

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11

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NEPHROGENEX, INC., : Case No. 16-11074 (KG)

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Debtor.¹ : Hearing Date: 10/4/2016 at 2:00 p.m. (ET)

: Objection Deadline: 9/20/2016 at 4:00 p.m. (ET)

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**DEBTOR’S MOTION FOR ENTRY OF (A) ORDER
(I) SCHEDULING A HEARING TO CONSIDER APPROVAL OF
THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS,
AND THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, (II) APPROVING CERTAIN BIDDING
PROCEDURES, ASSUMPTION AND ASSIGNMENT PROCEDURES AND THE FORM
AND MANNER OF NOTICE THEREOF AND (III) GRANTING RELATED RELIEF;
AND (B) ORDER (I) APPROVING THE SALE OR OTHER ACQUISITION
TRANSACTION FOR THE ASSETS, (II) AUTHORIZING THE SALE FREE
AND CLEAR OF ALL ENCUMBRANCES, (III) AUTHORIZING THE
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS
AND UNEXPIRED LEASES AND (IV) GRANTING RELATED RELIEF**

NephroGenex, Inc., the debtor and debtor-in-possession in the above-captioned chapter 11 case (the “Debtor”), hereby moves (the “Motion”), pursuant to sections 105(a), 363, 365, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), for the entry of:

- (A) an order, substantially in the form attached hereto as Exhibit B (the “Bidding Procedures Order”), (i) scheduling a hearing (the “Sale Hearing”) to consider approval of (a) the sale (the “Sale”) of substantially

¹ The last four digits of the Debtor’s federal tax identification number are 5171. The mailing address for the Debtor is 3200 Beechleaf Court, Suite 900, Raleigh, NC 27604.

all of the Debtor's assets (the "Assets") free and clear of all liens, claims, encumbrances and other interests (collectively, the "Encumbrances"), other than those Encumbrances permitted by an applicable asset purchase agreement or other agreement for the Sale (the "Transaction Agreement"), which Sale may include the acquisition of the equity or the Assets of the Debtor through a section 363 sale or pursuant to a chapter 11 plan (a "Plan"), and (b) the assumption and assignment of certain executory contracts and unexpired leases (each, an "Assumed Contract" and, collectively, the "Assumed Contracts") in connection therewith, (ii) authorizing and approving certain proposed bidding procedures for the Sale in the form attached to the Bidding Procedures Order as Exhibit 1 (collectively, the "Bidding Procedures"), certain proposed assumption and assignment procedures (collectively, the "Assumption and Assignment Procedures"), and the form and manner of notice thereof; and (iii) granting related relief; and

- (B) an order (the "Sale Order"),² (i) authorizing and approving the Debtor's entry into the Transaction Agreement with a Successful Bidder, Back-Up Bidder or a Stalking Horse Purchaser (each as defined below); (ii) authorizing and approving the Sale of the Assets, free and clear of all Encumbrances other than those permitted by the Transaction Agreement; (iii) authorizing and approving the assumption and assignment of the Assumed Contracts in connection therewith; and (iv) granting related relief.

In support of the Motion, the Debtor relies upon and incorporates by reference the Declaration of James S. Cassel (the "Cassel Declaration"), of Cassel Salpeter & Co., LLC ("Cassel Salpeter"), investment bankers to the Debtor, which declaration is being filed concurrently herewith. In further support of the Motion, the Debtor respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this case and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

² The Debtor will file a form of Sale Order as soon as practicable after such document is negotiated with a purchaser.

2. The statutory predicates for the relief requested herein are sections 105(a), 363, 365, 503 and 507 of the Bankruptcy Code. Such relief also is warranted under Bankruptcy Rules 2002, 6004, 6006 and 9014 and Local Rules 2002-1 and 6004-1.

BACKGROUND

A. The Chapter 11 Case

3. On April 30, 2016 (the "Petition Date"), the Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Case"). The factual background regarding the Debtor, including its business operations, capital structure and debt structure, and the events leading to the filing of the Chapter 11 Case, is set forth in detail in the Declaration of John P. Hamill in Support of Chapter 11 Petition and First Day Pleadings [Docket No. 4] (the "First Day Declaration").

4. The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. To date, no creditors' committee has been appointed in the Chapter 11 Case by the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"). No trustee or examiner has been appointed in the Chapter 11 Case.

B. The Debtor's Sale and Marketing Process

6. Since the execution of its engagement agreement with the Debtor on April 29, 2016, Cassel Salpeter has worked closely with the Debtor and its professionals, consultants and members of the Debtor's Board of Directors to identify buyers that might be interested in acquiring the Debtor's Assets. Through this process, Cassel Salpeter developed a list of over two hundred seventy-five (275) entities that Cassel Salpeter believed may have an interest in the Debtor's two (2) formulations of Pyridorin. This target list includes (i) parties that previously have been approached by the Debtor or its advisors regarding a potential transaction with the

Debtor; and (ii) additional parties Cassel Salpeter has identified as potential buyers. Cassel Salpeter also has spoken to several creditors and interest holders that have sought to provide input regarding the sale process, including suggesting additional potential sale targets. Cassel Salpeter has been willing—and continues to be willing—to speak with parties in interest regarding the Debtor’s ongoing sale efforts.

7. To date, approximately sixty-five (65) nondisclosure agreements (“NDAs”) and one hundred ninety-one (191) non-confidential presentations have been circulated, and eighteen (18) NDAs have been executed. Those entities that have executed NDAs have been provided access to a virtual data room (the “Data Room”) containing, among other things, pre-clinical and clinical data for Pyridorin, information pertaining to the structure of the clinical studies and correspondence with the U.S. Food and Drug Administration. Moreover, parties requesting additional information have been provided access to the Debtor’s management, consultants and intellectual property counsel.

8. After approximately ten (10) weeks of active marketing, Cassel Salpeter informed parties in the Data Room that, in order to be considered as a potential “stalking horse” purchaser, parties were required to submit written indications of interest on or before July 19, 2016 at 5:00 p.m. Two parties submitted written indications of interest by this deadline, although one was deemed unacceptable to serve as the “stalking horse” bid by the Debtor’s management. The second indication of interest was viewed by the Debtor’s management as an acceptable “stalking horse” bid and, as such, the Debtor prepared an appropriate purchase agreement and draft sale papers for review by the anticipated stalking horse bidder. Unfortunately, on August 23, 2016, before the sale documentation was finalized, this bidder informed the Debtor that it would not proceed with the anticipated transaction. Although the

Debtor continues to discuss a potential sale transaction with several potential bidders, these discussions are not sufficiently advanced to justify further delay before seeking formal Court approval for the Debtor's proposed sale process. Accordingly, the Debtor, after consultation with its professionals, determined to seek approval for an auction process to be conducted without a stalking horse purchaser.

BIDDING PROCEDURES³

9. The Debtor's objective throughout its sale process has been to obtain maximum exposure of its Assets to potential buyers, and it will consider any transaction that will result in obtaining the highest or otherwise best value for the Assets. To that end, the Debtor has developed the Bidding Procedures to provide potential purchasers with maximum flexibility in proposing an acquisition transaction, which can take the form of, among other things, a sale under section 363 of the Bankruptcy Code or a transaction through a chapter 11 plan. In leaving all of these transactional avenues open, the Debtor and its stakeholders can use all of the tools available under the Bankruptcy Code to preserve and create value.⁴

10. The Debtor intends to solicit bids for its Assets in accordance with the Bidding Procedures. The Bidding Procedures describe, among other things, the manner in which bids become "qualified," the coordination of diligence efforts among the bidders and the Debtor,

³ The following is a summary of the Bidding Procedures. It is qualified in its entirety by the actual terms and conditions of the Bidding Procedures as provided for in the Bidding Procedures Order, and parties are encouraged to review the Bidding Procedures and Bidding Procedures Order in their entirety. To the extent that there is any conflict between any summary contained herein and the actual terms and conditions of the Bidding Procedures as provided for in the Bidding Procedures Order, the actual terms and conditions of the Bidding Procedures shall control. Capitalized terms used but not defined in this summary of the Bidding Procedures shall have the meanings ascribed to such terms in the Bidding Procedures.

