 8.07.

(b) Any shares of Common Stock delivered upon the conversion of this Note will be newly issued shares or treasury shares, duly and validly issued, fully paid, nonassessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of the Holder or other Person to whom such shares of Common Stock will be delivered). In addition, the Company will endeavor to comply promptly with all federal and state securities laws regulating the offer and delivery of any shares of Common Stock issuable upon conversion of this Note. The Company will also use its best efforts to cause any shares of Common Stock issuable upon conversion of this Note to be listed on whatever stock exchange(s) the Common Stock is listed on the date the Holder becomes a record holder of such Common Stock.

Section 8.05 *Adjustment of Conversion Rate*. The Company will adjust the Conversion Rate from time to time as described in this Section 8.05, except that the Company will not make an adjustment to the Conversion Rate if the Holder participates (other than in a share split or share combination), at the same time and upon the same terms as holders of the Common Stock, and solely as a result of holding this Note, in the relevant transaction described in this Section 8.05 without having to convert its Note and as if it held a number of shares of the Common Stock equal to the product of (i) the Conversion Rate in effect on the applicable record date, Effective Date or expiration date; and (ii) the aggregate principal amount of this Note (expressed in thousands) on such date.

(a) *Stock Dividends and Share Splits*. If the Company exclusively issues to all or substantially all holders of the Common Stock shares of Common Stock as a dividend or distribution on shares of the outstanding Common Stock, or if the Company effects a share split of the Common Stock or a share combination of the Common Stock (excluding an issuance solely pursuant to a Common Stock Change Event, as to which the provisions set forth in Section 8.08(a) will apply), the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where:

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the Open of Business on the Effective Date of such share split or share combination, as applicable;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date or Effective Date, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date or Effective Date, as applicable; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination, as applicable.

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date or Effective Date, as applicable. If any dividend, distribution, share split or share combination of the type described in this Section 8.05(a) is declared, but not so paid or made, the Conversion Rate will be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or to effect such share split or share combination, to the Conversion Rate that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

(b) *Rights, Options and Warrants*. If the Company issues, to all or substantially all holders of its outstanding Common Stock, rights, options or warrants entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such issuance, to subscribe for, or purchase, shares of Common Stock, at a price per share less than the average of the Last Reported Sale Prices per share of the Common Stock for the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, then, subject to the provisions described below with respect to rights issued pursuant to a stockholder rights plan, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS + X}{OS + Y}$$

where:

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such issuance;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

OS = the number of shares of Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date;

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

Y = the number of shares of Common Stock equal to the quotient of (i) the aggregate price payable to exercise such rights, options or warrants, over (ii) the average of the Last Reported Sale Prices per share of the Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants, including because the issued rights, options or warrants were not exercised, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect if the Ex-Dividend Date for such issuance had not occurred.

For purposes of this Section 8.05(b), in determining whether any rights, options or warrants entitle holders of the Common Stock to subscribe for, or purchase, shares of Common Stock at a price per share less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement for an issuance, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) *Spin-Offs and Other Distributed Property*.

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

(A) dividends, distributions, rights, options or warrants for which an adjustment was effected pursuant to Section 8.05(a) or Section 8.05(b), as applicable;

(B) dividends or distributions paid exclusively in cash for which an adjustment was effected pursuant to Section 8.05(d);

(C) Spin-Offs for which the provisions described in Section 8.05(c)(ii) will apply; and

(D) an issuance solely pursuant to a Common Stock Change Event, as to which the provisions set forth in Section 8.08(a) will apply,

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

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where:

CR_0	=	the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such distribution;
CR_1	=	the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;
SP_0	=	the average of the Last Reported Sale Prices per share of the Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and
FMV	=	the fair market value (as determined by the Board of Directors) of the shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants distributed with respect to each outstanding share of Common Stock on the Ex-Dividend Date for such distribution.

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date. Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than the "SP_0" (as defined above), in lieu of the foregoing increase, the Holder will receive, for each $1,000 principal amount of this Note outstanding on the record date for the distribution, at the same time and upon the same terms as holders of the Common Stock, the amount and kind of shares of Capital Stock, evidences of indebtedness, assets or property, rights, options or warrants or other securities that the Holder would have received if the Holder had owned a number of shares of Common Stock equal to the Conversion Rate in effect on the record date for such distribution (or in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata amount).

If any distribution of the type described in this Section 8.05(c)(i) is not so paid or made, or if any rights, options or warrants are not exercised before their expiration date, the Conversion Rate will be readjusted to be the Conversion Rate that would then be in effect if such distribution had not been declared.

(ii) With respect to an adjustment pursuant to this Section 8.05(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to an Affiliate, a Subsidiary or other business unit of the Company, and such Capital Stock or similar equity interest is listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a national securities exchange or a reasonably comparable non-U.S. equivalent (a "**Spin-Off**"), but excluding an issuance solely pursuant to a Common Stock Change Event as to which the provisions described in Section 8.08(a) apply, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where:

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

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

FMV_0 = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of Common Stock (determined for purposes of the definition of Last Reported Sale Price as if such Capital Stock or similar equity interest were the Common Stock) over the first ten (10) consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the "**Valuation Period**"); and

MP_0 = the average of the Last Reported Sale Prices per share of the Common Stock over the Valuation Period.

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date. The adjustment to the Conversion Rate under this Section 8.05(c)(ii) will be calculated as of the Close of Business on the last Trading Day of the Valuation Period but will be given effect as of immediately after the Open of Business on the Ex-Dividend Date of the Spin-Off. Notwithstanding anything to the contrary herein or in this Note, if necessary, the Company shall delay the settlement of any conversion of this Note where the Conversion Date occurs during the Valuation Period until the third (3rd) Business Day after the last day of the Valuation Period. If any distribution of the type described in this Section 8.05(c)(ii) is declared but not so made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to make such distribution, to the Conversion Rate that would then be in effect if such distribution had not been declared.

(d) *Cash Dividends or Distributions*. If any cash dividend or distribution (other than a distribution as to which an adjustment to the Conversion Rate was effected pursuant to Section 8.05(e)) is made to all or substantially all holders of the Common Stock, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where:

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

CR_1 = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution;

SP_0 = the Last Reported Sale Price per share of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

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

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, the Holder will receive, for each $1,000 principal amount of this Note outstanding on the record date for such cash dividend or distribution, at the same time and upon the same terms as holders of the Common Stock, the amount of cash that the Holder would have received if the Holder had owned a number of shares of Common Stock equal to the Conversion Rate in effect on such record date (or in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata number of shares). If any dividend or distribution of the type described in this Section 10.05(d) is declared but not so paid or made, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(e) *Tender Offers or Exchange Offers*. If the Company or any Subsidiary makes a payment in respect of a tender offer or exchange offer for the Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the Last Reported Sale Price per share of the Common Stock on the Trading Day next succeeding the last date (the "**Expiration Date**") on which tenders or exchanges may be made pursuant to such tender offer or exchange offer (as it may be amended), the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where:

CR_0 = the Conversion Rate in effect immediately prior to the Expiration Time (as defined below);

CR_1 = the Conversion Rate in effect immediately after the Expiration Time;

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

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

OS_1 = the number of shares of Common Stock outstanding immediately after the Expiration Time (after giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer); and

SP_1 = the average of the Last Reported Sale Prices per share of the Common Stock over the ten (10) consecutive Trading Day period (the "**Averaging Period**") commencing on the Trading Day next succeeding the Expiration Date.

The adjustment to the Conversion Rate pursuant to this Section 8.05(e) will be calculated as of the Close of Business on the last Trading Day of the Averaging Period but will be given effect as of immediately after the Expiration Time. Notwithstanding anything to the contrary herein, if necessary, the Company shall delay the settlement of any conversion of this Note where the Conversion Date occurs during the Averaging Period until the third (3rd) Business Day after the last day of the Averaging Period.

(f) *Successive Adjustments.* After an adjustment to the Conversion Rate under this Article 8, any subsequent event requiring an adjustment under this Article 8 will cause an adjustment to the Conversion Rate as so adjusted, without duplication.

(g) *Limitations Imposed by Stock Market Listing Standards.* The Company will not enter into any transaction, or take any other voluntary action, that would result in an adjustment to the Conversion Rate that would violate the listing standards of any securities exchange on which any securities of the Company may be then listed, without complying, if applicable, with the requirements of such listing standards.

(h) *Special Settlement Provisions*. Notwithstanding anything to the contrary herein, if:

(i) this Note is to be converted and, as of the Conversion Date for such conversion, any transaction or other event that requires an adjustment to the Conversion Rate pursuant to Sections 8.05(a) through (e) has occurred but has not yet resulted in an adjustment to the Conversion Rate;

(ii) the consideration due upon such conversion consists of any shares of Common Stock; and

(iii) such shares of Common Stock are not entitled to participate in such transaction or event because they were not held on the related record date or otherwise, then, solely for purpose of such conversion, the Company shall, without duplication, give effect to such adjustment on such Conversion Date.

In addition, notwithstanding anything to the contrary herein, if:

(i) a Conversion Rate adjustment for any transaction or other event becomes effective on any Ex-Dividend Date pursuant to Sections 8.05(a) through (e);

(ii) this Note is to be converted;

(iii) the Conversion Date for such conversion occurs on or after such Ex-Dividend Date and on or before the related record date;

(iv) the consideration due upon such conversion includes any whole shares of Common Stock; and

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

then such Conversion Rate adjustment shall not be given effect for such conversion. Instead, the Holder will be treated as if the Holder were, as of such record date, the record holder of such shares of Common Stock on an unadjusted basis and will participate in such transaction or event.

(i) *Shareholder Rights Plans*. If the Company has a rights plan in effect when the Holder converts this Note, the Company will deliver to the Holder, to the extent the Holder receives any shares of Common Stock upon such conversion of this Note, any rights that, under the rights plan, would be applicable to a share of Common Stock, unless prior to the Conversion Date for this Note, the rights have separated from the Common Stock, in which case, and only in such case, the Conversion Rate will be adjusted pursuant to Section 8.05(c)(i) as if, at the time of such separation, the Company had distributed to all holders of the Common Stock shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities, subject to readjustment in the event of the expiration, termination or redemption of such rights.

(j) *Other Adjustments.* Whenever any provision of this Note requires the calculation of the Last Reported Sale Price or a function thereof over a period of multiple days (including the Stock Price for purposes of a Make-Whole Fundamental Change), the Company will make appropriate adjustments to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Effective Date or expiration date of the event occurs, at any time during such period.

(k) *Restrictions on Adjustments*. Except as a result of a reverse share split or a share combination subject to Section 8.05(a), and except for readjustments pursuant to the last paragraph of Section 8.05(a), readjustments pursuant to the penultimate paragraph of Section 8.05(b), readjustments pursuant to the last paragraph of Section 8.05(c)(i), readjustments pursuant to the penultimate paragraph of Section 8.05(c)(ii) and readjustments pursuant to Section 8.05(d), in no event will the Conversion Rate be adjusted downward pursuant to Section 8.05(a), (b), (c), (d) or (e). In addition, notwithstanding anything to the contrary elsewhere in this Note, the Conversion Rate will not be adjusted:

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

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

(iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in the preceding clause and outstanding as of the date of the Issue Date;

(iv) upon the repurchase of any shares of Common Stock pursuant to an open-market share repurchase program or other buy-back transaction that is not a tender offer or exchange offer subject to Section 10.05(e);

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

(vi) for accrued and unpaid interest.

(l) *Miscellaneous*.

(i) *Certain Definitions.*

(II) For purposes of this Section 8.05, the number of shares outstanding at any time will include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; but, so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, will not include shares of Common Stock held in the treasury of the Company.

(III) For purposes of this Section 8.05, the term "**Effective Date**" will mean the first date on which the Common Stock trades on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

(IV) For purposes of this Article 8, the term "**Ex-Dividend Date**" will mean the first date on which the shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

(ii) *Notices*. Whenever the Company adjusts (or is required to adjust) the Conversion Rate pursuant to this Section 8.05, the Company will promptly deliver to the Holder a written notice, which notice will include (i) a brief description of the event requiring adjustment to the Conversion Rate pursuant to this Section 8.05; (ii) the effective time of such adjustment; (iii) the Conversion Rate in effect immediately after such adjustment is made; and (iv) a schedule explaining, in reasonable detail, how the Company calculated such adjustment.

(iii) All calculations and other determinations in respect of the Conversion Rate will be made by the Company to the nearest 1/10,000th of a share, with 5/100,000ths rounded upward.

Section 8.06 *Voluntary Adjustments*.

(a) *Best Interest Increases*. The Company may, from time to time, to the extent permitted by law and the applicable rules of any exchange on which the Common Stock is listed, increase the Conversion Rate by any amount if (i) the Board of Directors determines that such increase is in the best interest of the Company; (ii) such increase is in effect for a period of at least twenty (20) Business Days; and (iii) during such period, such increase is irrevocable.

(b) *Tax-Related Increases*. To the extent permitted by law and the applicable rules of any exchange on which the Common Stock is listed, the Company may (but is not required to) increase the Conversion Rate if the Board of Directors determines that such increase is advisable to avoid, or diminish, any income tax imposed on holders of the Common Stock or rights to purchase the Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) or similar event treated as such for U.S. federal income tax purposes.

(c) *Notices*. Whenever the Board of Directors determines that the Company will increase the Conversion Rate pursuant to this Section 8.06, the Company will deliver to the Holder notice of such increase at least fifteen (15) Business Days before such increase will take effect, which notice will state the increase to be made and the period during which such increase will be in effect.

Section 8.07 *Adjustments Upon Certain Fundamental Changes*.

(a) *General*. If a Fundamental Change (determined after giving effect to the penultimate paragraph of the definition thereof, but without regard to the exclusion in clause (b)(ii) of the definition thereof) occurs (a "**Make-Whole Fundamental Change**"), and the Holder converts this Note "in connection with" such Make-Whole Fundamental Change, the Company will, in the circumstances described in this Section 8.07, increase the Conversion Rate for this Note by the number of additional shares of Common Stock (the "**Additional Shares**") set forth in this Section 8.07. For purposes of this Section 8.07, a conversion of this Note will be deemed to be "in connection with" a Make-Whole Fundamental Change if the applicable Conversion Date occurs during the period from, and including, the effective date of the Make-Whole Fundamental Change up to, and including, the Business Day immediately prior to the related Fundamental Change Repurchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the exclusion in clause (b)(ii) of the definition thereof, the thirty fifth (35th) Trading Day immediately following the effective date of such Make-Whole Fundamental Change). As promptly as practicable, but in no event later than the Business Day after the effective date of a Make-Whole Fundamental Change, the Company will notify the Holder of such effective date.

(b) *Determination of Additional Shares*. The number of Additional Shares, if any, by which the Conversion Rate will be increased if the Holder converts this Note in connection with a Make-Whole Fundamental Change will be determined by reference to the table below, and will be based on the Make-Whole Fundamental Change Effective Date and the Stock Price for such Make-Whole Fundamental Change. For any Make-Whole Fundamental Change, the "**Make-Whole Fundamental Change Effective Date**" will mean the date on which such Make-Whole Fundamental Change occurs or becomes effective.

(c) *Adjustment of Stock Prices and Additional Shares*. The Stock Prices set forth in the first row (*i.e.*, the column headers) of the table below will be adjusted on each date on which the Conversion Rate must be adjusted pursuant to Section 8.05. The adjusted Stock Prices will equal the Stock Prices in effect immediately prior to such adjustment, multiplied by a fraction, (i) the numerator of which is the Conversion Rate in effect immediately prior to the adjustment giving rise to the share price adjustment; and (ii) the denominator of which is the Conversion Rate in effect immediately after the adjustment. The numbers of Additional Shares set forth in the table below will be adjusted in the same manner, at the same time and for the same events for which the Conversion Rate is adjusted pursuant to Section 8.05.

(d) *Additional Shares Table*. The following table sets forth hypothetical Make-Whole Fundamental Change Effective Dates, Stock Prices and the number of Additional Shares by which the Conversion Rate will be increased per $1,000 principal amount of this Note for the Holder that converts this Note in connection with a Make-Whole Fundamental Change having such Make-Whole Fundamental Change Effective Date and Stock Price. In the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, the Conversion Rate will be increased by an equivalent pro rata number of shares.

	Stock Price									
Effective Date	$0.60	$0.76	$2.90	$3.50	$3.88	$5.00	$6.00	$8.00	$12.00	$16.00
January 17, 2017	355.4918	236.8878	162.5063	130.9858	70.8763	39.1640	21.6412	0.0000	0.0000	0.0000
January 17, 2018	355.4918	201.4220	132.1653	105.7891	57.5709	31.9951	16.7018	0.0000	0.0000	0.0000
January 17, 2019	355.4918	159.9914	95.7987	75.8657	41.7694	25.8873	11.4030	0.0000	0.0000	0.0000
January 17, 2020	355.4918	109.1105	51.7587	40.7040	23.0112	13.2302	5.9770	0.0000	0.0000	0.0000
January 17, 2021	355.4918	2.0122	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

(e) *Use of Additional Shares Table*. If the Stock Price and/or Make-Whole Fundamental Change Effective Date for a Make-Whole Fundamental Change are not set forth in the table above, then:

(A) if the Stock Price is between two Stock Prices in the table or the Make-Whole Fundamental Change Effective Date is between two Make-Whole Fundamental Change Effective Dates in the table, the number of Additional Shares by which the Conversion Rate will be increased for the Holder that converts this Note in connection with such Make-Whole Fundamental Change will be determined by a straight-line interpolation between the numbers of Additional Shares set forth for the higher and lower Stock Prices listed in the table and the earlier and later Make-Whole Fundamental Change Effective Dates listed in the table, as applicable, based on a 365- or 366-day year, as applicable;

(B) if the Stock Price is greater than $8.00, subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table, no Additional Shares will be added to the Conversion Rate; and

(C) if the Stock Price is less than $0.60 per share, subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table, no Additional Shares will be added to the Conversion Rate.

Notwithstanding the foregoing, in no event will the Conversion Rate be increased as a result of this Section 8.07 to exceed 1,673.1918 shares of Common Stock per $1,000 principal amount of this Note, subject to adjustment in the same manner, at the same time and for the same events for which the Conversion Rate must be adjusted as set forth in Section 8.05.

(f) *Settlement or Conversion*. If the Holder converts this Note in connection with a Make-Whole Fundamental Change, the Company will settle such conversion by delivering Conversion Consideration in accordance with Section 8.03; *provided*, *however*, that notwithstanding anything to the contrary in Section 8.03, if the Holder converts this Note in connection with a Make-Whole Fundamental Change described in clause (b)(ii) of the definition of Fundamental Change in which the holders of the Common Stock receive only cash in consideration for their shares of Common Stock, the Company will settle such conversion by delivering to the Holder, on the third (3rd) Business Day immediately following the Conversion Date for this Note, an amount of cash, for each $1,000 principal amount of this Note so converted, equal to the product of (i) the Conversion Rate on the Conversion Date applicable to this Note (including any Additional Shares added to such Conversion Rate pursuant to this Section 8.07) and (ii) the Stock Price for such Make-Whole Fundamental Change, or in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata amount.

Section 8.08 *Effect of Recapitalization, Reclassification, Consolidation, Merger or Sale*.

(a) *General*. If any of the following events occur:

(1) any recapitalization, reclassification or change of Common Stock (other than (x) a change only in par value, from par value to no par value or no par value to par value; or (y) changes resulting from a stock split or combination not involving the issuance of any other class or series of securities);

(2) any consolidation, merger, combination or similar transaction involving the Company;

(3) any sale, lease or other transfer to a third party of all or substantially all of the consolidated assets of the Company and its Subsidiaries substantially as an entirety; or

(4) any statutory share exchange,

and, in each case, as a result of which the Common Stock would be converted into, or exchanged for, or represent solely the right to receive, stock (including one or more series of the Common Stock), other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Common Stock Change Event**" and such stock, other securities, other property or assets, the "**Reference Property**", and the amount and kind of Reference Property that a holder of one share of Common Stock would be entitled to receive on account of such Common Stock Change Event, a "**Reference Property Unit**"), then, notwithstanding anything to the contrary, at the effective time of such transaction, the consideration due upon a conversion of this Note will be determined in the same manner as if each reference to any number of shares of Common Stock in this Article 8 were instead a reference to the same number of Reference Property Units. For these purposes, the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration (determined based in part upon any form of stockholder election), then the composition of the Reference Property Unit shall be deemed to be (a) the weighted average, per share of Common Stock, of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election; or (b) if no holders of the Common Stock affirmatively make such an election, the types and amounts of consideration actually received, per share of Common Stock, by the holders of the Common Stock. The Company shall notify the Holder of such weighted average (if applicable) as soon as practicable after such determination is made.

None of the foregoing provisions will affect the right of the Holder to convert this Note as set forth in Section 8.01 and Section 8.02 prior to the effective date of such Common Stock Change Event.

(b) *Notices*.

(i) As soon as practicable upon learning of the anticipated or actual effective date of any Common Stock Change Event, the Company will deliver written notice of such Common Stock Change Event to the Holder. Such Notice will include:

(A) a brief description of such Common Stock Change Event;

(B) the Conversion Rate in effect on the date the Company delivers such notice;

(C) the anticipated effective date for the Common Stock Change Event;

(D) that, on and after the effective date for the Common Stock Change Event, this Note will be convertible into Reference Property Units and cash in lieu of fractional Reference Property Units; and

(E) the composition of the Reference Property Unit for such Common Stock Change Event.

(c) *Successive Common Stock Change Events.* If more than one Common Stock Change Event occurs, this Section 8.08 will apply successively to each Common Stock Change Event.

(d) *Compliance Covenant*. The Company will not become a party to any Common Stock Change Event unless its terms are consistent with this Section 8.08.

ARTICLE 9
NO RIGHT OF REDEMPTION AT THE OPTION OF THE COMPANY

This Note will not be redeemable prior to the Maturity Date at the Company's election, and no sinking fund will be provided for this Note.

ARTICLE 10
MISCELLANEOUS

Section 10.01 *Notices*. Any request, demand, authorization, notice, waiver, consent or communication will be in writing and delivered in Person or mailed by first-class mail, postage prepaid, addressed as follows or transmitted by electronic transmission or other similar means of unsecured electronic methods to the following:

if to the Company:

Xtant Medical Holdings, Inc.
600 Cruiser Lane
Belgrade, MT 59714
Facsimile: (406) 388-9724
Attn: President

If to the Holder:

OrbiMed Royalty Opportunities II, LP
c/o OrbiMed Advisors LLC
601 Lexington Avenue, 54th Floor
New York, NY 10022
Attention: Tadd Wessel and Christopher LiPuma

The Company or the Holder, by notice given to the other in the manner provided above, may designate additional or different addresses for subsequent notices or communications. Any notice, direction, request or demand hereunder to or upon the Holder shall be deemed to have been sufficiently given or made, for all purposes, if it is in writing and actually received by the Holder, addressed as provided above or sent electronically in PDF format.

Section 10.02 *Separability Clause*. In case any provision in this Note will be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

Section 10.03 *Governing Law and Waiver of Jury Trial*. THIS NOTE WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. THE COMPANY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 10.04 *No Recourse Against Others*. A director, officer, employee or stockholder, as such, of the Company will not have any liability for any obligations of the Company under this Note for for any claim based on, in respect of or by reason of such obligations or their creation. By accepting this Note, the Holder will waive and release all such liability. The waiver and release will be part of the consideration for the issuance of this Note.

Section 10.05 *Calculations*. Except as otherwise provided in this Note, the Company will be responsible for making all calculations called for under this Note. These calculations include, but are not limited to, determinations of the Last Reported Sale Price of the Common Stock or any other security, accrued interest (including, for the avoidance of doubt, any Additional Interest, Default Interest or Special Interest) payable on this Note and the Conversion Rate in effect on any Conversion Date.

The Company will make all calculations in good faith and, absent manifest error, its calculations will be final and binding on the Holder. The Company will provide a schedule of its calculations to the Holder, and the Holder is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification.

All calculations will be made to the nearest cent or to the nearest 1/10,000th of a share, as the case may be, with 5/100,000ths rounded upward.

Section 10.06 *Successors*. All agreements of the Company in this Note will bind its successors.

Section 10.07 *Table of Contents; Headings*. The table of contents and headings of the articles and sections of this Note have been inserted for convenience of reference only, are not intended to be considered a part hereof, and will not modify or restrict any of the terms or provisions hereof.

Section 10.08 *Submission to Jurisdiction*. The Company: (a) agrees that any suit, action or proceeding against it arising out of or relating to this Note as the case may be, may be instituted in any U.S. federal court with applicable subject matter jurisdiction sitting in The City of New York; (b) waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding, and any claim that any suit, action or proceeding in such a court has been brought in an inconvenient forum; and (c) submits to the nonexclusive jurisdiction of such courts in any suit, action or proceeding.

Section 10.09 *Legal Holidays*. If the Maturity Date or any Interest Payment Date or Fundamental Change Repurchase Date is not a Business Day (which, solely for the purposes of any payment required to be made on this Note on any such date will be deemed not to include any day on which the office where the place of payment is authorized or required by law to close), then any action to be taken on such date need not be taken on such date, but may be taken on the immediately following Business Day, and no interest on such payment will accrue as a result of such delay.

Section 10.10 *No Security Interest Created*. Nothing in this Note, expressed or implied, will be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 10.11 *Benefits of Note*. Nothing in this Note, expressed or implied, will give to any Person, other than the parties hereto, and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Note.

Section 10.12 *Withholding Taxes*. The Holder agrees, and each beneficial owner of an interest in this Note, by its acquisition of such interest, is deemed to agree, that if the Company or other applicable withholding agent pays withholding taxes or backup withholding on behalf of the Holder or beneficial owner, as applicable, as a result of an adjustment to the Conversion Rate, then the Company or other applicable withholding agent, as applicable, may, at its option, set off such payments against payments of cash and shares of Common Stock on this Note.

Section 10.13 *Amendment and Waiver*. With the written consent of the holders of at least a majority of the Series then outstanding (including consents obtained in connection with a repurchase of, or tender offer or exchange offer for, notes of the Series), the Company, may amend the notes of the Series or waive compliance with any provision of the notes of the Series; *provided*, *however*, that, without the consent of each affected holder, no amendment to the notes of the Series, or waiver of any provision of the notes of the Series, may:

(a) reduce the principal amount of, or change the Maturity Date of, any note of the Series;

(b) reduce the rate of, or extend the stated time for payment of, interest on any note of the Series;

(c) reduce the Fundamental Change Repurchase Price of any note of the Series or change the time at which, or the circumstances under which, the notes of the Series may, or will be, repurchased;

(d) impair the right of any holder to institute suit for any payment on any note of the Series, including with respect to any consideration due upon conversion of a note of the Series;

(e) make any note of the Series payable in a currency other than that stated in such note;

(f) make any change that impairs or adversely affects the conversion rights of any holder under Section 8 or otherwise reduces the number of shares of Common Stock, the amount of cash or any other property receivable by a holder upon conversion;

(g) change the ranking of the notes of the Series;

(h) make any change to any amendment, modification or waiver of a provision of a note of the Series that requires the consent of each affected holder of notes of the Series; or

(i) reduce the percentage of the aggregate principal amount of then outstanding notes of the Series whose holders must consent to an amendment or modification of any note of the Series or a waiver of a past Default.

It will not be necessary for the consent of the holders under this Section 10.13 to approve the particular form of any proposed amendment or modification, but it will be sufficient if such consent approves the substance of such proposed amendment or modification.

[*Remainder of Page Intentionally Left Blank; Signature Page Follows*]

IN WITNESS WHEREOF, the undersigned have executed this Note as of the day and year first written above.

XTANT MEDICAL HOLDINGS, INC.

By: /s/ Daniel Goldberger
Name: Daniel Goldberger
Title: Chief Executive Officer

[Signature Page to Convertible Promissory Note]

EXHIBIT A

CONVERSION NOTICE

XTANT MEDICAL HOLDINGS, INC.
6.00% CONVERTIBLE SENIOR NOTE DUE 2021

To convert this Note, check the box ☐

To convert the entire principal amount of this Note, check the box ☐

To convert only a portion of the principal amount of this Note, check the box ☐ and here specify the principal amount to be converted:

$ _____

ORBIMED ROYALTY OPPORTUNITIES II, LP

By: _____
Authorized Signatory

EXHIBIT B

FUNDAMENTAL CHANGE REPURCHASE NOTICE

Xtant Medical Holdings, Inc.
600 Cruiser Lane
Belgrade, MT 59714
Attention: General Counsel

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Xtant Medical Holdings, Inc. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the Holder hereof in accordance with the applicable provisions of this Note (1) the entire principal amount of this Note, or the portion thereof below designated; and (2) if such Fundamental Change Repurchase Date does not occur during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Fundamental Change Repurchase Date.

Principal amount to be repaid (if less than all): $_____,000

ORBIMED ROYALTY OPPORTUNITIES II, LP

By: _____
Authorized Signatory

REGISTRATION RIGHTS AGREEMENT

OrbiMed Royalty Opportunities II, LP
c/o OrbiMed Advisors LLC
601 Lexington Ave., 54th Floor
New York, NY 10022

ROS Acquisition Offshore LP
c/o OrbiMed Advisors LLC
601 Lexington Ave., 54th Floor
New York, NY 10022

Ladies and Gentlemen:

Xtant Medical Holdings, Inc., a Delaware corporation (the "**Company**"), proposes to issue and sell to OrbiMed Royalty Opportunities II, LP and ROS Acquisition Offshore LP (the "**Purchasers**") convertible senior notes due 2021 in the aggregate principal amount of $1,560,000 (the "**Notes**"), upon the terms set forth in the Securities Purchase Agreements among the Company, each of the Purchasers, dated January 16, 2017 (the "**Purchase Agreements**"). Upon a conversion of each Note at the option of the holder thereof, the Company will be required to deliver shares of common stock of the Company, $0.000001 par value per share (the "**Common Stock**"). To induce the Purchasers to enter into the Purchase Agreements and to satisfy the Company's obligations thereunder, the holders of the Notes will have the benefit of this registration rights agreement (this "**Agreement**") pursuant to which the Company agrees with the Purchasers for the benefit of the Purchasers and for the benefit of the holders (the "**Holders**") from time to time of the Registrable Securities (as defined below), as follows:

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

"**Additional Interest**" has the meaning set forth in Section 7.

"**Affiliate**" has the meaning set forth in Rule 405 under the Securities Act.

"**Agreement**" has the meaning set forth in the preamble hereto.

"**Broker-Dealer**" means any broker or dealer registered as such under the Exchange Act.

"**Business Day**" has the meaning set forth in the Notes.

"**Close of Business**" has the meaning set forth in the Notes.

"**Closing Date**" means the date hereof.

"**Company**" has the meaning set forth in the preamble hereto.

"**Commission**" means the Securities and Exchange Commission.

"**Common Stock**" has the meaning set forth in the preamble hereto.

"**Control**" has the meaning set forth in Rule 405 under the Securities Act, and the terms "controlling" and "controlled" shall have meanings correlative thereto.

"**Conversion Date**" has the meaning set forth in the Notes.

"**Deferral Period**" has the meaning indicated in Section 3(i).

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

"**FINRA Rules**" means the Conduct Rules and the By-Laws of the Financial Industry Regulatory Authority, Inc.

"**Holder**" has the meaning set forth in the preamble hereto.

"**Losses**" has the meaning set forth in Section 5(d).

"**Majority Holders**" means, on any date, Holders of Registrable Securities that represent a majority of the shares of Common Stock that underlie (or were issued upon conversion of) the Notes and whose offer and sale is registered under the Shelf Registration Statement.

"**Managing Underwriters**" means the investment bank(s) and manager(s) that administer an underwritten offering, if any, conducted pursuant to Section 6.

"**Maturity Date**" has the meaning set forth in the Notes.

"**Notes**" has the meaning set forth in the preamble hereto.

"**Notice and Questionnaire**" means a written notice delivered to the Company substantially in the form attached as Annex A hereto.

"**Notice Holder**" means, on any date, any Holder that has delivered a completed Notice and Questionnaire to the Company on or before such date.

"**Prospectus**" means a prospectus included in the Shelf Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A or Rule 430B under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Notes and the shares of Common Stock covered by the Shelf Registration Statement, and all amendments and supplements thereto, including any and all exhibits thereto and any information incorporated by reference therein.

"**Purchase Agreements**" has the meaning set forth in the preamble hereto.

"**Purchasers**" has the meaning set forth in the preamble hereto.

"**Registrable Securities**" means the Notes initially sold to the Purchasers pursuant to the Purchase Agreements and the shares of Common Stock issuable upon conversion of such Notes, and any securities into or for which such Notes or shares have been converted or exchanged, and any security issued with respect thereto upon any stock dividend, split or similar event; *provided*, *however*, that each such security will cease to constitute Registrable Securities upon the earliest to occur of (i) such security being sold pursuant to a registration statement that is effective under the Securities Act; and (ii) such security ceasing to be outstanding.

"**Registration Default**" has the meaning set forth in Section 7.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"**Shelf Registration Period**" has the meaning set forth in Section 2(b).

"**Shelf Registration Statement**" means a "shelf" registration statement of the Company prepared pursuant to Section 2 that covers the resale, from time to time pursuant to Rule 415 under the Securities Act (or any successor thereto), of some or all of the Registrable Securities on an appropriate form under the Securities Act, including all post-effective and other amendments and supplements to such registration statement, the related Prospectus, all exhibits thereto and all material incorporated by reference therein.

"**Trading Day**" has the meaning set forth in the Notes.

"**Underwriter**" means any underwriter of Registrable Securities for an offering thereof under the Shelf Registration Statement.

2. *Shelf Registration*. (a) The Company will file with the Commission a Shelf Registration Statement (which, initially, will be on Form S-1 and, as soon as the Company is eligible, will be on Form S-3) providing for the registration of the offer and sale, from time to time on a continuous or delayed basis, of the Registrable Securities by the Holders in accordance with the methods of distribution elected by such Holders, pursuant to Rule 415 under the Securities Act (or any successor thereto) and will use its best efforts to cause such Shelf Registration Statement to become effective under the Securities Act no later than the one hundred and eightieth (180th) day after the Closing Date.

(b) The Company will use its best efforts to keep the Shelf Registration Statement continuously effective, supplemented and amended as required by the Securities Act, in order to permit the related Prospectus to be usable by Holders for a period (the "**Shelf Registration Period**") from the date the Shelf Registration Statement becomes effective to, and including, the earlier of (i) the sixtieth (60th) Trading Day immediately following the Maturity Date (subject to extension for any suspension of the effectiveness of the Shelf Registration Statement during such sixty (60) Trading Days immediately following the Maturity Date); and (ii) the date upon which no Registrable Securities are outstanding and constitute "restricted securities" (as defined in Rule 144 under the Securities Act).

(c) The Company will cause the Shelf Registration Statement and the related Prospectus and any amendment or supplement thereto, as of the effective date of the Shelf Registration Statement or such amendment or supplement, (i) to comply in all material respects with the applicable requirements of the Securities Act; and (ii) not to contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein (in the case of the Prospectus, in the light of the circumstances under which they were made) not misleading.

