
**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): March 11, 2018

MannKind Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

000-50865
(Commission
File Number)

13-3607736
(IRS Employer
Identification No.)

**30930 Russell Ranch Road, Suite 301
Westlake Village, California**
(Address of principal executive offices)

91362
(Zip Code)

Registrant's telephone number, including area code: (818) 661-5000

N/A
(Former name or former address, if changed since last report.)

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

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

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement

On March 11, 2018, MannKind Corporation (the “Company”) entered into an amended and restated promissory note (the “Restated Note”) with The Mann Group LLC (the “Mann Group”). The Restated Note amended the terms of the existing promissory note, dated as of October 18, 2012, with the Mann Group to, among other things, (i) reflect the current outstanding principal balance of the promissory note of \$71,505,500, after giving effect to the partial cancellation of principal in exchange for shares of the Company’s common stock described below, (ii) extend the maturity date of the promissory note to July 1, 2021, (iii) permit accrued and unpaid interest to be paid-in-kind, and (iv) permit the principal and any accrued and unpaid interest under the Restated Note to be converted, at the option of the Mann Group, at any time on or prior to the close of business on the business day immediately preceding the stated maturity date, into shares of the Company’s common stock at a conversion rate of 250 shares per \$1,000 of principal and/or accrued and unpaid interest, which is equal to a conversion price of \$4.00 per share. The conversion rate will be subject to adjustment under certain circumstances described in the Restated Note.

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

The information set forth under Item 1.01 of this report regarding the issuance of the Restated Note is incorporated by reference into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth under Item 1.01 of this report regarding the issuance of the Restated Note is incorporated by reference into this Item 3.02. Also on March 11, 2018, the Company and the Mann Group entered into a common stock purchase agreement pursuant to which the Company agreed to issue to the Mann Group and the Mann Group agreed to purchase 3,000,000 shares of the Company’s common stock at a price per share of \$2.72 (the “Purchased Shares”). As payment of the purchase price for the shares, the Mann Group agreed to cancel \$8,160,000 in principal amount under the promissory note dated October 18, 2012, with the principal repayment to be reflected in the Restated Note.

The Company offered the Restated Note and the Purchased Shares in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), and expects to rely on such exemption or the exemption provided by Section 3(a)(9) of the Securities Act for any issuance of shares of its common stock upon conversion of the Restated Note. The Purchased Shares were issued in a private placement and the Company does not have an obligation or intend to register the Purchased Shares for resale.

On March 12, 2018, the Company and MannKind LLC, the Company’s wholly-owned subsidiary, entered into an Exchange Agreement (the “Exchange Agreement”) with Deerfield Private Design Fund II, L.P. and Deerfield Private Design International II, L.P. (collectively, “Deerfield”) pursuant to which the Company agreed to, among other things, exchange \$5.0 million principal amount under the 8.75% Senior Secured Convertible Notes due 2019 held by Deerfield (the “Tranche B Notes”) for 1,838,236 shares of the Company’s common stock (the “Exchange Shares”). The exchange price for the Exchange Shares is \$2.72 per share. The principal amount being exchanged under the Tranche B Notes represents the principal amount that would have otherwise become due and payable in May 2018 under the Tranche B Notes.

The Company offered the Exchange Shares in reliance on the exemption from registration provided by Sections 3(a)(9) and 4(a)(2) of the Securities Act of 1933.

On March 6, 2018, pursuant to the prior exchange and sixth amendment agreement with Deerfield, the Company exchanged approximately \$1.3 million in principal amount of its outstanding 9.75% Senior Convertible Notes due 2019 held by Deerfield for 441,618 shares of the Company’s common stock, at a conversion price of \$2.83 per share.

After giving effect to the exchange transactions described above, the Company’s current amount of principal owed to Deerfield is \$45.0 million.

The foregoing descriptions of the Restated Note and the Exchange Agreement do not purport to be complete and are qualified in their entirety by reference to the Restated Note and the Exchange Agreement, copies of which is attached as Exhibits 99.1 and 99.2 to this report, respectively.

This report does not constitute an offer to sell, or a solicitation of an offer to buy, any security and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offering would be unlawful.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
99.1	<u>Amended and Restated Promissory Note made by MannKind Corporation in favor of The Mann Group LLC, dated March 11, 2018.</u>
99.2	<u>Exchange Agreement, dated March 12, 2018, by and among MannKind Corporation, MannKind LLC, Deerfield Private Design Fund II, L.P. and Deerfield Private Design International II, L.P.</u>

SIGNATURES

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: March 12, 2018

MANKIND CORPORATION

By: /s/ David Thomson, Ph.D., J.D.

David Thomson, Ph.D., J.D.

Corporate Vice President, General Counsel and Secretary

Execution Version

THE SECURITY REPRESENTED BY THIS CERTIFICATE AND THE COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, OR APPLICABLE STATE SECURITIES LAWS. THIS SECURITY AND THE COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY MAY NOT BE SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER SAID ACT, OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SAID ACT INCLUDING, WITHOUT LIMITATION, PURSUANT TO RULE 144 UNDER SAID ACT, OR PURSUANT TO A PRIVATE SALE EFFECTED UNDER SECTION 4(A)(7) OF THE SECURITIES ACT OR APPLICABLE FORMAL OR INFORMAL SEC INTERPRETATION OR GUIDANCE, SUCH AS A SO-CALLED "4[(A)](1) AND A HALF" SALE. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED (BUT NOT TRANSFERRED) IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING SECURED BY THE SECURITIES. PRIOR TO THE REGISTRATION OF ANY TRANSFER PURSUANT TO AN EXEMPTION FROM REGISTRATION OTHER THAN RULE 144, BORROWER RESERVES THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.

**AMENDED AND RESTATED
PROMISSORY NOTE**

\$71,505,500

Issue Date: February 26, 2009
Amended and Restated Date: August 10, 2010
Amended and Restated Date: October 18, 2012
Amended Date: October 31, 2013
Amended and Restated Date: March 11, 2018
Westlake Village, California

THIS AMENDED AND RESTATED PROMISSORY NOTE (this "**Restated Note**"), dated as of March 11, 2018, amends, re-evidences, restates, and supersedes in full, but does not in any way satisfy nor discharge the outstanding indebtedness, if any, owed under that certain Amended and Restated Promissory Note, dated as of October 18, 2012 (which amended and restated that certain Promissory Note, dated as of August 10, 2010 (the "**2010 Note**")), as amended by that certain Acknowledgment and Agreement, dated as of October 31, 2013, made by the undersigned in favor of **THE MANN GROUP LLC** (the "**2012 Note**"). The 2012 Note, as amended, re-evidenced, and restated by this Restated Note, is referred to herein as the "**Note**."

FOR VALUE RECEIVED, MANKIND CORPORATION, a Delaware corporation ("**Borrower**"), hereby promises to pay to the order of **THE MANN GROUP LLC** ("**Lender**"), in lawful money of the United States of America and in immediately available funds, the principal sum of up to Seventy One Million Five Hundred and Five Thousand Dollars (\$71,505,500), which amount represents the outstanding principal amount of all Advances (as defined below) made hereunder, together with accrued and unpaid interest thereon, each due and payable on the dates and in the manner set forth below.

1. Principal Repayment. The outstanding principal amount of each Advance together with all accrued and unpaid interest thereon shall be due and payable on July 1, 2021 (the "**Maturity Date**").

2. Interest Rate. Borrower further promises to pay interest on the outstanding principal amount of each Advance from the date thereof until payment in full, which interest shall be payable at a rate equal to: (a) for periods up to and including December 31, 2012, at a rate equal to the one year London Interbank Offered Rate (LIBOR) reported by the Wall Street Journal (or a comparable periodical if such periodical is no longer published) on the day of such Advance plus 3% per annum, or the maximum rate permissible by law (which under the laws of the State of California shall be deemed to be the laws relating to permissible rates of interest on commercial loans), whichever is less; and (b) for periods beginning on and after January 1, 2013, at a rate equal to the one year London Interbank Offered Rate (LIBOR) reported by the Wall Street Journal (or a comparable periodical if such periodical is no longer published) on December 31, 2012 plus 5% per annum, or the maximum rate permissible by law (which under the laws of the State of California shall be deemed to be the laws relating to permissible rates of interest on commercial loans), whichever is less; and (c) for periods beginning on and after April 1, 2018, compounded interest, compounded on a quarterly basis, at a rate equal to the one year London Interbank Offered Rate (LIBOR) reported by the Wall Street Journal (or a comparable periodical if such periodical is no longer published) on December 31, 2012 plus 5% per annum, or the maximum rate permissible by law (which under

the laws of the State of California shall be deemed to be the laws relating to permissible rates of interest on commercial loans), whichever is less. Interest shall be due and payable quarterly in arrears not later than (i) the first day of each calendar quarter for the preceding quarter, commencing on the first day of the calendar quarter following the calendar quarter in which an Advance is made, or (ii) such other time as Borrower and Lender mutually agree, in either case with interest calculated on the basis of a 365/366-day year for the actual number of days elapsed. (Borrower and Lender acknowledge and agree that there is no agreement or understanding regarding the deferral of cash payment of accrued interest other than that certain Subordination Agreement dated as dated as of July 1, 2013, by and among Lender, Deerfield Private Design Fund II, L.P. and Deerfield Private Design International II, L.P.)