⁴ Moreover, based on the experience and advice of the Debtor's restructuring professionals, the Debtor believes it would further the goal of maximizing the value of the Assets to designate a party to serve as a stalking horse purchaser (a "Stalking Horse Purchaser" and, the Transaction Agreement with such party, the "Stalking Horse Agreement") for the sale of the Assets. Accordingly, the Debtor is reserving the right to request that the Court, by separate motion and after notice and a hearing, approve the Debtor's selection of a Stalking Horse Purchaser if one emerges.

the receipt and negotiation of bids received, the conduct of an Auction, and the selection and approval of the Successful Bidder and the selection of the Back-Up Bidder. The Bidding Procedures reflect the Debtor's objective of conducting the Auction in a controlled, but fair and open, manner, while ensuring that the highest or otherwise best bid is generated for the Assets.

11. The material terms of the Bidding Procedures are set forth below:

- (a) **Qualification as Bidder:** Any person or entity that wishes to participate in the bidding process for the Assets (each, a "**Potential Bidder**") must first become a "Qualifying Bidder." Parties may be qualified as a Qualifying Bidder up to the Bid Deadline (**November 10, 2016 at 5:00 p.m. (ET)**), but parties interested in submitting a bid for the Assets are encouraged to qualify as soon as possible because the Bidding Procedures do not permit any due diligence conditions in Qualifying Bids. Section 2 of the Bidding Procedures identifies the requirements to be deemed a Qualifying Bidder, which include, among other things, (1) entry into a confidentiality agreement in form and substance reasonably satisfactory to the Debtor and (2) providing sufficient information as determined by the Debtor, to allow the Debtor to determine that the interested party has, or can obtain, the financial wherewithal and any required internal corporate, legal or other authorizations to close a sale transaction and to provide adequate assurance of future performance as required under section 365 of the Bankruptcy Code. Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtor or its advisors regarding the ability of such Potential Bidder to consummate its contemplated transaction.

Once qualified, Qualifying Bidders will be able to conduct due diligence and gain access to the Debtor's confidential electronic data room concerning the Assets (the "**Data Room**").

Notwithstanding anything to the contrary in the Bidding Procedures, and for the avoidance of doubt, for all purposes under the Bidding Procedures, any designated Stalking Horse Purchaser shall be considered a Qualifying Bidder, and a Stalking Horse Agreement shall be considered a Qualifying Bid (as defined below).

- (b) **Due Diligence:** The Debtor will provide any Qualifying Bidder with reasonable access to the Data Room and any other additional information that the Debtor believes to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to Cassel Salpeter & Co., LLC, Attn: James S. Cassel (Phone: 305-438-7701; Email: jcassel@cs-ib.com). The due diligence period shall extend through

and including the Bid Deadline. The Debtor may, but shall not be obligated to, in its sole discretion, furnish any due diligence information after the Bid Deadline. The Debtor reserves the right, in its sole discretion, to withhold or limit access to any due diligence information that the Debtor determines is business-sensitive or otherwise not appropriate for disclosure to a Qualifying Bidder.

(c) **Bid Requirements:**

- i. **Form of Agreement.** Potential Bidders intending to submit bids must include with their bids:
 - a. (i) a modified Transaction Agreement marked against the form asset purchase agreement attached hereto as Exhibit A (the “Form APA”) to show all changes requested by the Proposed Bidder and (ii) a clean and duly executed version of such modified Transaction Agreement;
 - b. a statement that such Potential Bidder offers to purchase the Assets upon the terms set forth in its modified Transaction Agreement; provided that, in the event that the Debtor enters into a Stalking Horse Agreement, such statement shall provide that the Potential Bidder offers to purchase the Assets upon substantially the same terms as, or terms more favorable to the Debtor and its estate than, the terms set forth in the Stalking Horse Agreement; and
 - c. if the Qualifying Bidder proposes to implement an acquisition transaction through a Plan, a detailed term sheet that includes a description of (i) the treatment of each class of creditors proposed under the Plan, (ii) the transactions that will be implemented and occur under the Plan, (iii) the consideration to be received by existing creditors, existing equity holders and any other party receiving distributions under the Plan and the source thereof, (iv) any conditions to the occurrence of the effective date of the proposed Plan, and (v) any other matters that are material to the Plan and the implementation thereof.
- ii. **Qualifying Bid.** Other than in the case of a Stalking Horse Purchaser, to be deemed a “Qualifying Bid,” a bid must be received from a Qualifying Bidder on or before the Bid Deadline and satisfy each of the requirements set forth in Section 6 of the Bidding Procedures (each, a “Bid Requirement”). These requirements include, but are not limited to, that the bid:

- a. be in writing;
- b. fully disclose the identity of the Qualifying Bidder and whether such party is an insider (as defined in section 101 of the Bankruptcy Code) of the Debtor, and provide the contact information of the specific person(s) whom the Debtor or its advisors should contact in the event that the Debtor has any questions or wishes to discuss the bid submitted by the Qualifying Bidder;
- c. in the case of a Sale, set forth the purchase price to be paid by such Qualifying Bidder, including what amount is being paid as cash, and identify the liabilities proposed to be paid or assumed by such Qualifying Bidder;
- d. to the extent a Stalking Horse Purchaser is designated, state that such Qualifying Bidder offers to purchase the Assets included in the Stalking Horse Agreement upon substantially the same terms as, or terms more favorable to the Debtor and its estate than, the terms set forth in the Stalking Horse Agreement;
- e. be accompanied by a clean and marked modified Transaction Agreement that reflects any variations from the Form APA;
- f. state that such Qualifying Bidder's offer is formal, binding and unconditional and is irrevocable until (i) two (2) business days after the closing of the Sale, or (ii) in the case of a Sale proposed to be consummated pursuant to a Plan, the conclusion of the Sale Hearing;
- g. state that such Qualifying Bidder is financially capable of consummating the transactions contemplated by the Transaction Agreement or proposed Plan and provide written evidence in support thereof;
- h. contain such financial and other information to allow the Debtor to make a reasonable determination as to the Qualifying Bidder's financial and other capabilities to close the transactions contemplated by its proposed Transaction Agreement, including, without limitation, such financial and other information supporting the Qualifying Bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code, including the Qualifying Bidder's

financial wherewithal and willingness to perform under any contracts that are assumed and assigned to the Qualifying Bidder, in a form that allows the Debtor to make available such information to any counterparties to any contracts or leases being assumed and assigned in connection with the Sale that have requested, in writing, such information;

