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CELL THERAPEUTICS INC
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September 15, 2008

Filed Pursuant to Rule 433

Issuer Free Writing Prospectus Dated September 15, 2008

Registration Statement No. 333-149982

Cell Therapeutics, Inc.

Free Writing Prospectus

This free writing prospectus relates to securities being issued pursuant to Cell Therapeutics, Inc.'s Registration Statement on Form S-3 (File No. 333-149982). The Registration Statement can be accessed through the following link:

<http://www.sec.gov/Archives/edgar/data/891293/000119312508069698/ds3.htm>. Cell Therapeutics, Inc. provided this form of document, containing deal terms, to prospective investors on the date this free writing prospectus was filed with the Securities and Exchange Commission:

CELL THERAPEUTICS, INC.,

as Company

U.S. BANK NATIONAL ASSOCIATION,

as Trustee

INDENTURE

Dated as of September 15, 2008

10% CONVERTIBLE SENIOR NOTES DUE 2012

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CROSS-REFERENCE TABLE*

| TIA SECTION | | INDENTURE SECTION |
|-------------|-----------------------|---------------------|
| Section | 310(a)(1) | 5.8 |
| | (a)(2) | 5.8 |
| | (a)(3) | N/A** |
| | (a)(4) | N/A** |
| | (a)(5) | 5.8 |
| | (b) | 5.9, 5.10, 5.13 |
| | (c) | N/A** |
| Section | 311(a) | 5.14 |
| | (b) | 5.14 |
| | (c) | N/A** |
| Section | 312(a) | 13.1, 13.2 |
| | (b) | 13.2 |
| | (c) | 13.2 |
| Section | 313(a) | 13.4 |
| | (b)(1) | N/A |
| | (b)(2) | 13.4 |
| | (c) | 1.6, 13.4 |
| | (d) | 13.4 |
| Section | 314(a) | 1.5, 8.5, 8.6, 13.5 |
| | (b) | N/A** |
| | (c)(1) | 1.2 |
| | (c)(2) | 1.2 |
| | (c)(3) | N/A** |
| | (d) | N/A** |
| | (e) | 1.2 |
| | (f) | N/A** |
| Section | 315(a) | 5.1(a) |
| | (b) | 1.6, 5.2 |
| | (c) | 5.1(b) |
| | (d) | 5.1(c) |
| | (e) | 4.14 |
| Section | 316(a)(last sentence) | 1.1 |
| | (a)(1)(A) | 4.12 |
| | (a)(1)(B) | 4.13 |
| | (a)(2) | N/A |
| | (b) | 4.8 |

| TIA SECTION | | INDENTURE SECTION |
|------------------------|-----------|--------------------------|
| | (c) | 1.4(e) |
| Section | 317(a)(1) | 4.3 |
| | (a)(2) | 4.4 |
| | (b) | 3.2 |
| Section | 318(a) | 1.13 |

* This Cross-Reference Table shall not, for any purpose, be deemed a part of this Indenture.

** N/A means Not Applicable

INDENTURE, dated as of September 15, 2008, between Cell Therapeutics, Inc., a corporation duly organized and existing under the laws of the State of Washington, having its principal office at 501 Elliott Avenue West, Suite 400, Seattle, Washington 98119 (herein called the **Company**), and U.S. Bank National Association, as Trustee hereunder (herein called the **Trustee**).

RECITALS OF THE COMPANY

The Company has duly authorized the creation of an issue of its 10% Convertible Senior Notes due 2012 (herein called the **Securities**), of substantially the tenor and amount hereinafter set forth, and to provide therefor the Company has duly authorized the execution and delivery of this Indenture.

All things necessary to make the Securities, when the Securities are executed by the Company and authenticated and delivered hereunder, the valid obligations of the Company and to make this Indenture a valid agreement of the Company, in accordance with their and its terms, have been done. Further, all things necessary to duly authorize the issuance of shares of common stock of the Company issuable upon the conversion of the Securities, and to duly reserve for issuance the number of shares of Common Stock issuable upon such conversion, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS

OF GENERAL APPLICATION

SECTION 1.1 Definitions.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms defined in this Article I have the meanings assigned to them in this Article I and include the plural as well as the singular;
- (b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles in the United States; and
- (c) the words herein, hereof and hereunder and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

Act, when used with respect to any Holder of a Security, has the meaning specified in Section 1.4(a).