3. Place of Payment. All amounts payable hereunder shall be payable in lawful money of the United States of America at the office of Lender, 30930 Russell Ranch Road, Suite 301, Westlake Village, CA 91362, unless another place of payment shall be specified in writing by Lender.

4. Application of Payments; Prepayment.

4.1 Payment on this Note shall be applied first to accrued interest, and thereafter to the outstanding principal balance hereof, unless otherwise consented to by Lender at or prior to the time of such payment.

4.2 This Note may be prepaid in whole or in part without penalty or premium. Any partial prepayment made pursuant to this Section 4.2 shall be applied to interest first and then to principal, and shall be applied to the oldest outstanding Advance first, unless otherwise consented to by Lender at or prior to the time of such prepayment. At the time of any prepayment of principal hereunder, Borrower shall also pay all accrued and unpaid interest on the amount prepaid through the date of prepayment.

4.3 Subject to that certain Subordination Agreement, dated as of July 1, 2013, by and among Lender, Deerfield Private Design Fund II, L.P. and Deerfield Private Design International II, L.P., at any time upon delivery of prior written notice (the "**Call Notice**"), Lender may require Borrower to prepay Advances that have been outstanding for more than twelve months as of the date of the notice. Lender may not require Borrower to prepay Advances in an aggregate amount exceeding \$200,000,000 (less the aggregate amount of principal indebtedness cancelled (i) under the 2010 Note pursuant to that certain Common Stock Purchase Agreement between Borrower and Lender dated as of August 10, 2010, (ii) under the 2010 Note pursuant to that certain Common Stock Purchase Agreement between Borrower and Lender dated as of February 2, 2012, and (iii) under the 2012 Note pursuant to that certain Common Stock Purchase Agreement between Borrower and Lender dated as of March 11, 2018) pursuant to this Section 4.3. If Lender exercises such call right, Borrower shall, on the earlier of: (x) 90 days after delivery of the Call Notice, or (y) the Maturity Date, prepay the Advances in the amount set forth in the Call Notice. Any partial prepayment made pursuant to this Section 4.3 shall be applied to interest first and then to principal. At the time of any prepayment of principal hereunder, Borrower shall also pay all accrued and unpaid interest on the amount prepaid through the date of prepayment.

5. Advances. As of the date hereof, Lender has made advances to Borrower (each, an "**Advance**") in the aggregate principal amount of Three Hundred Seventy Million Dollars (\$370,000,000) less the aggregate amount of principal indebtedness repaid, converted or otherwise cancelled from time to time hereunder. At the time of any Advance (or at the time of receipt of any payment or conversion of principal), Lender shall make or cause to be made, an appropriate notation on Exhibit A attached hereto reflecting the amount of such Advance (or the amount of such payment or conversion). The outstanding amount of this Note set forth on such Exhibit A shall be prima facie evidence of the principal amount thereof outstanding, but the failure to record, or any error in so recording, shall not limit or otherwise affect the obligations of Borrower to make payments of principal of or interest on this Note when due.

6. Representations and Warranties. Borrower hereby represents and warrants to the Lender as follows:

6.1 Borrower has the requisite power and authority to enter into this Note and to consummate the transactions contemplated hereby. The execution and delivery of this Note by Borrower and the consummation by

Borrower of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Borrower. This Note has been duly executed and delivered by Borrower and constitutes the legal, valid and binding agreement of Borrower enforceable against Borrower in accordance with its terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) equitable principles of general applicability relating to the availability of specific performance, injunctive relief or other equitable remedies.

6.2 No consent, approval, authorization, order, license, registration or qualification of or with any Governmental Entity is required for the execution and delivery by Borrower of this Note or the transactions contemplated hereby, except such consents, approvals, authorizations, orders, licenses, registrations or qualifications as have been obtained, or which, if not obtained, would not, individually or in the aggregate, have a material adverse effect on the ability of Borrower to perform its obligations hereunder or consummate the transactions contemplated hereby on a timely basis. As used in this Note, the term "**Governmental Entity**" means any agency, bureau, commission, authority, department, official, political subdivision, tribunal or other instrumentality of any government, whether (i) regulatory, administrative or otherwise (including, without limitation, a self-regulatory organization or stock exchange); (ii) federal, state or local; or (iii) domestic or foreign.

6.3 The execution and delivery by Borrower of this Note, the performance by Borrower of its obligations hereunder, and the consummation by Borrower of the transactions contemplated hereby, will not conflict with or result in a breach or violation of (i) any of the terms or provisions of, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower or any of its subsidiaries is a party or by which Borrower or any of its subsidiaries is bound or to which any of their property or assets is subject or (ii) any applicable law or statute or any order, rule or regulation of any Governmental Entity having jurisdiction over Borrower or any of its subsidiaries or any of their respective properties, except for in the case of either clause (i) or (ii) such conflicts, breaches or violations that would not prevent or delay the consummation of the transactions contemplated by this Note or that would not be reasonably expected to have a material adverse effect on Borrower, nor will any such action result in any violation of the provisions of the organizational documents of Borrower.

6.4 All of the shares of Common Stock issuable upon conversion of this Note (the "**Conversion Shares**"), are duly authorized and, when issued in accordance with the terms of this Note, will be duly and validly issued, fully paid and nonassessable, free and clear of all liens, taxes, adverse claims, and will not be issued in violation of, or subject to, any preemptive or similar rights of any Person. The Borrower has reserved sufficient shares of Common Stock from its duly authorized capital stock for issuance upon conversion of this Note.

6.5 Borrower has filed all reports, schedules, forms, statements and other documents required to be filed by it under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "**SEC Reports**"). None of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Borrower is not in violation of the requirements of the NASDAQ Stock Market ("**NASDAQ**") and has no knowledge of any facts or circumstances which could reasonably be expected to lead to delisting or suspension of the Common Stock in the foreseeable future.

6.6 No brokerage or finder's fees or commissions are or will be payable by Borrower or any of its Affiliates or representatives to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by this Note. Lender shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 6.6 that may be payable by the Company or any of its affiliates or representatives in connection with the transactions contemplated by this Note.

6.7 Assuming the accuracy of the representations and warranties of Lender contained in Section 7 hereof, the offer and issuance of this Note or the issuance of the Conversion Shares by Borrower pursuant hereto will be exempt from the registration requirements of the Securities Act (and such issuances will be or have been

registered or qualified (or are exempt from registration and qualification) under the registration, permit or qualification requirements of all applicable state securities laws). The amendments and transactions contemplated hereby, including the issuance and sale of the Conversion Shares under this Note, does not contravene, or require stockholder approval pursuant to, the rules and regulations of NASDAQ.

6.8 Neither the Borrower, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, has made or will make any offers or sales of any security, or has solicited or will solicit any offers to buy any security, under circumstances that would cause the offering and issuance of the Conversion Shares to be integrated with prior offerings by Borrower (i) for purposes of the Securities Act and which would require the registration of any such securities under the Securities Act, or (ii) for purposes of any applicable stockholder approval provisions of NASDAQ and which would require stockholder approval for the issuance of any Conversion Shares.

7. Representation and Warranties of Lender. Lender hereby represents and warrants to Borrower as follows:

7.1 Lender has full right, power and authority to enter into this Note and to consummate the transactions contemplated hereby and has taken all necessary action to authorize the execution, delivery and performance of this Note.

7.2 Lender understands that nothing in this Note or any other materials presented to Lender in connection with this Note or the issuance of the Conversion Shares constitutes legal, tax or investment advice. Lender has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with this Note and the issuance of the Conversion Shares.

7.3 Lender understands that the this Note and any Conversion Shares (collectively, the “**Securities**”) have not been registered under the Securities Act. Lender also understands that the Securities are being offered and issued pursuant to an exemption from registration contained in the Securities Act based in part upon Lender’s representations contained in this Note.