- i. identify with particularity each and every executory contract and unexpired lease the assumption and assignment of which is a condition to close the transactions contemplated by the proposed Transaction Agreement;
- j. a commitment to close the transactions contemplated by the Transaction Agreement no later than fourteen (14) calendar days after entry of the Sale Order; provided, however, that if the proposed transaction will be implemented through a Plan, the Debtor shall have ninety (90) calendar days after entry of the Sale Order to obtain confirmation of such Plan;
- k. not request or entitle such Qualifying Bidder to any break-up fee, termination fee, expense reimbursement or similar type of fee or payment;
- l. in the event that there is a Stalking Horse Purchaser, the aggregate consideration proposed by the Qualifying Bidder must equal or exceed the sum of the amount of (A) the purchase price under the Stalking Horse Agreement, plus (B) any break-up fee, expense reimbursement, or other bid protection provided under the Stalking Horse Agreement, plus (C) the Bid Increment (as defined below);
- m. not contain contingencies of any kind, including, without limitation, contingencies related to financing, internal approval or due diligence;
- n. contain written evidence satisfactory to the Debtor that the Qualifying Bidder has a commitment for financing or other evidence of the ability to close the transactions contemplated by the Transaction Agreement or to consummate a proposed Plan transaction, with appropriate contact information for such financing sources to verify funds;
- o. contain a written acknowledgement and representation that the Qualifying Bidder (i) has had an opportunity to conduct any and all due diligence regarding the Assets, (ii) has

relied solely upon its own independent review, investigation and/or inspection of any documents and other information in making its Qualifying Bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any documents or other information provided in connection with the Bidding Procedures and the Sale;

- p. sets forth (i) a statement or evidence that the Qualifying Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if applicable, and pay the fees associated with such filings and (ii) any regulatory and third-party approval required for the Qualifying Bidder to close the transactions contemplated by the Transaction Agreement, and the time period within which the Qualifying Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than ten (10) business days following execution and delivery of such Qualifying Bidder's Transaction Agreement, those actions the bidder will take to ensure receipt of such approval(s) as promptly as possible); provided that a Qualifying Bidder agrees that its legal counsel will coordinate in good faith with Debtor's legal counsel to discuss and explain Qualifying Bidder's regulatory analysis, strategy and timeline for securing all such approvals as soon as reasonably practicable, and in no event later than the time period contemplated in the Transaction Agreement; provided, further that the offer contains a covenant to cooperate with the Debtor to provide pertinent factual information regarding the bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements;
- q. provides for the Qualifying Bidder to serve as a backup bidder (the "Back-Up Bidder") if the Qualifying Bidder's bid is the next highest or otherwise best bid (the "Back-Up Bid") after the Successful Bid (as defined below), in accordance with the terms of the Transaction Agreement;
- r. includes written evidence of authorization and approval from the Qualifying Bidder's board of directors (or

comparable governing body) with respect to the submission, execution and delivery of the Transaction Agreement;

- s. provides a good faith cash deposit (the “Deposit”) in an amount equal to (i) ten percent (10%) of the cash purchase price to be paid under the proposed Transaction Agreement or (ii) in the event of a transaction proposed to be implemented through a Plan, such amount as may be determined by the Debtor in its reasonable discretion, to be deposited, prior to the Bid Deadline, with an escrow agent selected by the Debtor pursuant to the escrow agreement to be provided by the Debtor to Qualifying Bidders;
- t. provides that in the event of the Qualifying Bidder’s breach of, or failure to perform under, the Transaction Agreement, the Debtor may retain the Qualifying Bidder’s Deposit as part of the damages resulting to the Debtor and its estate for such breach or failure to perform.

A bid from a Qualifying Bidder satisfying all of the above requirements, as determined by the Debtor, shall constitute a Qualifying Bid. The Debtor reserves the right to work with any Qualifying Bidder in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualifying Bid. Each Qualifying Bidder submitting a bid shall be deemed to:

- (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures; and
- (b) have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures and the Sale.

- iii. **Bid Deadline.** A Qualifying Bidder, other than any Stalking Horse Purchaser, that desires to make a bid shall deliver a written and electronic copy of its bid in both PDF and MS-WORD format to the Notice Parties⁵ so as to be received on or before **November 10, 2016 at 5:00 p.m. (ET)** (the “Bid Deadline”); provided that the Debtor may extend the Bid Deadline without further order of the Court. **Any party that does not submit a bid by the Bid**

⁵ The term “Notice Parties” as used in the Bidding Procedures shall mean (i) the Debtor, NephroGenex, Inc., 3200 Beechleaf Court, Suite 900, Raleigh, NC 27604 (Attn: John P. Hamill) and Email: jhamill@nephrogenex.com; (ii) counsel to the Debtor, Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801 (Attn: David R. Hurst, Esq. and Jacob S. Frumkin, Esq.) and Email: dhurst@coleschotz.com and jfrumkin@coleschotz.com; (iii) counsel to any official committee appointed in the Chapter 11 Case; and (iv) counsel to the Stalking Horse Purchaser, if any.

Deadline will not be allowed to (a) submit any offer after the Bid Deadline, or (b) participate in the Auction.

- iv. Evaluation of Qualifying Bids. The Debtor shall make a determination regarding whether a timely submitted bid from a Qualifying Bidder is a Qualifying Bid, and shall notify all Qualifying Bidders whether their bids have been determined to be Qualifying Bids by no later than two (2) calendar days prior to the Auction Date (as defined below). In the event that a bid is determined not to be a Qualifying Bid, the Qualifying Bidder shall be notified by the Debtor and shall have one (1) calendar day from the date of such notification to modify its bid to increase the purchase price or otherwise improve the terms of the Qualifying Bid; provided that any Qualifying Bid may be improved at the Auction as set forth in the Bidding Procedures.

One (1) calendar day prior to the Auction Date, the Debtor shall determine which of the Qualifying Bids, at such time, is the highest or otherwise best bid for purposes of constituting the opening bid of the Auction (the "Baseline Bid" and, the Qualifying Bidder submitting the Baseline Bid, the "Baseline Bidder"), and shall promptly notify any Stalking Horse Purchaser and all Qualifying Bidders with Qualifying Bids of the Baseline Bid.

- v. Insufficient Qualifying Bids. If less than two Qualifying Bids (including any Stalking Horse Purchaser's Qualifying Bid) are submitted on or before the Bid Deadline, the Debtor shall not hold an Auction and shall request at the Sale Hearing (as defined in the Bidding Procedures Order) that the Court approve the sole Qualifying Bid (which may be the Stalking Horse Agreement) and the transactions contemplated thereunder.

- (d) Auction: In the event that the Debtor timely receives more than one Qualifying Bid (including any Stalking Horse Purchaser's Qualifying Bid), the Debtor shall conduct an auction (the "Auction"). Following the Auction, the Debtor will determine which Qualifying Bid is the highest or otherwise best bid for the Assets, which will be determined by considering, among other things, the following non-binding factors: (a) the transaction structure and execution risk, including conditions to, timing of and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approvals, as well as additional costs or savings to the Debtor in the event that a bid is implemented through a chapter 11 plan or a section 363 sale; (b) variations between competing bids and any incremental execution risk that the Debtor reasonably determines exists as a result of those variations; (c) the time needed to close a Sale or other

transaction compared with other Qualifying Bids and the cost to the Debtor and its estate of any incremental delay; (d) the total consideration to be received by the Debtor and its estate; (e); the net benefit to the Debtor's estate, taking into account any Stalking Horse Purchaser's rights to any break-up fee, expense reimbursement or similar bid protection; (f) the impact on employees, contract and lease counterparties (including claims that may be asserted related to rejection and objections to adequate assurance) and other creditors; and (g) any other factors the Debtor may reasonably deem relevant.