(d) Subject to applicable law, the Company will provide written notice to the Holders of the anticipated effective date of the Shelf Registration Statement at least ten (10) Business Days before such anticipated effective date. Each Holder, in order to be named in the Shelf Registration Statement at the time of its initial effectiveness, will be required to deliver a Notice and Questionnaire and such other information as the Company may reasonably request in writing, if any, to the Company on or before the fifth (5th) day before the anticipated effective date of the Shelf Registration Statement as provided in the notice. Subject to Section 3(i), from and after the effective date of the Shelf Registration Statement, the Company will, as promptly as is practicable after the date a Holder's Notice and Questionnaire is delivered, but in no event after the tenth (10th) day after such date, (i) file with the Commission an amendment to the Shelf Registration Statement or prepare and, if permitted or required by applicable law, file a supplement to the Prospectus or an amendment or supplement to any document incorporated therein by reference or file any other required document so that such Holder delivering such Notice and Questionnaire is named as a selling securityholder in the Shelf Registration Statement and the related Prospectus, and so that such Holder is permitted to deliver such Prospectus to purchasers of Registrable Securities in accordance with applicable law (except that the Company will not be required to file more than one supplement or post-effective amendment in any thirty (30) day period in accordance with this Section 2(d)(i)) and, in the case of a post-effective amendment to the Shelf Registration Statement, the Company will use its best efforts to cause such post-effective amendment to become effective under the Securities Act as promptly as is practicable; (ii) provide such Holder, upon request, copies of any documents filed pursuant to Section 2(d)(i); and (iii) notify such Holder as promptly as practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 2(d)(i); *provided*, *however*, that if such Notice and Questionnaire is delivered during a Deferral Period, then the Company will so inform the Holder delivering such Notice and Questionnaire and will take the actions set forth in clauses (i), (ii) and (iii) above upon expiration of the Deferral Period in accordance with Section 3(i). Notwithstanding anything to the contrary herein, the Company need not name any Holder that is not a Notice Holder as a selling securityholder in the Shelf Registration Statement or Prospectus; *provided*, *however*, that any Holder that becomes a Notice Holder pursuant to this Section 2(d) (whether or not such Holder was a Notice Holder at the effective date of the Shelf Registration Statement) will be named as a selling securityholder in the Shelf Registration Statement or Prospectus in accordance with this Section 2(d).

3. *Registration Procedures*. The following provisions will apply in connection with the Shelf Registration Statement.

(a) The Company will:

(i) furnish to the Purchasers and to counsel for the Notice Holders, not less than five (5) Business Days before the filing thereof with the Commission, a copy of the Shelf Registration Statement and each amendment thereto and each amendment or supplement, if any, to the Prospectus (other than amendments and supplements that do nothing more than name Notice Holders and provide information with respect thereto and other than filings by the Company under the Exchange Act) and will use its best efforts to reflect in each such document, when so filed with the Commission, such comments as the Purchasers reasonably propose within three (3) Business Days of the delivery of such copies to the Purchasers; and

(ii) include information regarding the Notice Holders and the methods of distribution they have elected for their Registrable Securities provided to the Company in Notices and Questionnaires as necessary to permit such distribution by the methods specified therein.

(b) The Company will ensure that:

(i) the Shelf Registration Statement and any amendment thereto, and any Prospectus and any amendment or supplement thereto, comply in all material respects with the Securities Act; and

(ii) the Shelf Registration Statement and any amendment thereto do not, when each becomes effective, 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.

(c) The Company will advise the Purchasers, the Notice Holders and any Underwriter that has provided in writing to the Company a telephone or email or other address for notices, and confirm such advice in writing, if requested (which notice pursuant to clauses (ii) to (v), inclusive, below will be accompanied by an instruction to suspend the use of the Prospectus until the Company has remedied the basis for such suspension):

(i) when the Shelf Registration Statement and any amendment thereto have been filed with the Commission and when the Shelf Registration Statement or any post-effective amendment thereto has become effective;

(ii) of any request by the Commission for any amendment or supplement to the Shelf Registration Statement or the Prospectus or for additional information;

(iii) of the issuance by the Commission of any stop order suspending the effectiveness of the Shelf Registration Statement or the institution or threatening of any proceeding for that purpose;

(iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Common Stock included therein for sale in any jurisdiction or the institution or threatening of any proceeding for such purpose; and

(v) of the happening of any event that requires any change in the Shelf Registration Statement or the Prospectus so that they do not contain any untrue statement of a material fact and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the Prospectus, in the light of the circumstances under which they were made) not misleading.

(d) The Company will use its best efforts to prevent the issuance of any order suspending the effectiveness of the Shelf Registration Statement or the qualification of the securities therein for sale in any jurisdiction and, if issued, to obtain as soon as practicable the withdrawal thereof.

(e) Upon request, the Company will furnish, in electronic or physical form, to each Notice Holder, without charge, one copy of the Shelf Registration Statement and any post-effective amendment thereto, including all material incorporated therein by reference, and, if a Notice Holder so requests in writing, all exhibits thereto (including exhibits incorporated by reference therein).

(f) During the Shelf Registration Period, the Company will promptly deliver to each Purchaser, each Notice Holder, and any sales or placement agents or underwriters acting on their behalf, without charge, as many copies of the Prospectus (including the preliminary Prospectus, if any) relating to the Shelf Registration Statement and any amendment or supplement thereto as such person may reasonably request. Subject to the restrictions set forth in this Agreement, the Company consents to the use of the Prospectus or any amendment or supplement thereto by each of the foregoing in connection with the offering and sale of the Registrable Securities.

(g) Before any offering of Registrable Securities pursuant to the Shelf Registration Statement, the Company will arrange for the qualification of the Registrable Securities for sale under the laws of such U.S. jurisdictions as any Notice reasonably requests and will maintain such qualification in effect so long as required; *provided*, *however*, that in no event will the Company be obligated by this Agreement to qualify to do business or as a dealer of securities in any jurisdiction where it is not then so qualified or to take any action that would subject it to taxation or service of process in suits in any jurisdiction where it is not then so subject. If, at any time during the Shelf Registration Period, the Registrable Securities are not "covered securities" within the meaning of Section 18 of the Securities Act, then the Company will arrange for such qualification (subject to the proviso of the immediately preceding paragraph) in each U.S. jurisdiction of residence of each Notice Holder.

(h) Upon the occurrence of any event contemplated by subsections (c)(ii) to (v), inclusive, above, the Company will promptly (or within the time period provided for by Section 3(i), if applicable) prepare a post-effective amendment to the Shelf Registration Statement or an amendment or supplement to the Prospectus or file any other required document so that the Shelf Registration Statement and the Prospectus will not include 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 (in the case of the Prospectus, in the light of the circumstances under which they were made) not misleading.

(i) Upon the occurrence or existence of any pending corporate development, public filings with the Commission or any other material event that, in the reasonable judgment of the Company, makes it appropriate to suspend the availability of the Shelf Registration Statement and the Prospectus, the Company will give notice (without notice of the nature or details of such events) to the Notice Holders that the availability of the Shelf Registration Statement is suspended and, upon receipt of any such notice, each Notice Holder agrees: (i) not to sell any Registrable Securities pursuant to the Shelf Registration Statement until such Notice Holder receives copies of the supplemented or amended Prospectus provided for in Section 3(i), or until it is advised in writing by the Company that the Prospectus may be used; and (ii) to hold such notice in confidence. Except in the case of a suspension of the availability of the Shelf Registration Statement and the Prospectus solely as the result of filing a post-effective amendment or supplement to the Prospectus to add additional selling securityholders therein, the period during which the availability of the Shelf Registration Statement and any Prospectus is suspended (the "**Deferral Period**") will not exceed an aggregate of (A) thirty (30) days (or, if the Shelf Registration Statement is on Form S-1 (or any successor thereto), sixty (60) days) in any calendar quarter; or (B) sixty (60) days (or, if the shelf registration statement is on Form S-1 (or any successor thereto), ninety (90) days) in any calendar year.

(j) The Company will comply with all applicable rules and regulations of the Commission and will make generally available to its securityholders an earnings statement (which need not be audited) satisfying the provisions of Section 11(a) of the Securities Act as soon as practicable after the effective date of the Shelf Registration Statement and in any event no later than forty five (45) days after the end of the twelve (12) month period (or ninety (90) days, if such period is a fiscal year) beginning with the first month of the Company's first fiscal quarter commencing after the effective date of the Shelf Registration Statement.

(k) The Company may require each Holder of Registrable Securities to be sold pursuant to the Shelf Registration Statement to furnish to the Company such information regarding the Holder and the distribution of such Registrable Securities as the Company may from time to time reasonably require for inclusion in the Shelf Registration Statement in order to comply with the Securities Act. The Company may exclude from the Shelf Registration Statement the Registrable Securities of any Holder that unreasonably fails to furnish such information within a reasonable time after receiving a request from the Company for such information.

(l) Subject to Section 6, the Company will enter into customary agreements (including, if requested by the Majority Holders, an underwriting agreement in customary form that, for the avoidance of doubt, will provide for customary representations and warranties, legal opinions, comfort letters and other documents and certifications) and take all other necessary actions in order to expedite or facilitate the registration or the disposition of the Registrable Securities, and in connection therewith, if an underwriting agreement is entered into, cause the same to contain customary indemnification provisions and procedures.

(m) Subject to Section 6, for persons who are or may be "underwriters" with respect to the Registrable Securities within the meaning of the Securities Act and who make appropriate requests for information to be used solely for the purpose of taking reasonable steps to establish a due diligence or similar defense in connection with the proposed sale of such Registrable Securities pursuant to the Shelf Registration, the Company will:

(i) make reasonably available during business hours for inspection by the Holders, any Underwriter participating in any disposition pursuant to the Shelf Registration Statement and any attorney, accountant or other agent retained by the Holders or any such Underwriter all relevant financial and other records and pertinent corporate documents of the Company and its subsidiaries; and

(ii) cause the Company's officers, directors, employees, accountants and auditors to supply all relevant information reasonably requested by the Holders or any such Underwriter, attorney, accountant or agent in connection with the Shelf Registration Statement as is customary for similar due diligence examinations.

(n) In the event that any Broker-Dealer underwrites any Registrable Securities or participates as a member of an underwriting syndicate or selling group or "participates in an offering" (within the meaning of the FINRA Rules) thereof, whether as a Holder or as an underwriter, placement, sales agent or broker or dealer in respect thereof, or otherwise, the Company will, upon the reasonable request of such Broker-Dealer, comply with any reasonable request of such Broker-Dealer in complying with the FINRA Rules.

(o) The Company will use its best efforts to take all other steps necessary to effect the registration of the offer and sale of the Registrable Securities covered by the Shelf Registration Statement.

4. *Registration Expenses*. The Company will bear all expenses incurred in connection with the performance of its obligations under Sections 2 and 3. The Company will reimburse the Purchasers and the Holders for the reasonable fees and disbursements of one firm or counsel (which may be a nationally recognized law firm experienced in securities matters designated by the Majority Holders) to act as counsel for the Holders in connection therewith.

5. *Indemnification and Contribution*.

(a) The Company agrees to indemnify and hold harmless each Holder, the directors, officers, employees, Affiliates and agents of each Holder and each person who Controls any Holder against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Shelf Registration Statement as originally filed or in any amendment thereof, or in any preliminary Prospectus or the Prospectus, or in any amendment thereof or supplement thereto, or caused by the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of any preliminary Prospectus or the Prospectus, in the light of the circumstances under which they were made) not misleading, and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by it in connection with investigating or defending any such loss, claim, damage, liability or action; *provided*, *however*, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of the party claiming indemnification specifically for inclusion therein.

The Company also agrees to provide customary indemnities to, and to contribute as provided in Section 5(d) to Losses of, any underwriters of the Registrable Securities, their officers, directors and employees and each Person who Controls such underwriters to the same extent as provided herein with respect to the Holders.

(b) Each Holder of securities covered by the Shelf Registration Statement (including each Purchaser that is a Holder, in such capacity) severally and not jointly agrees to indemnify and hold harmless the Company, each of the Company's directors, each of the Company's officers who sign the Shelf Registration Statement and each person who Controls the Company, to the same extent as the foregoing indemnity from the Company to each such Holder, but only with reference to written information relating to such Holder furnished to the Company by or on behalf of such Holder specifically for inclusion in the documents referred to in the foregoing indemnity. This indemnity agreement will be acknowledged by each Notice Holder that is not a Purchaser in such Notice Holder's Notice and Questionnaire and will be in addition to any liability that any such Notice Holder may otherwise have.

(c) Promptly after receipt by an indemnified party under this Section 5 or notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 5, notify the indemnifying party in writing of the commencement thereof, but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b), as applicable, above unless and to the extent it has been materially prejudiced through the forfeiture by the indemnifying party of substantial rights and defenses; and (ii) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) or (b), as applicable, above. If any action is brought against an indemnified party and it has notified the indemnifying party thereof, the indemnifying party will be entitled to appoint counsel (including local counsel) of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case, the indemnifying party will not thereafter be responsible for the fees and expenses of any separate counsel, other than local counsel if not appointed by the indemnifying party, retained by the indemnified party or parties, except as set forth below); *provided*, *however*, that such counsel will be reasonably satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel (including local counsel) to represent the indemnified party in an action, the indemnified party will have the right to employ separate counsel (including local counsel), and the indemnifying party will bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest; (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party has reasonably concluded that there may be legal defenses available to it and/or other indemnified parties that are different from or additional to those available to the indemnifying party; (iii) the indemnifying party has not employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action; or (iv) the indemnifying party has authorized the indemnified party to employ separate counsel at the expense of the indemnifying party. The indemnifying party will not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one (1) separate law firm (in addition to any local counsel) for all indemnified persons. An indemnifying party will not, without the prior written consent of the indemnified parties, 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 includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding and does not include an admission of fault, culpability or a failure to act, by or on behalf of any such indemnified party.

(d) In the event that the indemnity provided in paragraph (a) or (b) of this Section 5 is unavailable to or insufficient to hold harmless an indemnified party for any reason, then each applicable indemnifying party will have a several, and not joint, obligation to contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending such losses, claims, damages, liabilities or actions) (collectively "**Losses**") to which such indemnified party may be subject in such proportion as is appropriate to reflect the relative benefits received by such indemnifying party, on the one hand, and such indemnified party, on the other hand, from the offering of the Registrable Securities and the Shelf Registration Statement that resulted in such Losses; *provided*, *however*, that in no case will any underwriter be responsible for any amount in excess of the underwriting discount or commission applicable to the securities purchased by such underwriter under the Shelf Registration Statement that resulted in such Losses. If the allocation provided by the immediately preceding sentence is unavailable for any reason, then the indemnifying party and the indemnified party will contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of such indemnifying party, on the one hand, and such indemnified party, on the other hand, in connection with the statements or omissions, or alleged statements or omissions, that resulted in such Losses as well as any other relevant equitable considerations. Benefits received by the Company will be deemed to be equal to the total net proceeds from the offering of the Notes (before deducting expenses). Benefits received by any Holder will be deemed to be equal to the value of having the offer and sale of such Holder's Registrable Securities registered under the Securities Act pursuant to the Shelf Registration Statement and hereunder. Benefits received by any underwriter will be deemed to be equal to the total underwriting discounts and commissions, as set forth on the cover page of the Prospectus relating to the Shelf Registration Statement that resulted in such Losses. Relative fault will be determined by reference to, among other things, whether any untrue or any alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information provided by the indemnifying party, on the one hand, or by the indemnified party, on the other hand, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such untrue statement or omission or alleged untrue statement or omission. The parties agree that it would not be just and equitable if contribution were determined by pro rata allocation (even if the Holders were treated as one entity for such purpose) or any other method of allocation which does not take account of the equitable considerations referred to above. Notwithstanding anything to the contrary in this Section 5(d), no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 5, each person who Controls a Holder and each director, officer, employee, Affiliate and agent of such Holder will have the same rights to contribution as such Holder, and each person who Controls the Company, each officer of the Company who signed the Shelf Registration Statement and each director of the Company will have the same rights to contribution as the Company, subject in each case to the applicable terms and conditions of this Section 5(d).

(e) The provisions of this Section 5 will remain in full force and effect, regardless of any investigation made by or on behalf of any Purchaser or Holder or the Company or any of the indemnified persons referred to in this Section 5, and will survive the sale by a Holder of securities covered by the Shelf Registration Statement.

6. *Underwritten Registrations*.

(a) Notwithstanding anything to the contrary herein, in no event will the method of distribution of Registrable Securities take the form of an underwritten offering without the prior written consent of the Company. Consent may be conditioned on waivers of any of the obligations in Section 3, 4 or 5.

(b) If any Registrable Securities are to be sold in an underwritten offering, the Managing Underwriters will be selected by the Company, subject to the prior written consent of the Majority Holders, which consent will not be unreasonably withheld.

(c) No person may participate in any underwritten offering pursuant to the Shelf Registration Statement unless such person: (i) agrees to sell such person's Registrable Securities on the basis reasonably provided in any underwriting arrangements approved by the persons entitled hereunder to approve such arrangements; and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements.

7. *Registration Defaults*. If any of the following events shall occur (each, a "**Registration Default**"), then the Company will pay additional interest on the Notes ("**Additional Interest**") as follows:

(a) if the Shelf Registration Statement has not been filed with the Commission and has not become effective on or before the one hundred and eightieth (180th) day after the Closing Date, then, commencing on the one hundred and eighty first (181st) day after the Closing Date, Additional Interest will accrue on the aggregate outstanding principal amount of the Notes at a rate of 0.25% per annum for the first 90 days beginning on, and including, such one hundred and eighty first (181st) day and 0.50% per annum thereafter;

(b) if the Shelf Registration Statement has become effective but ceases to be effective or usable for the offer and sale of the Registrable Securities (other than in connection with (i) a Deferral Period; or (ii) as a result filing a post-effective amendment solely to add additional selling securityholders) at any time during the Shelf Registration Period and the Company does not cure the lapse of effectiveness or usability within ten (10) Business Days (or, if a Deferral Period is then in effect, within ten (10) Business Days after the expiration of such Deferral Period) (or, in the case of filing a post-effective amendment solely to add additional selling securityholders, within ten (10) Business Days after the expiration of the ten (10) day period referred to in Section 2(d), subject to the proviso therein), then Additional Interest will accrue on the aggregate outstanding principal amount of the Notes at a rate of 0.25% per annum for the first ninety (90) days beginning on, and including, the day following such tenth (10th) Business Day and 0.50% per annum thereafter;

(c) if the Company, through its omission, fails to name as a selling securityholder any Holder that had complied timely with its obligations hereunder in a manner to entitle such Holder to be so named in (i) the Shelf Registration Statement at the time it first became effective; or (ii) any Prospectus at the time it is filed with the Commission (or, if later, the effective date of the Shelf Registration Statement), then Additional Interest will accrue on the aggregate outstanding principal amount of the Notes held by such Holder at a rate of 0.25% per annum for the first ninety (90) days beginning on, and including, the day following the effective date of such Shelf Registration Statement or the filing of such Prospectus, as applicable, and 0.50% per annum thereafter; and

(d) if the aggregate duration of Deferral Periods in any period exceeds the number of days permitted in respect of such period pursuant to Section 3(i), then, commencing on the day the aggregate duration of Deferral Periods in such period exceeds the number of days permitted in respect of such period, Additional Interest will accrue on the aggregate outstanding principal amount of the Notes at a rate of 0.25% per annum for the first ninety (90) days beginning on, and including, and including such date, and 0.50% per annum thereafter; *provided*, *however*, that (1) upon the filing and effectiveness of the Shelf Registration Statement (in the case of paragraph (a) above), (2) upon such time as the applicable Shelf Registration Statement becomes effective and usable for resales (in the case of paragraph (b) above), (3) upon such time as such Holder is permitted to sell its Registrable Securities pursuant to any Shelf Registration Statement and Prospectus in accordance with applicable law (in the case of paragraph (c) above), (4) upon the termination of the applicable Deferral Period (in the case of paragraph (d) above), or (5) in any case, upon the expiration of the Shelf Registration Period, Additional Interest will cease to accrue on account of the applicable Registration Default (it being understood that nothing in this sentence will prevent Additional Interest from accruing as a result of any other Registration Default during the Shelf Registration Period).

Any Additional Interest due pursuant to this Section 7 will be payable in cash in the same manner and on the same dates as the stated interest payable on the Notes. If any Note ceases to be outstanding during any period for which Additional Interest is accruing, the Company will prorate the Additional Interest payable with respect to such Note.

Additional Interest will not accrue on the Notes at a rate that exceeds 0.50% per annum in the aggregate and will not be payable under more than one clause above for any given period of time, except that if Additional Interest would be payable because of more than one Registration Default, but at a rate of 0.25% per annum under one Registration Default and at a rate of 0.50% per annum under the other, then the Additional Interest rate will be the higher rate of 0.50% per annum.

Notwithstanding anything to the contrary in this Agreement, in no event will Additional Interest accrue on the shares of Common Stock issued upon conversion of the Notes. However, if there exists a Registration Default with respect to the Registrable Securities on the Maturity Date, then, in addition to any Additional Interest otherwise payable, the Company will make a cash payment to each Holder of any outstanding Note as of the Close of Business on the Business Day immediately before the Maturity Date in an amount equal to five percent (5%) of the principal amount of such Note. For purposes of the preceding sentence, Notes that have been converted with a Conversion Date that is on or after January 15, 2021, and on or before the second (2nd) Business Day immediately preceding the Maturity Date will be considered to be outstanding. Accordingly, and for the avoidance of doubt, if a Registration Default exists on the Maturity Date, the payment described in the preceding two sentences will be payable on all Notes outstanding as of the Close of Business on the Business Day immediately preceding the Maturity Date and on all Notes converted with a conversion date that is on or after January 15, 2021, and on or before the second (2nd) Business Day immediately preceding the Maturity Date.

8. *No Inconsistent Agreements*. The Company has not entered into, and agrees not to enter into, any agreement with respect to its securities that is inconsistent with the registration rights granted to the Holders herein.

9. *Rule 144A and Rule 144*. So long as any Registrable Securities remain outstanding, the Company will file the reports required to be filed by it under Rule 144A(d)(4) under the Securities Act and the reports required to be filed by it under the Exchange Act in a timely manner and, if at any time the Company is not required to file such reports, it will, upon the written request of any Holder of Registrable Securities, make publicly available other information so long as necessary to permit sales of such Holder's Registrable Securities pursuant to Rules 144 and 144A of the Securities Act. The Company covenants that it will take such further action as any Holder of Registrable Securities may reasonably request, all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act pursuant to Rule 144 or Rule 144A (including, without limitation, satisfying the requirements of Rule 144A(d)(4)). Upon the written request of any Holder of Registrable Securities, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements. Notwithstanding anything to the contrary in this Section 9, nothing in this Section 9 will be deemed to require the Company to register any of its securities pursuant to the Exchange Act.

10. *Amendments and Waivers*. The provisions of this Agreement may not be amended, qualified, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of the Holders of a majority of the Registrable Securities (determined on an as-converted basis); *provided*, *however*, that no amendment, qualification, modification, supplement, waiver or consent with respect to Section 7 will be effective as against any Holder unless consented to in writing by such Holder; *provided*, *further*, that this Section 10 may not be amended, qualified, modified or supplemented, and waivers of or consents to departures from this Section 10 may not be given, unless the Company has obtained the written consent of each Purchaser and each Holder.

11. *Notices*. All notices and other communications provided for or permitted hereunder will be made in writing by hand-delivery, first-class mail, telex, telecopier, email or air courier guaranteeing overnight delivery:

(a) if to a Holder, at the most current address given by such holder to the Company in accordance with the provisions of the Notice and Questionnaire.

(b) if to any Purchaser, initially at the address thereof set forth above; and

(c) if to the Company, initially at its address set forth in the Purchase Agreements.

All such notices and communications shall be deemed to have been duly given when received.

12. *Remedies*. Each Holder, in addition to being entitled to exercise all rights provided to it herein or in the Purchase Agreement or granted by law, including recovery of liquidated or other damages, will be entitled to specific performance of its rights under this Agreement. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Agreement and hereby agrees to waive in any action for specific performance the defense that a remedy at law would be adequate.

13. *Successors*. This Agreement will inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns, including, without the need for an express assignment or any consent by the Company thereto, subsequent Holders, and the indemnified persons referred to in Section 5. The Company hereby agrees to extend the benefits of this Agreement to any Holder, and any such Holder may specifically enforce the provisions of this Agreement as if an original party hereto.

14. *Counterparts*. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

15. *Headings*. The section headings used herein are for convenience only and shall not affect the construction or interpretation hereof.

16. *Applicable Law*. THIS AGREEMENT WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT THE TRANSACTION CONTEMPLATED HEREBY.

17. *Severability*. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof will not be in any way impaired or affected thereby, it being intended that all of the rights and privileges of the parties will be enforceable to the fullest extent permitted by law.

18. *Common Stock Held by the Company, Etc.* Whenever the consent or approval of Holders of a specified percentage of securities is required hereunder, securities held by the Company or its Affiliates (other than subsequent Holders thereof if such subsequent Holders are deemed to be Affiliates solely by reason of their holdings of such securities) will not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

[*Remainder of Page Intentionally Left Blank; Signature Page Follows*]

Very truly yours,

XTANT MEDICAL HOLDINGS, INC.

By: /s/ Daniel Goldberger
Name: Daniel Goldberger
Title: Chief Executive Officer

OrbiMed Royalty Opportunities II, LP

By OrbiMed ROF II LLC,
its General Partner

By OrbiMed Advisors LLC,
its Managing Member

By: /s/ W. Carter Neild
Print Name: W. Carter Neild
Title: Member

ROS Acquisition Offshore LP

By OrbiMed Advisors LLC, solely in its
capacity as Investment Manager

By: /s/ W. Carter Neild
Print Name: W. Carter Neild
Title: Member

EXHIBIT 10.10

SECURITIES PURCHASE AGREEMENT

Dated as of January 17, 2017

Xtant Medical Holdings, Inc.
600 Cruiser Lane
Belgrade, Montana 59714

Ladies and Gentlemen:

Each of the undersigned hereby confirms its agreement with you as follows:

1. This Securities Purchase Agreement (this "**Agreement**") is made as of the date hereof between Xtant Medical Holdings, Inc., a Delaware corporation (the "**Company**"), and the Investors listed on the signature pages hereto (the "**Investors**"). The Investors hold Convertible Promissory Notes issued by the Company pursuant to the Securities Purchase Agreement, dated as of April 14, 2016 (the "**Notes**"), in the aggregate principal amount of $2,238,166.

2. The Company is proposing to issue and sell to the Investors $67,145 aggregate principal amount of convertible senior notes due 2021 (the "**Securities**"), which are convertible into shares of the Company's common stock, par value $0.000001 per share (the "**Common Stock**"). The Securities will be entitled to the benefits of a Registration Rights Agreement (the "**Registration Rights Agreement**"), to be entered into among the Company and the Investors, pursuant to which the Company will agree, among other things, to file and cause to become effective under the Securities Act of 1933, as amended (the "**Securities Act**"), a registration statement covering the resale of the Securities and the Common Stock issuable upon conversion of the Securities.

3. The purchase price for the Securities shall be paid by a dollar-for-dollar offset against all interest due to the Investors as of the closing under the Notes.

4. The Securities shall have the terms set forth in each of the convertible promissory notes (the "**Notes**") in the form attached hereto as Exhibit A, to be issued on the date hereof to each of the Investors.

5. The Company and each Investor agrees that, upon the terms and subject to the conditions set forth herein, each Investor will purchase from the Company and the Company will issue and sell to each Investor the aggregate principal amount of the Securities set forth below on such Investor's signature page for the aggregate purchase price set forth below on such Investor's signature page. The Securities shall be purchased pursuant to the Terms and Conditions for Purchase of Securities attached hereto as Annex A and incorporated herein by reference as if fully set forth herein.

Aggregate Principal Amount of Securities the Investor Agrees to Purchase:

$42,856.59

Aggregate Purchase Price of such Securities: $42,856.59

Please confirm that the foregoing correctly sets forth the agreement between us by signing in the space provided below for that purpose.

AGREED AND ACCEPTED BY:

Xtant Medical Holdings, Inc. a Delaware corporation	Name of Investor: ROS Acquisition Offshore LP By OrbiMed Advisors LLC, solely in its capacity as Investment Manager
By: /s/ Daniel Goldberger Name: Daniel Goldberger Title: Chief Executive Officer	By: /s/ W. Carter Neild Print Name: W. Carter Neild Title: Member

Aggregate Principal Amount of Securities the Investor Agrees to Purchase:

$24,288.41

Aggregate Purchase Price of such Securities: $24,288.41

Please confirm that the foregoing correctly sets forth the agreement between us by signing in the space provided below for that purpose.

AGREED AND ACCEPTED BY:

Xtant Medical Holdings, Inc.
a Delaware corporation

By: /s/ Daniel Goldberger
Name: Daniel Goldberger
Title: Chief Executive Officer

Name of Investor:
OrbiMed Royalty Opportunities II, LP

By OrbiMed ROF II LLC,
Its General Partner

By OrbiMed Advisors LLC,
its Managing Member

By: /s/ W. Carter Neild
Print Name: W. Carter Neild
Title: Member

ANNEX A TO THE SECURITIES PURCHASE AGREEMENT
TERMS AND CONDITIONS FOR PURCHASE OF SECURITIES

1. Authorization and Sale of Securities. The Company is proposing to sell $67,145 aggregate principal amount of the Securities to the Investors.

2. Agreement to Sell and Purchase the Securities. Upon the terms and subject to the conditions hereinafter set forth, at the Closing (as defined in Section 3.1), the Company will sell to each Investor, and each Investor will purchase from the Company, the aggregate principal amount of Securities set forth on such Investor's signature page hereto at the purchase price set forth on such signature page.

3. Closings and Delivery of Securities and Funds.

3.1 The completion of the purchase and sale of the Securities (the "**Closing**") shall occur on January 17, 2017 (the "**Closing Date"**).

3.2 The Company's obligation to issue and sell the Securities to the Investors shall be subject to the following conditions, any one or more of which may be waived by the Company: (a) the accuracy of the representations and warranties made by the Investors and (b) the fulfillment of those undertakings of the Investors to be fulfilled prior to the Closing.

3.3 Each Investor's obligation to accept delivery of the Securities and to pay for the Securities shall be subject to the following conditions, any one or more of which may be waived by such Investor: (a) each of the representations and warranties of the Company made in Section 4 shall be accurate in all material respects as of the Closing Date; (b) delivery of an officer's certificate dated as of the Closing Date regarding the accuracy in material respects of the Company's representations and warranties and addressing such other matters as are customarily addressed in closing certificates; (c) delivery to the Investors of a customary secretary's certificate in form reasonably acceptable to the Investors; (d) the Company and the Investors shall have executed the Registration Rights Agreement; (e) the Company shall have issued a Note, in the form attached hereto as Exhibit A, to each of the Investors and (f) the Company shall have furnished to the Investors such further documents as the Investors may reasonably request.

3.4 At the Closing, the purchase price for the Securities shall be paid by each Investor by a dollar-for-dollar offset against all interest due to the Investor as of the Closing under the Notes. Such offset shall have the same affect as if the Investor paid cash to the Company for such Securities and the Company used such cash to pay to the Investor the interest so offset.

4. Representations, Warranties and Covenants of the Company.

The Company hereby represents and warrants to, and covenants with, each Investor that:

4.1 When the Notes are issued and delivered pursuant to this Agreement, such Notes will not be of the same class (within the meaning of Rule 144A under the Securities Act) as securities of the Company that are listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), or that are quoted in a U.S. automated inter-dealer quotation system.

4.2 Assuming the accuracy of each Investor's representations and warranties in Section 5, the purchase and resale of the Notes pursuant hereto are exempt from the registration requirements of the Securities Act.

4.3 No form of general solicitation or general advertising within the meaning of Regulation D under the Securities Act (including, but not limited to, advertisements, articles, notices or other communications published in any newspaper, magazine or similar medium or broadcast over television or radio, or any seminar or meeting whose attendees have been invited by any general solicitation or general advertising) was used by the Company, any of its affiliates or any of its representatives (other than you, as to whom the Company makes no representation) in connection with the offer and sale of the Notes.

4.4 None of the Company or any other person acting on its behalf has sold or issued any securities that would be integrated with the offering of the Notes contemplated by this Agreement pursuant to the Securities Act, the rules and regulations thereunder or the interpretations thereof by the Securities and Exchange Commission (the "**Commission**") in a manner that would require the registration, under the Securities Act, of the sale of the Notes contemplated by this Agreement.

4.5 Each of the Company and its subsidiaries has been duly organized, is validly existing and in good standing as a corporation, partnership or limited liability company, as applicable, under the laws of its jurisdiction of organization and is duly qualified to do business and in good standing as a foreign corporation or other business entity in each jurisdiction in which its ownership or lease of property or the conduct of its businesses requires such qualification, except where the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to (i) have a material adverse effect on the condition (financial or otherwise), results of operations, stockholders' equity, properties, business or prospects of the Company and its subsidiaries taken as a whole or (ii) materially interfere with the consummation of the transactions contemplated hereby (collectively, a "**Material Adverse Effect**"). Each of the Company and its subsidiaries has all power and authority necessary to own or hold its properties and to conduct the businesses in which it is engaged. As of the date of this Agreement, the Company has no subsidiaries other than Bacterin International, Inc., X-spine Systems Inc. and Xtant Medical, Inc. and no "significant subsidiaries" (as defined in Rule 405 under the Securities Act) other than Bacterin International, Inc. and X-spine Systems Inc.

4.6 The Company has an authorized capitalization as set forth in the publicly available Annual Report on Form 10-K filed with the Commission for the fiscal year ended December 31, 2015, and all of the issued shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable. All of the issued shares of capital stock or other ownership interest of each subsidiary of the Company have been duly authorized and validly issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims, except for such liens, encumbrances, equities or claims as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.7 The Company has all requisite corporate power and authority to execute, issue, sell and perform its obligations under the Notes. The Notes have been duly authorized by the Company and, when duly executed by the Company, will be validly issued and delivered and will constitute valid and binding obligations of the Company entitled to the benefits of the Registration Rights Agreement, enforceable against the Company in accordance with their terms, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.8 The Company has all requisite corporate power and authority to execute, deliver and perform its obligations under the Registration Rights Agreement. The Registration Rights Agreement has been duly and validly authorized by the Company, and upon its execution and delivery and, assuming due authorization, execution and delivery by the other parties thereto, will constitute the valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.9 The Company has all the requisite corporate power and authority to issue the Common Stock issuable upon conversion of the Notes (the "**Underlying Common Stock**"). The Underlying Common Stock has been duly and validly authorized by the Company and, and when issued upon conversion of the Notes, in accordance with the terms of the Notes, will be validly issued, fully paid and non-assessable, and the issuance of the Underlying Common Stock will not be subject to any preemptive or similar rights.

4.10 The Company has all requisite corporate power to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly and validly authorized, executed and delivered by the Company.