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

Agent Members means a member of, or a participant in, the Depository.

Aggregate Current Market Price has the meaning specified in Section 10.4(e).

American Depository Shares means US. Dollar denominated forms of equity ownership held in deposit in a custodian bank and evidenced by physical certificates of ownership (American Depository Receipts) issued by a U.S. bank.

Applicable Procedures means, with respect to any transfer or transaction involving a Global Security or beneficial interest therein, the rules and procedures of the Depository for such Security, to the extent applicable to such transaction and as in effect from time to time.

Authenticating Agent means any Person authorized pursuant to Section 5.12 to act on behalf of the Trustee to authenticate Securities.

Automatic Conversion has the meaning specified in Section 10.13.

Automatic Conversion Date has the meaning specified in Section 10.13.

Automatic Conversion Notice has the meaning specified in Section 10.13.

Board of Directors means either the board of directors of the Company or any duly authorized committee of that board.

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

Business Day, when used with respect to any Place of Payment, Place of Conversion or any other place, as the case may be, means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in such Place of Payment, Place of Conversion or other place, as the case may be, are authorized or obligated by law or executive order to close; *provided, however*, that a day on which banking institutions in New York, New York are authorized or obligated by law or executive order to close shall not be a Business Day for purposes of Section 10.5.

Cash Equivalents means (1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than six months from the date of acquisition, (2) certificates of deposit and eurodollar time deposits with

maturities of six months or less from the date of acquisition, bankers' acceptances with maturities not exceeding six months and overnight bank deposits, in each case with any domestic commercial bank having capital and surplus in excess of \$500 million and a Thompson Bank Watch Rating of B or better, (3) repurchase obligations with a term of not more than seven (7) days for underlying securities of the types described in clause (1) above entered into with any financial institution meeting the qualifications specified in clause (2) above, (4) commercial paper having the highest rating obtainable from Moody's Investors Service, Inc. or Standard & Poor's Ratings Services and in each case maturing within six months after the date of acquisition and (5) money market funds at least ninety-five percent (95%) of the assets of which constitute Cash Equivalents of the kinds described in clauses (1)-(4) of this definition.

Change in Control means the occurrence at any time, after the original issuance of the Securities, of any of the following events:

(1) the acquisition by any Person (including any syndicated group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act) of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of shares of capital stock of the Company entitling such Person to exercise more than thirty three percent (33%) of the total voting power of all shares of capital stock of the Company entitled to vote generally in the elections of directors, other than any such acquisition by the Company, any Subsidiary or any employee benefit plan of the Company; or

(2) any Person shall succeed in having sufficient of its nominees (who are not supported by a majority of the then current Board of Directors of the Company) elected to the Board of Directors of the Company such that such nominees, when added to any existing directors remaining on the Board of Directors of the Company after such election who are Affiliates of or acting in concert with any such Person, shall constitute a majority of the Board of Directors of the Company; or

(3) any consolidation or merger of the Company with or into any other Person, or any merger of another Person with or into the Company (other than (A) a merger (i) that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of the Company's capital stock and (ii) pursuant to which holders of Common Stock immediately prior to such transaction have, directly or indirectly, sixty seven percent (67%) or more of the total voting power of all shares of capital stock or other ownership interests entitled to vote generally in the election of directors of the continuing or surviving Person immediately after such transaction and (B) any merger that is effected solely to change the jurisdiction of incorporation of the Company and results in a reclassification, conversion or exchange of outstanding shares of Common Stock solely into shares of common stock of the Company or another Person); or

(4) any conveyance, transfer, sale, lease or other disposition of all or substantially all of the Company's assets to another Person.

For the purposes of this definition, beneficial owner, has the meaning attributed to it in Rules 13d-3 under the Exchange Act, whether or not applicable.