The Auction shall be governed by the following procedures:

- i. the Auction shall be held on **November 14, 2016 at 10:00 a.m. (ET)** (the "**Auction Date**") at the offices of Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801;
- ii. only a Stalking Horse Purchaser and the other Qualifying Bidders with Qualifying Bids (collectively, the "**Auction Bidders**") shall be entitled to make any subsequent bids at the Auction;
- iii. the Auction Bidders shall appear in person at the Auction, or through a duly authorized representative;
- iv. only the Debtor, the Auction Bidders and all creditors of the Debtor, together with the professional advisors to each of the foregoing parties, may attend the Auction; **provided** that such creditors must provide counsel for the Debtor one (1) business day's written notice of their intent to attend the Auction;
- v. the Debtor and its professional advisors shall direct and preside over the Auction, which shall be transcribed;
- vi. the Auction Bidders shall confirm that they have not engaged in any collusion with respect to the Bidding Procedures, the Auction or the Sale;
- vii. bidding on the Assets shall commence at the amount of the Baseline Bid, and the Auction Bidders may submit successive bids in increments of 2% of the Baseline Bid (the "**Bid Increment**"), **provided** that: (i) each such successive bid must be a Qualifying Bid; (ii) any bid made by a Stalking Horse Purchaser shall be deemed to include the sum of the amount of any break-up fee, expense reimbursement or other bid protection available to such Stalking Horse Purchaser in addition to the cash and other consideration provided for in its bid; and (iii) the Debtor shall

- retain the right to modify the bid increment requirements at the Auction;
- viii. the Auction may include individual negotiations with any of the Auction Bidders, but all bids shall be made on the record and in the presence of all of the Auction Bidders;
 - ix. all material terms of the bid that is deemed to be the highest or otherwise best bid for each round of bidding shall be fully disclosed to the Auction Bidders, and the Debtor shall use reasonable efforts to clarify any and all questions that the Auction Bidders may have regarding the Debtor's announcement of the then-current highest or otherwise best bid;
 - x. the Debtor and its professional advisors may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time allotted to make subsequent bids) for conducting the Auction, provided that such rules are (i) not inconsistent with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules or any applicable order of the Court entered in connection with the Chapter 11 Case, including, without limitation, the Bidding Procedures Order, and (ii) disclosed to the Auction Bidders;
 - xi. each Auction Bidder shall be deemed to have (i) waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating to the Bidding Procedures, the Sale, the Auction and the construction and enforcement of the contemplated transaction documents of the Auction Bidders, (ii) agreed to bring any such action or proceeding in the Court, and (iii) consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law;
 - xii. the Auction Bidders shall have the right to make additional modifications to their Transaction Agreement or Stalking Horse Agreement, as applicable, in conjunction with each Qualifying Bid submitted in each round of bidding during the Auction, provided that (i) any such modifications on an aggregate basis and viewed in whole, shall not, in the Debtor's discretion, be less favorable to the Debtor and its estate than the terms of any Stalking Horse Agreement for the Assets, and (ii) each Qualifying Bid shall

constitute an irrevocable offer and shall be binding on the Auction Bidder submitting such bid until such party shall have submitted a subsequent Qualifying Bid at the Auction or the conclusion of the Sale Hearing, whichever occurs sooner, unless such bid is selected as the Successful Bid or the Back-Up Bid, which shall remain binding as provided in the Bidding Procedures;

- xiii. the Debtor shall have the right to request any additional financial information that will allow the Debtor to make a reasonable determination as to an Auction Bidder's financial and other capabilities to consummate the transactions contemplated by the Transaction Agreement or a Stalking Horse Agreement, as applicable, as may be amended during the Auction, and any further information that the Debtor may believe is reasonably necessary to clarify and evaluate any bid made by an Auction Bidder during the Auction;
- xiv. upon the conclusion of the Auction, the Debtor shall determine, subject to Court approval, the offer for the Assets that is the highest or otherwise best from among the Qualifying Bids submitted at the Auction (the "Successful Bid"). The bidder submitting such Successful Bid shall become the "Successful Bidder," and shall have such rights and responsibilities of the purchaser as set forth in the Transaction Agreement or a Stalking Horse Agreement, as applicable. The Debtor may, in its sole discretion, designate a Back-Up Bid (and the corresponding Back-Up Bidder) to purchase the Assets in the event that a Successful Bidder does not close a Sale; and
- xv. prior to the Sale Hearing, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

THE SUCCESSFUL BID AND ANY BACK-UP BID SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE SUCCESSFUL BIDDER AND THE BACK-UP BIDDER, RESPECTIVELY, FROM THE TIME THE BID IS SUBMITTED UNTIL TWO (2) BUSINESS DAYS AFTER THE SALE HAS CLOSED. EACH QUALIFYING BID THAT IS NOT THE SUCCESSFUL BID OR THE BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.

- (e) **Sale Hearing**: If an Auction is held, the Successful Bid and any Back-Up Bid will be subject to approval by the Court. The Sale Hearing to approve

the Successful Bid and any Back-Up Bid or the Stalking Horse Agreement(s) will take place on **November 17, 2016 at 10:00 a.m. (ET)**. The Sale Hearing may be adjourned by the Debtor from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a notice on the docket of the Debtor's Chapter 11 Case.

- (f) **Backup Bidder**: Notwithstanding any of the foregoing, in the event that a Successful Bidder fails to close the Sale prior to thirty (30) calendar days after the completion of the Auction (or such date as may be extended by the Debtor), the Back-Up Bid will be deemed to be the Successful Bid, the Back-Up Bidder will be deemed to be the Successful Bidder, and the Debtor will be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any interested parties.
- (g) **Return of Deposits**: All Deposits shall be returned to each bidder not selected by the Debtor as the Successful Bidder or Back-Up Bidder no later than five (5) business days following the conclusion of the Sale Hearing. The deposit of a Back-Up Bidder shall be returned within five (5) business days of the closing of the Sale to the Successful Bidder; the deposit of the Successful Bidder or, if the Sale is closed with the Back-Up Bidder, the deposit of the Back-Up Bidder, shall be applied to the purchase price for the Sale. If the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Transaction Agreement or any Stalking Horse Agreement, as applicable, the Debtor and its estate shall be entitled to retain the Deposit of the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) as part of the damages resulting to the Debtor and its estate for such breach or failure to perform.
- (h) **Reservation of Rights**: Notwithstanding any of the foregoing, the Debtor and its estate reserve the right to modify the Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth in the Bidding Procedures, modify bidding increments, waive terms and conditions set forth in the Bidding Procedures with respect to any or all potential bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all Potential Bidders, adjourn or cancel the Auction at or prior to the Auction and adjourn the Sale Hearing.

**NOTICE PROCEDURES FOR THE SALE,
BIDDING PROCEDURES, AUCTION AND SALE HEARING**

12. The Debtor also requests approval of the sale notice (the “Sale Notice”), substantially in the form attached to the Bidding Procedures Order as Exhibit 2. Within three (3) business days of entry of the Bidding Procedures Order, the Debtor will serve the Sale Notice by first class mail on: (1) the U.S. Trustee; (2) counsel to any official committee appointed in the Chapter 11 Case; (3) all parties known by the Debtor to assert a lien on any of the Assets; (4); all non-Debtor parties to any of the Assumed Contracts; (5) all parties that have expressed an interest in acquiring the Assets of the Debtor during the Debtor’s postpetition marketing process; (6) the Office of the United States Attorney for the District of Delaware; (7) the Office of the Attorney General in each state in which the Debtor operates; (8) the Office of the Secretary of State in each state in which the Debtor operates; (9) all taxing authorities having jurisdiction over any of the Assets, including the Internal Revenue Service; (10) all environmental authorities having jurisdiction over any of the Assets, including the Environmental Protection Agency; (11) the Securities and Exchange Commission; (12) the United States Attorney General/Antitrust Division of Department of Justice; and (13) all other parties that have filed a notice of appearance and demand for service of papers in the Chapter 11 Case as of the date of service. In addition, the Debtor will serve the Sale Notice on all of the Debtor’s known creditors and equity holders (for whom identifying information and addresses are available to the Debtor).