4.11 The issue and sale of the Notes, the issuance of the Underlying Common Stock upon conversion of the Notes, the execution, delivery and performance by the Company of the Notes, the Registration Rights Agreement and this Agreement and the consummation of the transactions contemplated hereby and thereby, will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, impose any lien, charge or encumbrance upon any property or assets of the Company or its subsidiaries, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, license, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which any of them is bound or to which any of their respective properties or assets is subject, (ii) result in any violation of the provisions of the charter or by-laws (or similar organizational documents) of the Company or any of its subsidiaries, or (iii) result in any violation of any statute or any judgment, order, decree, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their respective properties or assets, except, with respect to clauses (i) and (iii), conflicts or violations that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and except as set forth in the Public Disclosure Documents.

4.12 No consent, approval, authorization or order of, or filing, registration or qualification with any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their respective properties or assets is required for the issue and sale of the Notes, the issuance of the Underlying Common Stock upon conversion of the Notes, the execution, delivery and performance by the Company of the Notes, the Registration Rights Agreement and this Agreement, and the consummation of the transactions contemplated hereby, except for such consents, approvals, authorizations, orders, filings, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase of the Notes.

4.13 The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) of the Exchange Act) that complies with the requirements of the Exchange Act and that has been designed by, or under the supervision of, the Company's principal executive and principal financial officers, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States. The Company maintains internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of the Company's financial statements in conformity with accounting principles generally accepted in the United States and to maintain accountability for its assets, (iii) access to the Company's assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for the Company's assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. As of the date of the most recent balance sheet of the Company and its consolidated subsidiaries reviewed or audited by EKS&H LLP and the audit committee of the board of directors of the Company, there were no material weaknesses in the Company's internal controls.

4.14 The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act), (ii) such disclosure controls and procedures are designed to ensure that the information required to be disclosed by the Company and its subsidiaries in the reports they file or submit under the Exchange Act is accumulated and communicated to management of the Company and its subsidiaries, including their respective principal executive officers and principal financial officers, as appropriate, to allow timely decisions regarding required disclosure to be made; and (iii) such disclosure controls and procedures are effective in all material respects to perform the functions for which they were established.

4.15 Since the date of the most recent balance sheet of the Company and its consolidated subsidiaries reviewed or audited by EKS&H LLP and the audit committee of the board of directors of the Company, (i) the Company has not been advised of or become aware of (A) any significant deficiencies in the design or operation of internal controls, that could adversely affect the ability of the Company or any of its subsidiaries to record, process, summarize and report financial data, or any material weaknesses in internal controls, and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Company and each of its subsidiaries; and (ii) there have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses.

4.16 There is and has been no failure on the part of the Company and any of its directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith.

4.17 Since the date of the latest audited financial statements included in the Public Disclosure Documents (as defined below) and except as disclosed therein, neither the Company nor any of its subsidiaries has (i) sustained any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or court or governmental action, order or decree, (ii) issued or granted any securities (other than pursuant to (x) employee benefit plans, qualified stock option plans, other employee compensation plans or non-employee director compensation programs in existence on the date hereof and described in the Public Disclosure Documents or (y) options, warrants or rights outstanding on the date hereof, (iii) incurred any liability or obligation, direct or contingent, other than liabilities and obligations that were incurred in the ordinary course of business, (iv) entered into any transaction not in the ordinary course of business (other than as described in the Public Disclosure Documents (without giving effect to any supplements or amendments thereto after the execution and delivery of this Agreement)), or (v) declared or paid any dividend on its capital stock, and, since such date, there has not been any change in the capital stock, partnership or limited liability company interests, as applicable, or long-term debt of the Company or any of its subsidiaries (other than as described in the Public Disclosure Documents (without giving effect to any supplements or amendments thereto after the execution and delivery of this Agreement)) or any adverse change, or any development involving a prospective adverse change, in or affecting the condition (financial or otherwise), results of operations, stockholders' equity, properties, management, business or prospects of the Company and its subsidiaries, taken as a whole, in each case except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The reports required to be filed by the Company under the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, together with any materials filed or furnished by the Company under the Exchange Act, whether or not any such reports were required, are referred to herein, collectively, as the "**Public Disclosure Documents**".

4.18 The Company and each of its subsidiaries has good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them, in each case free and clear of all liens, encumbrances and defects, except to the extent such liens, encumbrances and defects do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company or any of its subsidiaries. All assets held under lease by the Company or any of its subsidiaries are held by them under valid, subsisting and enforceable leases, with such exceptions as do not materially interfere with the use made and proposed to be made of such assets by the Company or any of its subsidiaries.

4.19 The Company and each of its subsidiaries have, and have operated in compliance with, such permits, licenses, patents, franchises, certificates of need, exemptions, clearances and other approvals or authorizations of governmental or regulatory authorities ("**Permits**") as are necessary under applicable law to own their properties and conduct their businesses in the manner described in the Public Disclosure Documents, except for any of the foregoing that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company and each of its subsidiaries have fulfilled and performed all of its obligations with respect to the Permits, and no event has occurred that allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other impairment of the rights of the holder or any such Permits, except for any of the foregoing that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company, nor any of its subsidiaries has received written notice of any revocation, termination or modification of any such Permits or otherwise has any reason to believe that any such Permits will be revoked, terminated or modified or not be renewed in the ordinary course.

4.20 The Company and its subsidiaries own, or have obtained valid and enforceable licenses for, or other rights to use, the inventions, patent applications, patents, trademarks (both registered and unregistered), tradenames, service names, copyrights, trade secrets and other proprietary information described in Public Disclosure Documents as being owned or licensed by them or which are necessary for the conduct of their respective businesses as currently conducted or as proposed to be conducted (including the commercialization of products or services described in the Public Disclosure Documents as under development), except where the failure to own, license or have such rights could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (collectively, "**Intellectual Property**"). Except as disclosed in Public Disclosure Documents, and except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) there are no third parties who have or, to the Company's knowledge, will be able to establish rights to any Intellectual Property, except for, and to the extent of, the ownership rights of the owners of the Intellectual Property which the Public Disclosure Documents disclose is licensed to the Company or any of its subsidiaries; (ii) to the Company's knowledge, there is no infringement by third parties of any Intellectual Property; (iii) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the Company's or its subsidiaries' rights in or to any Intellectual Property, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (iv) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the validity, enforceability or scope of any Intellectual Property, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (v) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company or any of its subsidiaries infringes or otherwise violates (or would, upon the commercialization of any product or service described in the Public Disclosure Documents as under development, infringe or violate) any patent, trademark, tradename, service name, copyright, trade secret or other proprietary rights of others, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (vi) the Company and its subsidiaries have complied with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company or any of its subsidiaries, and all such agreements are in full force and effect; (vii) to the Company's knowledge, there is no patent or patent application that contains claims that interfere with the issued or pending claims of any of the Intellectual Property or that challenges the validity, enforceability or scope of any of the Intellectual Property; and (viii) to the Company's knowledge, there is no prior art that may render any patent application within the Intellectual Property unpatentable that has not been disclosed to the U.S. Patent and Trademark Office.

4.21 There are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any property or assets of the Company or any of its subsidiaries is the subject that could, individually or in the aggregate, reasonably be expected to (i) have a Material Adverse Effect, except as described in the Public Disclosure Documents, or (ii) have a material adverse effect on the performance by the Company of this Agreement, the Notes or the Registration Rights Agreement or on the consummation of any of the transactions contemplated hereby or thereby. To the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or others.

4.22 Neither the Company nor any of its subsidiaries: (i) is in violation of its charter or by-laws (or similar organizational documents), (ii) is in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant, condition or other obligation contained in any indenture, mortgage, deed of trust, loan agreement, license or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties or assets is subject, or (iii) is in violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over it or its property or assets or has failed to obtain any license, permit, certificate, franchise or other governmental authorization or permit necessary to the ownership of its property or to the conduct of its business, except in the case of clauses (ii) and (iii), to the extent any such default, violation or failure could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.23 The Company and its subsidiaries and their respective properties, assets and operations are in compliance with, and the Company and each of its subsidiaries hold all permits, authorizations and approvals required under, Environmental Laws (as defined below), except to the extent that failure to so comply or to hold such permits, authorizations or approvals could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Company's knowledge, there are no past, present or reasonably anticipated future events, conditions, circumstances, activities, practices, actions, omissions or plans that, individually or in the aggregate, could reasonably be expected to give rise to any material costs or liabilities to the Company or any of its subsidiaries under, or to interfere with or prevent compliance by the Company or any of its subsidiaries with, Environmental Laws; except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, neither the Company nor any of its subsidiaries (i) is the subject of any investigation, (ii) has received any notice or claim, (iii) is a party to or affected by any pending or, to the Company's knowledge, threatened action, suit or proceeding, (iv) is bound by any judgment, decree or order or (v) has entered into any agreement, in each case relating to any alleged violation of any Environmental Law or any actual or alleged release or threatened release or cleanup at any location of any Hazardous Materials (as defined below) (as used herein, "**Environmental Law**" means any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, decree, judgment, injunction, permit, license, authorization or other binding requirement, or common law, relating to health, safety or the protection, cleanup or restoration of the environment or natural resources, including those relating to the distribution, processing, generation, treatment, storage, disposal, transportation, other handling or release or threatened release of Hazardous Materials, and "**Hazardous Materials**" means any material (including, without limitation, pollutants, contaminants, hazardous or toxic substances or wastes) that is regulated by or may give rise to liability under any Environmental Law).

4.24 The Company and each of its subsidiaries have filed all federal, state, local and foreign tax returns required to be filed through the date hereof, subject to permitted extensions, and have paid all taxes due, and no tax deficiency has been determined adversely to the Company or any of its subsidiaries, nor does the Company have any knowledge of any tax deficiencies that have been, or could reasonably be expected to be asserted against the Company and each of its subsidiaries, that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.25 Neither the Company nor any of its subsidiaries is, and, after giving effect to the offer and sale of the Notes and the application of the proceeds therefrom, none of them will be, an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder.

4.26 The Company and its affiliates have not taken, directly or indirectly, any action designed to or that has constituted or that could reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the offering of the Notes.

4.27 Neither the Company nor any of its subsidiaries, nor, to the knowledge of the Company, after due inquiry, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its subsidiaries, has in the course of its actions for, or on behalf of, the Company or any of its subsidiaries: (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official, "foreign office" (as defined in the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (collectively, the "**FCPA**")) or employee from corporate funds; (iii) violated or is in violation of any provision of the FCPA, the Bribery Act 2010 of the United Kingdom, as amended, or any other applicable anti-corruption or anti-bribery laws or statutes; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any domestic government official, foreign official or employee; and the Company and its subsidiaries and, to the knowledge of the Company, the Company's affiliates have conducted their respective businesses in compliance with the FCPA, the Bribery Act 2010 of the United Kingdom, as amended, and any other applicable anti-corruption or anti-bribery laws or statutes, and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

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

4.29 Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, after due inquiry, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries (i) is currently subject to or the target of any sanctions administered or enforced by the Office of Foreign Assets Control of the U.S. Treasury Department, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "**Sanctions**"); or (ii) located, organized or resident in a country that is the subject of Sanctions (including, without limitation, Cuba, Iran, North Korea, Sudan, and Syria); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person, or in any country or territory, that currently is the subject or target of Sanctions or in any other manner that will result in a violation by any person (including any person participating in the transaction whether as an underwriter, advisor, investor or otherwise) of Sanctions. The Company and its subsidiaries have not knowingly engaged in for the past five (5) years, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any individual or entity, or in any country or territory, that at the time of the dealing or transaction is or was the subject or target of Sanctions.

4.30 There are no contracts or other documents that would be required to be described in a registration statement filed under the Securities Act or filed as exhibits to a registration statement of the Company pursuant to Item 601(b)(10) of Regulation S-K that have not been described in the Public Disclosure Documents.

4.31 No relationship, direct or indirect, that would be required to be described in a registration statement of the Company pursuant to Item 404 of Regulation S-K, exists between or among the Company and its subsidiaries, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company and its subsidiaries, on the other hand, that has not been described in the Public Disclosure Documents.

4.32 No labor disturbance by or dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.33 None of the transactions contemplated by this Agreement (including, without limitation, the use of the proceeds from the sale of the Notes), will violate or result in a violation of Section 7 of the Exchange Act, or any regulation promulgated thereunder, including, without limitation, Regulations T, U and X of the Board of Governors of the Federal Reserve System.

4.34 The Company and each of its subsidiaries carry, or are covered by, insurance from insurers of recognized financial responsibility in such amounts and covering such risks as is adequate for the conduct of their respective businesses and the value of their respective properties and as is customary for companies engaged in similar businesses in similar industries. All policies of insurance of the Company and its subsidiaries are in full force and effect; the Company and each of its subsidiaries are in compliance with the terms of such policies in all material respects; and neither the Company nor any of its subsidiaries has received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance. Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there are no claims by the Company or any of its subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; and neither the Company nor any such subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.35 Each "employee benefit plan" (within the meaning of Section 3(3) of the Employee Retirement Security Act of 1974, as amended ("**ERISA**")) for which the Company or any member of its "Controlled Group" (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the "**Code**")) would have any liability (each a "**Plan**") has been maintained in compliance with its terms and with the requirements of all applicable statutes, rules and regulations including ERISA and the Code; (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Plan excluding transactions effected pursuant to a statutory or administrative exemption; (iii) with respect to each Plan subject to Title IV of ERISA: (A) no "reportable event" (within the meaning of Section 4043(c) of ERISA) has occurred or is reasonably expected to occur, (B) no Plan is or is reasonably expected to be "at risk" status (within the meaning of Section 430 of the Code or Section 303 of ERISA), (C) there has been no filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan or the receipt by the Company or any member of its Controlled Group from the Pension Benefit Guaranty Corporation or the plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (D) no conditions contained in Section 303(k)(1)(A) of ERISA for imposition of a lien shall have been met with respect to any Plan and (E) neither the Company or any member of its Controlled Group has incurred, or reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the Pension Benefit Guaranty Corporation in the ordinary course and without default) in respect of a Plan (including a "multiemployer plan", within the meaning of Section 4001(c)(3) of ERISA) ("**Multiemployer Plan**"); (iv) no Multiemployer Plan is, or is expected to be, "insolvent" (within the meaning of Section 4245 of ERISA), in "reorganization" (within the meaning of Section 4241 of ERISA), or in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 304 of ERISA); and (v) each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

4.36 No subsidiary of the Company is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock or other ownership interests, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's property or assets to the Company or any other subsidiary of the Company, except as described in the Public Disclosure Documents.

4.37 Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that could give rise to a valid claim against any of them for a brokerage commission, finder's fee or like payment in connection with the sale of the Notes.

4.38 Neither the Company nor any of its subsidiaries is in violation of or has received notice of any violation with respect to any federal or state law relating to discrimination in the hiring, promotion or pay of employees, nor any applicable federal or state wage and hour laws, nor any state law precluding the denial of credit due to the neighborhood in which a property is situated, the violation of any of which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.39 Except as described in the Public Disclosure Documents, and except, in each case, where such event could not, individually or in the aggregate, reasonably be expect to have a Material Adverse Effect, the Company and each of its subsidiaries: (i) has not received any unresolved U.S. Food and Drug Administration ("**FDA**") or similar governmental agency or body ("**Governmental Authority**") written notice of inspectional observations, Form 483, written notice of adverse filing, warning letter, untitled letter or other similar correspondence or notice from the FDA, or any other court or arbitrator or federal, state, local or foreign governmental or regulatory authority, alleging or asserting material noncompliance with the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), or received any written requests or requirements to make material changes to the Company products by the FDA or any other Governmental Authority, (ii) is and has been in compliance with applicable health care laws, including, the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the criminal False Claims Law (42 U.S.C. § 1320a-7b(a)), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h), all criminal laws relating to health care fraud and abuse, including but not limited to 18 U.S.C. Sections 286 and 287, and the health care fraud criminal provisions under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) ("**HIPAA**"), the exclusion laws (42 U.S.C. § 1320a-7), Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations promulgated pursuant to such laws, and comparable state laws, and all other foreign, federal, state and local laws relating to the regulation of the Company and its subsidiaries (collectively, "**Health Care Laws**"), (iii) has not engaged in activities which are, as applicable, cause for false claims liability, civil penalties, or mandatory or permissive exclusion from Medicare, Medicaid, or any other state health care program or federal health care program, (iv) possesses all Permits and supplements or amendments thereto required by any such Health Care Laws and/or to carry on its businesses as currently conducted as described in the Public Disclosure Documents ("**Authorizations**"), and such Authorizations are valid and in full force and effect and neither the Company nor any of its subsidiaries is in violation of any term of any such Authorizations, (v) has not received written notice of any ongoing claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any Governmental Authority alleging that any product, operation or activity is in material violation of any Health Care Laws or Authorizations and has no knowledge that any such Governmental Authority has threatened any such claim, litigation, arbitration, action, suit, investigation or proceeding, (vi) has not received written notice that any Governmental Authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorizations and has no knowledge that any such Governmental Authority has threatened such action, (vii) has filed, obtained, maintained or submitted all reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments thereto as required by any Health Care Laws or Authorizations and all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete, correct and not misleading on the date filed (or were corrected or supplemented by a subsequent submission), (viii) has not, either voluntarily or involuntarily, initiated, conducted, or issued or caused to be initiated, conducted or issued, any recall, market withdrawal or replacement, safety alert, post sale warning, "dear doctor" letter, or other notice or action relating to the alleged lack of safety, efficacy or regulatory compliance of any product or any alleged product defect or violation and, to the Company's knowledge, there are no facts which are reasonably likely to cause, and the Company has not received any written notice from the FDA or any other Governmental Authority regarding, a material recall, market withdrawal or replacement of any Company product sold or intended to be sold by the Company, a material change in the marketing classification or a material adverse change in the labeling of any such Company products, or a termination or suspension of the manufacturing, marketing, or distribution of such Company products, (ix) is not a party to any corporate integrity agreement, deferred prosecution agreement, monitoring agreement, consent decree, settlement order, or similar agreements, or has any reporting obligations pursuant to any such agreement, plan or correction or other remedial measure entered into with any Governmental Authority, (x) has not, nor has any officer, director, employee, agent or, to the knowledge of the Company, any distributor of the Company, made an untrue statement of a material fact or a fraudulent statement to the FDA or any other Governmental Authority, failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority, or committed an act, made a statement, or failed to make a statement, in each such case, related to the business of the Company that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991) or for the FDA or any other Governmental Authority to invoke any similar policy, (xi) has not, nor has any officer, director, employee, or, to the knowledge of the Company, any agent or distributor of the Company, been debarred or convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. § 335a(a) or any similar law or authorized by 21 U.S.C. § 335a(b) or any similar law applicable in other jurisdictions in which Company products or Company product candidates are sold or intended by the Company to be sold, and (xii) neither the Company, its subsidiaries nor their officers, directors, employees, agents or contractors has been or is currently debarred, suspended or excluded from participation in the Medicare and Medicaid programs or any other state or federal health care program.

4.40 The preclinical tests and clinical trials conducted or sponsored by, or on behalf of the Company and its subsidiaries were and, if still pending, are being conducted in all material respects in accordance with protocols filed with the appropriate regulatory authorities for each such test or trial, as the case may be, and with standard medical and scientific research procedures and applicable laws, regulations and Authorizations, including without limitation, those of the FDA; each description of the results of such tests and trials contained in the Public Disclosure Documents is accurate and complete in all material respects and fairly presents the data derived from such tests and trials, and the Company and its subsidiaries have no knowledge of any other studies or tests, the results of which are inconsistent with, or otherwise call into question, the results described or referred to in the Public Disclosure Documents; and neither the Company nor any of its subsidiaries has received any notices or other correspondence from the FDA, the U.S. Department of Health and Human Services or any committee thereof or from any other U.S. or foreign government or drug or medical device regulatory agency requiring the termination, suspension or modification of any clinical trials..

4.41 So long as any of the Notes or the Underlying Common Stock are outstanding, the Company will furnish at its expense, upon request, to the holders of the Notes or the Underlying Common Stock and prospective purchasers of the Notes or the Underlying Common Stock the information, if any, required by Rule 144A(d)(4) under the Securities Act.

4.42 The Company and its affiliates will not take, directly or indirectly, any action designed to or that has constituted or that reasonably could be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the sale of the Notes.

4.43 The Company agrees not to sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any "security" (as defined in the Securities Act) that would be integrated with the sale of the Notes in a manner that would require the registration under the Securities Act of the sale of the Notes to the Investors. The Company will take any reasonable precautions designed to insure that any offer or sale, direct or indirect of any Notes or any substantially similar security issued by the Company, within six months subsequent to the date on which the distribution of the Notes has been completed, is made under restrictions and other circumstances reasonably designed not to affect the status of the sale of the Notes contemplated by this Agreement, as transactions exempt from the registration provisions of the Securities Act, including any sales pursuant to Rule 144A under, or Regulation D of, the Securities Act.

4.44 In connection with any offer or sale of the Notes, the Company will not engage, and will cause its affiliates and any person acting on its behalf not to engage in any form of general solicitation or general advertising (within the meaning of Regulation D of the Securities Act), or any "public offering" within the meaning of Section 4(a)(2) of the Securities Act in connection with any sale of the Notes.

4.45 The Company agrees to reserve and keep available at all times, free of preemptive rights, a sufficient number of Underlying Common Stock to enable the Company to satisfy any obligations to issue Underlying Common Stock upon conversion of the Notes.

4.46 On and after the date hereof to, and including, the Closing Date, the Company will not do or authorize any act that would result in an adjustment of the conversion rate of the Notes.

5. Representations, Warranties and Covenants of the Investors.

Each Investor hereby represents and warrants to, and covenants with, the Company that:

5.1 (1) Each Investor is (a) either a QIB as defined in Rule 144A under the Securities Act, or an institutional accredited investor as defined in Rule 501(a)(1), (a)(2), (a)(3), or (a)(7) under the Securities Act, as presently in effect, (b) aware that the sale to it is being made in reliance on a private placement exemption from registration under the Securities Act, and (c) acquiring the Securities for its own account or for the account of a QIB or an institutional accredited investor.

(2) Each Investor understands and agrees on behalf of itself and on behalf of any investor account for which it is purchasing the Securities and Common Stock issuable upon conversion of the Securities, that the Securities and Common Stock issuable upon conversion of the Securities are being offered in a transaction not involving any public offering within the meaning of the Securities Act, that the Securities and Common Stock issuable upon conversion of the Securities have not been, and will not be, registered under the Securities Act and that (a) if it decides to offer, resell, pledge or otherwise transfer any of the Securities or Common Stock issued upon conversion of the Securities, such Securities and Common Stock may be offered, resold, pledged or otherwise transferred only (i) to a person whom the seller reasonably believes is a QIB in a transaction meeting the requirements of Rule 144A, (ii) pursuant to any other exemption from the registration requirements of the Securities Act, including Rule 144 under the Securities Act (if available), (iii) pursuant to an effective registration statement under the Securities Act, or (iv) to the Company, or one of its subsidiaries, in each of cases (i) through (iv) in accordance with any applicable securities laws of any state of the United States.

(3) Each Investor understands that the Securities and Common Stock issued upon conversion of the Securities will, unless sold pursuant to a registration statement that has been declared effective under the Securities Act or in compliance with Rule 144, and will bear a legend that reflects the restricted nature of the securities.

(4) Each Investor:

(a) is able to fend for itself in the transactions contemplated hereby;

(b) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its prospective investment in the Securities; and

(c) has the ability to bear the economic risks of its prospective investment and can afford the complete loss of such investment.

(5) Each Investor acknowledges that (a) it has conducted its own investigation of the Company and the terms of the Securities, (b) it has had access to, and has had an adequate opportunity to review, (i) all information the Company has filed with and furnished to the Commission, (ii) all information set forth in such filings and (iii) such financial and other information as it deems necessary to make its decision to purchase the Securities, and (c) it has been offered the opportunity to ask questions of the Company, and received such answers thereto, as it deemed necessary in connection with the decision to purchase the Securities.

(6) Each Investor understands that the Company, and others will rely upon the truth and accuracy of the foregoing representations, acknowledgements and agreements and agrees that if any of the representations and acknowledgements deemed to have been made by its purchase of the Securities are no longer accurate, such Investor shall promptly notify the Company. If such Investor is acquiring the Securities as a fiduciary or agent for one or more investor accounts, it represents that it has sole investment discretion with respect to each such account and it has full power to make the foregoing representations, acknowledgements and agreements on behalf of such account.

5.2 Each Investor acknowledges that no action has been or will be taken in any jurisdiction outside the United States by the Company that would permit an offering of the Securities, or possession or distribution of offering materials in connection with the issuance of the Securities (including any filing of a registration statement), in any jurisdiction outside the United States where action for that purpose is required. Each Investor outside the United States will comply with all applicable laws and regulations in each foreign jurisdiction in which it purchases, offers, sells or delivers Securities or has in its possession or distributes any offering material, in all cases at its own expense.

5.3 When the Securities are issued in accordance with the terms of this Agreement, all interest obligations owed by the Company to such Investor on account of the Investor's Notes will be current.

5.4 Each Investor has full right, power, authority and capacity to enter into this Agreement and to consummate the transactions contemplated hereby and has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and this Agreement constitutes a valid, binding and enforceable obligation of such Investor, except as the enforceability of the Agreement may be subject to or limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally.

5.5 The entry into and performance of this Agreement by each Investor and the consummation by such Investor of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of Investor, (ii) conflict with, or constitute a default under, or give to others any rights of termination, amendment, acceleration or cancellation of any agreement, indenture or instrument to which such Investor is party, or (iii) result in the violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Investor, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Investor to perform its obligations hereunder.

5.6 Each Investor understands that nothing in this Agreement, information the Company has filed with and furnished to the Commission or any other materials presented to such Investor in connection with the purchase and sale of the Securities constitutes legal, tax or investment advice. Each Investor has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Securities and has made its own assessment and has satisfied itself concerning the relevant tax and other economic considerations relevant to its investment in the Securities.

6. Survival of Representations, Warranties and Agreements. Notwithstanding any investigation made by any party to this Agreement, all covenants, agreements, representations and warranties made by the Company and the Investors herein shall survive the execution of this Agreement, the delivery to the Investors of the Securities being purchased and the payment therefor.

7. Notices. All notices, requests, consents and other communications hereunder shall be in writing, shall be delivered (A) if within the domestic United States, by first-class registered or certified mail, or nationally recognized overnight express courier, postage prepaid, or by facsimile, or (B) otherwise by International Federal Express or facsimile, and shall be deemed given (i) if delivered by first-class registered or certified mail, three (3) business days after so mailed, (ii) if delivered by a nationally recognized overnight carrier, one business day after so mailed, (iii) if delivered by International Federal Express, two (2) business days after so mailed and (iv) if delivered by facsimile, upon electronic confirmation of receipt and shall be delivered as addressed as follows:

if to the Company, to:

Xtant Medical Holdings, Inc.
600 Cruiser Lane
Belgrade, Montana 59714
Attention: President

if to the Investors, at each Investor's address on the signature page hereto, or at such other address or addresses as may have been furnished to the Company in writing.

8. Changes. Except as contemplated herein, this Agreement may not be modified or amended except pursuant to an instrument in writing signed by the Company and each Investor.

9. Headings. The headings of the various sections of this Agreement have been inserted for convenience or reference only and shall not be deemed to be part of this Agreement.

10. Severability. In case any provision contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

11. Applicable Law; Venue. This Agreement will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York. Each of the Company and each Investor agrees that any suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted only in any State or U.S. federal court in The City of New York and County of New York and waives any objection that such party may now or hereafter have to the laying of venue of any such suit, action or proceeding, and irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

12. Waiver of Jury Trial. Each of the Company and each Investor hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

13. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

14. Payment of Expenses. The Company agrees to pay on demand all expenses of the Investors incurred in connection with the Investors' review, consideration and evaluation of this Agreement, the Securities and the Registration Rights Agreement, including the rights and remedies available to it in connection therewith, and the negotiation, preparation, execution and delivery of this Agreement, the Securities and the Registration Rights Agreement.

Exhibit A

Form of Convertible Promissory Note

[See Attached.]

THE SALE OF THIS NOTE HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, THIS NOTE (AND ANY BENEFICIAL INTEREST HEREIN) MAY NOT BE OFFERED, RESOLD OR OTHERWISE TRANSFERRED, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF;

(B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT; OR

(C) UNDER ANY AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (INCLUDING, IF AVAILABLE, THE EXEMPTION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT).

PRIOR TO ANY TRANSFER PURSUANT TO THE FOREGOING CLAUSE (C), THE COMPANY RESERVES THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE COMPANY MAY REASONABLY REQUIRE AND MAY RELY UPON 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 APPLICABLE SECURITIES LAWS OF ANY OTHER JURISDICTION. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

XTANT MEDICAL HOLDINGS, INC.

CONVERTIBLE PROMISSORY NOTE

$42,856.59 Date of Issuance: January 17, 2017

FOR VALUE RECEIVED, Xtant Medical Holdings, Inc., a Delaware corporation (the "**Company**"), promises to pay to ROS Acquisition Offshore LP, and its assigns, (the "**Holder**") the principal sum of $42,856.59 (the "**Principal Amount**"), in the manner provided herein. Commencing on the date hereof, and continuing until such time as the Principal Amount is repaid in full, interest shall accrue on the Principal Amount outstanding at the rate of six percent (6.00%) per annum. This Note is one of a series of notes of the Company issued on the date hereof (the "**Series**"). This Note is subject to the following terms and conditions.

TABLE OF CONTENTS

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 *Definitions.*

"**Additional Interest**" has the meaning ascribed to it in the Registration Rights Agreement.

"**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 or cause the direction of 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, United States Code, or any similar U.S. federal, state or non-U.S. law for the relief of debtors.

"**Board of Directors**" means the board of directors of the Company or a committee of such board duly authorized to act for it.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

"**Capital Stock**" means, for any Person, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of, or interests in (however designated), the equity of such Person, but excluding any debt securities convertible into such equity.

"**Close of Business**" means 5:00 p.m., New York City time.

"**Common Stock**" means the shares of the common stock of the Company, $0.000001 par value per share.

"**Company**" means the party named as such in the first paragraph of this Note until a successor or assignee replaces it pursuant to the applicable provisions hereof and, thereafter, means the successor or assignee.

"**Conversion Price**" means, at any time, (i) $1,000 *divided by* (ii) the Conversion Rate in effect at such time.

"**Conversion Rate**" means, initially, 1,317.70 shares of Common Stock per $1,000 principal amount of this Note, subject to adjustment as provided herein, or in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata number of shares.

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

"**Default**" means any event which is (or after notice, passage of time or both would be) an Event of Default.

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

"**Fundamental Change**" means an event that will be deemed to occur if any of the following occurs:

(a) a "person" or "group" within the meaning of Section 13(d) of the Exchange Act, other than the Company or the Subsidiaries, has become the direct or indirect "beneficial owner" (as defined below) of shares of the Company's common equity representing more than 50% of the voting power of the Company's common equity;

(b) the consummation of:

(i) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and the Subsidiaries to any person; or

(ii) any transaction or series of related transactions in connection with which (whether by means of exchange, liquidation, consolidation, merger, combination, reclassification, recapitalization, acquisition or otherwise) all of the Common Stock is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, other property, assets or cash, but excluding any merger, consolidation, share exchange or acquisition of the Company with or by another Person pursuant to which the Persons that "beneficially owned" (as defined below), directly or indirectly, the shares of the Company's Voting Stock immediately prior to such transaction beneficially own, directly or indirectly, immediately after such transaction, shares of the surviving, continuing or acquiring corporation's Voting Stock representing more than 50% of the total outstanding voting power of all outstanding classes of Voting Stock of the surviving, continuing or acquiring corporation in substantially the same proportions vis-à-vis each other as immediately prior to such transaction; or

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

A transaction or event described in clause (a) or (b) above will not constitute a Fundamental Change, however, if at least 90% of the consideration received or to be received by the holders of the Common Stock, excluding cash payments for fractional shares or dissenters rights, in connection with the transaction or transactions, consists of shares of common stock traded on any of the NASDAQ Capital Market, the NASDAQ Global Market, the NASDAQ Global Select Market, the NYSE MKT LLC or the New York Stock Exchange (or any of their respective successors) or which will be so traded or quoted when issued or exchanged in connection with such transaction or event and as a result of such transaction or event, this Note become convertible or exchangeable solely into such consideration (excluding cash payable in lieu of any fractional share) in accordance with Section 8.08.

For the purposes of this definition of "Fundamental Change," whether a person is a "**beneficial owner**" or whether shares are "**beneficially owned**" will be determined in accordance with Rule 13d-3 under the Exchange Act.

"**Holder**" means the party named as such in the first paragraph of this Note.

"**Issue Date**" means January 17, 2017.

"**Last Reported Sale Price**" of the Common Stock on any date means the closing sale or trading price (or, if no closing sale or trading price is reported, the average of the last bid and last ask prices or, if more than one in either case, the average of the average last bid and the average last ask prices) per share on such date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is traded. If the Common Stock is not listed for trading on a U.S. national or regional securities exchange on such date, the "Last Reported Sale Price" of the Common Stock will be the last quoted bid price per share for the Common Stock in the over-the-counter market on such date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted, the "Last Reported Sale Price" will be the average of the mid-point of the last bid and last ask prices per share for the Common Stock on the relevant date from each of at least three (3) nationally recognized independent investment banking firms selected by the Company for this purpose. The "Last Reported Sale Price" will be determined without regard to after-hours trading or any other trading outside of regular trading session hours.

"**Market Disruption Event**" means the occurrence or existence during the one-half hour period ending on the scheduled close of trading on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"**Officer**" means the Chairman of the Board, the Vice Chairman, the Chief Executive Officer, the President, the Chief Financial Officer, any Executive Vice President, any Senior Vice President, any Vice President, the Treasurer or the Secretary of the Company.

"**Officers' Certificate**" means a written certificate containing the information specified in Sections 4.05, 5.01(c), signed in the name of the Company by any two Officers, and delivered to the Holder; *provided*, that, if such certificate is given pursuant to Section 4.05, one of the Officers signing such certificate must be the Chief Financial Officer of the Company.

"**Open of Business**" means 9:00 a.m., New York City time.

"**Opinion of Counsel**" means a written opinion containing the information specified in Section 5.01(c), from legal counsel satisfactory to holders of a majority of the Series. The counsel may be an employee of, or counsel to, the Company who is satisfactory to holders of a majority of the Series.

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

"**Registration Rights Agreement**" means the Registration Rights Agreement, dated as of the date hereof, among the Company and the holders of the notes of the Series.

"**Rule 144**" means Rule 144 under the Securities Act (or any successor provision), as it may be amended from time to time.

"**Rule 144A**" means Rule 144A under the Securities Act (or any successor provision), as it may be amended from time to time.

"**SEC**" means the Securities and Exchange Commission.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Significant Subsidiary**" means any Subsidiary that is a "significant subsidiary" of the Company within the meaning of Rule 1-02(w) of Regulation S-X promulgated under the Exchange Act.