Closing Price means, with respect to the Common Stock on any day, the closing sale price regular way on such day or, in the case where no such sale takes place on such day, the average of the reported closing bid and asked prices, regular way, in each case on the Nasdaq Global Market or New York Stock Exchange, as applicable, or, if the Common Stock is not listed or admitted to trading on such National Market or Exchange, on the principal national security exchange or quotation system on which such security is quoted or listed or admitted to trading, or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the average of the closing bid and asked prices of the Common Stock on the over-the-counter market on the day in question as reported by the National Quotation Bureau Incorporated, or a similar generally accepted reporting service, or if not so available, in such manner as furnished by any New York Stock Exchange member firm selected from time to time by the Board of Directors for that purpose, or if no bid or asked price is available a price determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution.

Code has the meaning specified in Section 2.1.

Combined Cash and Tender Amount has the meaning specified in Section 10.4(e).

Combined Tender and Cash Amount has the meaning specified in Section 10.4(f).

Commission means the United States Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

Common Stock means the shares of the class designated as common stock of the Company at the date of this Indenture or as such stock may be reconstituted from time to time. Subject to the provisions of Section 10.11, shares issuable on conversion or repurchase of Securities shall include only shares of Common Stock or shares of any class or classes of common stock resulting from any reclassification or reclassifications thereof; *provided, however*, that if at any time there shall be more than one such resulting class, the shares so issuable on conversion of Securities shall include shares of all such classes, and the shares of each such class then so issuable shall be substantially in the proportion that the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

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

Company Notice has the meaning specified in Section 12.2(a).

Company Request or **Company Order** means a written request or order signed in the name of the Company by its Chairman of the Board, its Vice Chairman of the Board, its Chief Executive Officer, its President or a Vice President, and by its principal financial officer, Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

Completion Date has the meaning specified in Section 10.4(f).

Constituent Person has the meaning specified in Section 10.11.

Conversion Agent means any Person authorized by the Company to convert Securities in accordance with Article X. The Company has initially appointed the Trustee as its Conversion Agent.

Conversion Price means the amount equal to U.S. \$1,000 divided by the Conversion Rate.

Conversion Date means the date on which both the Securities and the duly signed and completed notice have been delivered to the Trustee.

Conversion Rate has the meaning specified in Section 10.1.

Conversion Shares has the meaning specified in Section 10.4(m).

Corporate Trust Office means the office of the Trustee at which at any particular time the trust created by this Indenture shall be administered (which at the date of this Indenture is located at 633 West Fifth Street, 24th Floor, Los Angeles, CA 90071, Attn: Corporate Trust Services (Cell Therapeutics, Inc. 10% Convertible Senior Notes due 2012)).

Corporation means a corporation, company, association, joint-stock company or business trust.

Defaulted Interest has the meaning specified in Section 2.8.

Depository means, with respect to any Registered Securities, a clearing agency that is registered as such under the Exchange Act and is designated by the Company to act as Depository for such Registered Securities (or any successor securities clearing agency so registered).

Distribution Date has the meaning specified in Section 10.4(m).

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

DTC means The Depository Trust Company, a New York corporation.

Event of Default has the meaning specified in Section 4.1.

Exchange Act means the United States Securities Exchange Act of 1934 (or any successor statute), as amended from time to time.

Existing Notes means the Existing 2003 Senior Subordinated Notes, the Existing 2005 Senior Notes, the Existing 2006 Senior Notes, the Existing 2007 Senior Notes, the Existing 2008 Senior Notes, the Existing 2008 15% Senior Notes, the Existing 2008 18.33% Senior Notes and the Existing 2008 Series B 18.33% Senior Notes.

Existing 2003 Senior Subordinated Notes means the Company's 4% Convertible Senior Subordinated Notes due July 1, 2010, issued under the Existing 2003 Senior Subordinated Notes Indenture.

Existing 2003 Senior Subordinated Notes Indenture means the Indenture dated as of June 23, 2003, between the Company and the Trustee.

Existing 2005 Senior Notes means the Company's 6.75% Convertible Senior Notes due October 31, 2010, issued under the Existing 2005 Senior Notes Indenture.

Existing 2005 Senior Notes Indenture means the Indenture dated November 4, 2005 by and between the Company and the Trustee.

Existing 2006 Senior Notes means the Company's 7.5% Convertible Senior Notes due 2011, issued under the Existing 2006 Senior Notes Indenture.