13. The Debtor also will post the Sale Notice and the Bidding Procedures Order on the website of the Debtor’s claims and noticing agent.

14. Finally, no later than twenty-one (21) calendar days prior to the date of the Sale Hearing, the Debtor will publish the Sale Notice once in the national edition of *The Wall Street Journal*, *The New York Times* or *USA Today*.

ASSUMPTION AND ASSIGNMENT PROCEDURES

15. To facilitate the Sale, the Debtor seeks authority to assume and assign to any acquirer in a Sale the Assumed Contracts in accordance with the Assumption and Assignment Procedures. The Assumption and Assignment Procedures are detailed in the Bidding Procedures Order and provide for the following, among other things:

- (a) The identification of contracts that potentially could be assumed and assigned in connection with the Sale and the corresponding proposed Cure Amounts.
- (b) At least fourteen (14) calendar days for counterparties to the Assumed Contracts (each, a “Counterparty”) to object to (i) the Debtor’s ability to assume and/or assign the Assumed Contracts and (ii) proposed Cure Amounts, excluding objections relating to adequate assurance of future performance to be provided by the assignee of the Assumed Contracts.
- (c) Notice after the Auction of the identity of the proposed assignee, with the opportunity for Counterparties to object to the adequate assurance of future performance provided by such proposed assignee.
- (d) The deemed consent of Counterparties to the proposed assumption and assignment and Cure Amounts if such Counterparties fail to timely object to the proposed assumption, assignment and Cure Amounts.

RELIEF REQUESTED

16. By the Motion, the Debtor seeks entry of: (a) the Bidding Procedures Order, (i) scheduling a date for the Sale Hearing, (ii) authorizing and approving the Bidding Procedures and the Assumption and Assignment Procedures, and the form and manner of notice thereof, and (iii) granting related relief; and (b) the Sale Order, (i) authorizing and approving the Debtor’s entry into the Transaction Agreement with the Successful Bidder, Back-Up Bidder or Stalking Horse Purchaser, as applicable, (ii) authorizing and approving the Sale, free and clear of all Encumbrances, (iii) authorizing and approving the assumption and assignment of the Assumed Contracts in connection with the Sale; and (iv) granting related relief.

17. The Bidding Procedures Order, if approved, will establish the following timeline, which the Debtor believes is appropriate to arrive at a value maximizing transaction:

Milestone	Proposed Dates
Bidding Procedures Hearing	October 4, 2016 2:00 p.m. (ET)
Deadline to serve Sale Notice	October 7, 2016
Deadline to serve Assumption Notice	
Deadline to object to Sale	October 28, 2016 4:00 p.m. (ET)
Deadline to object to Assumption Notice (other than adequate assurance)	
Bid Deadline	November 10, 2016 5:00 p.m. (ET)
Auction commencement	November 14, 2016 10:00 a.m. (ET)
Deadline to object to adequate assurance	November 16, 2016 12:00 Noon (ET)
Sale Hearing	November 17, 2016 10:00 a.m. (ET)
Outside Closing Date	14 business days after entry of the Sale Order⁶

18. The Debtor respectfully submits that the timeline set forth in the Bidding Procedures is reasonable and necessary under the circumstances of the Chapter 11 Case. Such timeline provides an approximately ten (10) week period between the filing of the Motion and the Bid Deadline, which will allow parties in interest sufficient time to formulate bids, especially considering the significant postpetition marketing efforts undertaken by the Debtor and its professionals prior to the filing of the Motion.

19. Finally, the Debtor will promptly make the disclosures required under Bankruptcy Rule 6004 and Local Rule 6004-1(b) with respect to any definitive Transaction Agreement the Debtor enters into, including any Stalking Horse Agreement.

⁶ To the extent that a Successful Bidder proposes a transaction that will be implemented through a chapter 11 plan, this deadline will be extended until the date that is ninety (90) calendar days after entry of the Sale Order to provide sufficient time for confirmation of such a plan.

BASIS FOR RELIEF

A. Sufficient Business Justification Exists for Consummation of the Sale Under Sections 105(a) and 363(b) of the Bankruptcy Code

20. Pursuant to section 105(a) of the Bankruptcy Code, a “court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). Section 363(b) of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate” Id. at § 363(b). Although section 363(b) of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts have required that such use, sale or lease be based upon the sound business judgment of the debtor. See, e.g., Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996); Dai-Ichi Kangyo Bank Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (D. Del. 1999) (“In determining whether to authorize the use, sale or lease of property of the estate under [section 363(b)], courts require the debtor to show that a sound business purpose justifies such actions”). The demonstration of a valid business justification by a debtor leads to a strong presumption “that in making [the] business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)).

21. The Debtor submits that its decision to market and sell the Assets, either through a section 363 sale or another transaction, represents a reasonable exercise of its business

judgment and, accordingly, the Sale should be approved under sections 105(a) and 363(b) of the Bankruptcy Code.

22. The Debtor must now seek to obtain the highest and best value for the Assets so that it can distribute to its stakeholders the value it believes is inherent in the Assets. The Debtor is committed to considering all rational and viable proposals in search of that goal. The open and fair auction and sale process contemplated by the Bidding Procedures will ensure that the Debtor's estate receives the highest and best value available for the Assets by allowing the market to test the purchase price of the Assets. Further, compliance with the Bidding Procedures will ensure the fairness and reasonableness of the consideration to be paid by any Stalking Horse Purchaser or other Successful Bidder, and establish that the Debtor and such bidder have proceeded in good faith.

23. Additionally, the Debtor believes that the notice procedures described above are reasonable and adequate under the circumstances. Bankruptcy Rules 2002(a) and (c) require the Debtor to notify creditors of the Sale, the terms and conditions of the Sale, the time and place of the Auction and the deadline for filing any objections. The Debtor believes that the proposed notice procedures comply with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the Sale, Bidding Procedures, Auction and Sale Hearing to the Debtor's creditors and all other parties in interest that are entitled to notice, as well as those parties that have expressed a *bona fide* interest in acquiring the Assets.

24. A Sale conducted in accordance with the Bidding Procedures will generate significant value for the Debtor's estate and represents the best path forward for maximizing recoveries to such estate, the Debtor's creditors and all parties in interest. The Debtor submits

that ample business justification exists for the consummation of the Sale and, therefore, requests that the Court approve such Sale.

B. The Sale of the Assets Free and Clear of All Encumbrances Is Authorized Under Section 363(f) of the Bankruptcy Code

25. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests and encumbrances if:

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). This provision is supplemented by section 105(a) of the Bankruptcy Code, which provides that the “court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” *Id.* at § 105(a).

26. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Assets “free and clear” of liens and interests. See Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that because section 363(f) is written in the disjunctive, a court may approve a sale free and clear if any one subsection is met). Further, a debtor possesses broad authority to sell assets free and clear of liens. See In re Trans World Airlines, Inc., 322 F.3d 283, 289 (3d Cir. 2003).