7.4 Lender has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to Borrower so that it is capable of evaluating the merits and risks of the Securities and has the capacity to protect its own interests. Lender must bear the economic risk of the Securities indefinitely (subject to the Company’s payment obligations under this Note) unless the Securities are registered pursuant to the Securities Act, or an exemption from registration is available. Lender understands that Borrower has no present intention of registering any of the Securities. Lender also understands that there is no assurance that any exemption from registration under the Securities Act will be available and that, even if available, such exemption may not allow Lender to transfer all or any portion of any of the Securities under the circumstances, in the amounts or at the times Lender might propose.

7.5 Lender is acquiring the Securities for Lender’s own account for investment only, and not with a view towards their distribution.

7.6 Lender has the capacity to protect its own interests in connection with the transactions contemplated in this Note.

7.7 Lender is an accredited investor within the meaning of Regulation D under the Securities Act.

8. Conversion.

8.1 Conversion. Subject to and upon compliance with the provisions of this Section 8, Lender shall have the right, at Lender’s option, to convert all or any portion of this Note at any time and from time to time prior to the close of business on the Business Day immediately preceding the Maturity Date at an initial conversion rate of 250 shares of Common Stock (subject to adjustment as provided in this Section 8, the “**Conversion Rate**”) per \$1,000 principal amount of this Note (subject to, and in accordance with, the settlement provisions of Section 8.2,

the “**Conversion Obligation**”). Any accrued and unpaid interest on this Note may also be converted at Lender’s option into Common Stock on the same terms as the principal of this Note.

8.2 Conversion Procedure: Settlement Upon Conversion.

(a) Upon conversion of all or part of the principal amount of this Note and/or any accrued and unpaid interest thereon, Borrower shall satisfy its Conversion Obligation by delivering to Lender a number of shares of Common Stock equal to the quotient of (i) (x) the Conversion Rate, multiplied by (y) the principal amount of this Note being converted and/or, accrued and unpaid interest thereon being converted, divided by (ii) \$1,000, by the fifth (5th) Business Day immediately following the relevant Conversion Date.

(b) Before Lender shall be entitled to convert this Note as set forth above, Lender shall complete, manually sign and deliver an irrevocable notice to Borrower as set forth in Exhibit B hereto (or a facsimile, PDF or other electronic transmission thereof) (a “**Notice of Conversion**”) at Borrower’s address set forth on Exhibit B hereto, and state in writing therein the principal amount of this Note and/or accrued and unpaid interest thereon to be converted.

(c) This Note shall be deemed to have been converted immediately prior to the close of business on the date (the “**Conversion Date**”) that Lender has complied with the requirements set forth in subsection (b) above or, if accrued and unpaid interest is being converted at or prior to the applicable interest payment date, such interest payment date. Borrower shall issue or cause to be issued, and deliver (if applicable) to Lender, the full number of shares of Common Stock to which Lender shall be entitled in satisfaction of Borrower’s Conversion Obligation within five (5) days following the Conversion Date.

(d) If Lender submits all or part of this Note and/or accrued and unpaid interest thereon for conversion from time to time, Borrower shall pay any documentary, stamp or similar issue or transfer tax due on the issue of the shares of Common Stock upon conversion.

(e) Except as provided in Section 8.3, no adjustment shall be made for dividends on any shares of Common Stock issued upon the conversion of this Note and/or accrued and unpaid interest thereon as provided in this Section 8.

(f) Lender shall be treated as a stockholder of record as of the close of business on the relevant Conversion Date. Upon a conversion of principal of this Note, Lender shall no longer be deemed to be the holder of this Note with respect to that principal amount of this Note surrendered for conversion.

(g) Borrower shall not issue any fractional share of Common Stock upon conversion of the principal of this Note, and/or any accrued and unpaid interest thereon, and shall instead round any fractional share that is greater than 0.5 up to one whole share of Common Stock and round any fractional share that is 0.5 and below down to zero.

(h) Upon the conversion of principal of this Note, Borrower shall make a notation on Exhibit A of this Note as to the reduction in the principal amount represented thereby.

8.3. Adjustment of Conversion Rate. The Conversion Rate shall be adjusted from time to time by Borrower as follows:

(a) If Borrower issues shares of Common Stock as a dividend or distribution on shares of Common Stock, or if Borrower effects a share split or a share combination (i.e., a reverse stock split), the Conversion Rate will be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS'}{OS_0}$$

where,

CR ₀	=	the Conversion Rate in effect immediately prior to the close of business on the Record 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'	=	the Conversion Rate in effect immediately after the close of business on such Record Date or immediately after the open of business on such Effective Date, as applicable;
OS ₀	=	the number of shares of Common Stock outstanding immediately prior to the close of business on such Record Date or immediately prior to the open of business on such Effective Date, as applicable; and
OS'	=	the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 8.3(a) shall become effective immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the Effective Date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 8.3(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If Borrower issues to all or substantially all holders of the Common Stock any rights, options or warrants (other than pursuant to a stockholder rights plan) entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of the Common Stock at a price per share that is less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR ₀	=	the Conversion Rate in effect immediately prior to the close of business on the Record Date for such issuance;
CR'	=	the Conversion Rate in effect immediately after the close of business on such Record Date;
OS ₀	=	the number of shares of Common Stock outstanding immediately prior to the close of business on such Record 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 aggregate price payable to exercise such rights, options or warrants, divided by the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any increase made under this Section 8.3(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the close of business on the Record Date for such issuance. To the extent that such rights, options or warrants are not exercised prior to their expiration or shares of Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock

actually delivered. If such rights, options or warrants are not so issued or if no such rights, options or warrants are exercised prior to the expiration, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such Record Date for such issuance had not occurred.

For purposes of this Section 8.3(b), in determining whether any rights, options or warrants entitle Lender to subscribe for or purchase shares of Common Stock at less than such average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement for such issuance, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by Borrower for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by Borrower in good faith.

(c) If Borrower distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of Borrower or rights, options or warrants to acquire its Capital Stock or other securities, to all or substantially all holders of the Common Stock, excluding (i) dividends, distributions or issuances as to which an adjustment was effected pursuant to Section 8.3(a) or Section 8.3(b), (ii) dividends or distributions paid exclusively in cash as to which the provisions set forth in Section 8.3(d) shall apply, (iii) dividends or distributions that constitute Reference Property following an event pursuant to Section 8.6(f) and (iv) Spin-Offs as to which the provisions set forth below in this Section 8.3(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities, the “*Distributed Property*”), then the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such distribution;
- CR' = the Conversion Rate in effect immediately after the close of business on such Record Date;
- SP₀ = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and
- FMV = the fair market value (as determined by Borrower in good faith) of the Distributed Property with respect to each outstanding share of the Common Stock on the Record Date for such distribution.

Any increase made under the portion of this Section 8.3(c) above shall become effective immediately after the close of business on the Record Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if “FMV” (as defined above) is equal to or greater than “SP₀” (as defined above), in lieu of the foregoing increase, Lender shall receive, in respect of each \$1,000 principal amount and/or accrued and unpaid interest thereof, at the same time and upon the same terms as holders of the Common Stock receive the Distributed Property, the amount and kind of Distributed Property Lender would have received if Lender owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Record Date for the distribution. If the Board of Directors determines the “FMV” (as defined above) of any distribution for purposes of this Section 8.3(c) by reference to the actual or when-issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

With respect to an adjustment pursuant to this Section 8.3(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 any of Borrower’s Subsidiaries or other business units, that are, or, when issued, will be, listed or

admitted for trading on a U.S. national securities exchange (a "*Spin-Off*"), the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the end of the Valuation Period;
- CR' = the Conversion Rate in effect immediately after the end of the Valuation Period;
- FMV₀ = 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 by reference to the definition of Last Reported Sale Price as set forth in Section 8.6 as if references therein to Common Stock were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the "*Valuation Period*"); and
- MP₀ = the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

The increase to the Conversion Rate under the preceding paragraph shall occur at the close of business on the last Trading Day of the Valuation Period; provided that in respect of any conversion of this Note, if the relevant Conversion Date occurs during the Valuation Period, references to "10" in the preceding paragraph shall be deemed to be replaced with such lesser number of Trading Days as have elapsed between the Ex-Dividend Date of such Spin-Off and the Conversion Date in determining the Conversion Rate. If any dividend or distribution that constitutes a Spin-Off is declared but not so paid or made, the Conversion Rate shall be immediately decreased, effective as of the date the Board of Directors determines not to pay or make such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared or announced.

(d) If Borrower makes any cash dividend or distribution to all or substantially all holders of the Common Stock, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution;
- CR' = the Conversion Rate in effect immediately after the close of business on the Record Date for such dividend or distribution;
- SP₀ = the Last Reported Sale Price 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 Borrower distributes to all or substantially all holders of the Common Stock.