Existing 2006 Senior Notes Indenture means the Indenture dated April 27, 2006 by and between the Company and the Trustee.

Existing 2007 Senior Notes means the Company's 5 3/4% Convertible Senior Notes due 2011, issued under the Existing 2007 Senior Notes Indenture.

Existing 2007 Senior Notes Indenture means the Indenture dated December 12, 2007 by and between the Company and the Trustee.

Existing 2008 Senior Notes means the Company's 9% Convertible Senior Notes due 2012, issued under the Existing 2008 Senior Notes Indenture.

Existing 2008 Senior Notes Indenture means the Indenture dated March 3, 2008 by and between the Company and the Trustee.

Existing 2008 15% Senior Notes means the Company's 15% Convertible Senior Notes due 2011, issued under the Existing 2008 15% Senior Notes Indenture.

Existing 2008 15% Senior Notes Indenture means the Indenture dated June 12, 2008 by and between the Company and the Trustee.

Existing 2008 18.33% Senior Notes means the Company's 18.33% Convertible Senior Notes due 2011, issued under the Existing 2008 18.33% Senior Notes Indenture.

Existing 2008 18.33% Senior Notes Indenture means the Indenture dated July 24, 2008 by and between the Company and the Trustee.

Existing 2008 Series B 18.33% Senior Notes means the Company's Series B 18.33% Convertible Senior Notes due 2011, issued under the Existing 2008 Series B 18.33% Senior Notes Indenture.

Existing 2008 Series B 18.33% Senior Notes Indenture means the Indenture dated August 19, 2008 by and between the Company and the Trustee.

GAAP means generally accepted accounting principles.

Global Security means a Registered Security that is registered in the Security Register in the name of a Depository or a nominee thereof.

Holder means the Person in whose name the Security is registered in the Security Register.

Indebtedness means the principal of (and premium, if any) and interest (including all interest accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding) on, and rent payable on or in connection with, and all fees, costs, claims, expenses and other amounts payable in connection with, the following, whether absolute or contingent, secured or unsecured, due or to become due, outstanding on the date of this Indenture or thereafter created, incurred or assumed: (1) all the Company's indebtedness evidenced by a credit or loan agreement, note, bond, debenture, or other similar instrument whether or not the recourse of the lender is to all of the Company's assets or only to a portion, (2) all of the Company's indebtedness, obligations and other liabilities, contingent or otherwise, for borrowed money, including, without limitation, overdrafts, foreign exchange contracts, currency exchange agreements, interest rate protection agreements and any loans or advances from banks, whether or not evidenced by notes or similar instruments, or bonds, debentures, notes or similar instruments, whether or not the recourse of the lender is to all of the Company's assets or only to a portion thereof, (3) all of the Company's obligations as lessee under leases required to be capitalized on the balance sheet of the lessee under GAAP, (4) all of the Company's obligations and other liabilities, contingent or otherwise, under any lease or related document, including a purchase agreement, in connection with the lease of real property or improvements, or any personal property included as part of any such lease, which provides that the Company is contractually obligated to purchase or cause a third party to purchase the leased property and thereby guarantee a residual value of leased property to the lessor and all of the Company's obligations under such lease or related document to purchase or cause a third party to purchase the leased property, whether or not such lease transaction is characterized as an operating lease or capitalized lease in accordance with generally accepted accounting principles, (5) all of the Company's obligations under interest rate and currency swaps, caps, floors, collars, hedge agreements, forward contracts, or similar agreements or arrangements, (6) all of the Company's obligations with respect to letters of credit, bank guarantees, bankers' acceptances and similar facilities, including related reimbursement obligations, (7) all of the Company's obligations issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable and accrued liabilities arising in the ordinary course of business), (8) all of the Company's obligations of the type referred to in clauses (1) through (7) above of another Person and all dividends of another Person, the payment of which, in either case, the Company has assumed or guaranteed or for which the Company is responsible or liable, directly or indirectly, jointly or severally, as obligor, guarantor or otherwise or which is secured by a lien on the Company's property and (9) renewals, extensions, modifications, replacements, restatements and refundings of, or any indebtedness or obligation issued in exchange for, any such indebtedness or obligation described in clauses (1) through (8) of this definition; *provided, however*, that Indebtedness shall not include accounts payable or other accrued liabilities or obligations incurred in the ordinary course of business in connection with the obtaining of materials or services and any indebtedness or obligation that the Company may owe to any direct or indirect Subsidiary and obligations owed to a Person specified in clause (11) of the definition of Permitted Lien in connection with the licensing and/or partnering arrangement referred to therein.