27. The Debtor submits that, in the interest of attracting the best offers, it is appropriate to sell its Assets free and clear of any and all Encumbrances (except as otherwise expressly set forth in the Sale Order and a Stalking Horse Agreement or Transaction Agreement with a Successful Bidder, as applicable) in accordance with section 363(f) of the Bankruptcy

Code because one or more of the tests of section 363(f) are, or will be, satisfied with respect to the Sale.

28. The Debtor anticipates that it will be able to satisfy one or more of the conditions set forth in section 363(f). The Debtor will serve the Sale Notice on all parties known to assert a lien, claim or encumbrance on or against the Assets, so lienholders will receive notice and will be given sufficient opportunity to object to the relief requested. Lienholders that are on notice of, and do not object to, a Sale should be deemed to have consented to that Sale. See FutureSource LLC v. Reuters Ltd., 312 F.3d 281, 285-86 (7th Cir. 2002) (“[L]ack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt’s assets had to execute a formal consent before they could be sold.”) (internal citations omitted); Hargrave v. Twp. of Pemberton (In re Tabone, Inc.), 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (holding that creditor’s failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)). Importantly, the Debtor does not believe that any entity holds a lien on any of the Assets and therefore this relief is requested only out of an abundance of caution.

C. The Sale Should Be Subject to the Protections of Section 363(m)

29. Section 363(m) of the Bankruptcy Code provides, in part, that the reversal or modification on appeal of an authorization of a sale pursuant to section 363(b) or section 363(c) of the Bankruptcy Code does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. See 11 U.S.C. § 363(m). In approving the Sale free and clear of Encumbrances, the Debtor requests that the Court find and hold that any purchaser of the Assets purchased in accordance with the Bidding Procedures be entitled to the protections afforded by

section 363(m) of the Bankruptcy Code. Such relief is appropriate in that selection of the Successful Bidder will be the result of a competitive bidding process and arm's-length, good-faith negotiations, and parties in interest will have the opportunity to review and object to a proposed transaction. See, e.g., In re Congoleum Corp., Case No. 03-51524, 2007 WL 1428477, *2 (Bankr. D.N.J. May 11, 2007); In re: Abbotts Dairies of Pa., Inc., 788 F.2d 143, 147 (3d Cir. 1986).

D. The Court Should Approve the Bidding Procedures

30. The key objective in any sale of property of a debtor's estate is to maximize the value received by the estate. See In re Mushroom Transp. Co., 382 F.3d 325, 339 (3d Cir. 2004) (finding that debtor "had a fiduciary duty to protect and maximize the estate's assets"). Procedures used to enhance competitive bidding support this objective and, therefore, are appropriate in the context of bankruptcy sales. See Integrated Res., 147 B.R. at 659 (stating that bidding procedures "encourage bidding and . . . maximize the value of the debtor's assets").

31. The Debtor has designed the Bidding Procedures to promote a competitive and fair bidding process and, thus, to maximize value for the Debtor's estate and creditors. The Bidding Procedures will allow the Debtor to conduct the Auction in a controlled, fair and open fashion that will encourage participation by financially capable bidders, thereby increasing the likelihood that the Debtor will receive the highest and best possible consideration for the Assets. Further, the Bidding Procedures provide an appropriate framework for the Debtor to review, analyze and compare any bids received in order to determine which bids are in the best interests of the Debtor's estate and its creditors.

32. The Debtor submits that the proposed Bidding Procedures are fair, transparent and will derive the highest and best bids for the Assets. Therefore, the Debtor

requests that the Court approve the Bidding Procedures, including the dates established thereby for the Auction and the Sale Hearing.

E. The Assumption and Assignment of the Assumed Contracts in Connection with the Sale Satisfies Bankruptcy Code Section 365

33. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). The Second Circuit has stated that the “purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to ‘renounce title to and abandon burdensome property.’” Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098 (2d Cir. 1993) (quoting 2 COLLIER ON BANKRUPTCY 365.01[1] (15th ed. 1993)).

34. The standard applied to determine whether the assumption of a contract or an unexpired lease should be authorized is the “business judgment” standard. See In re AbitibiBowater Inc., 418 B.R. 815, 831 (Bankr. D. Del. 2009) (finding that a debtor’s decision to assume or reject an executory contract will stand so long as “a reasonable business person would make a similar decision under similar circumstances”); In re HQ Global Holdings, Inc., 290 B.R. 507, 511 (Bankr. D. Del. 2003) (stating a debtor’s decision to reject an executory contract is governed by the business judgment standard and can only be overturned if the decision was the product of bad faith, whim or caprice). As described above, “[t]he business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company.’” Integrated Res., Inc., 147 B.R. at 656 (quoting Smith v. Van Gorkom, 488 A.2d at 872).

35. The business judgment rule is crucial in chapter 11 cases and shields a debtor's management from judicial second-guessing. See, e.g., Comm. of Asbestos Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions.”). Generally, courts defer to a debtor in possession’s business judgment to assume or reject an executory contract or lease. See Wheeling-Pittsburgh Steel Corp. v. W. Penn Power Co., (In re Wheeling-Pittsburgh Steel Corp.), 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (stating that the business judgment test “requires only that the trustee [or debtor in possession] demonstrate that [assumption or] rejection of the executory contract will benefit the estate”) (citing In re Stable Mews Assoc., Inc., 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984)) (first alteration in original).

36. Here, the Debtor will exercise its sound business judgment in considering whether assumption and assignment of any Assumed Contracts is in the best interests of the Debtor and its estate. Courts should approve a proposed assumption under section 365(a) of the Bankruptcy Code when it is the result of a debtor’s sound exercise of its business judgment. See, e.g., In re Philadelphia Newspapers, LLC, 424 B.R. 178, 182-83 (Bankr. E.D. Pa. 2010) (stating that if a debtor’s business judgment has been reasonably exercised, a court should approve the assumption or rejection of an executory contract or unexpired lease); Summit Land Co. v. Allen (In re Summit Land Co.), 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that, absent extraordinary circumstances, court approval of a debtor’s decision to assume or reject an executory contract “should be granted as a matter of course”).

37. As set forth above, the Sale will provide significant benefits to the Debtor’s estate. To that end, the assumption and assignment of the Assumed Contracts will

likely be necessary for the Debtor to obtain the benefits of the Sale. In addition, under section 365(k) of the Bankruptcy Code, the assignment by a debtor to an entity of a contract or lease “relieves the trustee and the estate from any liability for any breach of such contract or lease occurring after such assignment.” 11 U.S.C. § 365(k). Thus, following an assignment of any Assumed Contract, the Debtor will be relieved from any liability for any subsequent breach associated therewith.

38. Further, section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Assumed Contracts must be cured or that adequate assurance be provided that such defaults will be promptly cured. 11 U.S.C. § 365(b)(1). The Debtor proposes to file with the Court and serve on each Counterparty to an Assumed Contract an Assumption Notice (as defined in the Bidding Procedures Order) that indicates the proposed Cure Amount for each such contract. As such, each Counterparty will have the opportunity to object to the proposed assumption and assignment to the Successful Bidder and to the proposed Cure Amount, if applicable. Moreover, the payment or reserve of the applicable Cure Amount will be a condition to the Debtor’s assumption and assignment of any Assumed Contract.

39. Relatedly, section 365(f)(2)(B) of the Bankruptcy Code provides that a debtor may assign an executory contract or unexpired lease of nonresidential real property if “adequate assurance of future performance by the assignee of such contract or lease is provided.” 11 U.S.C. § 365(f)(2)(B). The words “adequate assurance of future performance” must be given a “practical, pragmatic construction” in light of the facts and circumstances of the proposed assumption. See In re Fleming Cos., Inc., 499 F.3d 300, 307 (3d Cir. 2007) (internal citation omitted); see also In re Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (finding that adequate assurance of future performance does not mean absolute assurance that debtor will

thrive and profit); In re Bon Ton Rest. & Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”).