"**Stock Price**" means, for any Make-Whole Fundamental Change, (i) if the holders of the Common Stock receive only cash in consideration for their shares of Common Stock in such Make-Whole Fundamental Change and such Make-Whole Fundamental Change is of the type described in clause (b) of the definition of Fundamental Change, the amount of cash paid per share of the Common Stock in such Make-Whole Fundamental Change; and (ii) otherwise, the average of the Last Reported Sale Price per share of the Common Stock over the five consecutive Trading Days ending on, and including, the Trading Day immediately preceding the Make-Whole Fundamental Change Effective Date for such Make-Whole Fundamental Change.

"**Subsidiary**" means a Person 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 of the Company, or by the Company and one or more other Subsidiaries of the Company.

"**Trading Day**" means a day on which (i) trading in the Common Stock (or other security for which a Last Reported Sale Price must be determined) generally occurs on the NYSE MKT or, if the Common Stock (or such other security) is not then listed on the NYSE MKT, on the principal other U.S. national or regional securities exchange on which the Common Stock (or such other security) is then listed or, if the Common Stock (or such other security) is not then listed on a U.S. national or regional securities exchange, on the principal other market (including, without limitation, the OTCQX marketplace) on which the Common Stock (or such other security) is then listed or admitted for trading; and (ii) there is no Market Disruption Event; *provided*, *however*, that if the Common Stock (or such other security) is not so listed or traded, then "Trading Day" means a Business Day.

"**Uniform Commercial Code**" means the New York Uniform Commercial Code as in effect on the Issue Date.

"**Voting Stock**" of a Person means Capital Stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the board of directors, managers or trustees of such Person (irrespective of whether or not at the time Capital Stock of any other class or classes will have or might have voting power by reason of the happening of any contingency).

Section 1.02 *Other Definitions.*

Term:	**Section Defined in:**
"**Additional Shares**"	8.07(a)
"**Averaging Period**"	8.05(e)
"**Common Stock Change Event**"	8.08
"**Conversion Consideration**"	8.03(a)(i)
"**Conversion Date**"	8.02(a)
"**Conversion Notice**"	8.02(a)
"**Defaulted Amount**"	2.01(b)
"**Default Interest**"	2.01(b)
"**Effective Date**"	8.05(l)(i)(III)
"**Event of Default**"	6.01(a)
"**Ex-Dividend Date**"	8.05(l)(i)(IV)
"**Expiration Date**"	8.05(e)
"**Expiration Time**"	8.05(e)
"**Fundamental Change Notice**"	3.02(a)
"**Fundamental Change Notice Date**"	3.02(a)
"**Fundamental Change Repurchase Date**"	3.01(c)
"**Fundamental Change Repurchase Notice**"	3.03(a)(i)
"**Fundamental Change Repurchase Price**"	3.01(b)
"**Interest Payment Date**"	2.01(a)(ii)
"**Make-Whole Fundamental Change**"	8.07(a)
"**Make-Whole Fundamental Change Effective Date**"	8.07(b)
"**Maturity Date**"	2.01(a)(i)
"**Principal Amount**"	Introductory Paragraph
"**Reference Property**"	8.08(a)
"**Reference Property Unit**"	8.08(a)
"**Regular Record Date**"	2.01(a)(ii)
"**Reorganization Event**"	5.01
"**Reorganization Successor Corporation**"	5.01(a)(ii)
"**Reporting Event of Default**"	6.04(a)
"**Series**"	Introductory Paragraph
"**Special Interest**"	6.04(a)
"**Spin-Off**"	8.05(c)(ii)
"**Valuation Period**"	8.05(c)(ii)

Section 1.03 *Rules of Construction*. In this Note:

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

(b) an accounting term not otherwise defined has the meaning assigned to it and will be construed in accordance with U.S. generally accepted accounting principles;

(c) "**or**" is not exclusive;

(d) "**including**" means including, without limitation;

(e) words in the singular include the plural, and words in the plural include the singular, unless the context requires otherwise;

(f) "**herein**," "**hereof**" and other words of similar import refer to this Note as a whole and not to any particular Article, Section or other subdivision of this Note, unless the context requires otherwise;

(g) all references to $, dollars, cash payments or money refer to United States currency; and

(h) unless the context requires otherwise, all references to interest on this Note will (i) include any Additional Interest payable pursuant to the Registration Rights Agreement and any Special Interest payable pursuant to Section 6.04; and (ii) for the avoidance of doubt, not include any Default Interest payable on a Defaulted Amount pursuant to Article 2.

ARTICLE 2
PAYMENT TERMS, TRANSFER RESTRICTIONS AND NOTE REPLACEMENT

Section 2.01 *Payments.*

(a) *General.*

(i) *Payment at Maturity.* Unless earlier paid or deemed paid pursuant to any of Sections 3.05 or 8.03, this Note will mature on July 15, 2021 (the "**Maturity Date**") and, on the Maturity Date, the Company will pay the Holder $1,000 in cash for each $1,000 principal amount of this Note (and in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata amount), together with accrued and unpaid interest to, but not including, the Maturity Date (with such interest to be payable to the Holder as of the Close of Business on the Regular Record Date immediately preceding the Maturity Date).

(ii) *Payment of Interest.* This Note will accrue interest at a rate equal to 6.00% per annum from the most recent date to which interest has been paid or duly provided for, or, if no interest has been paid or duly provided for, the Issue Date until, subject to Section 2.01(b), the date the principal amount of this Note is paid or deemed to be paid, as the case may be, pursuant to clause (i) of this Section 2.01(a) or any of Sections 3.05 or 8.03. Additional Interest will accrue on this Note to the extent provided in the Registration Rights Agreement and Special Interest will accrue on this Note to the extent provided in Section 6.04, in each case in addition to interest accruing on this Note pursuant to the immediately preceding sentence. Except as otherwise provided herein (including Section 3.01(b) and Section 8.02(d)), interest will be payable semi-annually in arrears on January 15 and July 15 of each year (each, an "**Interest Payment Date**") to the Holder as of the Close of Business on the January 1 or July 1, as the case may be, and whether or not on a Business Day, immediately preceding the applicable Interest Payment Date (each such date, a "**Regular Record Date**"). Interest on this Note that has been converted or repurchased after a Regular Record Date and on or before the related Interest Payment Date will be paid in the manner set forth in Section 3.01(b) and Section 8.02(d), as applicable. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

(iii) *Method of Payment.* The Company will pay the principal of and the Fundamental Change Repurchase Price for this Note by check or wire transfer, in the manner set forth below, to the Holder on the relevant payment date upon surrender thereof to the Company and, if applicable, satisfaction of any other requirements therefor set forth in Article 3. The Company will pay interest due, on an Interest Payment Date, on (and, subject to the immediately preceding sentence, the principal of or the Fundamental Change Repurchase Price for) this Note to the Holder (i) by check mailed to the Holder's registered address; or (ii) if the Holder delivers, not later than the Regular Record Date relating to such Interest Payment Date (or, with respect to the payment of the principal of or the Fundamental Change Repurchase Price for such Note, the date that is fifteen (15) days immediately preceding the Maturity Date or related Fundamental Change Repurchase Date, as applicable), a written request to the Company that the Company make such payments by wire transfer to an account of the Holder within the United States, by wire transfer of immediately available funds to such account, which request shall remain in effect until the Holder notifies the Company, in writing, to the contrary.

(b) *Defaulted Amounts*. Whenever any amount payable on this Note (including, the principal of, the Fundamental Change Repurchase Price for, and interest on, this Note) has become due and payable, but the Company fails to punctually pay or to duly provide for such amount (any such amount, a "**Defaulted Amount**"), in each case regardless of whether such failure constitutes an Event of Default, then such Defaulted Amount will accrue interest ("**Default Interest**") at a rate equal to 6.00% per annum plus 100 basis points from, and including, such payment date and to, but excluding, the date on which such Defaulted Amount is paid by the Company, which Default Interest shall be payable by the Company on demand.

(c) *Acknowledgement and Agreement by the Holder*. The Holder, by accepting this Note, acknowledges and agrees to comply with the restrictions set forth in this Note's legend.

Section 2.02 *Replacement Note.* If (a)(i) this Note is mutilated and surrendered to the Company; or (ii) the Holder claims that this Note has been lost, destroyed or stolen and provides the Company with (A) evidence of such loss, theft or destruction that is reasonably satisfactory to the Company; and (B) any amount or kind of security or indemnity that the Company requests to protect itself from any loss that it may suffer upon replacement of this Note; and, in either case, (b) such Holder satisfies any other reasonable requirements of the Company, including the payment of any tax or other governmental charge that may be imposed in connection with the replacement of this Note, then, unless the Company receives notice that this Note has been acquired by a bona fide purchaser, the Company will promptly execute and deliver to the Holder a replacement Note having the same aggregate principal amount as this Note that was mutilated or claimed to be lost, destroyed or stolen.

Every new Note issued pursuant to this Section 2.02 in exchange for a mutilated Note, or in lieu of a destroyed, lost or stolen Note, will constitute an original contractual obligation of the Company and any other obligor upon this Note, regardless of whether the mutilated, destroyed, lost or stolen Note will be at any time enforceable by anyone, and will be entitled to all of the benefits, and subject to all the limitations, set forth herein.

ARTICLE 3
REPURCHASE AT THE OPTION OF THE HOLDER

Section 3.01 *Fundamental Change Permits Holder to Require the Company to Repurchase this Note.*

(a) *General*. If a Fundamental Change occurs at any time prior to the Maturity Date, the Holder will have the right, at its option, to require the Company to repurchase this Note, or any portion thereof, on the Fundamental Change Repurchase Date for such Fundamental Change for an amount of cash equal to the Fundamental Change Repurchase Price for such Fundamental Change Repurchase Date and this Note.

(b) *Fundamental Change Repurchase Price*. The "**Fundamental Change Repurchase Price**" means, for this Note to be repurchased on any Fundamental Change Repurchase Date, a price equal to 100% of the principal amount of this Note, plus accrued and unpaid interest, if any, on this Note to, but excluding, such Fundamental Change Repurchase Date; *provided*, *however*, that if such Fundamental Change Repurchase Date occurs after a Regular Record Date, but on or prior to the Interest Payment Date corresponding to such Regular Record Date, the Fundamental Change Repurchase Price for this Note will be 100% of the principal amount of this Note, and accrued and unpaid interest, if any, on this Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that this Note remained outstanding through such Interest Payment Date) will be payable, on such Fundamental Change Repurchase Date, to the Holder as of the Close of Business on such Regular Record Date.

(c) *Fundamental Change Repurchase Date*. The "**Fundamental Change Repurchase Date**" means, for any Fundamental Change, the date specified by the Company in the Fundamental Change Notice for such Fundamental Change, which date will be not less than twenty (20) Business Days, nor more than thirty five (35) Business Days, immediately following the Fundamental Change Notice Date for such Fundamental Change.

Section 3.02 *Fundamental Change Notice.*

(a) *General*. On or before the Business Day immediately following the effective date of a Fundamental Change, the Company will deliver to the Holder written notice of such Fundamental Change and of the resulting repurchase right (the "**Fundamental Change Notice**", and the date of such delivery, the "**Fundamental Change Notice Date**").

The Fundamental Change Notice for each Fundamental Change will specify, as applicable:

(A) briefly, the events causing such Fundamental Change;

(B) the effective date of such Fundamental Change;

(C) the last date on which the Holder may exercise its right to require the Company to repurchase this Note as a result of such Fundamental Change under this Article 3;

(D) the procedures that the Holder must follow to require the Company to repurchase this Note;

(E) the Fundamental Change Repurchase Price for each $1,000 principal amount this Note for such Fundamental Change (and in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, the equivalent pro rata amount);

(F) the Fundamental Change Repurchase Date for such Fundamental Change;

(G) in the event that a Fundamental Change Repurchase Notice has been duly tendered in respect of this Note and not validly withdrawn, the Fundamental Change Repurchase Price which will be paid promptly following the later of the Fundamental Change Repurchase Date and the time this Note is surrendered for repurchase;

(H) the Conversion Rate in effect on the Fundamental Change Notice Date for such Fundamental Change and the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Fundamental Change Notice Date;

(I) if applicable, any adjustments that will be made to the Conversion Rate as a result of such Fundamental Change, including any Additional Shares by which the Conversion Rate will be increased pursuant to Section 8.07 in the event that the Holder converts this Note “in connection with” such Fundamental Change;

(J) that in the event that a Fundamental Change Repurchase Notice has been delivered by the Holder, this Note may be converted only if the Holder withdraws such Fundamental Change Repurchase Notice in accordance with the terms of this Note or to the extent any portion of this Note are not subject to such Fundamental Change Repurchase Notice;

(K) the procedures for withdrawing a Fundamental Change Repurchase Notice;

(L) that if this Note or portion of this Note is subject to a validly delivered Fundamental Change Repurchase Notice, unless the Company defaults in paying the Fundamental Change Repurchase Price for this Note or portion of this Note, interest, if any, on this Note or portion of this Note will cease to accrue on and after the Fundamental Change Repurchase Date; and

(b) *Failure or Defect*. Notwithstanding anything provided elsewhere in this Note, neither the failure of the Company to deliver a Fundamental Change Notice nor a defect in a Fundamental Change Notice delivered by the Company will limit the repurchase rights of the Holder under this Article 3 or impair or otherwise affect the validity of any proceedings relating to the repurchase of this Note pursuant to this Article 3.

Section 3.03 *Fundamental Change Repurchase Notice*.

(a) *General*. To exercise its repurchase rights under Section 3.01(a) with respect to this Note pursuant to a Fundamental Change, the Holder must:

(i) deliver to the Company, by the Close of Business on the second (2nd) Business Day immediately preceding the Fundamental Change Repurchase Date, subject to extension to comply with applicable law, a duly completed Fundamental Change Repurchase notice, substantially in the form set forth in Exhibit B hereto (a "**Fundamental Change Repurchase Notice**") setting forth that the Holder is tendering this Note for repurchase; and

(ii) deliver this Note to the Company by physical delivery together with any endorsements or other documents reasonably requested by the Company.

(b) *Contents of Fundamental Change Repurchase Notice*. The Fundamental Change Repurchase Notice for this Note must state:

(i) if this Note is to be repurchased in part, the portion of the principal amount of this Note to be repurchased; and

(ii) that this Note will be repurchased by the Company pursuant to the provisions of this Article 3.

(c) *Effect of Improper Notice*. Unless and until the Company receives a validly delivered Fundamental Change Repurchase Notice with respect to this Note, together with this Note, in a form that conforms in all material aspects with the description contained in such Fundamental Change Repurchase Notice, the Holder will not be entitled to receive the Fundamental Change Repurchase Price for this Note.

Section 3.04 *Withdrawal of Fundamental Change Repurchase Notice.*

(a) *General*. After the Holder delivers a Fundamental Change Repurchase Notice with respect to this Note, the Holder may withdraw such Fundamental Change Repurchase Notice (in whole or in part) with respect to this Note or any portion of this Note by delivering to the Company a written notice of withdrawal prior to the Close of Business on the second (2nd) Business Day immediately preceding the Fundamental Change Repurchase Date. Any such withdrawal notice must state the principal amount of this Note, if any, that remains subject to the Fundamental Change Repurchase Notice.

(b) *Return of Note*. Upon receipt of a validly delivered withdrawal notice, the Company will promptly return this Note or portion of this Note to the Holder, in the amount specified in such withdrawal notice.

Section 3.05 *Effect of Fundamental Change Repurchase Notice.*

(a) *General*. If the Holder validly delivers to the Company a Fundamental Change Repurchase Notice (together with all necessary endorsements) with respect to this Note, the Holder may no longer convert this Note unless and until the Holder validly withdraws such Fundamental Change Repurchase Notice in accordance with Section 3.04.

(b) *Timing of Payment*. Upon the Company's receipt of (i) a valid Fundamental Change Repurchase Notice (together with all necessary endorsements); and (ii) this Note to which such Fundamental Change Repurchase Notice pertains, the Holder will be entitled, except to the extent the Holder has validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 3.04, to receive the Fundamental Change Repurchase Price with respect to this Note on the later of the following (subject to extension to comply with applicable law): (x) the Fundamental Change Repurchase Date; and (y) the date of delivery of this Note to the Company, duly endorsed.

(c) *Effect of Payment*. Upon receipt by the Holder of the Fundamental Change Repurchase Price:

(A) this Note will cease to be outstanding and interest (except Default Interest) will cease to accrue on this Note, except to the extent provided in the proviso to Section 3.01(b); and

(B) all other rights of the Holder with respect to this Note (other than the right to receive payment of the Fundamental Change Repurchase Price upon delivery or transfer of this Note and any Defaulted Amounts or Default Interest with respect to this Note, and other than as provided in the proviso to Section 3.01(b)) will terminate.

Section 3.06 *Note Repurchased in Part*. If this Note is to be repurchased only in part, the Holder must surrender this Note to the Company, whereupon the Company will promptly deliver to the Holder a new Note of any denomination or denominations equal to the portion of the principal amount of this Note so surrendered which is not repurchased.

Section 3.07 *Covenant to Comply With Securities Laws Upon Repurchase of Note*. In connection with any repurchase offer pursuant to a Fundamental Change Repurchase Notice under this Article 3, the Company will comply with any applicable United States federal and state securities laws so as to permit the Holder to exercise its rights and obligations under this Article 3 in the time and in the manner specified in Sections 3.01 and 3.03.

ARTICLE 4
COVENANTS

Section 4.01 *Payment of Note.* The Company will pay or cause to be paid the principal of, Fundamental Change Repurchase Price for, and any accrued and unpaid interest (including, for the avoidance of doubt, any Additional Interest or Special Interest) on, this Note on the dates and in the manner required under this Note. To the extent lawful, the Company will also pay Default Interest on any Defaulted Amounts in accordance with Section 2.01.

Section 4.02 *144A Information* Whenever the Company is not subject to Section 13 or Section 15(d) of the Exchange Act, if this Note or shares of Common Stock, if any, issuable upon the conversion of this Note constitute "restricted securities" within the meaning of Rule 144, the Company will, upon the request of the Holder or beneficial owner of this Note, or a holder or beneficial owner of the Common Stock, if any, issuable upon the conversion of this Note, (i) promptly furnish or cause to be furnished to the applicable Holder, beneficial owner, or any prospective purchaser designated by the applicable Holder or beneficial owner, of this Note, or any holder, beneficial owner, or any prospective purchaser designated by the applicable holder or beneficial owner, of the Common Stock, as applicable, all of the information that a prospective purchaser of this Note or the Common Stock, as applicable, is required to receive under Rule 144A(d)(4) of the Securities Act for this Note or shares of Common Stock, as applicable, to be resold to such prospective purchaser pursuant to the exemption from registration provided by Rule 144A and (ii) make publicly available such information as necessary to permit sales pursuant to Rule 144, as the case may be.

Section 4.03 *Reports*. The Company will deliver to the Holder copies of all quarterly and annual reports that the Company is required to deliver to the SEC on Forms 10-Q and 10-K, respectively, and any other documents, information or other reports that the Company is required to file with the SEC under Sections 13 or 15(d) of the Exchange Act no later than the date that the Company is required to file such quarterly and annual reports, other documents, information or other reports with the SEC (after giving effect to any grace period provided by Rule 12b-25 under the Exchange Act). Any document filed by the Company with the SEC via the EDGAR system (or any successor thereto) will be deemed to be delivered to the Holder at the time such document is filed via the EDGAR system (or such successor). Notwithstanding anything to the contrary in the foregoing, nothing in this paragraph shall require the Company to deliver to any Holder any material for which the Company has sought and received, or is seeking and has not been denied, confidential treatment by the SEC.

Section 4.04 *Additional Interest*.

(a) *General.* Additional Interest will accrue on this Note to the extent provided in the Registration Rights Agreement, and the Company's obligation to pay any such Additional Interest will be deemed to be obligations under this Note with the same force and effect as if the relevant provisions of the Registration Rights Agreement were reproduced in this Note.

Section 4.05 *Compliance Certificate.*

(a) *Annual Compliance Certificate*. Within ninety (90) days after the end of each fiscal year of the Company, beginning with the fiscal year ending on December 31, 2017, the Company will deliver to the Holder an Officers' Certificate, which Officers' Certificate will state (i) that the Officers signing such Officers' Certificate have supervised a review of the activities of the Company and the Subsidiaries with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Note during the preceding fiscal year; and (ii) to the best knowledge of each of the Officers signing such Officers' Certificate, (A) whether the Company has kept, observed, performed and fulfilled each and every covenant contained in this Note and is not in default in the performance or observance of any of the terms, provisions and conditions of this Note (without regard to any period of grace or requirement of notice provided under this Note) or, if one or more Defaults or Events of Default have occurred, what events triggered such Defaults or Events of Default and what actions the Company is taking or proposes to take with respect to such Defaults or Events of Default; and (B) whether any event has occurred and remains in existence by reason of which any payment of the principal of, the Fundamental Change Repurchase Price for, or interest on, or any delivery of any of the consideration due upon conversion of, this Note is prohibited, and, if any such event has occurred and remains in existence, a description, in reasonable detail, of such event or events and what actions the Company is taking or proposes to take with respect to such event or events.

(b) *Certificate of Default or Event of Default*. Within five (5) Business Days after a Default or Event of Default occurs, the Company will deliver to the Holder an Officers' Certificate describing such Default or Event of Default, its status and a description, in reasonable detail, of what action the Company is taking or proposes to take with respect to such Default or Event of Default.

Section 4.06 *Corporate Existence*. Subject to Article 5, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect:

(a) its corporate existence, and the corporate, partnership or other existence of each of the Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company or any such Subsidiary; and

(b) the rights (charter and statutory), licenses and franchises of the Company and the Subsidiaries;

provided, however, that the Company will not be required to preserve or keep in full force and effect any such right, license or franchise, or the corporate, partnership or other existence of any of the Subsidiaries, if the Board of Directors determines that the preservation thereof is no longer desirable in the conduct of the business of the Company and the Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holder.

Section 4.07 *Par Value Limitation.* The Company will not take any action that, after giving effect to any adjustment pursuant to Section 8.05 or 8.07, would result in the Conversion Price becoming less than the par value of one share of Common Stock. In addition, the Company will not engage in any transaction that would require an adjustment to the Conversion Rate pursuant to Section 8.06 that would cause the Conversion Price to be less than the par value of one share of Common Stock.

Section 4.08 *Stay, Extension and Usury Laws*. The Company covenants that, to the extent that it may lawfully do so, it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Note.

Section 4.09 *Further Instruments and Acts*. Upon request of the Holder, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the terms of this Note.

ARTICLE 5
CONSOLIDATION, MERGER AND SALE OF ASSETS

Section 5.01 *Company May Consolidate, Merge or Sell Its Assets Only on Certain Terms*. The Company will not (1) consolidate with or merge with or into; or (2) sell, lease or otherwise transfer all or substantially all of the consolidated assets of the Company and its Subsidiaries to, another Person (any such transaction, a "**Reorganization Event**"), unless:

(a) either:

(i) the Company is the surviving corporation; or

(ii) the resulting, surviving or transferee Person (if other than the Company) of such Reorganization Event (the "**Reorganization Successor Corporation**"):

(I) 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

(II) expressly assumes all of the obligations of the Company under this Note;

(b) immediately after giving effect to such Reorganization Event, no Default will have occurred and be continuing; and

(c) prior to the effective date of such Reorganization Event, the Company delivers to the Holder an Officers' Certificate and an Opinion of Counsel, each stating that:

(i) such Reorganization Event complies with Section 5.01(a);

(ii) all conditions precedent to such Reorganization Event provided in this Note have been satisfied; and

(iii) this Note constitutes the legal, valid and binding obligation of the Reorganization Successor Corporation (subject to customary limitations);

Section 5.02 *Successor Substituted*. If any Reorganization Event occurs that complies with Sections 5.01(a)(ii) and 5.01(b), and the Company has complied with Section 5.01(c):

(a) from and after the date of such Reorganization Event, the Reorganization Successor Corporation for such Reorganization Event will succeed to, and be substituted for, and may exercise every right and power of, and shall assume all obligations of, the Company under this Note with the same effect as if such Reorganization Successor Corporation had been named as the Company herein.

(b) except in the case of a Reorganization Event that is a conveyance, transfer or lease of all or substantially all of the Company's assets, the Person named as the "Company" in the first paragraph of this Note or any successor (other than such Reorganization Successor Corporation that will thereafter have become such in the manner prescribed in this Article 5) will be discharged from its obligations under this Note and may be dissolved, wound up and liquidated at any time.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default.*

(a) *General*. Each of the following events will be an "**Event of Default**":

(i) the Company fails to pay the principal of this Note (including any Fundamental Change Repurchase Price) when due at maturity or upon repurchase upon a Fundamental Change or declaration of acceleration or otherwise;

(ii) the Company fails to pay any interest on this Note when due and such failure continues for a period of thirty (30) days after the applicable due date;

(iii) the Company fails to give any Fundamental Change Notice or notice of a Make-Whole Fundamental Change, in each case, when due;

(iv) the Company fails to comply with its obligation to convert this Note in accordance with Article 8 upon the Holder's exercise of its conversion rights with respect to this Note;

(v) the Company fails to comply with its obligations under Article 5;

(vi) the Company fails to perform or observe any of its covenants or warranties in this Note (other than a covenant or agreement specifically addressed in clauses (i) through (v) above) and such failure continues for a period of sixty (60) days after days after written notice to the Company by holders of at least 25% of the Series then outstanding;

(vii) the default by the Company or any Subsidiary with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed by the Company and/or any Subsidiary in excess of one million dollars ($1,000,000) in the aggregate, whether such indebtedness exists as of the Issue Date or is later created, if that default:

(A) results in such indebtedness becoming or being declared due and payable (prior to its express maturity); or

(B) constitutes a failure to pay the principal of, or interest on, such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, and after the expiration of any applicable grace period,

and, such acceleration shall not have been rescinded or annulled or such failure to pay shall not have been cured, as the case may be, within thirty (30) days after written notice to the Company by the holders of at least 25% of the Series then outstanding;

(viii) a final judgment for the payment of in excess of one million dollars ($1,000,000) (excluding any amounts covered by insurance) is rendered against the Company or any Subsidiary, and such judgment is not discharged or stayed within sixty (60) days after (i) the date on which all rights to appeal such judgment have expired if no appeal has commenced; or (ii) the date on which all rights to appeal have been extinguished;

(ix) the Company or any Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case;

(B) consents to the entry of an order for relief against it in an involuntary case;

(C) consents to the appointment of a Custodian of it or for any substantial part of its property;

(D) makes a general assignment for the benefit of its creditors;

(E) takes any comparable action under any foreign laws relating to insolvency; or

(F) generally is not paying its debts as they become due; or

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

(A) is for relief against Company or any Significant Subsidiary in an involuntary case or proceeding;

(B) appoints a Custodian of the Company or any Significant Subsidiary, or for any substantial part of the property of the Company or any Significant Subsidiary;

(C) orders the winding up or liquidation of the Company or any Significant Subsidiary; or

(D) grants any similar relief under any foreign laws,

and, in each such case, the order or decree remains unstayed and in effect for sixty (60) days.

(b) *Cause Irrelevant*. Each of the events enumerated in Section 6.01(a) will constitute an Event of Default whatever the cause and regardless of whether voluntary or involuntary or 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.

Section 6.02 *Acceleration*.

(a) *Automatic Acceleration in Certain Circumstances*. If an Event of Default specified in Sections 6.01(a)(ix) or 6.01(a)(x) occurs with respect to the Company, the principal amount of, and all accrued and unpaid interest, if any, on this Note will immediately become due and payable without any further action or notice by any party.

(b) *Optional Acceleration*. If any Event of Default other than an Event of Default specified in Section 6.01(a)(ix) or 6.01(a)(x) occurs and is continuing, the holders of at least 25% of the aggregate principal amount of the Series then outstanding, by delivering a written notice to the Company, may declare the principal amount of, and all accrued and unpaid interest, if any, on all then outstanding notes in the Series immediately due and payable, and upon such declaration, the principal amount of, and all accrued and unpaid interest, if any, on all then outstanding notes in the Series will immediately become due and payable.

(c) *Rescission of Acceleration*. Notwithstanding anything to the contrary in this Note, holders of a majority of the aggregate principal amount of the Series then outstanding may, on behalf of the holders of all then outstanding notes in the Series, rescind any acceleration of such notes and its consequences hereunder by delivering written notice to the Company if (i) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and (ii) all existing Events of Default (other than the nonpayment of the principal of, interest, if any, on, or the Fundamental Change Repurchase Price for, the notes in the Series that have become due solely as a result of acceleration) have been cured or waived. No such rescission will affect any subsequent Default or impair any right consequent thereto.

Section 6.03 *Other Remedies*. If an Event of Default occurs and is continuing, the Holder may pursue any available remedy to collect the payment of principal, accrued and unpaid interest, if any, or payment of the Fundamental Change Repurchase Price for, this Note or to enforce the performance of any provision of this Note regarding any other matter.

A delay or omission by the Holder in exercising any right or remedy accruing upon an Event of Default will not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 6.04 *Sole Remedy for Failure to Report*.

(a) *General*. Notwithstanding anything to the contrary in this Note, the Company may elect that the sole remedy for any Event of Default specified in Section 6.01(a)(vi) relating to the Company's failure to comply with Section 4.03 (a "**Reporting Event of Default**") will, for the period beginning on the date on which such Reporting Event of Default first occurred and ending on the earlier of (A) the date on which such Reporting Event of Default (i) is cured; or (ii) is validly waived in accordance with Section 6.05; and (B) the sixtieth (60th) calendar day immediately following the date on which such Reporting Event of Default first occurred, consist exclusively of the right to receive additional interest (the "**Special Interest**") on this Note at a rate equal to 0.50% per annum on the principal amount of this Note. Any Special Interest will be payable in the same manner and on the same dates as the stated interest payable on this Note and will accrue in addition to any Additional Interest that the Company is obligated to pay.

(b) *Limitation on Remedy*. If (i) a Reporting Event of Default occurs and the Company elects that the sole remedy with respect to such Reporting Event of Default will be the Special Interest; and (ii) on the sixty first (61st) day immediately following, and including, the date on which such Reporting Event of Default first occurred, such Reporting Event of Default has not been cured or validly waived in accordance with Section 6.05, then this Note will become subject to acceleration under Section 6.02(a) on account of such Reporting Event of Default. For the avoidance of doubt, Special Interest will cease to accrue from such sixty first (61st) day, without limiting the generality of this Section 6.04 as it may apply to any subsequent Reporting Event of Default.

(c) *Company Election Notice*. To elect to pay the Special Interest as the sole remedy for a Reporting Event of Default, the Company must deliver written notice of such election to the Holder prior to the date on which such Reporting Event of Default first occurs. Any such notice must include a brief description of the report that the Company failed, or will fail, to file, a statement that the Company is electing to pay the Special Interest and the date on which such Reporting Event of Default will occur. If a Reporting Event of Default occurs and the Company fails to timely deliver such notice for such Reporting Event of Default or fails to pay the Special Interest, this Note will be subject to acceleration under Section 6.02(a) on account of such Reporting Event of Default.

(d) *Other Events of Default*. Notwithstanding anything to the contrary herein, if the Company elects to pay Special Interest with respect to any Reporting Event of Default, the Company's election will not affect the rights of the Holder with respect to any other Event of Default, including with respect to any other Reporting Event of Default; *provided*, that, for the avoidance of doubt, in no event will the Company be obligated to pay Special Interest at a rate greater than 0.50% per annum on the principal amount of this Note.

Section 6.05 *Waiver of Past Defaults*. If an Event of Default described in Sections 6.01(a)(i), 6.01(a)(ii), 6.01(a)(iv) or 6.01(a)(vi) (which, in the case of Section 6.01(a)(vi) only, relates to a covenant that cannot be amended without the consent of each affected holder of a note in the Series) or a Default that would lead to such an Event of Default occurs and is continuing, such Event of Default or Default may be waived only with the consent of each affected holder of a note in the Series. Every other Event of Default or Default may be waived by the holders of a majority of the aggregate principal amount of the outstanding Series (including consents obtained in connection with a repurchase of, or tender offer or exchange offer for, notes in the Series). Whenever any Event of Default is so waived, it will cease to exist, and whenever any Default is so waived, it will be deemed cured and any Event of Default arising therefrom will be deemed not to occur. However, no such waiver will extend to any subsequent or other Default or Event of Default or impair any consequent right

ARTICLE 7
SATISFACTION AND DISCHARGE

Section 7.01 *Discharge of Liability on Note*. When (a) this Note becomes due and payable, and the Company delivers to the Holder, as applicable, cash (or, solely to satisfy amounts due and owing as a result of conversions of this Note, Conversion Consideration), sufficient to pay all amounts due and owing on this Note and (b) the Company pays all other sums payable by it under this Note, this Note will cease to be of further effect and the Holder will acknowledge the satisfaction and discharge of this Note.

ARTICLE 8
CONVERSIONS

Section 8.01 *Right To Convert*.

(a) *In General*. Subject to, and upon compliance with, the provisions of this Article 8, at any time prior to the Close of Business on the second (2nd) Business Day immediately preceding the Maturity Date, the Holder may, at its option, convert this Note (or any portion thereof) into Conversion Consideration, as provided in this Article 8. This Note may not be converted after the Close of Business on the second (2nd) Business Day immediately preceding the Maturity Date.

(b) *Closed Periods*. Notwithstanding anything to the contrary in this Note, if the Holder tenders a Repurchase Notice with respect to this Note in accordance with Article 3, this Note may not be converted except to the extent (i) this Note is not subject to such Repurchase Notice, (ii) such Repurchase Notice is withdrawn in accordance with Article 3 or (iii) the Company fails to pay the Fundamental Change Repurchase Price for this Note in accordance with Section 3.05(b).

Section 8.02 *Conversion Procedures*.

(a) *General*. To exercise its conversion right with respect to this Note, the Holder must (i) complete and manually sign a conversion notice in the form set forth in Exhibit A hereto, or a facsimile of such conversion notice (such notice, or such facsimile, the "**Conversion Notice**"); (ii) deliver such signed and completed Conversion Notice, which shall be irrevocable, and this Note to the Company; (iii) furnish any endorsements and transfer documents that the Company may require; and (iv) pay any amounts due pursuant to Section 8.02(d) or 8.02(e). The first Business Day on which the Holder satisfies the foregoing requirements with respect to this Note and on which conversion of this Note is not otherwise prohibited hereunder will be the "**Conversion Date**" for this Note. If the Holder has delivered a Fundamental Change Repurchase Notice with respect to this Note, the Holder may not surrender this Note for conversion until the Holder has withdrawn such Fundamental Change Repurchase Notice in accordance with Section 3.04. The conversion of this Note will be deemed to occur at the Close of Business on the Conversion Date for this Note, and this converted Note or portion thereof will cease to be outstanding upon conversion.

(b) *Holder of Record*. If the Holder surrenders the entire principal amount of this Note for conversion, the Holder will no longer be the Holder of this Note as of the Close of Business on the Conversion Date for this Note. The person in whose name any shares of Common Stock are issuable upon conversion of this Note will become the holder of record of such shares as of the Close of Business on the Conversion Date for such conversion.