Any increase pursuant to this Section 8.3(d) shall become effective immediately after the close of business on the Record Date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been

declared. Notwithstanding the foregoing, if “C” (as defined above) is equal to or greater than “SP0” (as defined above), in lieu of the foregoing increase, Lender shall receive, for each \$1,000 principal amount and/or accrued and unpaid interest of this Note converted (or portion thereof), at the same time and upon the same terms as holders of shares of the Common Stock, the amount of cash that Lender would have received if Lender owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date for such cash dividend or distribution.

(e) If Borrower or any of its subsidiaries make a payment in respect of a tender or exchange offer for the Common Stock (other than odd-lot tender offers), to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer the Conversion Rate shall be increased based on the following formula.

$$CR' = CR_0 \times \frac{AC + (SP' \times OS')}{OS_0 \times SP'}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- CR' = the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- AC = the aggregate value of all cash and any other consideration (as determined by Borrower in good faith) paid or payable for shares of Common Stock purchased in such tender or exchange offer;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);
- OS' = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and
- SP' = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The increase to the Conversion Rate under this Section 8.3(e) shall occur at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; provided that in respect of any conversion of this Note, if the relevant Conversion Date occurs during the 10 Trading Days immediately following, and including, the Trading Day next succeeding the expiration date of any tender or exchange offer, references to “10” or “10th” in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed between the date that such tender or exchange offer expires and the Conversion Date in determining the Conversion Rate.

If Borrower is obligated to purchase Common Stock pursuant to any such tender or exchange offer described in this Section 8.3(e) but is permanently prevented by applicable law from effecting any such purchase or all such purchases are rescinded, the applicable Conversion Rate shall be readjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made or had been made only in respect of the purchases that have been effected.

(f) Except as provided in this Section 8, Borrower shall not adjust the Conversion Rate for the issuance of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or the right to purchase shares of Common Stock or such convertible or exchangeable securities.

(g) In addition to those adjustments required by clauses (a), (b), (c), (d) and (e) of this Section 8.3, and to the extent permitted by applicable law and subject to the applicable rules and/or listing standards of any exchange on which any of Borrower's securities are then listed and The Nasdaq Stock Market, Borrower from time to time may increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in Borrower's best interest. In addition, to the extent permitted by applicable law and subject to the applicable rules and/or listing standards of any exchange on which any of Borrower's securities are then listed and The Nasdaq Stock Market, Borrower may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of the Common Stock or rights to purchase the Common Stock in connection with a dividend or distribution of shares of Common Stock (or rights to acquire shares of Common Stock) or similar event. Whenever the Conversion Rate is increased pursuant to either of the preceding two sentences, Borrower shall deliver to Lender a notice of the increase at least 15 days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(h) Notwithstanding anything to the contrary in this Section 8, the Conversion Rate shall not be adjusted:

(i) upon the issuance of Common Stock at a price below the Conversion Price or otherwise, other than any such issuance described in Section 8.3(a), Section 8.3(b) or Section 8.3(c);

(ii) 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 Borrower's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(iii) upon the issuance of any shares of Common Stock or options or rights to acquire shares of Common Stock pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by Borrower or any of Borrower's subsidiaries;

(iv) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this subsection and outstanding as of the date the Note was first issued;

(v) for a third-party tender offer by any party other than a tender offer by one or more of Borrower's subsidiaries as described in Section 8.3(e);

(vi) upon the repurchase of any shares of Common Stock pursuant to an open market share purchase program or other buy-back transaction, including structured or derivative transactions such as accelerated share repurchase transactions or similar forward derivatives, or other buy-back transaction, that is not a tender or exchange offer of the kind described in Section 8.3(e) above;

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

(viii) for accrued and unpaid interest, if any.

Further, if the application of the foregoing formulas in Section 8.3 would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate will be made (except on account of a reverse stock split).

(i) All calculations and other determinations under this Section 8 shall be made by Borrower and shall be made to the nearest one-ten thousandth (1/10,000th) of a share. No adjustment in the Conversion Rate shall be required unless such adjustment would require an increase or decrease of at least 1% in the Conversion Rate as last adjusted; provided, however, that any adjustments which would be required to be made but for this Section 8.3(i) shall be carried forward and taken into account in any subsequent adjustment and any carry forward amount shall be paid to the holder of this Note upon conversion regardless of the 1% threshold. All calculations under this Section 8 shall be made to the nearest cent or to the nearest one-hundredth of a share.

(j) For purposes of this Section 8.3, the number of shares of Common Stock at any time outstanding shall not include shares of Common Stock held in the treasury of Borrower so long as Borrower does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of Borrower, but shall include shares of Common Stock issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

8.4 Adjustments of Prices. Whenever any provision of this Note requires Borrower to calculate the Last Reported Sale Prices over a span of multiple days, the Board of Directors shall make appropriate adjustments to each to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Record Date, Effective Date or expiration date, as the case may be, of the event occurs, at any time during the period when the Last Reported Sale Prices are to be calculated.

For the avoidance of doubt, the adjustments made pursuant to the foregoing paragraph shall be made, solely to the extent the Board of Directors determines that any such adjustment is necessary, without duplication of any adjustment made pursuant to the provisions set forth under Section 8.3.

8.5 Shares to Be Fully Paid. Borrower shall reserve, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, a sufficient number of shares of Common Stock to provide for the conversion of this Note in full.

8.6 Certain Covenants.

(a) Borrower covenants that all shares of Common Stock issued upon conversion of this Note will be duly authorized, validly issued, fully paid and nonassessable and shall be free from preemptive or similar rights and free of any taxes, liens or adverse claims.

(b) Borrower covenants that, if any shares of Common Stock to be provided for the purpose of conversion of this Note hereunder require registration with or approval of any Governmental Entity under any federal or state law before such shares of Common Stock may be validly issued upon conversion, Borrower will, to the extent then permitted by the rules and interpretations of the U.S. Securities and Exchange Commission or any applicable state laws, secure such registration or approval, as the case may be.

(c) Borrower further covenants that if at any time the Common Stock shall be listed on any national securities exchange or automated quotation system Borrower will list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, any Common Stock issuable upon conversion of this Note.

(d) Whenever the Conversion Rate or conversion privilege is required to be adjusted pursuant to the provisions of this Note, the Company shall promptly mail to the holder a notice of the adjustment and a certificate signed by an officer of the Company ("**Officer's Certificate**") briefly stating the facts requiring the adjustment, the adjusted Conversion Rate and the manner of computing it. Failure to mail such notice or any defect therein shall not affect the validity of any such adjustment. Unless and until the holder of this Note shall receive an Officer's Certificate setting forth an adjustment of the Conversion Rate, such holder may assume without inquiry that the Conversion Rate has not been adjusted and that the last Conversion Rate of which it has knowledge remains in effect.

(e) If any of the following events occur:

(i) any recapitalization, reclassification or change of the outstanding shares of Common Stock (other than a change resulting from a subdivision or combination),

(2) any consolidation, merger, or combination involving the Company with another corporation,

(3) any sale, conveyance or lease to any other corporation of all or substantially all of the property and assets of the Company or

(4) any statutory share exchange,

in each case as a result of which holders of Common Stock shall be entitled to receive stock, other securities or other property or assets (including cash or any combination thereof) (the "**Reference Property**") with respect to or in exchange for such Common Stock, the holder of this Note will be entitled thereafter to convert the Note into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) which they would have owned or been entitled to receive upon such transaction had such notes been converted into Common Stock immediately prior to such transaction. In the event holders of Common Stock have the opportunity to elect the form of consideration to be received in such transaction, the reference property will be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such election. The Company shall notify the holder of this Note of the weighted average as soon as practicable after such determination is made. None of the foregoing provisions shall affect the right of the holder of this Note to convert this Note into shares of Common Stock prior to the effective date of such transaction. The above provisions of this Section 8.6(f) shall similarly apply to successive recapitalizations, reclassifications, mergers, consolidations, statutory share exchanges, combinations, sales and conveyances. If this Section 8.6(f) applies to any event or occurrence, Section 8.3 hereof shall not apply. The Company shall not become a party to any such transaction unless its terms are consistent with the foregoing. None of the foregoing provisions shall affect the right of the holder of this Note to convert this Note as set forth in Section 8 prior to the effective time of such transaction.