40. Specifically, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. See In re Bygath, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (holding that adequate assurance of future performance is given where assignee of the lease has financial resources and expressed a willingness to devote sufficient funding to the business to ensure its success, and that in the leasing context, the chief determinant of adequate assurance is whether rent will be paid).

41. Here, the Successful Bidder will have provided adequate assurance of future performance with respect to any Assumed Contract. In order for its bid to be deemed a Qualifying Bid, each Qualifying Bidder will be required to provide evidence supporting its ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code (the “Adequate Assurance Information”), including: (a) the Qualifying Bidder’s financial wherewithal and willingness to perform under any contracts that are assumed and assigned to such Qualifying Bidder; (b) a contact person for the proposed assignee that the applicable Counterparty may directly contact in connection with the adequate assurance of future performance; and (c) the assignee’s identity. To the extent available, the Adequate Assurance Information may also include: (x) a corporate organization chart or similar disclosure identifying ownership and control of the proposed assignee; and (y) financial statements, tax returns and annual reports. Further, given that the Debtor will submit evidence that it has satisfied all requirements for the assumption and assignment of the

Assumed Contracts at the Sale Hearing, the Court and other interested parties will have the opportunity to evaluate the ability of each Successful Bidder to provide adequate assurance of future performance.⁷

42. Therefore, the Debtor respectfully requests that the Court (i) approve the proposed assumption and assignment of the Assumed Contracts, and (ii) find that all anti-assignment provisions of such contracts are unenforceable under section 365(f) of the Bankruptcy Code.⁸

WAIVER OF STAY UNDER BANKRUPTCY RULES 6004(h) AND 6006(d)

43. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Further, Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Id. at 6006(d).

44. Importantly, any delay in the Debtor’s ability to consummate the Sale would be detrimental to the Debtor, its creditors and estate, and would impair the Debtor’s ability to take advantage of the substantial cost-savings that can be achieved by an expeditious

⁷ The Debtor also will provide by email the Adequate Assurance Information to any Counterparty that submits a written request to receive the Adequate Assurance Information in accordance with the terms of the Bidding Procedure Order, and agrees to be bound by the confidentiality provisions set forth in the Bidding Procedures Order.

⁸ Section 365(f)(1) provides that “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease” 11 U.S.C. § 365(f)(1). Section 365(f)(3) further provides that “[n]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.” Id. § 365(f)(3).

closing of the Sale. For this reason and as set forth above, the Debtor submits that ample cause exists to justify a waiver of the fourteen-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d), to the extent applicable.

NOTICE

45. Notice of the Motion has been provided to: (i) the U.S. Trustee; (ii) the parties included on the Debtor's list of twenty (20) largest unsecured creditors; (iii) any party that may assert a lien on the Debtor's assets; (iv) all applicable federal, state and local taxing and regulatory authorities having jurisdiction over the Assets; and (v) all parties entitled to notice under Del. Bankr. L.R. 2002-1(b). The Debtor submits that, under the circumstances, no other or further notice is required.

NO PRIOR REQUEST

46. No previous request for the relief sought herein has been made to this or any other court.

CONCLUSION

WHEREFORE, the Debtor respectfully requests entry of the Bidding Procedures Order granting the relief requested herein and such other and further relief as is just and proper.

Dated: Wilmington, Delaware
August 31, 2016

COLE SCHOTZ P.C.

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*Counsel for Debtor and
Debtor-in-Possession*

EXHIBIT A TO MOTION

Form Asset Purchase Agreement

ACQUISITION AGREEMENT

between

NEPHROGENEX, INC., as Seller,

and

[_____], as Purchaser

Dated as of October ____, 2016

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I THE ACQUISITION	1
Section 1.1 <u>Acquired Assets</u>	1
Section 1.2 <u>Excluded Assets</u>	3
Section 1.3 <u>Assumed Liabilities</u>	4
Section 1.4 <u>Excluded Liabilities</u>	4
Section 1.5 <u>Assignment of Assigned Contracts</u>	5
Section 1.6 <u>Purchase Price; Deposit Funds</u>	5
Section 1.7 <u>Allocation of Purchase Price for Tax Purposes</u>	6
Section 1.8 <u>No Withholding</u>	6
ARTICLE II THE CLOSING.....	6
Section 2.1 <u>Closing</u>	6
Section 2.2 <u>Deliveries at Closing</u>	7
ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE SELLER.....	8
Section 3.1 <u>Organization; Subsidiaries</u>	8
Section 3.2 <u>Authority of the Seller</u>	8
Section 3.3 <u>Consents and Approvals</u>	8
Section 3.4 <u>No Violations</u>	9
Section 3.5 <u>Books and Records</u>	9
Section 3.6 <u>Title to Property; Sufficiency of Assets</u>	9
Section 3.7 <u>Brokers</u>	9
Section 3.8 <u>Litigation</u>	9
Section 3.9 <u>Intellectual Property</u>	10
Section 3.10 <u>Material Contracts</u>	10
Section 3.11 <u>Compliance with Laws; Permits</u>	11
Section 3.12 <u>Taxes</u>	12
Section 3.13 <u>State Takeover Statutes</u>	12
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE PURCHASER.....	13
Section 4.1 <u>Organization</u>	13
Section 4.2 <u>Authority of the Purchaser</u>	13
Section 4.3 <u>Consents and Approvals</u>	13
Section 4.4 <u>No Violations</u>	13

Section 4.5 Brokers..... 14

Section 4.6 Solvency 14

Section 4.7 Interested Stockholders..... 14

ARTICLE V COVENANTS 15

Section 5.1 Conduct of Business Pending the Closing..... 15

Section 5.2 Access and Information 15

Section 5.3 Approvals and Consents; Cooperation; Notification..... 16

Section 5.4 Additional Matters 17

Section 5.5 Further Assurances 17

Section 5.6 Cure Costs..... 17

Section 5.7 Bankruptcy Court Approval 17

Section 5.8 Bankruptcy Filings 18

Section 5.9 Intentionally Omitted..... 18

Section 5.10 Bidding Procedures; Superior Offers 19

Section 5.11 Communications with Customers and Suppliers..... 19

Section 5.12 Post-Closing Books and Records 19

Section 5.13 Confidentiality Agreement; Post-Closing Confidentiality 19

Section 5.14 Payments Received..... 20

Section 5.15 Use of Names and Marks..... 20

ARTICLE VI CONDITIONS PRECEDENT..... 20

Section 6.1 Conditions Precedent to Obligation of the Seller and the Purchaser..... 20

Section 6.2 Conditions Precedent to Obligation of the Seller 21

Section 6.3 Conditions Precedent to Obligation of the Purchaser..... 21

ARTICLE VII TERMINATION 21

Section 7.1 Termination Events..... 21

Section 7.2 Effect of Termination 23

ARTICLE VIII GENERAL PROVISIONS 23

Section 8.1 Tax Matters..... 23

Section 8.2 Bulk Sales 24

Section 8.3 Survival of Representations, Warranties and Covenants..... 24

Section 8.4 Public Announcements 24

Section 8.5 Notices 25

Section 8.6 Descriptive Headings; Interpretative Provisions 26

Section 8.7 No Strict Construction 26

Section 8.8 Entire Agreement; Assignment26
Section 8.9 Governing Law; Submission of Jurisdiction; Waiver of Jury Trial26
Section 8.10 Expenses27
Section 8.11 Amendment27
Section 8.12 Waiver27
Section 8.13 Counterparts; Effectiveness.....27
Section 8.14 Severability; Validity; Parties in Interest.....27
Section 8.15 Specific Performance; Sole and Exclusive Remedy for Seller Breach27
ARTICLE IX DEFINITIONS28

TABLE OF EXHIBITS

Exhibit A	Form of Bill of Sale
Exhibit B	Form of Assignment and Assumption Agreement
Exhibit C	Form of Intellectual Property Assignment Agreements
Exhibit D	Escrow Agreement

ACQUISITION AGREEMENT

THIS ACQUISITION AGREEMENT, dated as of October __, 2016 (this “Agreement”), is made between NephroGenex, Inc., a Delaware corporation (the “Seller”) and [_____] , a [_____] (the “Purchaser”). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in Article IX.