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

Interest Payment Date means the Stated Maturity of an installment of interest on the Securities.

Lien means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind with respect to such asset.

Maturity, when used with respect to any Security, means the date on which the principal of such Security becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, conversion, exercise of the repurchase right set forth in Article XII or otherwise.

Make-Whole Payment has the meaning specified in Article IX.

Member means any member of, or participant in, the Depositary.

New Rights Plan has the meaning specified in Section 10.4(d)

Non-electing Share has the meaning specified in Section 10.11.

Notice of Default has the meaning specified in Section 4.1.

Officers Certificate means a certificate signed by the Chairman of the Board, a Vice Chairman of the Board, the Chief Executive Officer, the President or a Vice President and by the principal financial officer, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Company, and delivered to the Trustee.

Opinion of Counsel means a written opinion of counsel, who may be counsel for or employed by the Company and who shall be acceptable to the Trustee.

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

- (1) securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;
- (2) securities for the payment of which money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (if other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities; and
- (3) securities that have been paid pursuant to Section 2.7 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than

any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a *bona fide* purchaser in whose hands such Securities are valid obligations of the Company;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Securities are present at a meeting of Holders of Securities for quorum purposes or have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such determination as to the presence of a quorum or upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities that a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor.

Paying Agent means any Person authorized by the Company to pay the principal of or interest on any Securities on behalf of the Company and, except as otherwise specifically set forth herein, such term shall include the Company if it shall act as its own Paying Agent. The Company has initially appointed the Trustee as its Paying Agent.

Permitted Lien means the following types of Liens:

(1) Liens imposed by law for taxes, fees, assessments or other governmental charges or levies that are not yet due and payable or are being contested in good faith by appropriate proceedings as to which the Company or its Subsidiaries shall have set aside on its books such reserves as may be required pursuant to GAAP;

(2) carriers', warehousemen's, mechanics', materialmen's, repairmen's, vendors' or lessors' Liens (and deposits to obtain the release of such Liens), set-off rights and other like Liens imposed by law (or contract, to the extent that such contractual Liens are similar in nature and scope to Liens imposed by law), in each case arising in the ordinary course of business and securing obligations that either (a) are not overdue by more than sixty (60) days or (ii) are being contested in good faith by appropriate proceedings as to which the Company or its Subsidiaries shall have set aside on its books such reserves as may be required pursuant to GAAP;

(3) Liens incurred and pledges and deposits made in the ordinary course of business in connection with workers' compensation, disability or unemployment insurance, old-age pensions, retiree health benefits and other similar plans or programs and other social security laws or regulations;

(4) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(5) (a) easements, covenants, conditions, restrictions, zoning restrictions, building codes, land use laws, leases, subleases, licenses, rights of way, minor irregularities in, or lack of, title and

similar encumbrances affecting real property, (b) with respect to any lessee's or licensee's interest in real or personal property, mortgages, liens, rights and obligations and other encumbrances arising by, through or under any owner, lessor or licensor thereof, with or without the lessee's or licensee's consent and (c) leases, licenses, rights and obligations in connection with patents, copyrights, trademarks, tradenames and other intellectual property, in each case that do not secure the payment of borrowed money (other than, with respect to any lessee's or licensee's interest in real or personal property, mortgages, liens, rights and obligations and other encumbrances arising by, through or under any owner, lessor or licensor thereof) to the extent, in the case of each of clauses (a), (b) and (c), that the Liens referred to therein do not, in the aggregate, materially detract from the value of the affected property as used by the Company and its Subsidiaries in the ordinary course of business taken as a whole or materially interfere with the ordinary conduct of the business of the Company and its Subsidiaries taken as a whole;

(6) Liens in favor of customs and revenue authorities to secure payment of customs duties in connection with the importation of goods;