(c) *Conversions in Part*. If the Holder surrenders only a portion of the principal amount of this Note for conversion, promptly after the Conversion Date for such portion, the Company will deliver to the Holder a new Note, having a principal amount equal to the aggregate principal amount of the unconverted portion of the Note surrendered for conversion.

(d) *Reimbursement of Interest upon Conversion*. If the Holder converts this Note after the Close of Business on a Regular Record Date, but prior to the Open of Business on the Interest Payment Date corresponding to such Regular Record Date, then (x) the Holder at the Close of Business on such Regular Record Date shall be entitled, notwithstanding such conversion, to receive, on the date the Company delivers (or is required to deliver) the Conversion Consideration due in respect of such conversion, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date); and (y) the Holder must, upon surrender of this Note for conversion, accompany this Note with an amount of cash equal to the amount of such interest referred to in clause (x) above; *provided, however*, that the Holder need not make such payment (A) for conversions following the Regular Record Date immediately preceding the Maturity Date; (B) if the Company has specified a Fundamental Change Repurchase Date that is after such Regular Record Date and on or prior to the Business Day immediately following such Interest Payment Date; or (C) to the extent of any overdue interest, if any overdue interest exists at the time of conversion with respect to this Note. For the avoidance of doubt, the Holder at the Close of Business on the Regular Record Date immediately preceding the Maturity Date will be entitled to receive interest that accrues (or would have accrued) on this Note to, but excluding, the Maturity Date notwithstanding any conversion of this Note.

(e) *Taxes and Duties.* If the Holder converts this Note, the Company will pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of the Common Stock upon the conversion; *provided*, *however*, that if any tax is due because the Holder requested that shares of Common Stock be issued in a name other than its own, the Holder will pay such tax and the Company, until having received a sum sufficient to pay such tax, may refuse to deliver any certificates representing the shares of Common Stock being issued in a name other than that of the Holder.

(f) *Restrictions on Conversion*. Notwithstanding anything to the contrary in this Note, this Note will not be convertible by the Holder, and the Company will not effect any conversion of this Note, in each case to the extent (and only to the extent) that such convertibility or conversion would result in the Holder or any of its Affiliates beneficially owning in excess of 9.99% of the then-outstanding shares of Common Stock. For these purposes, beneficial ownership and all determinations and calculations (including with respect to calculations of percentage ownership) will be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For the avoidance of doubt, if the convertibility of this Note is restricted pursuant to this Section 8.02(f), this Note will continue to be outstanding, and its convertibility will be reinstated if and when the convertibility and conversion will not violate the limitations set forth in this Section 8.02(f).

Section 8.03 *Settlement Upon Conversion.*

(a) *Conversion Obligation.*

(i) *Conversion Consideration*. Subject to the terms hereof, upon conversion of this Note, the consideration (the "**Conversion Consideration**") due in respect of each $1,000 principal amount of this Note to be converted will consist of (I) a whole number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such conversion (which, if not a whole number, will be rounded down to the nearest whole number); (II) in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata number of shares and (III) if such Conversion Rate is not a whole number, cash in lieu of the related fractional share in an amount equal to the product of (x) the Last Reported Sale Price per share of Common Stock on such Conversion Date (or, if such Conversion Date is not a Trading Day, the immediately preceding Trading Day) and (y) the fractional portion of such Conversion Rate.

(ii) *Delivery of Conversion Consideration*. Except as set forth in Section 8.05, the Company will pay or deliver, as the case may be, the Conversion Consideration due upon the conversion of this Note to the Holder on the third (3rd) Business Day immediately following the Conversion Date for such conversion.

(b) *Settlement of Accrued Interest and Deemed Payment of Principal*. If the Holder converts this Note, the Company will not adjust the Conversion Rate to account for any accrued and unpaid interest on this Note, and, except as provided in Section 8.02(d), the Company's delivery of the Conversion Consideration due upon such conversion will be deemed to satisfy and discharge in full the Company's obligation to pay the principal of this Note and accrued and unpaid interest, if any, on, this Note to, but excluding the Conversion Date. As a result, except as provided in Section 8.02(d), any accrued and unpaid interest with respect to this Note, in the event that it is converted, will be deemed to be paid in full rather than cancelled, extinguished or forfeited.

Section 8.04 *Common Stock Issued Upon Conversion.*

(a) The Company will reserve out of its authorized but unissued shares of Common Stock, and keep available to satisfy conversion of this Note, a number of shares of Common Stock sufficient to permit the conversion this Note, after giving effect to the largest number of Additional Shares that may from time to time be added to the Conversion Rate as provided in Section 8.07.

(b) Any shares of Common Stock delivered upon the conversion of this Note will be newly issued shares or treasury shares, duly and validly issued, fully paid, nonassessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of the Holder or other Person to whom such shares of Common Stock will be delivered). In addition, the Company will endeavor to comply promptly with all federal and state securities laws regulating the offer and delivery of any shares of Common Stock issuable upon conversion of this Note. The Company will also use its best efforts to cause any shares of Common Stock issuable upon conversion of this Note to be listed on whatever stock exchange(s) the Common Stock is listed on the date the Holder becomes a record holder of such Common Stock.

Section 8.05 *Adjustment of Conversion Rate*. The Company will adjust the Conversion Rate from time to time as described in this Section 8.05, except that the Company will not make an adjustment to the Conversion Rate if the Holder participates (other than in a share split or share combination), at the same time and upon the same terms as holders of the Common Stock, and solely as a result of holding this Note, in the relevant transaction described in this Section 8.05 without having to convert its Note and as if it held a number of shares of the Common Stock equal to the product of (i) the Conversion Rate in effect on the applicable record date, Effective Date or expiration date; and (ii) the aggregate principal amount of this Note (expressed in thousands) on such date.

(a) *Stock Dividends and Share Splits*. If the Company exclusively issues to all or substantially all holders of the Common Stock shares of Common Stock as a dividend or distribution on shares of the outstanding Common Stock, or if the Company effects a share split of the Common Stock or a share combination of the Common Stock (excluding an issuance solely pursuant to a Common Stock Change Event, as to which the provisions set forth in Section 8.08(a) will apply), the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where:

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the Open of Business on the Effective Date of such share split or share combination, as applicable;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date or Effective Date, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date or Effective Date, as applicable; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination, as applicable.

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date or Effective Date, as applicable. If any dividend, distribution, share split or share combination of the type described in this Section 8.05(a) is declared, but not so paid or made, the Conversion Rate will be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or to effect such share split or share combination, to the Conversion Rate that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

(b) *Rights, Options and Warrants*. If the Company issues, to all or substantially all holders of its outstanding Common Stock, rights, options or warrants entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such issuance, to subscribe for, or purchase, shares of Common Stock, at a price per share less than the average of the Last Reported Sale Prices per share of the Common Stock for the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, then, subject to the provisions described below with respect to rights issued pursuant to a stockholder rights plan, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS + X}{OS + Y}$$

where:

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such issuance;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

OS = the number of shares of Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date;

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

Y = the number of shares of Common Stock equal to the quotient of (i) the aggregate price payable to exercise such rights, options or warrants, over (ii) the average of the Last Reported Sale Prices per share of the Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants, including because the issued rights, options or warrants were not exercised, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect if the Ex-Dividend Date for such issuance had not occurred.

For purposes of this Section 8.05(b), in determining whether any rights, options or warrants entitle holders of the Common Stock to subscribe for, or purchase, shares of Common Stock at a price per share less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement for an issuance, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) *Spin-Offs and Other Distributed Property*.

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

(A) dividends, distributions, rights, options or warrants for which an adjustment was effected pursuant to Section 8.05(a) or 8.05(b), as applicable;

(B) dividends or distributions paid exclusively in cash for which an adjustment was effected pursuant to Section 8.05(d);

(C) Spin-Offs for which the provisions described in Section 8.05(c)(ii) will apply; and

(D) an issuance solely pursuant to a Common Stock Change Event, as to which the provisions set forth in Section 8.08(a) will apply,

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

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where:

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

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

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

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

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date. Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than the "SP_0" (as defined above), in lieu of the foregoing increase, the Holder will receive, for each $1,000 principal amount of this Note outstanding on the record date for the distribution, at the same time and upon the same terms as holders of the Common Stock, the amount and kind of shares of Capital Stock, evidences of indebtedness, assets or property, rights, options or warrants or other securities that the Holder would have received if the Holder had owned a number of shares of Common Stock equal to the Conversion Rate in effect on the record date for such distribution (or in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata amount).

If any distribution of the type described in this Section 8.05(c)(i) is not so paid or made, or if any rights, options or warrants are not exercised before their expiration date, the Conversion Rate will be readjusted to be the Conversion Rate that would then be in effect if such distribution had not been declared.

(ii) With respect to an adjustment pursuant to this Section 8.05(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to an Affiliate, a Subsidiary or other business unit of the Company, and such Capital Stock or similar equity interest is listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a national securities exchange or a reasonably comparable non-U.S. equivalent (a "**Spin-Off**"), but excluding an issuance solely pursuant to a Common Stock Change Event as to which the provisions described in Section 8.08(a) apply, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where:

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

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

FMV_0 = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of Common Stock (determined for purposes of the definition of Last Reported Sale Price as if such Capital Stock or similar equity interest were the Common Stock) over the first ten (10) consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the "**Valuation Period**"); and

MP_0 = the average of the Last Reported Sale Prices per share of the Common Stock over the Valuation Period.

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date. The adjustment to the Conversion Rate under this Section 8.05(c)(ii) will be calculated as of the Close of Business on the last Trading Day of the Valuation Period but will be given effect as of immediately after the Open of Business on the Ex-Dividend Date of the Spin-Off. Notwithstanding anything to the contrary herein or in this Note, if necessary, the Company shall delay the settlement of any conversion of this Note where the Conversion Date occurs during the Valuation Period until the third (3rd) Business Day after the last day of the Valuation Period. If any distribution of the type described in this Section 8.05(c)(ii) is declared but not so made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to make such distribution, to the Conversion Rate that would then be in effect if such distribution had not been declared.

(d) *Cash Dividends or Distributions*. If any cash dividend or distribution (other than a distribution as to which an adjustment to the Conversion Rate was effected pursuant to Section 8.05(e)) is made to all or substantially all holders of the Common Stock, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where:

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

CR_1 = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution;

SP_0 = the Last Reported Sale Price per share of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

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

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, the Holder will receive, for each $1,000 principal amount of this Note outstanding on the record date for such cash dividend or distribution, at the same time and upon the same terms as holders of the Common Stock, the amount of cash that the Holder would have received if the Holder had owned a number of shares of Common Stock equal to the Conversion Rate in effect on such record date (or in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata number of shares). If any dividend or distribution of the type described in this Section 10.05(d) is declared but not so paid or made, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(e) *Tender Offers or Exchange Offers*. If the Company or any Subsidiary makes a payment in respect of a tender offer or exchange offer for the Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the Last Reported Sale Price per share of the Common Stock on the Trading Day next succeeding the last date (the "**Expiration Date**") on which tenders or exchanges may be made pursuant to such tender offer or exchange offer (as it may be amended), the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where:

CR_0 = the Conversion Rate in effect immediately prior to the Expiration Time (as defined below);

CR_1 = the Conversion Rate in effect immediately after the Expiration Time;

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

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

OS_1 = the number of shares of Common Stock outstanding immediately after the Expiration Time (after giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer); and

SP_1 = the average of the Last Reported Sale Prices per share of the Common Stock over the ten (10) consecutive Trading Day period (the "**Averaging Period**") commencing on the Trading Day next succeeding the Expiration Date.

The adjustment to the Conversion Rate pursuant to this Section 8.05(e) will be calculated as of the Close of Business on the last Trading Day of the Averaging Period but will be given effect as of immediately after the Expiration Time. Notwithstanding anything to the contrary herein, if necessary, the Company shall delay the settlement of any conversion of this Note where the Conversion Date occurs during the Averaging Period until the third (3rd) Business Day after the last day of the Averaging Period.

(f) *Successive Adjustments.* After an adjustment to the Conversion Rate under this Article 8, any subsequent event requiring an adjustment under this Article 8 will cause an adjustment to the Conversion Rate as so adjusted, without duplication.

(g) *Limitations Imposed by Stock Market Listing Standards*. The Company will not enter into any transaction, or take any other voluntary action, that would result in an adjustment to the Conversion Rate that would violate the listing standards of any securities exchange on which any securities of the Company may be then listed, without complying, if applicable, with the requirements of such listing standards.

(h) *Special Settlement Provisions*. Notwithstanding anything to the contrary herein, if:

(i) this Note is to be converted and, as of the Conversion Date for such conversion, any transaction or other event that requires an adjustment to the Conversion Rate pursuant to Sections 8.05(a) through (e) has occurred but has not yet resulted in an adjustment to the Conversion Rate;

(ii) the consideration due upon such conversion consists of any shares of Common Stock; and

(iii) such shares of Common Stock are not entitled to participate in such transaction or event because they were not held on the related record date or otherwise, then, solely for purpose of such conversion, the Company shall, without duplication, give effect to such adjustment on such Conversion Date.

In addition, notwithstanding anything to the contrary herein, if:

(i) a Conversion Rate adjustment for any transaction or other event becomes effective on any Ex-Dividend Date pursuant to Sections 8.05(a) through (e);

(ii) this Note is to be converted;

(iii) the Conversion Date for such conversion occurs on or after such Ex-Dividend Date and on or before the related record date;

(iv) the consideration due upon such conversion includes any whole shares of Common Stock; and

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

then such Conversion Rate adjustment shall not be given effect for such conversion. Instead, the Holder will be treated as if the Holder were, as of such record date, the record holder of such shares of Common Stock on an unadjusted basis and will participate in such transaction or event.

(i) *Shareholder Rights Plans*. If the Company has a rights plan in effect when the Holder converts this Note, the Company will deliver to the Holder, to the extent the Holder receives any shares of Common Stock upon such conversion of this Note, any rights that, under the rights plan, would be applicable to a share of Common Stock, unless prior to the Conversion Date for this Note, the rights have separated from the Common Stock, in which case, and only in such case, the Conversion Rate will be adjusted pursuant to Section 8.05(c)(i) as if, at the time of such separation, the Company had distributed to all holders of the Common Stock shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities, subject to readjustment in the event of the expiration, termination or redemption of such rights.

(j) *Other Adjustments*. Whenever any provision of this Note requires the calculation of the Last Reported Sale Price or a function thereof over a period of multiple days (including the Stock Price for purposes of a Make-Whole Fundamental Change), the Company will make appropriate adjustments to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Effective Date or expiration date of the event occurs, at any time during such period.

(k) *Restrictions on Adjustments*. Except as a result of a reverse share split or a share combination subject to Section 8.05(a), and except for readjustments pursuant to the last paragraph of Section 8.05(a), readjustments pursuant to the penultimate paragraph of Section 8.05(b), readjustments pursuant to the last paragraph of Section 8.05(c)(i), readjustments pursuant to the penultimate paragraph of Section 8.05(c)(ii) and readjustments pursuant to Section 8.05(d), in no event will the Conversion Rate be adjusted downward pursuant to Section 8.05(a), (b), (c), (d) or (e). In addition, notwithstanding anything to the contrary elsewhere in this Note, the Conversion Rate will not be adjusted:

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

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

(iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in the preceding clause and outstanding as of the date of the Issue Date;

(iv) upon the repurchase of any shares of Common Stock pursuant to an open-market share repurchase program or other buy-back transaction that is not a tender offer or exchange offer subject to Section 10.05(e);

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

(vi) for accrued and unpaid interest.

(l) *Miscellaneous*.

(i) *Certain Definitions.*

(II) For purposes of this Section 8.05, the number of shares outstanding at any time will include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; but, so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, will not include shares of Common Stock held in the treasury of the Company.

(III) For purposes of this Section 8.05, the term "**Effective Date**" will mean the first date on which the Common Stock trades on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

(IV) For purposes of this Article 8, the term "**Ex-Dividend Date**" will mean the first date on which the shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

(ii) *Notices*. Whenever the Company adjusts (or is required to adjust) the Conversion Rate pursuant to this Section 8.05, the Company will promptly deliver to the Holder a written notice, which notice will include (i) a brief description of the event requiring adjustment to the Conversion Rate pursuant to this Section 8.05; (ii) the effective time of such adjustment; (iii) the Conversion Rate in effect immediately after such adjustment is made; and (iv) a schedule explaining, in reasonable detail, how the Company calculated such adjustment.

(iii) All calculations and other determinations in respect of the Conversion Rate will be made by the Company to the nearest 1/10,000th of a share, with 5/100,000ths rounded upward.

Section 8.06 *Voluntary Adjustments.*

(a) *Best Interest Increases*. The Company may, from time to time, to the extent permitted by law and the applicable rules of any exchange on which the Common Stock is listed, increase the Conversion Rate by any amount if (i) the Board of Directors determines that such increase is in the best interest of the Company; (ii) such increase is in effect for a period of at least twenty (20) Business Days; and (iii) during such period, such increase is irrevocable.

(b) *Tax-Related Increases*. To the extent permitted by law and the applicable rules of any exchange on which the Common Stock is listed, the Company may (but is not required to) increase the Conversion Rate if the Board of Directors determines that such increase is advisable to avoid, or diminish, any income tax imposed on holders of the Common Stock or rights to purchase the Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) or similar event treated as such for U.S. federal income tax purposes.

(c) *Notices*. Whenever the Board of Directors determines that the Company will increase the Conversion Rate pursuant to this Section 8.06, the Company will deliver to the Holder notice of such increase at least fifteen (15) Business Days before such increase will take effect, which notice will state the increase to be made and the period during which such increase will be in effect.

Section 8.07 *Adjustments Upon Certain Fundamental Changes.*

(a) *General*. If a Fundamental Change (determined after giving effect to the penultimate paragraph of the definition thereof, but without regard to the exclusion in clause (b)(ii) of the definition thereof) occurs (a "**Make-Whole Fundamental Change**"), and the Holder converts this Note "in connection with" such Make-Whole Fundamental Change, the Company will, in the circumstances described in this Section 8.07, increase the Conversion Rate for this Note by the number of additional shares of Common Stock (the "**Additional Shares**") set forth in this Section 8.07. For purposes of this Section 8.07, a conversion of this Note will be deemed to be "in connection with" a Make-Whole Fundamental Change if the applicable Conversion Date occurs during the period from, and including, the effective date of the Make-Whole Fundamental Change up to, and including, the Business Day immediately prior to the related Fundamental Change Repurchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the exclusion in clause (b)(ii) of the definition thereof, the thirty fifth (35th) Trading Day immediately following the effective date of such Make-Whole Fundamental Change). As promptly as practicable, but in no event later than the Business Day after the effective date of a Make-Whole Fundamental Change, the Company will notify the Holder of such effective date.

(b) *Determination of Additional Shares*. The number of Additional Shares, if any, by which the Conversion Rate will be increased if the Holder converts this Note in connection with a Make-Whole Fundamental Change will be determined by reference to the table below, and will be based on the Make-Whole Fundamental Change Effective Date and the Stock Price for such Make-Whole Fundamental Change. For any Make-Whole Fundamental Change, the "**Make-Whole Fundamental Change Effective Date**" will mean the date on which such Make-Whole Fundamental Change occurs or becomes effective.

(c) *Adjustment of Stock Prices and Additional Shares*. The Stock Prices set forth in the first row (*i.e.*, the column headers) of the table below will be adjusted on each date on which the Conversion Rate must be adjusted pursuant to Section 8.05. The adjusted Stock Prices will equal the Stock Prices in effect immediately prior to such adjustment, multiplied by a fraction, (i) the numerator of which is the Conversion Rate in effect immediately prior to the adjustment giving rise to the share price adjustment; and (ii) the denominator of which is the Conversion Rate in effect immediately after the adjustment. The numbers of Additional Shares set forth in the table below will be adjusted in the same manner, at the same time and for the same events for which the Conversion Rate is adjusted pursuant to Section 8.05.

(d) *Additional Shares Table*. The following table sets forth hypothetical Make-Whole Fundamental Change Effective Dates, Stock Prices and the number of Additional Shares by which the Conversion Rate will be increased per $1,000 principal amount of this Note for the Holder that converts this Note in connection with a Make-Whole Fundamental Change having such Make-Whole Fundamental Change Effective Date and Stock Price. In the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, the Conversion Rate will be increased by an equivalent pro rata number of shares.

	Stock Price									
Effective Date	$0.60	$0.76	$2.90	$3.50	$3.88	$5.00	$6.00	$8.00	$12.00	$16.00
January 17, 2017	355.4918	236.8878	162.5063	130.9858	70.8763	39.1640	21.6412	0.0000	0.0000	0.0000
January 17, 2018	355.4918	201.4220	132.1653	105.7891	57.5709	31.9951	16.7018	0.0000	0.0000	0.0000
January 17, 2019	355.4918	159.9914	95.7987	75.8657	41.7694	25.8873	11.4030	0.0000	0.0000	0.0000
January 17, 2020	355.4918	109.1105	51.7587	40.7040	23.0112	13.2302	5.9770	0.0000	0.0000	0.0000
January 17, 2021	355.4918	2.0122	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

(e) *Use of Additional Shares Table*. If the Stock Price and/or Make-Whole Fundamental Change Effective Date for a Make-Whole Fundamental Change are not set forth in the table above, then:

(A) if the Stock Price is between two Stock Prices in the table or the Make-Whole Fundamental Change Effective Date is between two Make-Whole Fundamental Change Effective Dates in the table, the number of Additional Shares by which the Conversion Rate will be increased for the Holder that converts this Note in connection with such Make-Whole Fundamental Change will be determined by a straight-line interpolation between the numbers of Additional Shares set forth for the higher and lower Stock Prices listed in the table and the earlier and later Make-Whole Fundamental Change Effective Dates listed in the table, as applicable, based on a 365- or 366-day year, as applicable;

(B) if the Stock Price is greater than $8.00, subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table, no Additional Shares will be added to the Conversion Rate; and

(C) if the Stock Price is less than $0.60 per share, subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table, no Additional Shares will be added to the Conversion Rate.

Notwithstanding the foregoing, in no event will the Conversion Rate be increased as a result of this Section 8.07 to exceed 1,673.1918 shares of Common Stock per $1,000 principal amount of this Note, subject to adjustment in the same manner, at the same time and for the same events for which the Conversion Rate must be adjusted as set forth in Section 8.05.

(f) *Settlement or Conversion*. If the Holder converts this Note in connection with a Make-Whole Fundamental Change, the Company will settle such conversion by delivering Conversion Consideration in accordance with Section 8.03; *provided*, *however*, that notwithstanding anything to the contrary in Section 8.03, if the Holder converts this Note in connection with a Make-Whole Fundamental Change described in clause (b)(ii) of the definition of Fundamental Change in which the holders of the Common Stock receive only cash in consideration for their shares of Common Stock, the Company will settle such conversion by delivering to the Holder, on the third (3rd) Business Day immediately following the Conversion Date for this Note, an amount of cash, for each $1,000 principal amount of this Note so converted, equal to the product of (i) the Conversion Rate on the Conversion Date applicable to this Note (including any Additional Shares added to such Conversion Rate pursuant to this Section 8.07) and (ii) the Stock Price for such Make-Whole Fundamental Change, or in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata amount.

Section 8.08 *Effect of Recapitalization, Reclassification, Consolidation, Merger or Sale*.

(a) *General*. If any of the following events occur:

(1) any recapitalization, reclassification or change of Common Stock (other than (x) a change only in par value, from par value to no par value or no par value to par value; or (y) changes resulting from a stock split or combination not involving the issuance of any other class or series of securities);

(2) any consolidation, merger, combination or similar transaction involving the Company;

(3) any sale, lease or other transfer to a third party of all or substantially all of the consolidated assets of the Company and its Subsidiaries substantially as an entirety; or

(4) any statutory share exchange,

and, in each case, as a result of which the Common Stock would be converted into, or exchanged for, or represent solely the right to receive, stock (including one or more series of the Common Stock), other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Common Stock Change Event**" and such stock, other securities, other property or assets, the "**Reference Property**", and the amount and kind of Reference Property that a holder of one share of Common Stock would be entitled to receive on account of such Common Stock Change Event, a "**Reference Property Unit**"), then, notwithstanding anything to the contrary, at the effective time of such transaction, the consideration due upon a conversion of this Note will be determined in the same manner as if each reference to any number of shares of Common Stock in this Article 8 were instead a reference to the same number of Reference Property Units. For these purposes, the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration (determined based in part upon any form of stockholder election), then the composition of the Reference Property Unit shall be deemed to be (a) the weighted average, per share of Common Stock, of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election; or (b) if no holders of the Common Stock affirmatively make such an election, the types and amounts of consideration actually received, per share of Common Stock, by the holders of the Common Stock. The Company shall notify the Holder of such weighted average (if applicable) as soon as practicable after such determination is made.

None of the foregoing provisions will affect the right of the Holder to convert this Note as set forth in Section 8.01 and 8.02 prior to the effective date of such Common Stock Change Event.

(b) *Notices*.

(i) As soon as practicable upon learning of the anticipated or actual effective date of any Common Stock Change Event, the Company will deliver written notice of such Common Stock Change Event to the Holder. Such Notice will include:

(A) a brief description of such Common Stock Change Event;

(B) the Conversion Rate in effect on the date the Company delivers such notice;

(C) the anticipated effective date for the Common Stock Change Event;

(D) that, on and after the effective date for the Common Stock Change Event, this Note will be convertible into Reference Property Units and cash in lieu of fractional Reference Property Units; and

(E) the composition of the Reference Property Unit for such Common Stock Change Event.

(c) *Successive Common Stock Change Events.* If more than one Common Stock Change Event occurs, this Section 8.08 will apply successively to each Common Stock Change Event.

(d) *Compliance Covenant*. The Company will not become a party to any Common Stock Change Event unless its terms are consistent with this Section 8.08.

ARTICLE 9
NO RIGHT OF REDEMPTION AT THE OPTION OF THE COMPANY

This Note will not be redeemable prior to the Maturity Date at the Company's election, and no sinking fund will be provided for this Note.

ARTICLE 10
MISCELLANEOUS

Section 10.01 *Notices*. Any request, demand, authorization, notice, waiver, consent or communication will be in writing and delivered in Person or mailed by first-class mail, postage prepaid, addressed as follows or transmitted by electronic transmission or other similar means of unsecured electronic methods to the following:

if to the Company:

Xtant Medical Holdings, Inc.
600 Cruiser Lane
Belgrade, MT 59714
Facsimile: (406) 388-9724
Attn: President

If to the Holder:

ROS Acquisition Offshore LP
c/o OrbiMed Advisors LLC
601 Lexington Avenue, 54th Floor
New York, NY 10022
Attention: Tadd Wessel and Christopher LiPuma

The Company or the Holder, by notice given to the other in the manner provided above, may designate additional or different addresses for subsequent notices or communications. Any notice, direction, request or demand hereunder to or upon the Holder shall be deemed to have been sufficiently given or made, for all purposes, if it is in writing and actually received by the Holder, addressed as provided above or sent electronically in PDF format.

Section 10.02 *Separability Clause*. In case any provision in this Note will be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

Section 10.03 *Governing Law and Waiver of Jury Trial*. THIS NOTE WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. THE COMPANY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 10.04 *No Recourse Against Others*. A director, officer, employee or stockholder, as such, of the Company will not have any liability for any obligations of the Company under this Note for for any claim based on, in respect of or by reason of such obligations or their creation. By accepting this Note, the Holder will waive and release all such liability. The waiver and release will be part of the consideration for the issuance of this Note.

Section 10.05 *Calculations*. Except as otherwise provided in this Note, the Company will be responsible for making all calculations called for under this Note. These calculations include, but are not limited to, determinations of the Last Reported Sale Price of the Common Stock or any other security, accrued interest (including, for the avoidance of doubt, any Additional Interest, Default Interest or Special Interest) payable on this Note and the Conversion Rate in effect on any Conversion Date.

The Company will make all calculations in good faith and, absent manifest error, its calculations will be final and binding on the Holder. The Company will provide a schedule of its calculations to the Holder, and the Holder is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification.

All calculations will be made to the nearest cent or to the nearest 1/10,000th of a share, as the case may be, with 5/100,000ths rounded upward.

Section 10.06 *Successors*. All agreements of the Company in this Note will bind its successors.

Section 10.07 *Table of Contents; Headings*. The table of contents and headings of the articles and sections of this Note have been inserted for convenience of reference only, are not intended to be considered a part hereof, and will not modify or restrict any of the terms or provisions hereof.

Section 10.08 *Submission to Jurisdiction*. The Company: (a) agrees that any suit, action or proceeding against it arising out of or relating to this Note as the case may be, may be instituted in any U.S. federal court with applicable subject matter jurisdiction sitting in The City of New York; (b) waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding, and any claim that any suit, action or proceeding in such a court has been brought in an inconvenient forum; and (c) submits to the nonexclusive jurisdiction of such courts in any suit, action or proceeding.

Section 10.09 *Legal Holidays*. If the Maturity Date or any Interest Payment Date or Fundamental Change Repurchase Date is not a Business Day (which, solely for the purposes of any payment required to be made on this Note on any such date will be deemed not to include any day on which the office where the place of payment is authorized or required by law to close), then any action to be taken on such date need not be taken on such date, but may be taken on the immediately following Business Day, and no interest on such payment will accrue as a result of such delay.

Section 10.10 *No Security Interest Created*. Nothing in this Note, expressed or implied, will be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 10.11 *Benefits of Note*. Nothing in this Note, expressed or implied, will give to any Person, other than the parties hereto, and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Note.

Section 10.12 *Withholding Taxes*. The Holder agrees, and each beneficial owner of an interest in this Note, by its acquisition of such interest, is deemed to agree, that if the Company or other applicable withholding agent pays withholding taxes or backup withholding on behalf of the Holder or beneficial owner, as applicable, as a result of an adjustment to the Conversion Rate, then the Company or other applicable withholding agent, as applicable, may, at its option, set off such payments against payments of cash and shares of Common Stock on this Note.

Section 10.13 *Amendment and Waiver*. With the written consent of the holders of at least a majority of the Series then outstanding (including consents obtained in connection with a repurchase of, or tender offer or exchange offer for, notes of the Series), the Company, may amend the notes of the Series or waive compliance with any provision of the notes of the Series; *provided*, *however*, that, without the consent of each affected holder, no amendment to the notes of the Series, or waiver of any provision of the notes of the Series, may:

(a) reduce the principal amount of, or change the Maturity Date of, any note of the Series;

(b) reduce the rate of, or extend the stated time for payment of, interest on any note of the Series;

(c) reduce the Fundamental Change Repurchase Price of any note of the Series or change the time at which, or the circumstances under which, the notes of the Series may, or will be, repurchased;

(d) impair the right of any holder to institute suit for any payment on any note of the Series, including with respect to any consideration due upon conversion of a note of the Series;

(e) make any note of the Series payable in a currency other than that stated in such note;

(f) make any change that impairs or adversely affects the conversion rights of any holder under Section 8 or otherwise reduces the number of shares of Common Stock, the amount of cash or any other property receivable by a holder upon conversion;

(g) change the ranking of the notes of the Series;

(h) make any change to any amendment, modification or waiver of a provision of a note of the Series that requires the consent of each affected holder of notes of the Series; or

(i) reduce the percentage of the aggregate principal amount of then outstanding notes of the Series whose holders must consent to an amendment or modification of any note of the Series or a waiver of a past Default.

It will not be necessary for the consent of the holders under this Section 10.13 to approve the particular form of any proposed amendment or modification, but it will be sufficient if such consent approves the substance of such proposed amendment or modification.

[*Remainder of Page Intentionally Left Blank; Signature Page Follows*]

IN WITNESS WHEREOF, the undersigned have executed this Note as of the day and year first written above.

XTANT MEDICAL HOLDINGS, INC.

By: /s/ Daniel Goldberger
Name: Daniel Goldberger
Title: Chief Executive Officer

[Signature Page to Convertible Promissory Note]

EXHIBIT A

CONVERSION NOTICE

XTANT MEDICAL HOLDINGS, INC.
6.00% CONVERTIBLE SENIOR NOTE DUE 2021

To convert this Note, check the box £

To convert the entire principal amount of this Note, check the box £

To convert only a portion of the principal amount of this Note, check the box £ and here specify the principal amount to be converted:

$ _____

ROS ACQUISITION OFFSHORE LP

By: _____
Authorized Signatory

EXHIBIT B

FUNDAMENTAL CHANGE REPURCHASE NOTICE

Xtant Medical Holdings, Inc.
600 Cruiser Lane
Belgrade, MT 59714
Attention: General Counsel

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Xtant Medical Holdings, Inc. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the Holder hereof in accordance with the applicable provisions of this Note (1) the entire principal amount of this Note, or the portion thereof below designated; and (2) if such Fundamental Change Repurchase Date does not occur during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Fundamental Change Repurchase Date.

Principal amount to be repaid (if less than all): $_____,000

ROS ACQUISITION OFFSHORE LP

By: _____
Authorized Signatory

THE SALE OF THIS NOTE HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, THIS NOTE (AND ANY BENEFICIAL INTEREST HEREIN) MAY NOT BE OFFERED, RESOLD OR OTHERWISE TRANSFERRED, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF;

(B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT; OR

(C) UNDER ANY AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (INCLUDING, IF AVAILABLE, THE EXEMPTION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT).

PRIOR TO ANY TRANSFER PURSUANT TO THE FOREGOING CLAUSE (C), THE COMPANY RESERVES THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE COMPANY MAY REASONABLY REQUIRE AND MAY RELY UPON 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 APPLICABLE SECURITIES LAWS OF ANY OTHER JURISDICTION. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

XTANT MEDICAL HOLDINGS, INC.

CONVERTIBLE PROMISSORY NOTE

$24,288.41 Date of Issuance: January 17, 2017

FOR VALUE RECEIVED, Xtant Medical Holdings, Inc., a Delaware corporation (the "**Company**"), promises to pay to OrbiMed Royalty Opportunities II, LP, and its assigns, (the "**Holder**") the principal sum of $24,288.4 (the "**Principal Amount**"), in the manner provided herein. Commencing on the date hereof, and continuing until such time as the Principal Amount is repaid in full, interest shall accrue on the Principal Amount outstanding at the rate of six percent (6.00%) per annum. This Note is one of a series of notes of the Company issued on the date hereof (the "**Series**"). This Note is subject to the following terms and conditions.

TABLE OF CONTENTS

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 *Definitions.*

"**Additional Interest**" has the meaning ascribed to it in the Registration Rights Agreement.

"**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 or cause the direction of 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, United States Code, or any similar U.S. federal, state or non-U.S. law for the relief of debtors.

"**Board of Directors**" means the board of directors of the Company or a committee of such board duly authorized to act for it.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

"**Capital Stock**" means, for any Person, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of, or interests in (however designated), the equity of such Person, but excluding any debt securities convertible into such equity.

"**Close of Business**" means 5:00 p.m., New York City time.

"**Common Stock**" means the shares of the common stock of the Company, $0.000001 par value per share.