8.7 Conversion Limitation. Anything to the contrary notwithstanding, Borrower shall not effect the conversion of this Note and Lender shall not have the right to convert this Note, to the extent that after giving effect to such conversion, Lender (together with the Lender's Affiliates) would beneficially own in excess of 9.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by Lender and its Affiliates shall include the number of shares of Common Stock issuable upon conversion of this Note with respect to which the determination of such sentence is being made (i.e., the particular conversion requested by Lender at such time), but shall exclude shares of Common Stock which would be issuable upon (i) exercise of the remaining, unconverted portion of this Note beneficially owned by Lender and its Affiliates and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company beneficially owned by Lender and its Affiliates (including, without limitation, any other convertible notes or convertible preferred stock or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein. Except as set forth in the preceding sentence, for purposes of this paragraph, beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended. For purposes of this Note, in determining the number of outstanding shares of Common Stock, Lender may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Form 10-Q or Form 10-K, as the case may be, filed with the U.S. Securities and Exchange Commission on the date thereof, (y) a more recent public announcement by the Company or (z) any other notice by the Company or its transfer agent setting forth the number of shares of Common Stock outstanding. By written notice to the Company, Lender may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 19.99% specified in such notice; provided that any such increase will not be effective until the sixty-fifth (65th) day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this paragraph to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation and comply with any rules of the Nasdaq Stock Market.

8.8 Definitions. For purposes of this Note, the following terms shall have the following meanings:

"**Affiliate**" means any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act. As used in this definition of "Affiliate," the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities or partnership or other ownership interest, by contract, or otherwise.

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

“**Business Day**” means, with respect to this Note, 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, with respect to Borrower, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by Borrower, but, for the avoidance of doubt, excluding any debt securities convertible into or exchangeable for any securities otherwise constituting Capital Stock pursuant to this definition.

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

“**Common Stock**” means the common stock of Borrower, par value \$0.01 per share.

“**Defaulted Amounts**” means any amounts on this Note that are payable but are not punctually paid or duly provided for.

“**Effective Date**” means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

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

“**Ex-Dividend Date**” means the first date on which 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, from Borrower or, if applicable, from the seller of Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

“**Last Reported Sale Price**” of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the 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 the relevant date, the “**Last Reported Sale Price**” shall be the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted, the “**Last Reported Sale Price**” shall be the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by Borrower for this purpose.

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

“**Person**” or “**person**” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any syndicate or group that would be deemed to be a “**person**” under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended, or any other entity.

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

“**Reference Property**” has the meaning set forth in Section 8.6(f).

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

“*Spin-Off*” has the meaning set forth in Section 8.3(c).

“*Trading Day*” means a day on which (i) trading in the Common Stock (or other security for which a closing sale price must be determined) generally occurs on The Nasdaq Stock Market or, if the Common Stock (or such other security) is not then listed on The Nasdaq Stock Market, 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 on which the Common Stock (or such other security) is then traded and (ii) a Last Reported Sale Price for the Common Stock (or such other security) is available on such securities exchange or market; *provided* that if the Common Stock (or such other security) is not so listed or traded, “*Trading Day*” means a Business Day.

9. Default. Each of the following events shall be an “*Event of Default*” hereunder:

(a) Borrower fails to pay timely any of the principal amount due under this Note or any accrued interest or other amounts due under this Note on the date the same becomes due and payable or within five (5) business days thereafter;

(b) Borrower files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law or any other law for the relief of, or relating to, debtors, now or hereafter in effect, or makes any assignment for the benefit of creditors or takes any corporate action in furtherance of any of the foregoing;

(c) An involuntary petition is filed against Borrower (unless such petition is dismissed or discharged within sixty (60) days) under any bankruptcy statute now or hereafter in effect, or a custodian, receiver, trustee, assignee for the benefit of creditors (or other similar official) is appointed to take possession, custody or control of any property of Borrower;

(d) Any representation or warranty made herein or in any other document delivered in connection herewith shall be incorrect or misleading in any material respect when made or deemed made (except where any such representation or warranty by the terms thereof is subject to a materiality standard, in which case such representation or warranty shall be incorrect or misleading in any respect); or

(e) Fails to deliver when due all shares of Common Stock deliverable upon conversion of all or any portion of this Note and/or accrued and unpaid interest thereon pursuant to Section 8, which failure continues for 10 days.

Upon the occurrence of an Event of Default hereunder, all unpaid principal, accrued interest and other amounts owing hereunder shall, at the option of Lender, and, in the case of an Event of Default pursuant to (b) or (c) above, automatically, be immediately due, payable and collectible by Lender pursuant to applicable law, the commitment of the Lender to lend shall, at the option of the Lender, and in the case of an Event of Default pursuant to (b) or (c) above, automatically, terminate, and the interest rate applicable to outstanding Advances upon an Event of Default shall increase to LIBOR calculated on the date of the initial Advance or the date of the Event of Default (whichever is greater) plus 5% per annum for the period after said Event of Default until payment, or the maximum rate permissible by law as defined above, whichever is less.

10. Waiver. Borrower waives presentment and demand for payment, notice of dishonor, protest and notice of protest of this Note, and shall pay all costs of collection when incurred, including, without limitation, reasonable attorneys’ fees, costs and other expenses.

The right to plead any and all statutes of limitations as a defense to any demands hereunder is hereby waived to the full extent permitted by law.

11. Governing Law. This Note shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, excluding conflict of laws principles that would cause the application of laws of any other jurisdiction. Borrower consents to *in personam* jurisdiction of the courts in the State of New York sitting in New York County and of the United States District Court of the Southern District of New York for any legal action or proceeding with respect to this Note. Borrower, by execution and delivery of this Note, hereby irrevocably accepts in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts.

12. Successors and Assigns. This Note shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns; provided that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender. Lender may assign to one or more other persons all or a portion of its rights (but not its obligations) under this Note with respect to all or a portion of the Advances made by it.

13. Integration. This Note reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement or instrument, oral or written, before or after the date hereof.

14. Amendments, Modification, Etc. No amendment, modification or waiver of any provision of this Note, and no consent to any departure by Lender or Borrower and their assigns therefrom, shall in any event be effective unless the same shall be in writing and signed by the Lender and Borrower, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

15. No Waiver. No failure on the part of the Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Note preclude any other or further exercise thereof or the exercise of any other right. The rights of the Lender under this Note against Borrower are not conditional or contingent on any attempt by the Lender to exercise any of its rights under this Note against Borrower or any other person.

16. Expenses. Borrower agrees to reimburse, periodically and upon request, and at the date of effectiveness of this Note or upon termination of this Note, (i) the Lender's reasonable expenses, including the reasonable fees and disbursements of the Lender's attorneys, arising in connection with the preparation, negotiation, execution, delivery, amendment and administration of this Note and related transactions and (ii) the Lender's expenses, including the fees and disbursements of the Lender's attorneys, in connection with the enforcement of this Note or the protection of the Lender's rights under this Note. In addition, Borrower agrees to reimburse the Lender for all reasonable expenses, including the reasonable fees and disbursements of the Lender's attorneys, incurred in connection with the licensing of the Lender as a finance lender under the California Finance Lenders Law.

17. Indemnity. Borrower shall indemnify, defend and hold harmless the Lender and its agents and attorneys (collectively, the "**Indemnitees**") from and against (i) any and all transfer taxes, documentary taxes, assessments or charges made by any Governmental Entity by reason of the execution and delivery of this Note or the making of the Advances, and (ii) any and all liabilities, losses, damages, penalties, judgments, claims, costs and expenses of any kind or nature whatsoever (including reasonable attorneys' fees, and disbursements in connection with any actual or threatened investigative, administrative or judicial proceeding, whether or not such Indemnitee shall be designated a party thereto) that may be imposed on, incurred by or asserted against such Indemnitee, in any manner relating to or arising out of this Note, the Advances or the use or intended use of the proceeds of the Advances; provided that no Indemnitee shall have the right to be indemnified or held harmless hereunder for its own gross negligence or willful misconduct, as determined by a final judgment of a court of competent jurisdiction.

18. Seniority. Amounts due under this Note shall rank *pari passu* with all of Borrower's other senior unsecured obligations.