(7) any interest or title of a lessor under any capitalized lease obligation; *provided, however*, that such Liens do not extend to any property or assets which is not leased property subject to such capitalized lease obligation;

(8) Liens securing purchase money indebtedness incurred in the ordinary course of business; *provided, however*, that (a) such purchase money indebtedness shall not exceed the purchase price or other cost of such property or equipment and shall not be secured by any property or equipment of the Company or any Subsidiary of the Company other than the property and equipment so acquired and (b) the Lien securing such purchase money indebtedness shall be created within ninety (90) days of such acquisition;

(9) Liens securing interest swap obligations which interest swap obligations relate to Indebtedness that is otherwise permitted under the indenture;

(10) Liens securing Indebtedness under currency agreements;

(11) Liens in favor of Strategic Partners in connection with a biopharmaceutical licensing and/or partnering arrangement;

(12) judgment Liens not giving rise to an Event of Default so long as such Lien is adequately bonded and any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceedings may be initiated shall not have expired;

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

(14) Liens securing reimbursement obligations with respect to commercial letters of credit which encumber documents and other property relating to such letters of credit and products and proceeds thereof;

(15) banker's Liens, rights of setoff and similar Liens with respect to cash and Cash Equivalents on deposit in one or more bank accounts in the ordinary course of business; and

(16) Liens arising from filing Uniform Commercial Code financing statements regarding leases.

Person means a natural person, Corporation, limited liability company, partnership, joint venture, trust, estate, unincorporated organization or government or any agency or political subdivision thereof.

Place of Conversion has the meaning specified in Section 2.2.

Place of Payment has the meaning specified in Section 2.2.

Predecessor Security of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 2.7 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

Record Date means any Regular Record Date or Special Record Date.

Record Date Period means the period from the close of business of any Regular Record Date next preceding any Interest Payment Date to the opening of business on such Interest Payment Date.

Registered Common Stock means Common Stock that does not require registration or approval under any federal securities law or, if applicable, the securities laws of any state where a holder is located, before such shares are freely transferable without being subject to transfer restrictions under the Securities Act.

Registered Securities has the meaning specified in Section 2.1.

Regular Record Date for interest payable in respect of any Registered Security on any Interest Payment Date means the May 1 and the November 1 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date.

Repurchase Date has the meaning specified in Section 12.1.

Repurchase Price has the meaning specified in Section 12.1.

Responsible Officer, when used with respect to the Trustee, means any officer within the Corporate Trust Office, including without limitation any vice president, assistant vice president, assistant treasurer, corporate trust officer or other employee of the Trustee customarily performing functions similar to those performed by any of the above designated officers, and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge and familiarity with the particular subject.

Restricted Global Security has the meaning specified in Section 2.1.

Secured Indebtedness means Indebtedness secured by a Lien other than a Permitted Lien.

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

Securities Act means the United States Securities Act of 1933 (or any successor statute), as amended from time to time.

Security Register and **Security Registrar** have the respective meanings specified in Section 2.6.

Significant Subsidiary means any Subsidiary that would be a significant subsidiary as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the date hereof.

Special Record Date for the payment of any Defaulted Interest means a date fixed by the Company pursuant to Section 2.8.

Stated Maturity, when used with respect to any Security or any installment of interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security or such installment of interest is due and payable.

Strategic Partner means (i) a pharmaceutical or biotechnology company with book equity of at least U.S. \$200,000,000, (ii) a pharmaceutical or biotechnology company with sales of at least U.S. \$150,000,000, or (iii) a publicly traded, or division or subdivision of a publicly traded, pharmaceutical or biotechnology company with market capitalization in excess of U.S. \$200,000,000.

Subsidiary means a Person more than fifty percent (50%) of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For the purposes of this definition, voting stock means stock or other similar interests in the Person that ordinarily has or have voting power for the election of directors or Persons performing similar functions, whether at all times or only so long as no senior class of stock or other interests has or have such voting power by reason of any contingency.