"**Company**" means the party named as such in the first paragraph of this Note until a successor or assignee replaces it pursuant to the applicable provisions hereof and, thereafter, means the successor or assignee.

"**Conversion Price**" means, at any time, (i) $1,000 *divided by* (ii) the Conversion Rate in effect at such time.

"**Conversion Rate**" means, initially, 1,317.70 shares of Common Stock per $1,000 principal amount of this Note, subject to adjustment as provided herein, or in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata number of shares.

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

"**Default**" means any event which is (or after notice, passage of time or both would be) an Event of Default.

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

"**Fundamental Change**" means an event that will be deemed to occur if any of the following occurs:

(a) a "person" or "group" within the meaning of Section 13(d) of the Exchange Act, other than the Company or the Subsidiaries, has become the direct or indirect "beneficial owner" (as defined below) of shares of the Company's common equity representing more than 50% of the voting power of the Company's common equity;

(b) the consummation of:

(i) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and the Subsidiaries to any person; or

(ii) any transaction or series of related transactions in connection with which (whether by means of exchange, liquidation, consolidation, merger, combination, reclassification, recapitalization, acquisition or otherwise) all of the Common Stock is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, other property, assets or cash, but excluding any merger, consolidation, share exchange or acquisition of the Company with or by another Person pursuant to which the Persons that "beneficially owned" (as defined below), directly or indirectly, the shares of the Company's Voting Stock immediately prior to such transaction beneficially own, directly or indirectly, immediately after such transaction, shares of the surviving, continuing or acquiring corporation's Voting Stock representing more than 50% of the total outstanding voting power of all outstanding classes of Voting Stock of the surviving, continuing or acquiring corporation in substantially the same proportions vis-à-vis each other as immediately prior to such transaction; or

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

A transaction or event described in clause (a) or (b) above will not constitute a Fundamental Change, however, if at least 90% of the consideration received or to be received by the holders of the Common Stock, excluding cash payments for fractional shares or dissenters rights, in connection with the transaction or transactions, consists of shares of common stock traded on any of the NASDAQ Capital Market, the NASDAQ Global Market, the NASDAQ Global Select Market, the NYSE MKT LLC or the New York Stock Exchange (or any of their respective successors) or which will be so traded or quoted when issued or exchanged in connection with such transaction or event and as a result of such transaction or event, this Note become convertible or exchangeable solely into such consideration (excluding cash payable in lieu of any fractional share) in accordance with Section 8.08.

For the purposes of this definition of "Fundamental Change," whether a person is a "**beneficial owner**" or whether shares are "**beneficially owned**" will be determined in accordance with Rule 13d-3 under the Exchange Act.

"**Holder**" means the party named as such in the first paragraph of this Note.

"**Issue Date**" means January 17, 2017.

"**Last Reported Sale Price**" of the Common Stock on any date means the closing sale or trading price (or, if no closing sale or trading price is reported, the average of the last bid and last ask prices or, if more than one in either case, the average of the average last bid and the average last ask prices) per share on such date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is traded. If the Common Stock is not listed for trading on a U.S. national or regional securities exchange on such date, the "Last Reported Sale Price" of the Common Stock will be the last quoted bid price per share for the Common Stock in the over-the-counter market on such date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted, the "Last Reported Sale Price" will be the average of the mid-point of the last bid and last ask prices per share for the Common Stock on the relevant date from each of at least three (3) nationally recognized independent investment banking firms selected by the Company for this purpose. The "Last Reported Sale Price" will be determined without regard to after-hours trading or any other trading outside of regular trading session hours.

"**Market Disruption Event**" means the occurrence or existence during the one-half hour period ending on the scheduled close of trading on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"**Officer**" means the Chairman of the Board, the Vice Chairman, the Chief Executive Officer, the President, the Chief Financial Officer, any Executive Vice President, any Senior Vice President, any Vice President, the Treasurer or the Secretary of the Company.

"**Officers' Certificate**" means a written certificate containing the information specified in Sections 4.05, 5.01(c), signed in the name of the Company by any two Officers, and delivered to the Holder; *provided*, that, if such certificate is given pursuant to Section 4.05, one of the Officers signing such certificate must be the Chief Financial Officer of the Company.

"**Open of Business**" means 9:00 a.m., New York City time.

"**Opinion of Counsel**" means a written opinion containing the information specified in Section 5.01(c), from legal counsel satisfactory to holders of a majority of the Series. The counsel may be an employee of, or counsel to, the Company who is satisfactory to holders of a majority of the Series.

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

"**Registration Rights Agreement**" means the Registration Rights Agreement, dated as of the date hereof, among the Company and the holders of the notes of the Series.

"**Rule 144**" means Rule 144 under the Securities Act (or any successor provision), as it may be amended from time to time.

"**Rule 144A**" means Rule 144A under the Securities Act (or any successor provision), as it may be amended from time to time.

"**SEC**" means the Securities and Exchange Commission.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Significant Subsidiary**" means any Subsidiary that is a "significant subsidiary" of the Company within the meaning of Rule 1-02(w) of Regulation S-X promulgated under the Exchange Act.

"**Stock Price**" means, for any Make-Whole Fundamental Change, (i) if the holders of the Common Stock receive only cash in consideration for their shares of Common Stock in such Make-Whole Fundamental Change and such Make-Whole Fundamental Change is of the type described in clause (b) of the definition of Fundamental Change, the amount of cash paid per share of the Common Stock in such Make-Whole Fundamental Change; and (ii) otherwise, the average of the Last Reported Sale Price per share of the Common Stock over the five consecutive Trading Days ending on, and including, the Trading Day immediately preceding the Make-Whole Fundamental Change Effective Date for such Make-Whole Fundamental Change.

"**Subsidiary**" means a Person 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 of the Company, or by the Company and one or more other Subsidiaries of the Company.

"**Trading Day**" means a day on which (i) trading in the Common Stock (or other security for which a Last Reported Sale Price must be determined) generally occurs on the NYSE MKT or, if the Common Stock (or such other security) is not then listed on the NYSE MKT, on the principal other U.S. national or regional securities exchange on which the Common Stock (or such other security) is then listed or, if the Common Stock (or such other security) is not then listed on a U.S. national or regional securities exchange, on the principal other market (including, without limitation, the OTCQX marketplace) on which the Common Stock (or such other security) is then listed or admitted for trading; and (ii) there is no Market Disruption Event; *provided*, *however*, that if the Common Stock (or such other security) is not so listed or traded, then "Trading Day" means a Business Day.

"**Uniform Commercial Code**" means the New York Uniform Commercial Code as in effect on the Issue Date.

"**Voting Stock**" of a Person means Capital Stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the board of directors, managers or trustees of such Person (irrespective of whether or not at the time Capital Stock of any other class or classes will have or might have voting power by reason of the happening of any contingency).

Section 1.02 *Other Definitions.*

Term:	**Section Defined in:**
"**Additional Shares**"	8.07(a)
"**Averaging Period**"	8.05(e)
"**Common Stock Change Event**"	8.08
"**Conversion Consideration**"	8.03(a)(i)
"**Conversion Date**"	8.02(a)
"**Conversion Notice**"	8.02(a)
"**Defaulted Amount**"	2.01(b)
"**Default Interest**"	2.01(b)
"**Effective Date**"	8.05(l)(i)(III)
"**Event of Default**"	6.01(a)
"**Ex-Dividend Date**"	8.05(l)(i)(IV)
"**Expiration Date**"	8.05(e)
"**Expiration Time**"	8.05(e)
"**Fundamental Change Notice**"	3.02(a)
"**Fundamental Change Notice Date**"	3.02(a)
"**Fundamental Change Repurchase Date**"	3.01(c)
"**Fundamental Change Repurchase Notice**"	3.03(a)(i)
"**Fundamental Change Repurchase Price**"	3.01(b)
"**Interest Payment Date**"	2.01(a)(ii)
"**Make-Whole Fundamental Change**"	8.07(a)
"**Make-Whole Fundamental Change Effective Date**"	8.07(b)
"**Maturity Date**"	2.01(a)(i)
"**Principal Amount**"	Introductory Paragraph
"**Reference Property**"	8.08(a)
"**Reference Property Unit**"	8.08(a)
"**Regular Record Date**"	2.01(a)(ii)
"**Reorganization Event**"	5.01
"**Reorganization Successor Corporation**"	5.01(a)(ii)
"**Reporting Event of Default**"	6.04(a)
"**Series**"	Introductory Paragraph
"**Special Interest**"	6.04(a)
"**Spin-Off**"	8.05(c)(ii)
"**Valuation Period**"	8.05(c)(ii)

Section 1.03 *Rules of Construction*. In this Note:

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

(b) an accounting term not otherwise defined has the meaning assigned to it and will be construed in accordance with U.S. generally accepted accounting principles;

(c) "**or**" is not exclusive;

(d) "**including**" means including, without limitation;

(e) words in the singular include the plural, and words in the plural include the singular, unless the context requires otherwise;

(f) "**herein**," "**hereof**" and other words of similar import refer to this Note as a whole and not to any particular Article, Section or other subdivision of this Note, unless the context requires otherwise;

(g) all references to $, dollars, cash payments or money refer to United States currency; and

(h) unless the context requires otherwise, all references to interest on this Note will (i) include any Additional Interest payable pursuant to the Registration Rights Agreement and any Special Interest payable pursuant to Section 6.04; and (ii) for the avoidance of doubt, not include any Default Interest payable on a Defaulted Amount pursuant to Article 2.

ARTICLE 2
PAYMENT TERMS, TRANSFER RESTRICTIONS AND NOTE REPLACEMENT

Section 2.01 *Payments.*

(a) *General.*

(i) *Payment at Maturity.* Unless earlier paid or deemed paid pursuant to any of Sections 3.05 or 8.03, this Note will mature on July 15, 2021 (the "**Maturity Date**") and, on the Maturity Date, the Company will pay the Holder $1,000 in cash for each $1,000 principal amount of this Note (and in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata amount), together with accrued and unpaid interest to, but not including, the Maturity Date (with such interest to be payable to the Holder as of the Close of Business on the Regular Record Date immediately preceding the Maturity Date).

(ii) *Payment of Interest.* This Note will accrue interest at a rate equal to 6.00% per annum from the most recent date to which interest has been paid or duly provided for, or, if no interest has been paid or duly provided for, the Issue Date until, subject to Section 2.01(b), the date the principal amount of this Note is paid or deemed to be paid, as the case may be, pursuant to clause (i) of this Section 2.01(a) or any of Sections 3.05 or 8.03. Additional Interest will accrue on this Note to the extent provided in the Registration Rights Agreement and Special Interest will accrue on this Note to the extent provided in Section 6.04, in each case in addition to interest accruing on this Note pursuant to the immediately preceding sentence. Except as otherwise provided herein (including Section 3.01(b) and Section 8.02(d)), interest will be payable semi-annually in arrears on January 15 and July 15 of each year (each, an "**Interest Payment Date**") to the Holder as of the Close of Business on the January 1 or July 1, as the case may be, and whether or not on a Business Day, immediately preceding the applicable Interest Payment Date (each such date, a "**Regular Record Date**"). Interest on this Note that has been converted or repurchased after a Regular Record Date and on or before the related Interest Payment Date will be paid in the manner set forth in Section 3.01(b) and Section 8.02(d), as applicable. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

(iii) *Method of Payment.* The Company will pay the principal of and the Fundamental Change Repurchase Price for this Note by check or wire transfer, in the manner set forth below, to the Holder on the relevant payment date upon surrender thereof to the Company and, if applicable, satisfaction of any other requirements therefor set forth in Article 3. The Company will pay interest due, on an Interest Payment Date, on (and, subject to the immediately preceding sentence, the principal of or the Fundamental Change Repurchase Price for) this Note to the Holder (i) by check mailed to the Holder's registered address; or (ii) if the Holder delivers, not later than the Regular Record Date relating to such Interest Payment Date (or, with respect to the payment of the principal of or the Fundamental Change Repurchase Price for such Note, the date that is fifteen (15) days immediately preceding the Maturity Date or related Fundamental Change Repurchase Date, as applicable), a written request to the Company that the Company make such payments by wire transfer to an account of the Holder within the United States, by wire transfer of immediately available funds to such account, which request shall remain in effect until the Holder notifies the Company, in writing, to the contrary.

(b) *Defaulted Amounts*. Whenever any amount payable on this Note (including, the principal of, the Fundamental Change Repurchase Price for, and interest on, this Note) has become due and payable, but the Company fails to punctually pay or to duly provide for such amount (any such amount, a "**Defaulted Amount**"), in each case regardless of whether such failure constitutes an Event of Default, then such Defaulted Amount will accrue interest ("**Default Interest**") at a rate equal to 6.00% per annum plus 100 basis points from, and including, such payment date and to, but excluding, the date on which such Defaulted Amount is paid by the Company, which Default Interest shall be payable by the Company on demand.

(c) *Acknowledgement and Agreement by the Holder*. The Holder, by accepting this Note, acknowledges and agrees to comply with the restrictions set forth in this Note's legend.

Section 2.02 *Replacement Note.* If (a)(i) this Note is mutilated and surrendered to the Company; or (ii) the Holder claims that this Note has been lost, destroyed or stolen and provides the Company with (A) evidence of such loss, theft or destruction that is reasonably satisfactory to the Company; and (B) any amount or kind of security or indemnity that the Company requests to protect itself from any loss that it may suffer upon replacement of this Note; and, in either case, (b) such Holder satisfies any other reasonable requirements of the Company, including the payment of any tax or other governmental charge that may be imposed in connection with the replacement of this Note, then, unless the Company receives notice that this Note has been acquired by a bona fide purchaser, the Company will promptly execute and deliver to the Holder a replacement Note having the same aggregate principal amount as this Note that was mutilated or claimed to be lost, destroyed or stolen.

Every new Note issued pursuant to this Section 2.02 in exchange for a mutilated Note, or in lieu of a destroyed, lost or stolen Note, will constitute an original contractual obligation of the Company and any other obligor upon this Note, regardless of whether the mutilated, destroyed, lost or stolen Note will be at any time enforceable by anyone, and will be entitled to all of the benefits, and subject to all the limitations, set forth herein.

ARTICLE 3
REPURCHASE AT THE OPTION OF THE HOLDER

Section 3.01 *Fundamental Change Permits Holder to Require the Company to Repurchase this Note.*

(a) *General*. If a Fundamental Change occurs at any time prior to the Maturity Date, the Holder will have the right, at its option, to require the Company to repurchase this Note, or any portion thereof, on the Fundamental Change Repurchase Date for such Fundamental Change for an amount of cash equal to the Fundamental Change Repurchase Price for such Fundamental Change Repurchase Date and this Note.

(b) *Fundamental Change Repurchase Price*. The "**Fundamental Change Repurchase Price**" means, for this Note to be repurchased on any Fundamental Change Repurchase Date, a price equal to 100% of the principal amount of this Note, plus accrued and unpaid interest, if any, on this Note to, but excluding, such Fundamental Change Repurchase Date; *provided*, *however*, that if such Fundamental Change Repurchase Date occurs after a Regular Record Date, but on or prior to the Interest Payment Date corresponding to such Regular Record Date, the Fundamental Change Repurchase Price for this Note will be 100% of the principal amount of this Note, and accrued and unpaid interest, if any, on this Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that this Note remained outstanding through such Interest Payment Date) will be payable, on such Fundamental Change Repurchase Date, to the Holder as of the Close of Business on such Regular Record Date.

(c) *Fundamental Change Repurchase Date*. The "**Fundamental Change Repurchase Date**" means, for any Fundamental Change, the date specified by the Company in the Fundamental Change Notice for such Fundamental Change, which date will be not less than twenty (20) Business Days, nor more than thirty five (35) Business Days, immediately following the Fundamental Change Notice Date for such Fundamental Change.

Section 3.02 *Fundamental Change Notice.*

(a) *General*. On or before the Business Day immediately following the effective date of a Fundamental Change, the Company will deliver to the Holder written notice of such Fundamental Change and of the resulting repurchase right (the "**Fundamental Change Notice**", and the date of such delivery, the "**Fundamental Change Notice Date**").

The Fundamental Change Notice for each Fundamental Change will specify, as applicable:

(A) briefly, the events causing such Fundamental Change;

(B) the effective date of such Fundamental Change;

(C) the last date on which the Holder may exercise its right to require the Company to repurchase this Note as a result of such Fundamental Change under this Article 3;

(D) the procedures that the Holder must follow to require the Company to repurchase this Note;

(E) the Fundamental Change Repurchase Price for each $1,000 principal amount this Note for such Fundamental Change (and in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, the equivalent pro rata amount);

(F) the Fundamental Change Repurchase Date for such Fundamental Change;

(G) in the event that a Fundamental Change Repurchase Notice has been duly tendered in respect of this Note and not validly withdrawn, the Fundamental Change Repurchase Price which will be paid promptly following the later of the Fundamental Change Repurchase Date and the time this Note is surrendered for repurchase;

(H) the Conversion Rate in effect on the Fundamental Change Notice Date for such Fundamental Change and the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Fundamental Change Notice Date;

(I) if applicable, any adjustments that will be made to the Conversion Rate as a result of such Fundamental Change, including any Additional Shares by which the Conversion Rate will be increased pursuant to Section 8.07 in the event that the Holder converts this Note “in connection with” such Fundamental Change;

(J) that in the event that a Fundamental Change Repurchase Notice has been delivered by the Holder, this Note may be converted only if the Holder withdraws such Fundamental Change Repurchase Notice in accordance with the terms of this Note or to the extent any portion of this Note are not subject to such Fundamental Change Repurchase Notice;

(K) the procedures for withdrawing a Fundamental Change Repurchase Notice;

(L) that if this Note or portion of this Note is subject to a validly delivered Fundamental Change Repurchase Notice, unless the Company defaults in paying the Fundamental Change Repurchase Price for this Note or portion of this Note, interest, if any, on this Note or portion of this Note will cease to accrue on and after the Fundamental Change Repurchase Date; and

(b) *Failure or Defect*. Notwithstanding anything provided elsewhere in this Note, neither the failure of the Company to deliver a Fundamental Change Notice nor a defect in a Fundamental Change Notice delivered by the Company will limit the repurchase rights of the Holder under this Article 3 or impair or otherwise affect the validity of any proceedings relating to the repurchase of this Note pursuant to this Article 3.

Section 3.03 *Fundamental Change Repurchase Notice*.

(a) *General*. To exercise its repurchase rights under Section 3.01(a) with respect to this Note pursuant to a Fundamental Change, the Holder must:

(i) deliver to the Company, by the Close of Business on the second (2nd) Business Day immediately preceding the Fundamental Change Repurchase Date, subject to extension to comply with applicable law, a duly completed Fundamental Change Repurchase notice, substantially in the form set forth in Exhibit B hereto (a "**Fundamental Change Repurchase Notice**") setting forth that the Holder is tendering this Note for repurchase; and

(ii) deliver this Note to the Company by physical delivery together with any endorsements or other documents reasonably requested by the Company.

(b) *Contents of Fundamental Change Repurchase Notice*. The Fundamental Change Repurchase Notice for this Note must state:

(i) if this Note is to be repurchased in part, the portion of the principal amount of this Note to be repurchased; and

(ii) that this Note will be repurchased by the Company pursuant to the provisions of this Article 3.

(c) *Effect of Improper Notice*. Unless and until the Company receives a validly delivered Fundamental Change Repurchase Notice with respect to this Note, together with this Note, in a form that conforms in all material aspects with the description contained in such Fundamental Change Repurchase Notice, the Holder will not be entitled to receive the Fundamental Change Repurchase Price for this Note.

Section 3.04 *Withdrawal of Fundamental Change Repurchase Notice.*

(a) *General*. After the Holder delivers a Fundamental Change Repurchase Notice with respect to this Note, the Holder may withdraw such Fundamental Change Repurchase Notice (in whole or in part) with respect to this Note or any portion of this Note by delivering to the Company a written notice of withdrawal prior to the Close of Business on the second (2nd) Business Day immediately preceding the Fundamental Change Repurchase Date. Any such withdrawal notice must state the principal amount of this Note, if any, that remains subject to the Fundamental Change Repurchase Notice.

(b) *Return of Note*. Upon receipt of a validly delivered withdrawal notice, the Company will promptly return this Note or portion of this Note to the Holder, in the amount specified in such withdrawal notice.

Section 3.05 *Effect of Fundamental Change Repurchase Notice.*

(a) *General*. If the Holder validly delivers to the Company a Fundamental Change Repurchase Notice (together with all necessary endorsements) with respect to this Note, the Holder may no longer convert this Note unless and until the Holder validly withdraws such Fundamental Change Repurchase Notice in accordance with Section 3.04.

(b) *Timing of Payment*. Upon the Company's receipt of (i) a valid Fundamental Change Repurchase Notice (together with all necessary endorsements); and (ii) this Note to which such Fundamental Change Repurchase Notice pertains, the Holder will be entitled, except to the extent the Holder has validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 3.04, to receive the Fundamental Change Repurchase Price with respect to this Note on the later of the following (subject to extension to comply with applicable law): (x) the Fundamental Change Repurchase Date; and (y) the date of delivery of this Note to the Company, duly endorsed.

(c) *Effect of Payment*. Upon receipt by the Holder of the Fundamental Change Repurchase Price:

(A) this Note will cease to be outstanding and interest (except Default Interest) will cease to accrue on this Note, except to the extent provided in the proviso to Section 3.01(b); and

(B) all other rights of the Holder with respect to this Note (other than the right to receive payment of the Fundamental Change Repurchase Price upon delivery or transfer of this Note and any Defaulted Amounts or Default Interest with respect to this Note, and other than as provided in the proviso to Section 3.01(b)) will terminate.

Section 3.06 *Note Repurchased in Part*. If this Note is to be repurchased only in part, the Holder must surrender this Note to the Company, whereupon the Company will promptly deliver to the Holder a new Note of any denomination or denominations equal to the portion of the principal amount of this Note so surrendered which is not repurchased.

Section 3.07 *Covenant to Comply With Securities Laws Upon Repurchase of Note.* In connection with any repurchase offer pursuant to a Fundamental Change Repurchase Notice under this Article 3, the Company will comply with any applicable United States federal and state securities laws so as to permit the Holder to exercise its rights and obligations under this Article 3 in the time and in the manner specified in Sections 3.01 and 3.03.

ARTICLE 4
COVENANTS

Section 4.01 *Payment of Note.* The Company will pay or cause to be paid the principal of, Fundamental Change Repurchase Price for, and any accrued and unpaid interest (including, for the avoidance of doubt, any Additional Interest or Special Interest) on, this Note on the dates and in the manner required under this Note. To the extent lawful, the Company will also pay Default Interest on any Defaulted Amounts in accordance with Section 2.01.

Section 4.02 *144A Information* Whenever the Company is not subject to Section 13 or Section 15(d) of the Exchange Act, if this Note or shares of Common Stock, if any, issuable upon the conversion of this Note constitute "restricted securities" within the meaning of Rule 144, the Company will, upon the request of the Holder or beneficial owner of this Note, or a holder or beneficial owner of the Common Stock, if any, issuable upon the conversion of this Note, (i) promptly furnish or cause to be furnished to the applicable Holder, beneficial owner, or any prospective purchaser designated by the applicable Holder or beneficial owner, of this Note, or any holder, beneficial owner, or any prospective purchaser designated by the applicable holder or beneficial owner, of the Common Stock, as applicable, all of the information that a prospective purchaser of this Note or the Common Stock, as applicable, is required to receive under Rule 144A(d)(4) of the Securities Act for this Note or shares of Common Stock, as applicable, to be resold to such prospective purchaser pursuant to the exemption from registration provided by Rule 144A and (ii) make publicly available such information as necessary to permit sales pursuant to Rule 144, as the case may be.

Section 4.03 *Reports*. The Company will deliver to the Holder copies of all quarterly and annual reports that the Company is required to deliver to the SEC on Forms 10-Q and 10-K, respectively, and any other documents, information or other reports that the Company is required to file with the SEC under Sections 13 or 15(d) of the Exchange Act no later than the date that the Company is required to file such quarterly and annual reports, other documents, information or other reports with the SEC (after giving effect to any grace period provided by Rule 12b-25 under the Exchange Act). Any document filed by the Company with the SEC via the EDGAR system (or any successor thereto) will be deemed to be delivered to the Holder at the time such document is filed via the EDGAR system (or such successor). Notwithstanding anything to the contrary in the foregoing, nothing in this paragraph shall require the Company to deliver to any Holder any material for which the Company has sought and received, or is seeking and has not been denied, confidential treatment by the SEC.

Section 4.04 *Additional Interest*.

(a) *General.* Additional Interest will accrue on this Note to the extent provided in the Registration Rights Agreement, and the Company's obligation to pay any such Additional Interest will be deemed to be obligations under this Note with the same force and effect as if the relevant provisions of the Registration Rights Agreement were reproduced in this Note.

Section 4.05 *Compliance Certificate.*

(a) *Annual Compliance Certificate*. Within ninety (90) days after the end of each fiscal year of the Company, beginning with the fiscal year ending on December 31, 2017, the Company will deliver to the Holder an Officers' Certificate, which Officers' Certificate will state (i) that the Officers signing such Officers' Certificate have supervised a review of the activities of the Company and the Subsidiaries with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Note during the preceding fiscal year; and (ii) to the best knowledge of each of the Officers signing such Officers' Certificate, (A) whether the Company has kept, observed, performed and fulfilled each and every covenant contained in this Note and is not in default in the performance or observance of any of the terms, provisions and conditions of this Note (without regard to any period of grace or requirement of notice provided under this Note) or, if one or more Defaults or Events of Default have occurred, what events triggered such Defaults or Events of Default and what actions the Company is taking or proposes to take with respect to such Defaults or Events of Default; and (B) whether any event has occurred and remains in existence by reason of which any payment of the principal of, the Fundamental Change Repurchase Price for, or interest on, or any delivery of any of the consideration due upon conversion of, this Note is prohibited, and, if any such event has occurred and remains in existence, a description, in reasonable detail, of such event or events and what actions the Company is taking or proposes to take with respect to such event or events.

(b) *Certificate of Default or Event of Default*. Within five (5) Business Days after a Default or Event of Default occurs, the Company will deliver to the Holder an Officers' Certificate describing such Default or Event of Default, its status and a description, in reasonable detail, of what action the Company is taking or proposes to take with respect to such Default or Event of Default.

Section 4.06 *Corporate Existence*. Subject to Article 5, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect:

(a) its corporate existence, and the corporate, partnership or other existence of each of the Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company or any such Subsidiary; and

(b) the rights (charter and statutory), licenses and franchises of the Company and the Subsidiaries;

provided, however, that the Company will not be required to preserve or keep in full force and effect any such right, license or franchise, or the corporate, partnership or other existence of any of the Subsidiaries, if the Board of Directors determines that the preservation thereof is no longer desirable in the conduct of the business of the Company and the Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holder.

Section 4.07 *Par Value Limitation.* The Company will not take any action that, after giving effect to any adjustment pursuant to Section 8.05 or 8.07, would result in the Conversion Price becoming less than the par value of one share of Common Stock. In addition, the Company will not engage in any transaction that would require an adjustment to the Conversion Rate pursuant to Section 8.06 that would cause the Conversion Price to be less than the par value of one share of Common Stock.

Section 4.08 *Stay, Extension and Usury Laws*. The Company covenants that, to the extent that it may lawfully do so, it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Note.

Section 4.09 *Further Instruments and Acts*. Upon request of the Holder, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the terms of this Note.

ARTICLE 5
CONSOLIDATION, MERGER AND SALE OF ASSETS

Section 5.01 *Company May Consolidate, Merge or Sell Its Assets Only on Certain Terms*. The Company will not (1) consolidate with or merge with or into; or (2) sell, lease or otherwise transfer all or substantially all of the consolidated assets of the Company and its Subsidiaries to, another Person (any such transaction, a "**Reorganization Event**"), unless:

(a) either:

(i) the Company is the surviving corporation; or

(ii) the resulting, surviving or transferee Person (if other than the Company) of such Reorganization Event (the "**Reorganization Successor Corporation**"):

(I) 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

(II) expressly assumes all of the obligations of the Company under this Note;

(b) immediately after giving effect to such Reorganization Event, no Default will have occurred and be continuing; and

(c) prior to the effective date of such Reorganization Event, the Company delivers to the Holder an Officers' Certificate and an Opinion of Counsel, each stating that:

(i) such Reorganization Event complies with Section 5.01(a);

(ii) all conditions precedent to such Reorganization Event provided in this Note have been satisfied; and

(iii) this Note constitutes the legal, valid and binding obligation of the Reorganization Successor Corporation (subject to customary limitations);

Section 5.02 *Successor Substituted*. If any Reorganization Event occurs that complies with Sections 5.01(a)(ii) and 5.01(b), and the Company has complied with Section 5.01(c):

(a) from and after the date of such Reorganization Event, the Reorganization Successor Corporation for such Reorganization Event will succeed to, and be substituted for, and may exercise every right and power of, and shall assume all obligations of, the Company under this Note with the same effect as if such Reorganization Successor Corporation had been named as the Company herein.

(b) except in the case of a Reorganization Event that is a conveyance, transfer or lease of all or substantially all of the Company's assets, the Person named as the "Company" in the first paragraph of this Note or any successor (other than such Reorganization Successor Corporation that will thereafter have become such in the manner prescribed in this Article 5) will be discharged from its obligations under this Note and may be dissolved, wound up and liquidated at any time.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default.*

(a) *General*. Each of the following events will be an "**Event of Default**":

(i) the Company fails to pay the principal of this Note (including any Fundamental Change Repurchase Price) when due at maturity or upon repurchase upon a Fundamental Change or declaration of acceleration or otherwise;

(ii) the Company fails to pay any interest on this Note when due and such failure continues for a period of thirty (30) days after the applicable due date;

(iii) the Company fails to give any Fundamental Change Notice or notice of a Make-Whole Fundamental Change, in each case, when due;

(iv) the Company fails to comply with its obligation to convert this Note in accordance with Article 8 upon the Holder's exercise of its conversion rights with respect to this Note;

(v) the Company fails to comply with its obligations under Article 5;

(vi) the Company fails to perform or observe any of its covenants or warranties in this Note (other than a covenant or agreement specifically addressed in clauses (i) through (v) above) and such failure continues for a period of sixty (60) days after days after written notice to the Company by holders of at least 25% of the Series then outstanding;

(vii) the default by the Company or any Subsidiary with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed by the Company and/or any Subsidiary in excess of one million dollars ($1,000,000) in the aggregate, whether such indebtedness exists as of the Issue Date or is later created, if that default:

(A) results in such indebtedness becoming or being declared due and payable (prior to its express maturity); or

(B) constitutes a failure to pay the principal of, or interest on, such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, and after the expiration of any applicable grace period,

and, such acceleration shall not have been rescinded or annulled or such failure to pay shall not have been cured, as the case may be, within thirty (30) days after written notice to the Company by the holders of at least 25% of the Series then outstanding;

(viii) a final judgment for the payment of in excess of one million dollars ($1,000,000) (excluding any amounts covered by insurance) is rendered against the Company or any Subsidiary, and such judgment is not discharged or stayed within sixty (60) days after (i) the date on which all rights to appeal such judgment have expired if no appeal has commenced; or (ii) the date on which all rights to appeal have been extinguished;

(ix) the Company or any Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case;

(B) consents to the entry of an order for relief against it in an involuntary case;

(C) consents to the appointment of a Custodian of it or for any substantial part of its property;

(D) makes a general assignment for the benefit of its creditors;

(E) takes any comparable action under any foreign laws relating to insolvency; or

(F) generally is not paying its debts as they become due; or

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

(A) is for relief against Company or any Significant Subsidiary in an involuntary case or proceeding;

(B) appoints a Custodian of the Company or any Significant Subsidiary, or for any substantial part of the property of the Company or any Significant Subsidiary;

(C) orders the winding up or liquidation of the Company or any Significant Subsidiary; or

(D) grants any similar relief under any foreign laws,

and, in each such case, the order or decree remains unstayed and in effect for sixty (60) days.

(b) *Cause Irrelevant*. Each of the events enumerated in Section 6.01(a) will constitute an Event of Default whatever the cause and regardless of whether voluntary or involuntary or 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.

Section 6.02 *Acceleration*.

(a) *Automatic Acceleration in Certain Circumstances*. If an Event of Default specified in Sections 6.01(a)(ix) or 6.01(a)(x) occurs with respect to the Company, the principal amount of, and all accrued and unpaid interest, if any, on this Note will immediately become due and payable without any further action or notice by any party.

(b) *Optional Acceleration*. If any Event of Default other than an Event of Default specified in Section 6.01(a)(ix) or 6.01(a)(x) occurs and is continuing, the holders of at least 25% of the aggregate principal amount of the Series then outstanding, by delivering a written notice to the Company, may declare the principal amount of, and all accrued and unpaid interest, if any, on all then outstanding notes in the Series immediately due and payable, and upon such declaration, the principal amount of, and all accrued and unpaid interest, if any, on all then outstanding notes in the Series will immediately become due and payable.

(c) *Rescission of Acceleration*. Notwithstanding anything to the contrary in this Note, holders of a majority of the aggregate principal amount of the Series then outstanding may, on behalf of the holders of all then outstanding notes in the Series, rescind any acceleration of such notes and its consequences hereunder by delivering written notice to the Company if (i) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and (ii) all existing Events of Default (other than the nonpayment of the principal of, interest, if any, on, or the Fundamental Change Repurchase Price for, the notes in the Series that have become due solely as a result of acceleration) have been cured or waived. No such rescission will affect any subsequent Default or impair any right consequent thereto.

Section 6.03 *Other Remedies*. If an Event of Default occurs and is continuing, the Holder may pursue any available remedy to collect the payment of principal, accrued and unpaid interest, if any, or payment of the Fundamental Change Repurchase Price for, this Note or to enforce the performance of any provision of this Note regarding any other matter.

A delay or omission by the Holder in exercising any right or remedy accruing upon an Event of Default will not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 6.04 *Sole Remedy for Failure to Report*.

(a) *General*. Notwithstanding anything to the contrary in this Note, the Company may elect that the sole remedy for any Event of Default specified in Section 6.01(a)(vi) relating to the Company's failure to comply with Section 4.03 (a "**Reporting Event of Default**") will, for the period beginning on the date on which such Reporting Event of Default first occurred and ending on the earlier of (A) the date on which such Reporting Event of Default (i) is cured; or (ii) is validly waived in accordance with Section 6.05; and (B) the sixtieth (60th) calendar day immediately following the date on which such Reporting Event of Default first occurred, consist exclusively of the right to receive additional interest (the "**Special Interest**") on this Note at a rate equal to 0.50% per annum on the principal amount of this Note. Any Special Interest will be payable in the same manner and on the same dates as the stated interest payable on this Note and will accrue in addition to any Additional Interest that the Company is obligated to pay.