[Signature Pages Follow]

BORROWER:

MANKIND CORPORATION

By: /s/ Steven B. Binder

Name: Steven B. Binder

Title: Chief Financial Officer

LENDER:

THE MANN GROUP LLC

By: /s/ Anoosheh Bostani

Name: Anoosheh Bostani

Title: CFO

Exhibit A**PRINCIPAL BORROWING SCHEDULE**

<u>Date</u>	<u>Borrowing</u>	<u>Repayment</u>	<u>Principal Balance</u>
1/31/2009	30,000,000	—	30,000,000
2/28/2009	20,000,000	—	50,000,000
3/31/2009	40,000,000	—	90,000,000
4/30/2009	15,000,000	—	105,000,000
5/31/2009	15,000,000	—	120,000,000
6/30/2009	15,000,000	—	135,000,000
7/31/2009	15,000,000	—	150,000,000
12/31/2009	15,000,000	—	165,000,000
1/31/2010	10,000,000	—	175,000,000
2/28/2010	15,000,000	—	190,000,000
3/31/2010	15,000,000	—	205,000,000
4/30/2010	15,000,000	—	220,000,000
5/31/2010	12,000,000	—	232,000,000
6/30/2010	10,000,000	—	242,000,000
7/31/2010	10,000,000	—	252,000,000
10/30/2010	—	(5,005,000)	246,995,000
12/31/2010	—	(11,676,000)	235,319,000
1/31/2011	—	(11,116,000)	224,203,000
6/30/2011	18,000,000	—	242,203,000
7/31/2011	15,000,000	—	257,203,000
8/31/2011	10,000,000	—	267,203,000
9/30/2011	10,000,000	—	277,203,000
1/31/2012	5,250,000	—	282,453,000
2/29/2012	1,000,000	—	283,453,000
6/30/2012	11,876,274	(77,187,500)	218,141,774
9/30/2012	5,000,000	—	223,141,774
10/31/2012	1,500,000	—	224,641,774
12/20/2012	2,342,816	(107,350,000)	119,634,590
10/31/2013	7,886,316	(78,000,000)	49,520,906
6/30/2017	30,144,594	—	79,665,500
3/11/2018	—	(8,160,000)	71,505,500

Exhibit B

[FORM OF NOTICE OF CONVERSION]

To: MannKind Corporation
30930 Russell Ranch Road
Suite 301
Westlake Village, CA 91362
Attn: [_____]

The Mann Group LLC hereby exercises the option to convert this Note, or the portion hereof below designated, into shares of Common Stock in accordance with the terms of this Note, and directs that any shares of Common Stock issuable and deliverable upon such conversion and any portion of this Note representing any unconverted principal amount hereof, be issued and delivered to The Mann Group LLC. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in this Note.

Dated: _____

Principal amount to be converted: \$ _____
Accrued and unpaid interest to be converted: \$ _____

By: THE MANN GROUP LLC

By: _____
Name:
Title:

EXCHANGE AGREEMENT

This **EXCHANGE AGREEMENT** (this “**Agreement**”) dated as of March 12, 2018, is by and among MannKind Corporation, a Delaware corporation (the “**Borrower**”), MannKind LLC, a Delaware limited liability company (the “**Guarantor**,” and together with the Borrower collectively, the “**Obligors**”), Deerfield Private Design Fund II, L.P. (“**DPDF**”) and Deerfield Private Design International II, L.P. (“**DPDI**” and, together with DPDF, the “**Purchasers**”). Capitalized terms used herein which are defined in the Facility Agreement (as defined below), unless otherwise defined herein, shall have the meanings ascribed to them in the Facility Agreement.

RECITALS:

A. The Borrower and the Purchasers have entered into that certain Facility Agreement, dated as of July 1, 2013, as amended by the First Amendment to Facility Agreement and Registration Rights Agreement, dated as of February 28, 2014, the Second Amendment to Facility Agreement, dated as of August 11, 2014, the Exchange and Third Amendment to Facility Agreement, dated as of June 29, 2017, the Fourth Amendment to Facility Agreement (the “**Fourth Amendment**”), dated as of October 23, 2017, the Fifth Amendment to Facility Agreement (the “**Fifth Amendment**”), dated as of January 15, 2018, and the Exchange and Sixth Amendment to Facility Agreement (the “**Sixth Amendment**”), dated as of January 18, 2018 (as the same may be further amended, modified, restated or otherwise supplemented from time to time, the “**Facility Agreement**”).

B. The Facility Agreement provides for the issuance of Notes in 4 Tranches of \$40,000,000 per Tranche. Prior to the date hereof, the Purchasers have purchased the Tranche 1 Notes, the Tranche 2 Notes, the Tranche 3 Notes and the Tranche 4 Notes in the aggregate principal amount of \$40,000,000 per Tranche.

C. Prior to the date hereof, (i) the Purchasers have converted \$20,000,000 in principal amount of the Tranche 1 Notes, \$6,842,749.50 in principal amount of the Tranche 4 Notes and all of the Tranche 2 Notes and the Tranche 3 Notes into Common Stock, (ii) the Tranche 1 Notes have been amended and restated (and are hereinafter referred to as the “**Amended and Restated Notes**”), and (iii) the Borrower has repaid \$10,000,000 in principal amount of the Amended and Restated Notes and (through the exchange of principal for shares of Common Stock) \$8,157,250.50 in principal amount of the Tranche 4 Notes, leaving \$10,000,000 in principal amount of the Amended and Restated Notes and \$25,000,000 in principal amount of the Tranche 4 Notes outstanding.

D. The Facility Agreement also provides for the issuance of Tranche B Notes. An aggregate of \$20,000,000 in principal amount of Tranche B Notes have been issued to the Purchasers, and the Borrower has repaid \$5,000,000 in principal amount of the Tranche B Notes, leaving \$15,000,000 in principal amount of the Tranche B Notes outstanding.

E. Pursuant to this Agreement (and subject to the terms and conditions hereof), the Borrower shall repay \$5,000,000 in principal amount of the Tranche B Notes through the exchange of such principal amount for shares of Common Stock.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I.
EXCHANGE

Section 1.01. Exchange. Subject to the terms and conditions hereof, each Purchaser hereby agrees to exchange a portion of the principal amount of such Purchaser's Tranche B Notes for the issuance by the Borrower to such Purchaser of the shares of Common Stock (the "**Exchange**"), as follows:

(a) Issuance of Shares. Pursuant to the Exchange, which shall be deemed effective and consummated on the date hereof (immediately following the execution and delivery of this Agreement of all parties hereto), (i) the Borrower shall issue 856,618 shares of Common Stock (the "**DPDF Exchange Shares**") to DPDF and 981,618 shares of Common Stock (the "**DPDI Exchange Shares**" and, together with the DPDI Exchange Shares, collectively, the "**Exchange Shares**") to DPDI, and, subject thereto and in exchange therefor, (ii) (A) the principal amount of DPDF's Tranche B Note shall be deemed repaid by \$2,330,000 and the principal amount of DPDI's Tranche B Note shall be deemed repaid by \$2,670,000, each such deemed repayment to be applied against, and reduce, the principal amount of each such Purchaser's Tranche B Note, all with respect to the Tranche B principal payment due May 6, 2018, and shall be reflected by the Borrower in the Register. The Borrower represents, warrants, covenants and agrees that, in reliance on the Purchasers' representations in Section 3.01(e), the Exchange Shares will be freely transferable by the Purchasers, without restriction or limitation (including any volume limitation) under federal or state securities laws, pursuant to Rule 144 under the Securities Act, and will not contain or be subject to any legend or stop transfer instructions restricting the sale or transferability thereof.

(b) Delivery of Exchange Shares. No later than two (2) Business Days after the date hereof, the Borrower shall cause the transfer agent for the Common Stock to credit the aggregate number of Exchange Shares to which each Purchaser is entitled pursuant to the Exchange to such Purchaser's or its designee's balance account with The Depository Trust Company through its Deposit/Withdrawal At Custodian system. For the avoidance of doubt, as of effectiveness of the Exchange, each Purchaser shall be deemed for all corporate purposes to have become the legal and record holder of its Exchange Shares without any further action by any party. In the event that any Exchange Shares are not delivered on a timely basis in accordance herewith, the Purchasers shall have the right to rescind and terminate any or all of this Agreement and the transactions contemplated hereby, to exercise any of the remedies available under the Notes in the event of any failure to timely deliver the Exchange Shares, and/or to exercise any and all other rights and remedies available at law or in equity.

ARTICLE II.
REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations and Warranties of the Purchasers. Each Purchaser hereby represents and warrants to the Borrower as of the date of this Agreement as follows:

(a) Organization and Good Standing. Such Purchaser is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted.

(b) Authority. Such Purchaser has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement by such Purchaser and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary action on the part of such Purchaser and no further action is required in connection herewith or therewith.

(c) Valid and Binding Agreement. This Agreement has been duly executed and delivered by such Purchaser and constitutes the valid and binding obligations of such Purchaser, enforceable against such Purchaser in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

(d) Non-Contravention. The execution and delivery of this Agreement by such Purchaser and the performance by such Purchaser of its obligations hereunder does not and will not (i) violate any provision of such Purchaser's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which such Purchaser is subject, or by which any of such Purchaser's Notes is bound or affected.

(e) Exemption. Such Purchaser has held such Purchaser's Notes of record and beneficially for a period of at least one (1) year for purposes of Rule 144 under the Securities Act and is not, and during the three-month period prior to the date hereof has not been, an Affiliate of the Borrower. Such Purchaser understands that the Exchange Shares are being offered, sold, issued and delivered to it in reliance upon specific exemptions from registration or qualification under federal and applicable state securities laws.