Successor Security of any particular Security means every Security issued after, and evidencing all or a portion of the same debt as that evidenced by, such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 2.7 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

Trading Day means: (1) if the Common Stock is listed or admitted for trading on any national securities exchange, days on which such national securities exchange is open for business; (2) if the Common Stock is quoted on the Nasdaq Global Market or any other system of automated dissemination of quotations of securities prices, days on which trades may be effected through such

system; or (3) if the Common Stock is not listed or admitted for trading on any national securities exchange or quoted on the Nasdaq Global Market or any other system of automated dissemination of quotation of securities prices, days on which the Common Stock is traded regular way in the over-the-counter market and for which a closing bid and a closing asked price for the Common Stock are available.

Trust Indenture Act means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after such date, **Trust Indenture Act** means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

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

United States means the United States of America (including the several States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction (its possessions including Puerto Rico, the United States Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands).

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

Volume Weighted Average Price means, with respect to the Common Stock of the Company, for any day the volume weighted average price per share of Common Stock as displayed on Bloomberg on the Nasdaq Global Market from 9:30 a.m. to 4:00 p.m. (New York City time) on that day (or if such volume weighted average price is not available, the market value of one share on such day as the Company determines in good faith using a volume weighted method).

SECTION 1.2 Compliance Certificates and Opinions.

Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and, if required by the Trust Indenture Act, an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished. Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- (a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with; *provided, however*, with respect to matters of fact, an Opinion of Counsel may rely on an Officers Certificate or certificates of public officials.

SECTION 1.3 Form of Documents Delivered to the Trustee.

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

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

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

SECTION 1.4 Acts of Holders of Securities.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given or taken by Holders of Securities may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent or proxy duly appointed in writing by such Holders. Such action shall become effective when such instrument or instruments is delivered to the Trustee and, where it is hereby expressly required, to the Company. The Trustee shall promptly deliver to the Company copies of all such instruments delivered to the Trustee. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the Act of the Holders of Securities signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent or proxy, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and (subject to Section 5.1) conclusive in favor of the Trustee and the Company if made in the manner provided in this Section 1.4.

- (b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority.
- (c) The principal amount and serial number of any Registered Security held by any Person, and the date of his holding the same, shall be proved by the Security Register.
- (d) The fact and date of execution of any such instrument or writing and the authority of the Person executing the same may also be proved in any other manner that the Trustee deems sufficient; and the Trustee may in any instance require further proof with respect to any of the matters referred to in this [Section 1.4](#).
- (e) The Company may set any day as the record date for the purpose of determining the Holders entitled to give or take any request, demand, authorization, direction, notice, consent, waiver or other action, or to vote on any action, authorized or permitted by this Indenture to be given or taken by Holders. Promptly and in any case not later than ten (10) days after setting a record date, the Company shall notify the Trustee and the Holders of such record date. If not set by the Company prior to the first solicitation of a Holder made by any Person in respect of any such action, or, in the case of any such vote, prior to such vote, the record date for any such action or vote shall be the thirtieth (30th) day (or, if later, the date of the most recent list of Holders required to be provided pursuant to [Section 13.1](#)) prior to such first solicitation or vote, as the case may be. With regard to any record date, the Holders on such date (or their duly appointed agents or proxies), and only such Persons, shall be entitled to give or take, or vote on, the relevant action, whether or not such Holders remain Holders after such record date. Notwithstanding the foregoing, the Company shall not set a record date for, and the provisions of this paragraph shall not apply with respect to, any notice, declaration or direction referred to in the next paragraph.

Upon receipt by the Trustee from any Holder of (1) any Notice of Default or breach referred to in [Section 4.1\(d\)](#), if such default or breach has occurred and is continuing and the Trustee shall not have given such a notice to the Company, (2) any declaration of acceleration referred to in [Section 4.2](#), if an Event of Default has occurred and is continuing and the Trustee shall not have given such a declaration to the Company, or (3) any direction referred to in [Section 4.12](#), if the Trustee shall not have taken the action specified in such direction, then, with respect to clauses (2) and (3), a record date shall automatically and without any action by the Company or the Trustee be set for determining the Holders entitled to join in such declaration or direction, which record date shall be the close of business on the tenth (10th) day (or, if such day is not a Business Day, the next succeeding Business Day) following the day on which the Trustee receives such declaration or direction, and, with respect to clause (1), the Trustee may set any day as a record date for the purpose of determining the Holders entitl