(b) *Limitation on Remedy*. If (i) a Reporting Event of Default occurs and the Company elects that the sole remedy with respect to such Reporting Event of Default will be the Special Interest; and (ii) on the sixty first (61st) day immediately following, and including, the date on which such Reporting Event of Default first occurred, such Reporting Event of Default has not been cured or validly waived in accordance with Section 6.05, then this Note will become subject to acceleration under Section 6.02(a) on account of such Reporting Event of Default. For the avoidance of doubt, Special Interest will cease to accrue from such sixty first (61st) day, without limiting the generality of this Section 6.04 as it may apply to any subsequent Reporting Event of Default.

(c) *Company Election Notice*. To elect to pay the Special Interest as the sole remedy for a Reporting Event of Default, the Company must deliver written notice of such election to the Holder prior to the date on which such Reporting Event of Default first occurs. Any such notice must include a brief description of the report that the Company failed, or will fail, to file, a statement that the Company is electing to pay the Special Interest and the date on which such Reporting Event of Default will occur. If a Reporting Event of Default occurs and the Company fails to timely deliver such notice for such Reporting Event of Default or fails to pay the Special Interest, this Note will be subject to acceleration under Section 6.02(a) on account of such Reporting Event of Default.

(d) *Other Events of Default*. Notwithstanding anything to the contrary herein, if the Company elects to pay Special Interest with respect to any Reporting Event of Default, the Company's election will not affect the rights of the Holder with respect to any other Event of Default, including with respect to any other Reporting Event of Default; *provided*, that, for the avoidance of doubt, in no event will the Company be obligated to pay Special Interest at a rate greater than 0.50% per annum on the principal amount of this Note.

Section 6.05 *Waiver of Past Defaults*. If an Event of Default described in Sections 6.01(a)(i), 6.01(a)(ii), 6.01(a)(iv) or 6.01(a)(vi) (which, in the case of Section 6.01(a)(vi) only, relates to a covenant that cannot be amended without the consent of each affected holder of a note in the Series) or a Default that would lead to such an Event of Default occurs and is continuing, such Event of Default or Default may be waived only with the consent of each affected holder of a note in the Series. Every other Event of Default or Default may be waived by the holders of a majority of the aggregate principal amount of the outstanding Series (including consents obtained in connection with a repurchase of, or tender offer or exchange offer for, notes in the Series). Whenever any Event of Default is so waived, it will cease to exist, and whenever any Default is so waived, it will be deemed cured and any Event of Default arising therefrom will be deemed not to occur. However, no such waiver will extend to any subsequent or other Default or Event of Default or impair any consequent right

ARTICLE 7
SATISFACTION AND DISCHARGE

Section 7.01 *Discharge of Liability on Note*. When (a) this Note becomes due and payable, and the Company delivers to the Holder, as applicable, cash (or, solely to satisfy amounts due and owing as a result of conversions of this Note, Conversion Consideration), sufficient to pay all amounts due and owing on this Note and (b) the Company pays all other sums payable by it under this Note, this Note will cease to be of further effect and the Holder will acknowledge the satisfaction and discharge of this Note.

ARTICLE 8
CONVERSIONS

Section 8.01 *Right To Convert*.

(a) *In General*. Subject to, and upon compliance with, the provisions of this Article 8, at any time prior to the Close of Business on the second (2nd) Business Day immediately preceding the Maturity Date, the Holder may, at its option, convert this Note (or any portion thereof) into Conversion Consideration, as provided in this Article 8. This Note may not be converted after the Close of Business on the second (2nd) Business Day immediately preceding the Maturity Date.

(b) *Closed Periods*. Notwithstanding anything to the contrary in this Note, if the Holder tenders a Repurchase Notice with respect to this Note in accordance with Article 3, this Note may not be converted except to the extent (i) this Note is not subject to such Repurchase Notice, (ii) such Repurchase Notice is withdrawn in accordance with Article 3 or (iii) the Company fails to pay the Fundamental Change Repurchase Price for this Note in accordance with Section 3.05(b).

Section 8.02 *Conversion Procedures*.

(a) *General*. To exercise its conversion right with respect to this Note, the Holder must (i) complete and manually sign a conversion notice in the form set forth in Exhibit A hereto, or a facsimile of such conversion notice (such notice, or such facsimile, the "**Conversion Notice**"); (ii) deliver such signed and completed Conversion Notice, which shall be irrevocable, and this Note to the Company; (iii) furnish any endorsements and transfer documents that the Company may require; and (iv) pay any amounts due pursuant to Section 8.02(d) or 8.02(e). The first Business Day on which the Holder satisfies the foregoing requirements with respect to this Note and on which conversion of this Note is not otherwise prohibited hereunder will be the "**Conversion Date**" for this Note. If the Holder has delivered a Fundamental Change Repurchase Notice with respect to this Note, the Holder may not surrender this Note for conversion until the Holder has withdrawn such Fundamental Change Repurchase Notice in accordance with Section 3.04. The conversion of this Note will be deemed to occur at the Close of Business on the Conversion Date for this Note, and this converted Note or portion thereof will cease to be outstanding upon conversion.

(b) *Holder of Record*. If the Holder surrenders the entire principal amount of this Note for conversion, the Holder will no longer be the Holder of this Note as of the Close of Business on the Conversion Date for this Note. The person in whose name any shares of Common Stock are issuable upon conversion of this Note will become the holder of record of such shares as of the Close of Business on the Conversion Date for such conversion.

(c) *Conversions in Part*. If the Holder surrenders only a portion of the principal amount of this Note for conversion, promptly after the Conversion Date for such portion, the Company will deliver to the Holder a new Note, having a principal amount equal to the aggregate principal amount of the unconverted portion of the Note surrendered for conversion.

(d) *Reimbursement of Interest upon Conversion*. If the Holder converts this Note after the Close of Business on a Regular Record Date, but prior to the Open of Business on the Interest Payment Date corresponding to such Regular Record Date, then (x) the Holder at the Close of Business on such Regular Record Date shall be entitled, notwithstanding such conversion, to receive, on the date the Company delivers (or is required to deliver) the Conversion Consideration due in respect of such conversion, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date); and (y) the Holder must, upon surrender of this Note for conversion, accompany this Note with an amount of cash equal to the amount of such interest referred to in clause (x) above; *provided, however*, that the Holder need not make such payment (A) for conversions following the Regular Record Date immediately preceding the Maturity Date; (B) if the Company has specified a Fundamental Change Repurchase Date that is after such Regular Record Date and on or prior to the Business Day immediately following such Interest Payment Date; or (C) to the extent of any overdue interest, if any overdue interest exists at the time of conversion with respect to this Note. For the avoidance of doubt, the Holder at the Close of Business on the Regular Record Date immediately preceding the Maturity Date will be entitled to receive interest that accrues (or would have accrued) on this Note to, but excluding, the Maturity Date notwithstanding any conversion of this Note.

(e) *Taxes and Duties.* If the Holder converts this Note, the Company will pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of the Common Stock upon the conversion; *provided*, *however*, that if any tax is due because the Holder requested that shares of Common Stock be issued in a name other than its own, the Holder will pay such tax and the Company, until having received a sum sufficient to pay such tax, may refuse to deliver any certificates representing the shares of Common Stock being issued in a name other than that of the Holder.

(f) *Restrictions on Conversion*. Notwithstanding anything to the contrary in this Note, this Note will not be convertible by the Holder, and the Company will not effect any conversion of this Note, in each case to the extent (and only to the extent) that such convertibility or conversion would result in the Holder or any of its Affiliates beneficially owning in excess of 9.99% of the then-outstanding shares of Common Stock. For these purposes, beneficial ownership and all determinations and calculations (including with respect to calculations of percentage ownership) will be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For the avoidance of doubt, if the convertibility of this Note is restricted pursuant to this Section 8.02(f), this Note will continue to be outstanding, and its convertibility will be reinstated if and when the convertibility and conversion will not violate the limitations set forth in this Section 8.02(f).

Section 8.03 *Settlement Upon Conversion.*

(a) *Conversion Obligation.*

(i) *Conversion Consideration*. Subject to the terms hereof, upon conversion of this Note, the consideration (the "**Conversion Consideration**") due in respect of each $1,000 principal amount of this Note to be converted will consist of (I) a whole number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such conversion (which, if not a whole number, will be rounded down to the nearest whole number); (II) in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata number of shares and (III) if such Conversion Rate is not a whole number, cash in lieu of the related fractional share in an amount equal to the product of (x) the Last Reported Sale Price per share of Common Stock on such Conversion Date (or, if such Conversion Date is not a Trading Day, the immediately preceding Trading Day) and (y) the fractional portion of such Conversion Rate.

(ii) *Delivery of Conversion Consideration*. Except as set forth in Section 8.05, the Company will pay or deliver, as the case may be, the Conversion Consideration due upon the conversion of this Note to the Holder on the third (3rd) Business Day immediately following the Conversion Date for such conversion.

(b) *Settlement of Accrued Interest and Deemed Payment of Principal*. If the Holder converts this Note, the Company will not adjust the Conversion Rate to account for any accrued and unpaid interest on this Note, and, except as provided in Section 8.02(d), the Company's delivery of the Conversion Consideration due upon such conversion will be deemed to satisfy and discharge in full the Company's obligation to pay the principal of this Note and accrued and unpaid interest, if any, on, this Note to, but excluding the Conversion Date. As a result, except as provided in Section 8.02(d), any accrued and unpaid interest with respect to this Note, in the event that it is converted, will be deemed to be paid in full rather than cancelled, extinguished or forfeited.

Section 8.04 *Common Stock Issued Upon Conversion.*

(a) The Company will reserve out of its authorized but unissued shares of Common Stock, and keep available to satisfy conversion of this Note, a number of shares of Common Stock sufficient to permit the conversion this Note, after giving effect to the largest number of Additional Shares that may from time to time be added to the Conversion Rate as provided in Section 8.07.

(b) Any shares of Common Stock delivered upon the conversion of this Note will be newly issued shares or treasury shares, duly and validly issued, fully paid, nonassessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of the Holder or other Person to whom such shares of Common Stock will be delivered). In addition, the Company will endeavor to comply promptly with all federal and state securities laws regulating the offer and delivery of any shares of Common Stock issuable upon conversion of this Note. The Company will also use its best efforts to cause any shares of Common Stock issuable upon conversion of this Note to be listed on whatever stock exchange(s) the Common Stock is listed on the date the Holder becomes a record holder of such Common Stock.

Section 8.05 *Adjustment of Conversion Rate*. The Company will adjust the Conversion Rate from time to time as described in this Section 8.05, except that the Company will not make an adjustment to the Conversion Rate if the Holder participates (other than in a share split or share combination), at the same time and upon the same terms as holders of the Common Stock, and solely as a result of holding this Note, in the relevant transaction described in this Section 8.05 without having to convert its Note and as if it held a number of shares of the Common Stock equal to the product of (i) the Conversion Rate in effect on the applicable record date, Effective Date or expiration date; and (ii) the aggregate principal amount of this Note (expressed in thousands) on such date.

(a) *Stock Dividends and Share Splits*. If the Company exclusively issues to all or substantially all holders of the Common Stock shares of Common Stock as a dividend or distribution on shares of the outstanding Common Stock, or if the Company effects a share split of the Common Stock or a share combination of the Common Stock (excluding an issuance solely pursuant to a Common Stock Change Event, as to which the provisions set forth in Section 8.08(a) will apply), the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where:

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the Open of Business on the Effective Date of such share split or share combination, as applicable;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date or Effective Date, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date or Effective Date, as applicable; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination, as applicable.

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date or Effective Date, as applicable. If any dividend, distribution, share split or share combination of the type described in this Section 8.05(a) is declared, but not so paid or made, the Conversion Rate will be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or to effect such share split or share combination, to the Conversion Rate that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

(b) *Rights, Options and Warrants*. If the Company issues, to all or substantially all holders of its outstanding Common Stock, rights, options or warrants entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such issuance, to subscribe for, or purchase, shares of Common Stock, at a price per share less than the average of the Last Reported Sale Prices per share of the Common Stock for the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, then, subject to the provisions described below with respect to rights issued pursuant to a stockholder rights plan, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS + X}{OS + Y}$$

where:

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such issuance;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

OS = the number of shares of Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date;

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

Y = the number of shares of Common Stock equal to the quotient of (i) the aggregate price payable to exercise such rights, options or warrants, over (ii) the average of the Last Reported Sale Prices per share of the Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants, including because the issued rights, options or warrants were not exercised, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect if the Ex-Dividend Date for such issuance had not occurred.

For purposes of this Section 8.05(b), in determining whether any rights, options or warrants entitle holders of the Common Stock to subscribe for, or purchase, shares of Common Stock at a price per share less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement for an issuance, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) *Spin-Offs and Other Distributed Property*.

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

(A) dividends, distributions, rights, options or warrants for which an adjustment was effected pursuant to Section 8.05(a) or 8.05(b), as applicable;

(B) dividends or distributions paid exclusively in cash for which an adjustment was effected pursuant to Section 8.05(d);

(C) Spin-Offs for which the provisions described in Section 8.05(c)(ii) will apply; and

(D) an issuance solely pursuant to a Common Stock Change Event, as to which the provisions set forth in Section 8.08(a) will apply,

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

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where:

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

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

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

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

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date. Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than the "SP_0" (as defined above), in lieu of the foregoing increase, the Holder will receive, for each $1,000 principal amount of this Note outstanding on the record date for the distribution, at the same time and upon the same terms as holders of the Common Stock, the amount and kind of shares of Capital Stock, evidences of indebtedness, assets or property, rights, options or warrants or other securities that the Holder would have received if the Holder had owned a number of shares of Common Stock equal to the Conversion Rate in effect on the record date for such distribution (or in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata amount).

If any distribution of the type described in this Section 8.05(c)(i) is not so paid or made, or if any rights, options or warrants are not exercised before their expiration date, the Conversion Rate will be readjusted to be the Conversion Rate that would then be in effect if such distribution had not been declared.

(ii) With respect to an adjustment pursuant to this Section 8.05(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to an Affiliate, a Subsidiary or other business unit of the Company, and such Capital Stock or similar equity interest is listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a national securities exchange or a reasonably comparable non-U.S. equivalent (a "**Spin-Off**"), but excluding an issuance solely pursuant to a Common Stock Change Event as to which the provisions described in Section 8.08(a) apply, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where:

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

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

FMV_0 = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of Common Stock (determined for purposes of the definition of Last Reported Sale Price as if such Capital Stock or similar equity interest were the Common Stock) over the first ten (10) consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the "**Valuation Period**"); and

MP_0 = the average of the Last Reported Sale Prices per share of the Common Stock over the Valuation Period.

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date. The adjustment to the Conversion Rate under this Section 8.05(c)(ii) will be calculated as of the Close of Business on the last Trading Day of the Valuation Period but will be given effect as of immediately after the Open of Business on the Ex-Dividend Date of the Spin-Off. Notwithstanding anything to the contrary herein or in this Note, if necessary, the Company shall delay the settlement of any conversion of this Note where the Conversion Date occurs during the Valuation Period until the third (3rd) Business Day after the last day of the Valuation Period. If any distribution of the type described in this Section 8.05(c)(ii) is declared but not so made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to make such distribution, to the Conversion Rate that would then be in effect if such distribution had not been declared.

(d) *Cash Dividends or Distributions*. If any cash dividend or distribution (other than a distribution as to which an adjustment to the Conversion Rate was effected pursuant to Section 8.05(e)) is made to all or substantially all holders of the Common Stock, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where:

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

CR_1 = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution;

SP_0 = the Last Reported Sale Price per share of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

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

Such adjustment shall become effective immediately after the Open of Business on such Ex-Dividend Date. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, the Holder will receive, for each $1,000 principal amount of this Note outstanding on the record date for such cash dividend or distribution, at the same time and upon the same terms as holders of the Common Stock, the amount of cash that the Holder would have received if the Holder had owned a number of shares of Common Stock equal to the Conversion Rate in effect on such record date (or in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata number of shares). If any dividend or distribution of the type described in this Section 10.05(d) is declared but not so paid or made, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(e) *Tender Offers or Exchange Offers*. If the Company or any Subsidiary makes a payment in respect of a tender offer or exchange offer for the Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the Last Reported Sale Price per share of the Common Stock on the Trading Day next succeeding the last date (the "**Expiration Date**") on which tenders or exchanges may be made pursuant to such tender offer or exchange offer (as it may be amended), the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where:

CR_0 = the Conversion Rate in effect immediately prior to the Expiration Time (as defined below);

CR_1 = the Conversion Rate in effect immediately after the Expiration Time;

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

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

OS_1 = the number of shares of Common Stock outstanding immediately after the Expiration Time (after giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer); and

SP_1 = the average of the Last Reported Sale Prices per share of the Common Stock over the ten (10) consecutive Trading Day period (the "**Averaging Period**") commencing on the Trading Day next succeeding the Expiration Date.

The adjustment to the Conversion Rate pursuant to this Section 8.05(e) will be calculated as of the Close of Business on the last Trading Day of the Averaging Period but will be given effect as of immediately after the Expiration Time. Notwithstanding anything to the contrary herein, if necessary, the Company shall delay the settlement of any conversion of this Note where the Conversion Date occurs during the Averaging Period until the third (3rd) Business Day after the last day of the Averaging Period.

(f) *Successive Adjustments.* After an adjustment to the Conversion Rate under this Article 8, any subsequent event requiring an adjustment under this Article 8 will cause an adjustment to the Conversion Rate as so adjusted, without duplication.

(g) *Limitations Imposed by Stock Market Listing Standards*. The Company will not enter into any transaction, or take any other voluntary action, that would result in an adjustment to the Conversion Rate that would violate the listing standards of any securities exchange on which any securities of the Company may be then listed, without complying, if applicable, with the requirements of such listing standards.

(h) *Special Settlement Provisions*. Notwithstanding anything to the contrary herein, if:

(i) this Note is to be converted and, as of the Conversion Date for such conversion, any transaction or other event that requires an adjustment to the Conversion Rate pursuant to Sections 8.05(a) through (e) has occurred but has not yet resulted in an adjustment to the Conversion Rate;

(ii) the consideration due upon such conversion consists of any shares of Common Stock; and

(iii) such shares of Common Stock are not entitled to participate in such transaction or event because they were not held on the related record date or otherwise, then, solely for purpose of such conversion, the Company shall, without duplication, give effect to such adjustment on such Conversion Date.

In addition, notwithstanding anything to the contrary herein, if:

(i) a Conversion Rate adjustment for any transaction or other event becomes effective on any Ex-Dividend Date pursuant to Sections 8.05(a) through (e);

(ii) this Note is to be converted;

(iii) the Conversion Date for such conversion occurs on or after such Ex-Dividend Date and on or before the related record date;

(iv) the consideration due upon such conversion includes any whole shares of Common Stock; and

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

then such Conversion Rate adjustment shall not be given effect for such conversion. Instead, the Holder will be treated as if the Holder were, as of such record date, the record holder of such shares of Common Stock on an unadjusted basis and will participate in such transaction or event.

(i) *Shareholder Rights Plans*. If the Company has a rights plan in effect when the Holder converts this Note, the Company will deliver to the Holder, to the extent the Holder receives any shares of Common Stock upon such conversion of this Note, any rights that, under the rights plan, would be applicable to a share of Common Stock, unless prior to the Conversion Date for this Note, the rights have separated from the Common Stock, in which case, and only in such case, the Conversion Rate will be adjusted pursuant to Section 8.05(c)(i) as if, at the time of such separation, the Company had distributed to all holders of the Common Stock shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities, subject to readjustment in the event of the expiration, termination or redemption of such rights.

(j) *Other Adjustments*. Whenever any provision of this Note requires the calculation of the Last Reported Sale Price or a function thereof over a period of multiple days (including the Stock Price for purposes of a Make-Whole Fundamental Change), the Company will make appropriate adjustments to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Effective Date or expiration date of the event occurs, at any time during such period.

(k) *Restrictions on Adjustments*. Except as a result of a reverse share split or a share combination subject to Section 8.05(a), and except for readjustments pursuant to the last paragraph of Section 8.05(a), readjustments pursuant to the penultimate paragraph of Section 8.05(b), readjustments pursuant to the last paragraph of Section 8.05(c)(i), readjustments pursuant to the penultimate paragraph of Section 8.05(c)(ii) and readjustments pursuant to Section 8.05(d), in no event will the Conversion Rate be adjusted downward pursuant to Section 8.05(a), (b), (c), (d) or (e). In addition, notwithstanding anything to the contrary elsewhere in this Note, the Conversion Rate will not be adjusted:

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

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

(iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in the preceding clause and outstanding as of the date of the Issue Date;

(iv) upon the repurchase of any shares of Common Stock pursuant to an open-market share repurchase program or other buy-back transaction that is not a tender offer or exchange offer subject to Section 10.05(e);

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

(vi) for accrued and unpaid interest.

(l) *Miscellaneous*.

(i) *Certain Definitions.*

(II) For purposes of this Section 8.05, the number of shares outstanding at any time will include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; but, so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, will not include shares of Common Stock held in the treasury of the Company.

(III) For purposes of this Section 8.05, the term "**Effective Date**" will mean the first date on which the Common Stock trades on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

(IV) For purposes of this Article 8, the term "**Ex-Dividend Date**" will mean the first date on which the shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

(ii) *Notices*. Whenever the Company adjusts (or is required to adjust) the Conversion Rate pursuant to this Section 8.05, the Company will promptly deliver to the Holder a written notice, which notice will include (i) a brief description of the event requiring adjustment to the Conversion Rate pursuant to this Section 8.05; (ii) the effective time of such adjustment; (iii) the Conversion Rate in effect immediately after such adjustment is made; and (iv) a schedule explaining, in reasonable detail, how the Company calculated such adjustment.

(iii) All calculations and other determinations in respect of the Conversion Rate will be made by the Company to the nearest 1/10,000th of a share, with 5/100,000ths rounded upward.

Section 8.06 *Voluntary Adjustments.*

(a) *Best Interest Increases*. The Company may, from time to time, to the extent permitted by law and the applicable rules of any exchange on which the Common Stock is listed, increase the Conversion Rate by any amount if (i) the Board of Directors determines that such increase is in the best interest of the Company; (ii) such increase is in effect for a period of at least twenty (20) Business Days; and (iii) during such period, such increase is irrevocable.

(b) *Tax-Related Increases*. To the extent permitted by law and the applicable rules of any exchange on which the Common Stock is listed, the Company may (but is not required to) increase the Conversion Rate if the Board of Directors determines that such increase is advisable to avoid, or diminish, any income tax imposed on holders of the Common Stock or rights to purchase the Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) or similar event treated as such for U.S. federal income tax purposes.

(c) *Notices*. Whenever the Board of Directors determines that the Company will increase the Conversion Rate pursuant to this Section 8.06, the Company will deliver to the Holder notice of such increase at least fifteen (15) Business Days before such increase will take effect, which notice will state the increase to be made and the period during which such increase will be in effect.

Section 8.07 *Adjustments Upon Certain Fundamental Changes.*

(a) *General*. If a Fundamental Change (determined after giving effect to the penultimate paragraph of the definition thereof, but without regard to the exclusion in clause (b)(ii) of the definition thereof) occurs (a "**Make-Whole Fundamental Change**"), and the Holder converts this Note "in connection with" such Make-Whole Fundamental Change, the Company will, in the circumstances described in this Section 8.07, increase the Conversion Rate for this Note by the number of additional shares of Common Stock (the "**Additional Shares**") set forth in this Section 8.07. For purposes of this Section 8.07, a conversion of this Note will be deemed to be "in connection with" a Make-Whole Fundamental Change if the applicable Conversion Date occurs during the period from, and including, the effective date of the Make-Whole Fundamental Change up to, and including, the Business Day immediately prior to the related Fundamental Change Repurchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the exclusion in clause (b)(ii) of the definition thereof, the thirty fifth (35th) Trading Day immediately following the effective date of such Make-Whole Fundamental Change). As promptly as practicable, but in no event later than the Business Day after the effective date of a Make-Whole Fundamental Change, the Company will notify the Holder of such effective date.

(b) *Determination of Additional Shares*. The number of Additional Shares, if any, by which the Conversion Rate will be increased if the Holder converts this Note in connection with a Make-Whole Fundamental Change will be determined by reference to the table below, and will be based on the Make-Whole Fundamental Change Effective Date and the Stock Price for such Make-Whole Fundamental Change. For any Make-Whole Fundamental Change, the "**Make-Whole Fundamental Change Effective Date**" will mean the date on which such Make-Whole Fundamental Change occurs or becomes effective.

(c) *Adjustment of Stock Prices and Additional Shares*. The Stock Prices set forth in the first row (*i.e.*, the column headers) of the table below will be adjusted on each date on which the Conversion Rate must be adjusted pursuant to Section 8.05. The adjusted Stock Prices will equal the Stock Prices in effect immediately prior to such adjustment, multiplied by a fraction, (i) the numerator of which is the Conversion Rate in effect immediately prior to the adjustment giving rise to the share price adjustment; and (ii) the denominator of which is the Conversion Rate in effect immediately after the adjustment. The numbers of Additional Shares set forth in the table below will be adjusted in the same manner, at the same time and for the same events for which the Conversion Rate is adjusted pursuant to Section 8.05.

(d) *Additional Shares Table*. The following table sets forth hypothetical Make-Whole Fundamental Change Effective Dates, Stock Prices and the number of Additional Shares by which the Conversion Rate will be increased per $1,000 principal amount of this Note for the Holder that converts this Note in connection with a Make-Whole Fundamental Change having such Make-Whole Fundamental Change Effective Date and Stock Price. In the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, the Conversion Rate will be increased by an equivalent pro rata number of shares.

	Stock Price									
Effective Date	$0.60	$0.76	$2.90	$3.50	$3.88	$5.00	$6.00	$8.00	$12.00	$16.00
January 17, 2017	355.4918	236.8878	162.5063	130.9858	70.8763	39.1640	21.6412	0.0000	0.0000	0.0000
January 17, 2018	355.4918	201.4220	132.1653	105.7891	57.5709	31.9951	16.7018	0.0000	0.0000	0.0000
January 17, 2019	355.4918	159.9914	95.7987	75.8657	41.7694	25.8873	11.4030	0.0000	0.0000	0.0000
January 17, 2020	355.4918	109.1105	51.7587	40.7040	23.0112	13.2302	5.9770	0.0000	0.0000	0.0000
January 17, 2021	355.4918	2.0122	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

(e) *Use of Additional Shares Table*. If the Stock Price and/or Make-Whole Fundamental Change Effective Date for a Make-Whole Fundamental Change are not set forth in the table above, then:

(A) if the Stock Price is between two Stock Prices in the table or the Make-Whole Fundamental Change Effective Date is between two Make-Whole Fundamental Change Effective Dates in the table, the number of Additional Shares by which the Conversion Rate will be increased for the Holder that converts this Note in connection with such Make-Whole Fundamental Change will be determined by a straight-line interpolation between the numbers of Additional Shares set forth for the higher and lower Stock Prices listed in the table and the earlier and later Make-Whole Fundamental Change Effective Dates listed in the table, as applicable, based on a 365- or 366-day year, as applicable;

(B) if the Stock Price is greater than $8.00, subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table, no Additional Shares will be added to the Conversion Rate; and

(C) if the Stock Price is less than $0.60 per share, subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table, no Additional Shares will be added to the Conversion Rate.

Notwithstanding the foregoing, in no event will the Conversion Rate be increased as a result of this Section 8.07 to exceed 1,673.1918 shares of Common Stock per $1,000 principal amount of this Note, subject to adjustment in the same manner, at the same time and for the same events for which the Conversion Rate must be adjusted as set forth in Section 8.05.

(f) *Settlement or Conversion*. If the Holder converts this Note in connection with a Make-Whole Fundamental Change, the Company will settle such conversion by delivering Conversion Consideration in accordance with Section 8.03; *provided*, *however*, that notwithstanding anything to the contrary in Section 8.03, if the Holder converts this Note in connection with a Make-Whole Fundamental Change described in clause (b)(ii) of the definition of Fundamental Change in which the holders of the Common Stock receive only cash in consideration for their shares of Common Stock, the Company will settle such conversion by delivering to the Holder, on the third (3rd) Business Day immediately following the Conversion Date for this Note, an amount of cash, for each $1,000 principal amount of this Note so converted, equal to the product of (i) the Conversion Rate on the Conversion Date applicable to this Note (including any Additional Shares added to such Conversion Rate pursuant to this Section 8.07) and (ii) the Stock Price for such Make-Whole Fundamental Change, or in the case of a principal amount or portion of a principal amount that is not a multiple of $1,000, an equivalent pro rata amount.

Section 8.08 *Effect of Recapitalization, Reclassification, Consolidation, Merger or Sale*.

(a) *General*. If any of the following events occur:

(1) any recapitalization, reclassification or change of Common Stock (other than (x) a change only in par value, from par value to no par value or no par value to par value; or (y) changes resulting from a stock split or combination not involving the issuance of any other class or series of securities);

(2) any consolidation, merger, combination or similar transaction involving the Company;

(3) any sale, lease or other transfer to a third party of all or substantially all of the consolidated assets of the Company and its Subsidiaries substantially as an entirety; or

(4) any statutory share exchange,

and, in each case, as a result of which the Common Stock would be converted into, or exchanged for, or represent solely the right to receive, stock (including one or more series of the Common Stock), other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Common Stock Change Event**" and such stock, other securities, other property or assets, the "**Reference Property**", and the amount and kind of Reference Property that a holder of one share of Common Stock would be entitled to receive on account of such Common Stock Change Event, a "**Reference Property Unit**"), then, notwithstanding anything to the contrary, at the effective time of such transaction, the consideration due upon a conversion of this Note will be determined in the same manner as if each reference to any number of shares of Common Stock in this Article 8 were instead a reference to the same number of Reference Property Units. For these purposes, the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration (determined based in part upon any form of stockholder election), then the composition of the Reference Property Unit shall be deemed to be (a) the weighted average, per share of Common Stock, of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election; or (b) if no holders of the Common Stock affirmatively make such an election, the types and amounts of consideration actually received, per share of Common Stock, by the holders of the Common Stock. The Company shall notify the Holder of such weighted average (if applicable) as soon as practicable after such determination is made.

None of the foregoing provisions will affect the right of the Holder to convert this Note as set forth in Section 8.01 and 8.02 prior to the effective date of such Common Stock Change Event.

(b) *Notices*.

(i) As soon as practicable upon learning of the anticipated or actual effective date of any Common Stock Change Event, the Company will deliver written notice of such Common Stock Change Event to the Holder. Such Notice will include:

(A) a brief description of such Common Stock Change Event;

(B) the Conversion Rate in effect on the date the Company delivers such notice;

(C) the anticipated effective date for the Common Stock Change Event;

(D) that, on and after the effective date for the Common Stock Change Event, this Note will be convertible into Reference Property Units and cash in lieu of fractional Reference Property Units; and

(E) the composition of the Reference Property Unit for such Common Stock Change Event.

(c) *Successive Common Stock Change Events.* If more than one Common Stock Change Event occurs, this Section 8.08 will apply successively to each Common Stock Change Event.

(d) *Compliance Covenant*. The Company will not become a party to any Common Stock Change Event unless its terms are consistent with this Section 8.08.

ARTICLE 9
NO RIGHT OF REDEMPTION AT THE OPTION OF THE COMPANY

This Note will not be redeemable prior to the Maturity Date at the Company's election, and no sinking fund will be provided for this Note.

ARTICLE 10
MISCELLANEOUS

Section 10.01 *Notices*. Any request, demand, authorization, notice, waiver, consent or communication will be in writing and delivered in Person or mailed by first-class mail, postage prepaid, addressed as follows or transmitted by electronic transmission or other similar means of unsecured electronic methods to the following:

if to the Company:

Xtant Medical Holdings, Inc.
600 Cruiser Lane
Belgrade, MT 59714
Facsimile: (406) 388-9724
Attn: President

If to the Holder:

OrbiMed Royalty Opportunities II, LP
c/o OrbiMed Advisors LLC
601 Lexington Avenue, 54th Floor
New York, NY 10022
Attention: Tadd Wessel and Christopher LiPuma

The Company or the Holder, by notice given to the other in the manner provided above, may designate additional or different addresses for subsequent notices or communications. Any notice, direction, request or demand hereunder to or upon the Holder shall be deemed to have been sufficiently given or made, for all purposes, if it is in writing and actually received by the Holder, addressed as provided above or sent electronically in PDF format.

Section 10.02 *Separability Clause*. In case any provision in this Note will be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

Section 10.03 *Governing Law and Waiver of Jury Trial*. THIS NOTE WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. THE COMPANY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 10.04 *No Recourse Against Others*. A director, officer, employee or stockholder, as such, of the Company will not have any liability for any obligations of the Company under this Note for for any claim based on, in respect of or by reason of such obligations or their creation. By accepting this Note, the Holder will waive and release all such liability. The waiver and release will be part of the consideration for the issuance of this Note.

Section 10.05 *Calculations*. Except as otherwise provided in this Note, the Company will be responsible for making all calculations called for under this Note. These calculations include, but are not limited to, determinations of the Last Reported Sale Price of the Common Stock or any other security, accrued interest (including, for the avoidance of doubt, any Additional Interest, Default Interest or Special Interest) payable on this Note and the Conversion Rate in effect on any Conversion Date.

The Company will make all calculations in good faith and, absent manifest error, its calculations will be final and binding on the Holder. The Company will provide a schedule of its calculations to the Holder, and the Holder is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification.

All calculations will be made to the nearest cent or to the nearest 1/10,000th of a share, as the case may be, with 5/100,000ths rounded upward.

Section 10.06 *Successors*. All agreements of the Company in this Note will bind its successors.

Section 10.07 *Table of Contents; Headings*. The table of contents and headings of the articles and sections of this Note have been inserted for convenience of reference only, are not intended to be considered a part hereof, and will not modify or restrict any of the terms or provisions hereof.

Section 10.08 *Submission to Jurisdiction*. The Company: (a) agrees that any suit, action or proceeding against it arising out of or relating to this Note as the case may be, may be instituted in any U.S. federal court with applicable subject matter jurisdiction sitting in The City of New York; (b) waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding, and any claim that any suit, action or proceeding in such a court has been brought in an inconvenient forum; and (c) submits to the nonexclusive jurisdiction of such courts in any suit, action or proceeding.

Section 10.09 *Legal Holidays*. If the Maturity Date or any Interest Payment Date or Fundamental Change Repurchase Date is not a Business Day (which, solely for the purposes of any payment required to be made on this Note on any such date will be deemed not to include any day on which the office where the place of payment is authorized or required by law to close), then any action to be taken on such date need not be taken on such date, but may be taken on the immediately following Business Day, and no interest on such payment will accrue as a result of such delay.

Section 10.10 *No Security Interest Created*. Nothing in this Note, expressed or implied, will be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 10.11 *Benefits of Note*. Nothing in this Note, expressed or implied, will give to any Person, other than the parties hereto, and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Note.

Section 10.12 *Withholding Taxes*. The Holder agrees, and each beneficial owner of an interest in this Note, by its acquisition of such interest, is deemed to agree, that if the Company or other applicable withholding agent pays withholding taxes or backup withholding on behalf of the Holder or beneficial owner, as applicable, as a result of an adjustment to the Conversion Rate, then the Company or other applicable withholding agent, as applicable, may, at its option, set off such payments against payments of cash and shares of Common Stock on this Note.