(f) Ownership of the Notes. Such Purchaser is the record and beneficial owner of, and has good and valid title to, such Purchaser's Notes, free and clear of all Liens, and has full power to dispose thereof and to exercise all rights thereunder (other than as restricted by the Facility Agreement), without the consent or approval of, or any other action on the part of, any other Person. Other than the transactions contemplated by this Agreement, there is no

outstanding contract, vote, plan, pending proposal or other right of any Person to acquire such Purchaser's Notes or any portion thereof.

(g) Stock Ownership. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not cause such Purchaser to own, or be treated as owning under the attribution rules of Section 871(h)(3)(C) of the Code, 10% or more of the total combined voting power of the outstanding common stock of the Borrower for purposes of Section 871(h)(3) of the Code.

Section 2.02. Representations and Warranties of the Obligor. Each Obligor hereby represents and warrants to the Purchasers as of the date of this Agreement as follows:

(a) Organization and Good Standing. Each Obligor is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted.

(b) Authority. Each Obligor has the requisite corporate or limited liability company power and authority, as applicable, to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder. The execution and delivery of this Agreement by each Obligor and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary action on the part of each Obligor, and no further action of any Obligor, its board of directors, managers, members or stockholders, as applicable, is required in connection herewith or therewith.

(c) Consents. No Obligor is required to obtain any consent from, authorization or order of, or make any filing or registration with any Governmental Authority or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by this Agreement or the Transaction Documents, in each case, in accordance with the terms hereof or thereof.

(d) Valid and Binding Agreement. This Agreement has been duly executed and delivered by each Obligor, and this Agreement constitutes the valid and binding obligations of each Obligor, enforceable against each Obligor in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

(e) Non-Contravention. The execution and delivery of this Agreement by each Obligor and the performance by each Obligor of its obligations hereunder do not and will not (i) violate any provision of any Obligor's organizational documents, (ii) conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which any Obligor is subject, or by which any property or asset of any Obligor is bound or affected, (iii) require any permit, authorization, consent, approval, exemption or other action by, notice to or filing with, any court or other federal, state, local or other governmental authority or other Person, (iv) violate, conflict with,

result in a material breach of, or constitute (with or without notice or lapse of time or both) a material default under, or an event which would give rise to any right of notice, modification, acceleration, payment, cancellation or termination under, or in any manner release any party thereto from any obligation under, any permit or contract to which any Obligor is a party or by which any of its properties or assets are bound or (v) result in the creation or imposition of any Lien on any part of the properties or assets of any Obligor. No Event of Default exists.

(f) Issuance of Exchange Shares. The Exchange Shares are duly authorized and, when issued in accordance with this Agreement, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Borrower, and will not be issued in violation of, or subject to, any preemptive or similar rights of any Person.

(g) SEC Reports; NASDAQ. The Borrower has filed all reports, schedules, forms, statements and other documents required to be filed by it under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the “**SEC Reports**”). None of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Borrower is not in violation of the requirements of the NASDAQ Stock Market (“**NASDAQ**”) and has no knowledge of any facts or circumstances which could reasonably lead to delisting or suspension of trading of the Common Stock in the foreseeable future.

(h) Certain Fees. No brokerage or finder’s fees or commissions are or will be payable by the Borrower or any of its affiliates or representatives to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by this Agreement. The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 3.2(h) that may be due in connection with the transactions contemplated hereby.

(i) Exemption from Registration. No registration under the Securities Act or any state securities laws is required for the offer and issuance of the Exchange Shares by the Borrower to the Purchasers as contemplated hereby. The transactions contemplated hereby, including the issuance and sale of the Exchange Shares hereunder, do not contravene, or require stockholder approval pursuant to, the rules and regulations of NASDAQ.

(j) No Integrated Offering. Neither the Borrower, nor any of its affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made, or will make, any offers or sales of any security or solicited, or will solicit, any offers to buy any security, under circumstances that would cause this offering and issuance of the Exchange Shares or the offering and issuance of any of the Conversion Shares (as defined in the Notes) to be integrated with prior offerings by the Borrower (i) for purposes of the Securities Act and which would require the registration of any such securities under the Securities Act, or (ii) for purposes of any applicable stockholder approval provisions of NASDAQ and which would require stockholder approval for the issuance of any Exchange Shares or Conversion Shares.

ARTICLE III.
COVENANTS

Section 3.01. Blue Sky Filings. The Borrower shall take such action as is necessary in order to obtain an exemption for, or to qualify the Exchange Shares for issuance and sale to the Purchasers under applicable securities or “Blue Sky” laws of the states of the United States, and shall provide evidence of such actions promptly upon request of any of the Purchasers.

Section 3.02. Listing. To the extent required under the rules of NASDAQ, the Borrower has submitted an application for the listing of the Exchange Shares on NASDAQ and will use its commercially reasonable efforts to secure such listing. For so long as any Notes remain outstanding, the Borrower shall use commercially reasonable efforts to maintain the Common Stock’s listing on NASDAQ. The Borrower shall not take any action which could be reasonably expected to result in the delisting or suspension of trading the Common Stock on NASDAQ. The Borrower shall pay all fees and expenses in connection with satisfying its obligations under this Section 3.02.

Section 3.03. Disclosure; Confidentiality. On or before 8:00 a.m., New York time, on the date of this Agreement, the Borrower shall file a Current Report on Form 8-K describing all the material terms of the transactions contemplated by this Agreement, attaching this Agreement and disclosing any other presently material non-public information (if any) provided or made available to any Purchaser (or any Purchaser’s agents or representatives) on or prior to the date hereof (the “**8-K Filing**”). From and after the filing of the 8-K Filing, the Borrower shall have disclosed all material, non-public information (if any) provided or made available to any Purchaser (or any Purchaser’s agents or representatives) by Borrower or any of its respective officers, directors, employees, Affiliates or agents in connection with the transactions contemplated by this Agreement or otherwise on or prior to the date hereof. Notwithstanding anything contained in this Agreement to the contrary and without implication that the contrary would otherwise be true, after giving effect to the 8-K Filing, the Borrower expressly acknowledges and agrees that no Purchaser shall have (unless expressly agreed to by a particular Purchaser after the date hereof in a written definitive and binding agreement executed by the Borrower and such particular Purchaser or customary oral (confirmed by e-mail) “wall-cross” agreement (it being understood and agreed that no Purchaser may bind any other Purchaser with respect thereto)), any duty of trust or confidence with respect to, or a duty not to trade on the basis of, any information regarding the Borrower.

Notwithstanding any affirmative disclosure obligations of the Borrower or the Guarantor pursuant to the terms of this Agreement or any of the other Transaction Documents or anything else to the contrary contained herein or therein, (a), subject to clause (b) below, each of the Borrower and the Guarantor shall not, and shall cause each of its officers, directors, employees, Affiliates and agents to not, provide any Purchaser with any material non-public information with respect to the Borrower from and after the filing of the Form 8-K Filing with the SEC without the express prior written consent of such Purchaser, and (b) in the event that the Borrower or the Guarantor believes that a notice or communication to any Purchaser contains material, nonpublic information with respect to the Borrower, the Borrower shall so indicate to such Purchaser prior to the delivery of such notice or communication, and such indication shall provide such Purchaser the means to refuse to receive such notice or communication (in which

case any obligation of the Borrower or the Guarantor to provide such notice to such Purchaser under the Facility Agreement or this Agreement shall be deemed waived), and in the absence of any such indication, such Purchaser shall be allowed to presume that all matters relating to such notice or communication do not constitute material non-public information with respect to the Borrower and shall have no duty of trust or confidence with respect thereto.

Section 3.04. Taxes. The Borrower shall be responsible for paying all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment or issuance made under, from the execution, delivery, performance or enforcement of, or otherwise with respect to, this Agreement.

Section 3.05. Fees and Expenses. The Borrower shall promptly reimburse the Purchasers for all of their reasonable out-of-pocket, costs, fees and expenses, including legal fees and expenses, incurred in connection with the negotiation and drafting of this Agreement and the consummation of the transactions contemplated hereby.

ARTICLE IV.
ACKNOWLEDGMENT OF THE BORROWER AND THE GUARANTOR

Section 4.01. The Borrower and the Guarantor irrevocably and unconditionally acknowledge, affirm and covenant to each Purchaser that:

(a) such Purchaser is not in default under any of the Transaction Documents and has not otherwise breached any obligations to the Borrower or the Guarantor; and

(b) there are no offsets, counterclaims or defenses to the Obligations, including the liabilities and obligations of the Borrower under the Notes and other Transaction Documents (as amended hereby), or to the rights, remedies or powers of such Purchaser in respect of any of the Obligations or any of the Transaction Documents, and the Borrower and the Guarantor agree not to interpose (and each does hereby waive and release) any such defense, set-off or counterclaim in any action brought by such Purchaser with respect thereto.