Section 10.13 *Amendment and Waiver*. With the written consent of the holders of at least a majority of the Series then outstanding (including consents obtained in connection with a repurchase of, or tender offer or exchange offer for, notes of the Series), the Company, may amend the notes of the Series or waive compliance with any provision of the notes of the Series; *provided*, *however*, that, without the consent of each affected holder, no amendment to the notes of the Series, or waiver of any provision of the notes of the Series, may:

(a) reduce the principal amount of, or change the Maturity Date of, any note of the Series;

(b) reduce the rate of, or extend the stated time for payment of, interest on any note of the Series;

(c) reduce the Fundamental Change Repurchase Price of any note of the Series or change the time at which, or the circumstances under which, the notes of the Series may, or will be, repurchased;

(d) impair the right of any holder to institute suit for any payment on any note of the Series, including with respect to any consideration due upon conversion of a note of the Series;

(e) make any note of the Series payable in a currency other than that stated in such note;

(f) make any change that impairs or adversely affects the conversion rights of any holder under Section 8 or otherwise reduces the number of shares of Common Stock, the amount of cash or any other property receivable by a holder upon conversion;

(g) change the ranking of the notes of the Series;

(h) make any change to any amendment, modification or waiver of a provision of a note of the Series that requires the consent of each affected holder of notes of the Series; or

(i) reduce the percentage of the aggregate principal amount of then outstanding notes of the Series whose holders must consent to an amendment or modification of any note of the Series or a waiver of a past Default.

It will not be necessary for the consent of the holders under this Section 10.13 to approve the particular form of any proposed amendment or modification, but it will be sufficient if such consent approves the substance of such proposed amendment or modification.

[*Remainder of Page Intentionally Left Blank; Signature Page Follows*]

IN WITNESS WHEREOF, the undersigned have executed this Note as of the day and year first written above.

XTANT MEDICAL HOLDINGS, INC.

By: /s/ Daniel Goldberger
Name: Daniel Goldberger
Title: Chief Executive Officer

[Signature Page to Converitble Promissory Note]

EXHIBIT A

CONVERSION NOTICE

XTANT MEDICAL HOLDINGS, INC.
6.00% CONVERTIBLE SENIOR NOTE DUE 2021

To convert this Note, check the box £

To convert the entire principal amount of this Note, check the box £

To convert only a portion of the principal amount of this Note, check the box £ and here specify the principal amount to be converted:

$ _____

ORBIMED ROYALTY OPPORTUNITIES II, LP

By: _____
Authorized Signatory

EXHIBIT B

FUNDAMENTAL CHANGE REPURCHASE NOTICE

Xtant Medical Holdings, Inc.
600 Cruiser Lane
Belgrade, MT 59714
Attention: General Counsel

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Xtant Medical Holdings, Inc. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the Holder hereof in accordance with the applicable provisions of this Note (1) the entire principal amount of this Note, or the portion thereof below designated; and (2) if such Fundamental Change Repurchase Date does not occur during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Fundamental Change Repurchase Date.

Principal amount to be repaid (if less than all): $_____,000

ORBIMED ROYALTY OPPORTUNITIES II, LP

By: _____
Authorized Signatory

REGISTRATION RIGHTS AGREEMENT

OrbiMed Royalty Opportunities II, LP
c/o OrbiMed Advisors LLC
601 Lexington Ave., 54th Floor
New York, NY 10022

ROS Acquisition Offshore LP
c/o OrbiMed Advisors LLC
601 Lexington Ave., 54th Floor
New York, NY 10022

Ladies and Gentlemen:

Xtant Medical Holdings, Inc., a Delaware corporation (the "**Company**"), proposes to issue and sell to OrbiMed Royalty Opportunities II, LP and ROS Acquisition Offshore LP (the "**Purchasers**") convertible senior notes due 2021 in the aggregate principal amount of $67,145.00 (the "**Notes**"), upon the terms set forth in the Securities Purchase Agreements among the Company, each of the Purchasers, dated January 16, 2017 (the "**Purchase Agreements**"). Upon a conversion of each Note at the option of the holder thereof, the Company will be required to deliver shares of common stock of the Company, $0.000001 par value per share (the "**Common Stock**"). To induce the Purchasers to enter into the Purchase Agreements and to satisfy the Company's obligations thereunder, the holders of the Notes will have the benefit of this registration rights agreement (this "**Agreement**") pursuant to which the Company agrees with the Purchasers for the benefit of the Purchasers and for the benefit of the holders (the "**Holders**") from time to time of the Registrable Securities (as defined below), as follows:

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

"**Additional Interest**" has the meaning set forth in Section 7.

"**Affiliate**" has the meaning set forth in Rule 405 under the Securities Act.

"**Agreement**" has the meaning set forth in the preamble hereto.

"**Broker-Dealer**" means any broker or dealer registered as such under the Exchange Act.

"**Business Day**" has the meaning set forth in the Notes.

"**Close of Business**" has the meaning set forth in the Notes.

"**Closing Date**" means the date hereof.

"**Company**" has the meaning set forth in the preamble hereto.

"**Commission**" means the Securities and Exchange Commission.

"**Common Stock**" has the meaning set forth in the preamble hereto.

"**Control**" has the meaning set forth in Rule 405 under the Securities Act, and the terms "controlling" and "controlled" shall have meanings correlative thereto.

"**Conversion Date**" has the meaning set forth in the Notes.

"**Deferral Period**" has the meaning indicated in Section 3(i).

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

"**FINRA Rules**" means the Conduct Rules and the By-Laws of the Financial Industry Regulatory Authority, Inc.

"**Holder**" has the meaning set forth in the preamble hereto.

"**Losses**" has the meaning set forth in Section 5(d).

"**Majority Holders**" means, on any date, Holders of Registrable Securities that represent a majority of the shares of Common Stock that underlie (or were issued upon conversion of) the Notes and whose offer and sale is registered under the Shelf Registration Statement.

"**Managing Underwriters**" means the investment bank(s) and manager(s) that administer an underwritten offering, if any, conducted pursuant to Section 6.

"**Maturity Date**" has the meaning set forth in the Notes.

"**Notes**" has the meaning set forth in the preamble hereto.

"**Notice and Questionnaire**" means a written notice delivered to the Company substantially in the form attached as Annex A hereto.

"**Notice Holder**" means, on any date, any Holder that has delivered a completed Notice and Questionnaire to the Company on or before such date.

"**Prospectus**" means a prospectus included in the Shelf Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A or Rule 430B under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Notes and the shares of Common Stock covered by the Shelf Registration Statement, and all amendments and supplements thereto, including any and all exhibits thereto and any information incorporated by reference therein.

"**Purchase Agreements**" has the meaning set forth in the preamble hereto.

"**Purchasers**" has the meaning set forth in the preamble hereto.

"**Registrable Securities**" means the Notes initially sold to the Purchasers pursuant to the Purchase Agreements and the shares of Common Stock issuable upon conversion of such Notes, and any securities into or for which such Notes or shares have been converted or exchanged, and any security issued with respect thereto upon any stock dividend, split or similar event; *provided*, *however*, that each such security will cease to constitute Registrable Securities upon the earliest to occur of (i) such security being sold pursuant to a registration statement that is effective under the Securities Act; and (ii) such security ceasing to be outstanding.

"**Registration Default**" has the meaning set forth in Section 7.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"**Shelf Registration Period**" has the meaning set forth in Section 2(b).

"**Shelf Registration Statement**" means a "shelf" registration statement of the Company prepared pursuant to Section 2 that covers the resale, from time to time pursuant to Rule 415 under the Securities Act (or any successor thereto), of some or all of the Registrable Securities on an appropriate form under the Securities Act, including all post-effective and other amendments and supplements to such registration statement, the related Prospectus, all exhibits thereto and all material incorporated by reference therein.

"**Trading Day**" has the meaning set forth in the Notes.

"**Underwriter**" means any underwriter of Registrable Securities for an offering thereof under the Shelf Registration Statement.

2. *Shelf Registration*. (a) The Company will file with the Commission a Shelf Registration Statement (which, initially, will be on Form S-1 and, as soon as the Company is eligible, will be on Form S-3) providing for the registration of the offer and sale, from time to time on a continuous or delayed basis, of the Registrable Securities by the Holders in accordance with the methods of distribution elected by such Holders, pursuant to Rule 415 under the Securities Act (or any successor thereto) and will use its best efforts to cause such Shelf Registration Statement to become effective under the Securities Act no later than the one hundred and eightieth (180th) day after the Closing Date.

(b) The Company will use its best efforts to keep the Shelf Registration Statement continuously effective, supplemented and amended as required by the Securities Act, in order to permit the related Prospectus to be usable by Holders for a period (the "**Shelf Registration Period**") from the date the Shelf Registration Statement becomes effective to, and including, the earlier of (i) the sixtieth (60th) Trading Day immediately following the Maturity Date (subject to extension for any suspension of the effectiveness of the Shelf Registration Statement during such sixty (60) Trading Days immediately following the Maturity Date); and (ii) the date upon which no Registrable Securities are outstanding and constitute "restricted securities" (as defined in Rule 144 under the Securities Act).

(c) The Company will cause the Shelf Registration Statement and the related Prospectus and any amendment or supplement thereto, as of the effective date of the Shelf Registration Statement or such amendment or supplement, (i) to comply in all material respects with the applicable requirements of the Securities Act; and (ii) not to contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein (in the case of the Prospectus, in the light of the circumstances under which they were made) not misleading.

(d) Subject to applicable law, the Company will provide written notice to the Holders of the anticipated effective date of the Shelf Registration Statement at least ten (10) Business Days before such anticipated effective date. Each Holder, in order to be named in the Shelf Registration Statement at the time of its initial effectiveness, will be required to deliver a Notice and Questionnaire and such other information as the Company may reasonably request in writing, if any, to the Company on or before the fifth (5th) day before the anticipated effective date of the Shelf Registration Statement as provided in the notice. Subject to Section 3(i), from and after the effective date of the Shelf Registration Statement, the Company will, as promptly as is practicable after the date a Holder's Notice and Questionnaire is delivered, but in no event after the tenth (10th) day after such date, (i) file with the Commission an amendment to the Shelf Registration Statement or prepare and, if permitted or required by applicable law, file a supplement to the Prospectus or an amendment or supplement to any document incorporated therein by reference or file any other required document so that such Holder delivering such Notice and Questionnaire is named as a selling securityholder in the Shelf Registration Statement and the related Prospectus, and so that such Holder is permitted to deliver such Prospectus to purchasers of Registrable Securities in accordance with applicable law (except that the Company will not be required to file more than one supplement or post-effective amendment in any thirty (30) day period in accordance with this Section 2(d)(i)) and, in the case of a post-effective amendment to the Shelf Registration Statement, the Company will use its best efforts to cause such post-effective amendment to become effective under the Securities Act as promptly as is practicable; (ii) provide such Holder, upon request, copies of any documents filed pursuant to Section 2(d)(i); and (iii) notify such Holder as promptly as practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 2(d)(i); *provided*, *however*, that if such Notice and Questionnaire is delivered during a Deferral Period, then the Company will so inform the Holder delivering such Notice and Questionnaire and will take the actions set forth in clauses (i), (ii) and (iii) above upon expiration of the Deferral Period in accordance with Section 3(i). Notwithstanding anything to the contrary herein, the Company need not name any Holder that is not a Notice Holder as a selling securityholder in the Shelf Registration Statement or Prospectus; *provided*, *however*, that any Holder that becomes a Notice Holder pursuant to this Section 2(d) (whether or not such Holder was a Notice Holder at the effective date of the Shelf Registration Statement) will be named as a selling securityholder in the Shelf Registration Statement or Prospectus in accordance with this Section 2(d).

3. *Registration Procedures*. The following provisions will apply in connection with the Shelf Registration Statement.

(a) The Company will:

(i) furnish to the Purchasers and to counsel for the Notice Holders, not less than five (5) Business Days before the filing thereof with the Commission, a copy of the Shelf Registration Statement and each amendment thereto and each amendment or supplement, if any, to the Prospectus (other than amendments and supplements that do nothing more than name Notice Holders and provide information with respect thereto and other than filings by the Company under the Exchange Act) and will use its best efforts to reflect in each such document, when so filed with the Commission, such comments as the Purchasers reasonably propose within three (3) Business Days of the delivery of such copies to the Purchasers; and

(ii) include information regarding the Notice Holders and the methods of distribution they have elected for their Registrable Securities provided to the Company in Notices and Questionnaires as necessary to permit such distribution by the methods specified therein.

(b) The Company will ensure that:

(i) the Shelf Registration Statement and any amendment thereto, and any Prospectus and any amendment or supplement thereto, comply in all material respects with the Securities Act; and

(ii) the Shelf Registration Statement and any amendment thereto do not, when each becomes effective, 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.

(c) The Company will advise the Purchasers, the Notice Holders and any Underwriter that has provided in writing to the Company a telephone or email or other address for notices, and confirm such advice in writing, if requested (which notice pursuant to clauses (ii) to (v), inclusive, below will be accompanied by an instruction to suspend the use of the Prospectus until the Company has remedied the basis for such suspension):

(i) when the Shelf Registration Statement and any amendment thereto have been filed with the Commission and when the Shelf Registration Statement or any post-effective amendment thereto has become effective;

(ii) of any request by the Commission for any amendment or supplement to the Shelf Registration Statement or the Prospectus or for additional information;

(iii) of the issuance by the Commission of any stop order suspending the effectiveness of the Shelf Registration Statement or the institution or threatening of any proceeding for that purpose;

(iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Common Stock included therein for sale in any jurisdiction or the institution or threatening of any proceeding for such purpose; and

(v) of the happening of any event that requires any change in the Shelf Registration Statement or the Prospectus so that they do not contain any untrue statement of a material fact and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the Prospectus, in the light of the circumstances under which they were made) not misleading.

(d) The Company will use its best efforts to prevent the issuance of any order suspending the effectiveness of the Shelf Registration Statement or the qualification of the securities therein for sale in any jurisdiction and, if issued, to obtain as soon as practicable the withdrawal thereof.

(e) Upon request, the Company will furnish, in electronic or physical form, to each Notice Holder, without charge, one copy of the Shelf Registration Statement and any post-effective amendment thereto, including all material incorporated therein by reference, and, if a Notice Holder so requests in writing, all exhibits thereto (including exhibits incorporated by reference therein).

(f) During the Shelf Registration Period, the Company will promptly deliver to each Purchaser, each Notice Holder, and any sales or placement agents or underwriters acting on their behalf, without charge, as many copies of the Prospectus (including the preliminary Prospectus, if any) relating to the Shelf Registration Statement and any amendment or supplement thereto as such person may reasonably request. Subject to the restrictions set forth in this Agreement, the Company consents to the use of the Prospectus or any amendment or supplement thereto by each of the foregoing in connection with the offering and sale of the Registrable Securities.

(g) Before any offering of Registrable Securities pursuant to the Shelf Registration Statement, the Company will arrange for the qualification of the Registrable Securities for sale under the laws of such U.S. jurisdictions as any Notice reasonably requests and will maintain such qualification in effect so long as required; *provided*, *however*, that in no event will the Company be obligated by this Agreement to qualify to do business or as a dealer of securities in any jurisdiction where it is not then so qualified or to take any action that would subject it to taxation or service of process in suits in any jurisdiction where it is not then so subject. If, at any time during the Shelf Registration Period, the Registrable Securities are not "covered securities" within the meaning of Section 18 of the Securities Act, then the Company will arrange for such qualification (subject to the proviso of the immediately preceding paragraph) in each U.S. jurisdiction of residence of each Notice Holder.

(h) Upon the occurrence of any event contemplated by subsections (c)(ii) to (v), inclusive, above, the Company will promptly (or within the time period provided for by Section 3(i), if applicable) prepare a post-effective amendment to the Shelf Registration Statement or an amendment or supplement to the Prospectus or file any other required document so that the Shelf Registration Statement and the Prospectus will not include 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 (in the case of the Prospectus, in the light of the circumstances under which they were made) not misleading.

(i) Upon the occurrence or existence of any pending corporate development, public filings with the Commission or any other material event that, in the reasonable judgment of the Company, makes it appropriate to suspend the availability of the Shelf Registration Statement and the Prospectus, the Company will give notice (without notice of the nature or details of such events) to the Notice Holders that the availability of the Shelf Registration Statement is suspended and, upon receipt of any such notice, each Notice Holder agrees: (i) not to sell any Registrable Securities pursuant to the Shelf Registration Statement until such Notice Holder receives copies of the supplemented or amended Prospectus provided for in Section 3(i), or until it is advised in writing by the Company that the Prospectus may be used; and (ii) to hold such notice in confidence. Except in the case of a suspension of the availability of the Shelf Registration Statement and the Prospectus solely as the result of filing a post-effective amendment or supplement to the Prospectus to add additional selling securityholders therein, the period during which the availability of the Shelf Registration Statement and any Prospectus is suspended (the "**Deferral Period**") will not exceed an aggregate of (A) thirty (30) days (or, if the Shelf Registration Statement is on Form S-1 (or any successor thereto), sixty (60) days) in any calendar quarter; or (B) sixty (60) days (or, if the shelf registration statement is on Form S-1 (or any successor thereto), ninety (90) days) in any calendar year.

(j) The Company will comply with all applicable rules and regulations of the Commission and will make generally available to its securityholders an earnings statement (which need not be audited) satisfying the provisions of Section 11(a) of the Securities Act as soon as practicable after the effective date of the Shelf Registration Statement and in any event no later than forty five (45) days after the end of the twelve (12) month period (or ninety (90) days, if such period is a fiscal year) beginning with the first month of the Company's first fiscal quarter commencing after the effective date of the Shelf Registration Statement.

(k) The Company may require each Holder of Registrable Securities to be sold pursuant to the Shelf Registration Statement to furnish to the Company such information regarding the Holder and the distribution of such Registrable Securities as the Company may from time to time reasonably require for inclusion in the Shelf Registration Statement in order to comply with the Securities Act. The Company may exclude from the Shelf Registration Statement the Registrable Securities of any Holder that unreasonably fails to furnish such information within a reasonable time after receiving a request from the Company for such information.

(l) Subject to Section 6, the Company will enter into customary agreements (including, if requested by the Majority Holders, an underwriting agreement in customary form that, for the avoidance of doubt, will provide for customary representations and warranties, legal opinions, comfort letters and other documents and certifications) and take all other necessary actions in order to expedite or facilitate the registration or the disposition of the Registrable Securities, and in connection therewith, if an underwriting agreement is entered into, cause the same to contain customary indemnification provisions and procedures.

(m) Subject to Section 6, for persons who are or may be "underwriters" with respect to the Registrable Securities within the meaning of the Securities Act and who make appropriate requests for information to be used solely for the purpose of taking reasonable steps to establish a due diligence or similar defense in connection with the proposed sale of such Registrable Securities pursuant to the Shelf Registration, the Company will:

(i) make reasonably available during business hours for inspection by the Holders, any Underwriter participating in any disposition pursuant to the Shelf Registration Statement and any attorney, accountant or other agent retained by the Holders or any such Underwriter all relevant financial and other records and pertinent corporate documents of the Company and its subsidiaries; and

(ii) cause the Company's officers, directors, employees, accountants and auditors to supply all relevant information reasonably requested by the Holders or any such Underwriter, attorney, accountant or agent in connection with the Shelf Registration Statement as is customary for similar due diligence examinations.

(n) In the event that any Broker-Dealer underwrites any Registrable Securities or participates as a member of an underwriting syndicate or selling group or "participates in an offering" (within the meaning of the FINRA Rules) thereof, whether as a Holder or as an underwriter, placement, sales agent or broker or dealer in respect thereof, or otherwise, the Company will, upon the reasonable request of such Broker-Dealer, comply with any reasonable request of such Broker-Dealer in complying with the FINRA Rules.

(o) The Company will use its best efforts to take all other steps necessary to effect the registration of the offer and sale of the Registrable Securities covered by the Shelf Registration Statement.

4. *Registration Expenses*. The Company will bear all expenses incurred in connection with the performance of its obligations under Sections 2 and 3. The Company will reimburse the Purchasers and the Holders for the reasonable fees and disbursements of one firm or counsel (which may be a nationally recognized law firm experienced in securities matters designated by the Majority Holders) to act as counsel for the Holders in connection therewith.

5. *Indemnification and Contribution*.

(a) The Company agrees to indemnify and hold harmless each Holder, the directors, officers, employees, Affiliates and agents of each Holder and each person who Controls any Holder against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Shelf Registration Statement as originally filed or in any amendment thereof, or in any preliminary Prospectus or the Prospectus, or in any amendment thereof or supplement thereto, or caused by the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of any preliminary Prospectus or the Prospectus, in the light of the circumstances under which they were made) not misleading, and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by it in connection with investigating or defending any such loss, claim, damage, liability or action; *provided*, *however*, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of the party claiming indemnification specifically for inclusion therein.

The Company also agrees to provide customary indemnities to, and to contribute as provided in Section 5(d) to Losses of, any underwriters of the Registrable Securities, their officers, directors and employees and each Person who Controls such underwriters to the same extent as provided herein with respect to the Holders.

(b) Each Holder of securities covered by the Shelf Registration Statement (including each Purchaser that is a Holder, in such capacity) severally and not jointly agrees to indemnify and hold harmless the Company, each of the Company's directors, each of the Company's officers who sign the Shelf Registration Statement and each person who Controls the Company, to the same extent as the foregoing indemnity from the Company to each such Holder, but only with reference to written information relating to such Holder furnished to the Company by or on behalf of such Holder specifically for inclusion in the documents referred to in the foregoing indemnity. This indemnity agreement will be acknowledged by each Notice Holder that is not a Purchaser in such Notice Holder's Notice and Questionnaire and will be in addition to any liability that any such Notice Holder may otherwise have.

(c) Promptly after receipt by an indemnified party under this Section 5 or notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 5, notify the indemnifying party in writing of the commencement thereof, but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b), as applicable, above unless and to the extent it has been materially prejudiced through the forfeiture by the indemnifying party of substantial rights and defenses; and (ii) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) or (b), as applicable, above. If any action is brought against an indemnified party and it has notified the indemnifying party thereof, the indemnifying party will be entitled to appoint counsel (including local counsel) of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case, the indemnifying party will not thereafter be responsible for the fees and expenses of any separate counsel, other than local counsel if not appointed by the indemnifying party, retained by the indemnified party or parties, except as set forth below); *provided*, *however*, that such counsel will be reasonably satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel (including local counsel) to represent the indemnified party in an action, the indemnified party will have the right to employ separate counsel (including local counsel), and the indemnifying party will bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest; (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party has reasonably concluded that there may be legal defenses available to it and/or other indemnified parties that are different from or additional to those available to the indemnifying party; (iii) the indemnifying party has not employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action; or (iv) the indemnifying party has authorized the indemnified party to employ separate counsel at the expense of the indemnifying party. The indemnifying party will not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one (1) separate law firm (in addition to any local counsel) for all indemnified persons. An indemnifying party will not, without the prior written consent of the indemnified parties, 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 includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding and does not include an admission of fault, culpability or a failure to act, by or on behalf of any such indemnified party.

(d) In the event that the indemnity provided in paragraph (a) or (b) of this Section 5 is unavailable to or insufficient to hold harmless an indemnified party for any reason, then each applicable indemnifying party will have a several, and not joint, obligation to contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending such losses, claims, damages, liabilities or actions) (collectively "**Losses**") to which such indemnified party may be subject in such proportion as is appropriate to reflect the relative benefits received by such indemnifying party, on the one hand, and such indemnified party, on the other hand, from the offering of the Registrable Securities and the Shelf Registration Statement that resulted in such Losses; *provided*, *however*, that in no case will any underwriter be responsible for any amount in excess of the underwriting discount or commission applicable to the securities purchased by such underwriter under the Shelf Registration Statement that resulted in such Losses. If the allocation provided by the immediately preceding sentence is unavailable for any reason, then the indemnifying party and the indemnified party will contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of such indemnifying party, on the one hand, and such indemnified party, on the other hand, in connection with the statements or omissions, or alleged statements or omissions, that resulted in such Losses as well as any other relevant equitable considerations. Benefits received by the Company will be deemed to be equal to the total net proceeds from the offering of the Notes (before deducting expenses). Benefits received by any Holder will be deemed to be equal to the value of having the offer and sale of such Holder's Registrable Securities registered under the Securities Act pursuant to the Shelf Registration Statement and hereunder. Benefits received by any underwriter will be deemed to be equal to the total underwriting discounts and commissions, as set forth on the cover page of the Prospectus relating to the Shelf Registration Statement that resulted in such Losses. Relative fault will be determined by reference to, among other things, whether any untrue or any alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information provided by the indemnifying party, on the one hand, or by the indemnified party, on the other hand, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such untrue statement or omission or alleged untrue statement or omission. The parties agree that it would not be just and equitable if contribution were determined by pro rata allocation (even if the Holders were treated as one entity for such purpose) or any other method of allocation which does not take account of the equitable considerations referred to above. Notwithstanding anything to the contrary in this Section 5(d), no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 5, each person who Controls a Holder and each director, officer, employee, Affiliate and agent of such Holder will have the same rights to contribution as such Holder, and each person who Controls the Company, each officer of the Company who signed the Shelf Registration Statement and each director of the Company will have the same rights to contribution as the Company, subject in each case to the applicable terms and conditions of this Section 5(d).

(e) The provisions of this Section 5 will remain in full force and effect, regardless of any investigation made by or on behalf of any Purchaser or Holder or the Company or any of the indemnified persons referred to in this Section 5, and will survive the sale by a Holder of securities covered by the Shelf Registration Statement.

6. *Underwritten Registrations*.

(a) Notwithstanding anything to the contrary herein, in no event will the method of distribution of Registrable Securities take the form of an underwritten offering without the prior written consent of the Company. Consent may be conditioned on waivers of any of the obligations in Section 3, 4 or 5.

(b) If any Registrable Securities are to be sold in an underwritten offering, the Managing Underwriters will be selected by the Company, subject to the prior written consent of the Majority Holders, which consent will not be unreasonably withheld.

(c) No person may participate in any underwritten offering pursuant to the Shelf Registration Statement unless such person: (i) agrees to sell such person's Registrable Securities on the basis reasonably provided in any underwriting arrangements approved by the persons entitled hereunder to approve such arrangements; and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements.

7. *Registration Defaults*. If any of the following events shall occur (each, a "**Registration Default**"), then the Company will pay additional interest on the Notes ("**Additional Interest**") as follows:

(a) if the Shelf Registration Statement has not been filed with the Commission and has not become effective on or before the one hundred and eightieth (180th) day after the Closing Date, then, commencing on the one hundred and eighty first (181st) day after the Closing Date, Additional Interest will accrue on the aggregate outstanding principal amount of the Notes at a rate of 0.25% per annum for the first 90 days beginning on, and including, such one hundred and eighty first (181st) day and 0.50% per annum thereafter;

(b) if the Shelf Registration Statement has become effective but ceases to be effective or usable for the offer and sale of the Registrable Securities (other than in connection with (i) a Deferral Period; or (ii) as a result filing a post-effective amendment solely to add additional selling securityholders) at any time during the Shelf Registration Period and the Company does not cure the lapse of effectiveness or usability within ten (10) Business Days (or, if a Deferral Period is then in effect, within ten (10) Business Days after the expiration of such Deferral Period) (or, in the case of filing a post-effective amendment solely to add additional selling securityholders, within ten (10) Business Days after the expiration of the ten (10) day period referred to in Section 2(d), subject to the proviso therein), then Additional Interest will accrue on the aggregate outstanding principal amount of the Notes at a rate of 0.25% per annum for the first ninety (90) days beginning on, and including, the day following such tenth (10th) Business Day and 0.50% per annum thereafter;

(c) if the Company, through its omission, fails to name as a selling securityholder any Holder that had complied timely with its obligations hereunder in a manner to entitle such Holder to be so named in (i) the Shelf Registration Statement at the time it first became effective; or (ii) any Prospectus at the time it is filed with the Commission (or, if later, the effective date of the Shelf Registration Statement), then Additional Interest will accrue on the aggregate outstanding principal amount of the Notes held by such Holder at a rate of 0.25% per annum for the first ninety (90) days beginning on, and including, the day following the effective date of such Shelf Registration Statement or the filing of such Prospectus, as applicable, and 0.50% per annum thereafter; and

(d) if the aggregate duration of Deferral Periods in any period exceeds the number of days permitted in respect of such period pursuant to Section 3(i), then, commencing on the day the aggregate duration of Deferral Periods in such period exceeds the number of days permitted in respect of such period, Additional Interest will accrue on the aggregate outstanding principal amount of the Notes at a rate of 0.25% per annum for the first ninety (90) days beginning on, and including, and including such date, and 0.50% per annum thereafter; *provided*, *however*, that (1) upon the filing and effectiveness of the Shelf Registration Statement (in the case of paragraph (a) above), (2) upon such time as the applicable Shelf Registration Statement becomes effective and usable for resales (in the case of paragraph (b) above), (3) upon such time as such Holder is permitted to sell its Registrable Securities pursuant to any Shelf Registration Statement and Prospectus in accordance with applicable law (in the case of paragraph (c) above), (4) upon the termination of the applicable Deferral Period (in the case of paragraph (d) above), or (5) in any case, upon the expiration of the Shelf Registration Period, Additional Interest will cease to accrue on account of the applicable Registration Default (it being understood that nothing in this sentence will prevent Additional Interest from accruing as a result of any other Registration Default during the Shelf Registration Period).

Any Additional Interest due pursuant to this Section 7 will be payable in cash in the same manner and on the same dates as the stated interest payable on the Notes. If any Note ceases to be outstanding during any period for which Additional Interest is accruing, the Company will prorate the Additional Interest payable with respect to such Note.

Additional Interest will not accrue on the Notes at a rate that exceeds 0.50% per annum in the aggregate and will not be payable under more than one clause above for any given period of time, except that if Additional Interest would be payable because of more than one Registration Default, but at a rate of 0.25% per annum under one Registration Default and at a rate of 0.50% per annum under the other, then the Additional Interest rate will be the higher rate of 0.50% per annum.

Notwithstanding anything to the contrary in this Agreement, in no event will Additional Interest accrue on the shares of Common Stock issued upon conversion of the Notes. However, if there exists a Registration Default with respect to the Registrable Securities on the Maturity Date, then, in addition to any Additional Interest otherwise payable, the Company will make a cash payment to each Holder of any outstanding Note as of the Close of Business on the Business Day immediately before the Maturity Date in an amount equal to five percent (5%) of the principal amount of such Note. For purposes of the preceding sentence, Notes that have been converted with a Conversion Date that is on or after January 15, 2021, and on or before the second (2nd) Business Day immediately preceding the Maturity Date will be considered to be outstanding. Accordingly, and for the avoidance of doubt, if a Registration Default exists on the Maturity Date, the payment described in the preceding two sentences will be payable on all Notes outstanding as of the Close of Business on the Business Day immediately preceding the Maturity Date and on all Notes converted with a conversion date that is on or after January 15, 2021, and on or before the second (2nd) Business Day immediately preceding the Maturity Date.

8. *No Inconsistent Agreements*. The Company has not entered into, and agrees not to enter into, any agreement with respect to its securities that is inconsistent with the registration rights granted to the Holders herein.

9. *Rule 144A and Rule 144*. So long as any Registrable Securities remain outstanding, the Company will file the reports required to be filed by it under Rule 144A(d)(4) under the Securities Act and the reports required to be filed by it under the Exchange Act in a timely manner and, if at any time the Company is not required to file such reports, it will, upon the written request of any Holder of Registrable Securities, make publicly available other information so long as necessary to permit sales of such Holder's Registrable Securities pursuant to Rules 144 and 144A of the Securities Act. The Company covenants that it will take such further action as any Holder of Registrable Securities may reasonably request, all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act pursuant to Rule 144 or Rule 144A (including, without limitation, satisfying the requirements of Rule 144A(d)(4)). Upon the written request of any Holder of Registrable Securities, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements. Notwithstanding anything to the contrary in this Section 9, nothing in this Section 9 will be deemed to require the Company to register any of its securities pursuant to the Exchange Act.

10. *Amendments and Waivers*. The provisions of this Agreement may not be amended, qualified, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of the Holders of a majority of the Registrable Securities (determined on an as-converted basis); *provided*, *however*, that no amendment, qualification, modification, supplement, waiver or consent with respect to Section 7 will be effective as against any Holder unless consented to in writing by such Holder; *provided*, *further*, that this Section 10 may not be amended, qualified, modified or supplemented, and waivers of or consents to departures from this Section 10 may not be given, unless the Company has obtained the written consent of each Purchaser and each Holder.

11. *Notices*. All notices and other communications provided for or permitted hereunder will be made in writing by hand-delivery, first-class mail, telex, telecopier, email or air courier guaranteeing overnight delivery:

(a) if to a Holder, at the most current address given by such holder to the Company in accordance with the provisions of the Notice and Questionnaire.

(b) if to any Purchaser, initially at the address thereof set forth above; and

(c) if to the Company, initially at its address set forth in the Purchase Agreements.

All such notices and communications shall be deemed to have been duly given when received.

12. *Remedies*. Each Holder, in addition to being entitled to exercise all rights provided to it herein or in the Purchase Agreement or granted by law, including recovery of liquidated or other damages, will be entitled to specific performance of its rights under this Agreement. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Agreement and hereby agrees to waive in any action for specific performance the defense that a remedy at law would be adequate.

13. *Successors*. This Agreement will inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns, including, without the need for an express assignment or any consent by the Company thereto, subsequent Holders, and the indemnified persons referred to in Section 5. The Company hereby agrees to extend the benefits of this Agreement to any Holder, and any such Holder may specifically enforce the provisions of this Agreement as if an original party hereto.

14. *Counterparts*. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

15. *Headings*. The section headings used herein are for convenience only and shall not affect the construction or interpretation hereof.

16. *Applicable Law*. THIS AGREEMENT WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT THE TRANSACTION CONTEMPLATED HEREBY.

17. *Severability*. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof will not be in any way impaired or affected thereby, it being intended that all of the rights and privileges of the parties will be enforceable to the fullest extent permitted by law.

18. *Common Stock Held by the Company, Etc.* Whenever the consent or approval of Holders of a specified percentage of securities is required hereunder, securities held by the Company or its Affiliates (other than subsequent Holders thereof if such subsequent Holders are deemed to be Affiliates solely by reason of their holdings of such securities) will not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

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Very truly yours,

XTANT MEDICAL HOLDINGS, INC.

By: /s/ Daniel Goldberger
Name: Daniel Goldberger
Title: Chief Executive Officer

OrbiMed Royalty Opportunities II, LP

By OrbiMed ROF II LLC,
its General Partner

By OrbiMed Advisors LLC,
its Managing Member

By: /s/ W. Carter Neild
Print Name: W. Carter Neild
Title: Member

ROS Acquisition Offshore LP

By OrbiMed Advisors LLC, solely in its
capacity as Investment Manager

By: /s/ W. Carter Neild
Print Name: W. Carter Neild
Title: Member