ARTICLE V.
CONDITIONS PRECEDENT.

Section 5.01. Conditions Precedent. The effectiveness of this Agreement is subject to the following conditions precedent:

(a) Delivery of Documents. The Borrower and the Purchasers shall each have executed and delivered this Agreement.

(b) Performance: No Default. The representations and warranties of the Borrower contained herein shall be true and correct, and the Borrower shall have performed and complied with all agreements and conditions contained in the Facility Agreement and the other Transaction Documents to be performed by or complied with by the Borrower prior to the date hereof in all material respects.

(c) Reimbursement of Expenses. The Borrower shall have reimbursed the Purchasers for all reasonable out-of-pocket costs, fees and expenses, including legal fees and expenses, in connection with the negotiation, execution and closing of this Agreement and the transactions contemplated hereby.

ARTICLE VI.
MISCELLANEOUS

Section 6.01. Entire Agreement. This Agreement and the Transaction Documents (as may be deemed amended hereby) constitute the entire agreement, and supersede all other prior and contemporaneous agreements and understandings, both oral and written, among the Purchasers, the Borrower and the Guarantor with respect to the subject matter hereof.

Section 6.02. Amendments and Waivers. No provision of this Agreement may be waived or amended except in a written instrument signed by the parties hereto. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

Section 6.03. Successors and Assigns. All of the covenants and provisions of this Agreement by or for the benefit of the Purchasers or the Obligors shall bind and inure to the benefit of their respective successors and permitted assigns. No party hereunder may assign its rights or obligations hereunder without the prior written consent of the other parties hereto, except as otherwise provided in the Transaction Documents (as amended hereby).

Section 6.04. Notices. Any notice to be given by any party to this Agreement shall be given in writing and be effected as provided in Section 6.1 of the Facility Agreement.

Section 6.05. Applicable Law; Consent to Jurisdiction.

(a) As part of the consideration and mutual promises being exchanged and given in connection with this Agreement, the parties hereto agree that all claims, controversies and disputes of any kind or nature arising under or relating in any way to the enforcement or interpretation of this Agreement or to the parties' dealings, rights or obligations in connection herewith, including disputes relating to the negotiations for, inducements to enter into, or execution of, this Agreement, and disputes concerning the interpretation, enforceability, performance, breach, termination or validity of all or any portion of this Agreement shall be governed by the laws of the State of New York without regard to its choice or conflicts of laws principles.

(b) The parties hereto agree that all claims, controversies and disputes of any kind or nature relating in any way to the enforcement or interpretation of this Agreement or to the parties' dealings, rights or obligations in connection herewith, shall be brought exclusively in the state and federal courts sitting in The City of New York, borough of Manhattan. With respect to any such claims, controversies or disputes, each of the Parties hereby irrevocably:

(i) submits itself and its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action in any court or tribunal other than the aforesaid courts;

(ii) waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding (A) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve process in accordance with this Section 6.05, (B) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (C) to the fullest extent permitted by the applicable law, any claim that (1) the suit, action or proceeding in such court is brought in an inconvenient forum, (2) the venue of such suit, action or proceeding is improper or (3) this Agreement, or the subject matter hereof, may not be enforced in or by such courts; and

(iii) WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (II) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND (IV) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 6.05.

Notwithstanding the foregoing in this Section 6.05, a party may commence any action or proceeding in a court other than the above-named courts solely for the purpose of enforcing an order or judgment issued by one of the above-named courts.

Section 6.06. Counterparts; Effectiveness. This Agreement and any amendment hereto may be executed and delivered in any number counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. In the event that any signature to this Agreement or any amendment hereto is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof. No party hereto shall raise the use of a facsimile machine or e-mail delivery of a “.pdf” format data file to deliver a signature to this Agreement or any amendment hereto or the fact that such signature was transmitted or communicated through the use of a facsimile machine or e-mail delivery of a “.pdf” format data file as a defense to the formation or enforceability of a contract, and each party hereto forever waives any such defense.

Section 6.07. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the parties to this Agreement) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 6.08. Specific Performance. The parties to this Agreement agree that irreparable damage would occur and that the parties to this Agreement would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties to this Agreement shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, in each case without the necessity of posting bond or other security or showing actual damages, and this being in addition to any other remedy to which they are entitled at law or in equity.

Section 6.09. Effect of Headings. The section and subsection headings herein are for convenience only and not part of this Agreement and shall not affect the interpretation thereof.

Section 6.10. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

Section 6.11. Amendment of Facility Agreement; Avoidance of Doubt. To the extent any provision of this Agreement shall in any manner effect a modification to the terms of the Facility Agreement, this Agreement shall be deemed to constitute an amendment to the Facility Agreement. The parties hereto hereby agree, for the avoidance of doubt, that, (a) the term "Liabilities" and "Obligations" as used in the Transaction Documents shall include all liabilities and obligations under this Agreement, under the Facility Agreement (as amended hereby), under the Notes and under the other Transaction Documents, (b) the Exchange Shares issued hereunder shall not be applied against, reduce or otherwise affect the Conversion Cap (as defined in the Notes), and (c) any future conversion of Principal under the Notes shall continue to be applied to reduce principal payments under the Notes in accordance with Schedule 1.01(b) of the Sixth Amendment, beginning, with respect to any conversions effected following the Exchange, with the Fourth order of application of conversions thereunder, and each of the parties hereto agrees not to take any contrary positions.

Section 6.12. Reservation of Rights. Neither of the Purchasers has hereby waived (a) any breach, default or Event of Default that may be continuing under any of the Transaction Documents or (b) any of such Purchaser's rights or remedies arising from any such breach,

default or Event of Default or otherwise available under the Transaction Documents or at law or in equity. Each of the Purchasers expressly reserves all such rights and remedies.

Section 6.13. Further Assurances. The Borrower hereby agrees, from time to time, as and when requested by any Purchaser, to execute and deliver or cause to be executed and delivered, all such documents, instruments and agreements, including secretary's certificates, stock powers and irrevocable transfer agent instructions, and to take or cause to be taken such further or other action, as any Purchaser may reasonably deem necessary or desirable in order to carry out the intent and purposes of this Agreement and the Transaction Documents (as amended hereby).

Section 6.14. No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

Section 6.15. Interpretative Matters. Unless otherwise indicated or the context otherwise requires, (i) all references to Sections, Schedules, Appendices or Exhibits are to Sections, Schedules, Appendices or Exhibits contained in or attached to this Agreement, (b) words in the singular or plural include the singular and plural and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter, (c) the words "hereof," "herein" and words of similar effect shall reference this Agreement in its entirety, and (d) the use of the word "including" in this Agreement shall be by way of example rather than limitation.

Section 6.16. Reaffirmation. Each of the Borrower and the Guarantor, as issuer, debtor, grantor, pledgor, mortgagor, guarantor or assignor, or in other any other similar capacity in which such Person grants Liens or security interests in its property or otherwise acts as accommodation party or guarantor, as the case may be, hereby (i) acknowledges and agrees that it has reviewed this Agreement, (ii) ratifies and reaffirms all of its obligations, contingent or otherwise, under each of the Transaction Documents (as may be deemed amended hereby) to which it is a party (after giving effect hereto), and (iii) to the extent such Person granted Liens on or security interests in any of its property pursuant to any such Transaction Document as security for or otherwise guaranteed the Obligations under or with respect to the Transaction Documents, ratifies and reaffirms such guarantee and grant of security interests and Liens and confirms and agrees that such security interests and Liens hereafter secure all of the Obligations (as amended hereby). Each Obligor hereby consents to this Agreement and acknowledges that this Agreement is a Transaction Document and that each of the other Transaction Documents (as may be deemed amended hereby) remains in full force and effect and is hereby ratified and reaffirmed.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed as of the date first written above.

THE BORROWER:

MANNKIND CORPORATION

By: /s/ Steven B. Binder

Name: Steven B. Binder

Title: Chief Financial Officer

THE GUARANTOR:

MANNKIND LLC

By: /s/ Steven B. Binder

Name: Steven B. Binder

Title: Chief Financial Officer

[Signature page to Exchange Agreement]

PURCHASERS:

DEERFIELD PRIVATE DESIGN FUND II, L.P.

By: Deerfield Mgmt, L.P., its General Partner
By: J.E. Flynn Capital, LLC, its General Partner

By: /s/ David Clark

Name: David Clark

Title: Authorized Signatory

**DEERFIELD PRIVATE DESIGN INTERNATIONAL II,
L.P.**

By: Deerfield Mgmt, L.P., its General Partner
By: J.E. Flynn Capital, LLC, its General Partner

By: /s/ David Clark

Name: David Clark

Title: Authorized Signatory

[Signature page to Exchange Agreement]