WHEREAS, the Seller conducts a specialty pharmaceutical business focused on developing and commercializing therapeutics to treat kidney disease (collectively, the “Business”);

WHEREAS, Seller filed a voluntary petition (the “Petition”) for relief commencing a case (the “Chapter 11 Case”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on April 30, 2016 (the “Petition Date”); and

WHEREAS, the parties intend hereunder to transfer the entire business operation and substantially all of the assets of the Seller, and in order to effectuate the foregoing, the Purchaser desires to purchase and accept, and the Seller desires to sell, convey, assign, transfer and deliver, or cause to be sold, conveyed, assigned, transferred and delivered, to the Purchaser, the Acquired Assets (as defined below), and the Purchaser is willing to assume, and the Seller desires to assign and delegate to the Purchaser, the Assumed Liabilities (as defined below), all in the manner and subject to the terms and conditions set forth herein and in accordance with sections 105, 363 and 365 of the Bankruptcy Code (such sale and purchase of the Acquired Assets and such assignment and assumption of the Assumed Liabilities, the “Acquisition”).

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

THE ACQUISITION

Section 1.1 Acquired Assets. On the terms and subject to the conditions set forth in this Agreement and, subject to approval of the Bankruptcy Court, pursuant to sections 105, 363 and 365 of the Bankruptcy Code, at the Closing, the Seller shall sell, assign, transfer, convey and deliver to the Purchaser, and the Purchaser shall purchase and accept from the Seller, all right, title and interest of the Seller in and to the rights, properties and assets of the Seller, wherever located, whether tangible or intangible, as the same shall exist on the Closing Date (collectively, the “Acquired Assets”), that are listed or described below and in the manner described below:

(a) the Purchaser shall acquire all the Contracts and all rights thereunder (the “Assigned Contracts”) listed or described on Schedule 1.1(a);

(b) the Purchaser shall acquire all rights and remedies under all warranties, representations and guarantees made by suppliers, manufacturers and contractors;

(c) [the Purchaser shall acquire all inventory, finished goods, works in process, raw materials and packaging materials;]¹

(d) the Purchaser shall acquire all (i) patents and patent applications, including provisionals, continuations, continuations-in-part, divisionals, substitutions, reissues, reexaminations and any extensions and supplementary protection certificates; (ii) trademarks, service marks, trade dress, trade names, logos, slogans, Internet domain names (except nephrogenex.com) and other similar designations of source or origin, together with the goodwill symbolized by, and any registrations and applications for, the foregoing; (iii) copyrights and database rights, and any copyright registrations and applications; (iv) trade secrets, including trade secret rights in inventions, discoveries, know-how, proprietary processes, formulae, protein sequences, standards for comparison, research and development information, clinical data, cell lines, dedicated toll free product lines, manufacturing technology and data, marketing and sales information, customer lists and supplier lists; and (v) any other intellectual property rights recognized in any relevant jurisdiction (collectively, “Intellectual Property”), including such of the foregoing as are listed or described on Schedule 1.1(d) or Schedule 1.1(i);

(e) the Purchaser shall acquire all rights under non-disclosure, confidentiality, invention and Intellectual Property assignment agreements with current or former employees and agents of the Seller or with third parties;

(f) the Purchaser shall acquire to the extent transferable, all Permits and all pending applications therefor;

(g) to the extent transferable, the Purchaser shall acquire all insurance policies set forth on Schedule 1.1(g) and rights thereunder relating to the Acquired Assets;

(h) other than as set forth in Section 1.2(f) or Section 1.2(g), the Purchaser shall acquire all books and records relating to the Acquired Assets;

(i) the Purchaser shall acquire the assets set forth on Schedule 1.1(i) to the extent not set forth in items (a) through (h) above.

EXCEPT AS SPECIFICALLY AND EXPRESSLY SET FORTH IN ARTICLE III, (I) THE SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, RELATING TO THE ACQUIRED ASSETS, THE ASSUMED LIABILITIES OR THE BUSINESS, INCLUDING ANY REPRESENTATION OR WARRANTY AS TO VALUE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR FOR ORDINARY PURPOSES, OR ANY OTHER MATTER, (II) THE SELLER MAKES NO, AND HEREBY DISCLAIMS ANY, OTHER REPRESENTATION OR WARRANTY REGARDING THE ACQUIRED ASSETS, THE ASSUMED LIABILITIES OR THE BUSINESS AND (III) THE ACQUIRED ASSETS AND THE ASSUMED LIABILITIES

¹ [To be discussed by Seller and Purchaser, as this provision may not be relevant.]

ARE CONVEYED ON AN “AS IS, WHERE IS” BASIS AS OF THE CLOSING, AND THE PURCHASER SHALL RELY UPON ITS OWN EXAMINATION THEREOF. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE SELLER MAKES NO REPRESENTATION OR WARRANTY REGARDING ANY BUSINESS OTHER THAN THE BUSINESS, ANY ASSETS OTHER THAN THE ACQUIRED ASSETS OR ANY LIABILITIES OTHER THAN THE ASSUMED LIABILITIES, AND NONE SHALL BE IMPLIED AT LAW OR IN EQUITY.

Section 1.2 Excluded Assets. Notwithstanding anything contained in this Agreement to the contrary, other than the Acquired Assets, all other rights, properties and assets of the Seller, including the following rights, properties and assets of the Seller, as the same shall exist on the Closing Date (collectively, the “Excluded Assets”), will not be included in the Acquired Assets, and the Seller shall retain all its right, title and interest in and to the Excluded Assets:

(a) all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and marketable securities, any bank accounts and lockbox arrangements of the Seller, and any accounts receivable that are owed or payable to Seller or any Affiliate thereof;

(b) all intercompany accounts receivable that are owed or payable to Seller or any Affiliate thereof, or as to which Seller or any Affiliate thereof is an obligor or is otherwise responsible or liable;

(c) all current and prior director and officer or similar fiduciary or errors and omissions insurance policies and all rights thereunder, and all other insurance policies not listed on Schedule 1.1(g);

(d) all rights with respect to deferred Tax assets or refunds for Taxes;

(e) any shares of capital stock or other equity interests of Seller or any Affiliate thereof or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interests of Seller or any Affiliate thereof;

(f) the company seal, minute books, stock certificates, stock or equity record books, Tax records, work papers and such other books and records as pertain to the organization, qualification to do business, existence or capitalization of Seller or any Affiliate thereof, books and records that the Seller is required to retain under applicable Law and books and records that relate primarily to an Excluded Asset or Excluded Liability; provided, that copies of such books and records shall be made available to the parties hereto upon reasonable request to the extent permitted by applicable Law;

(g) copies retained by the Seller of original books and records included in the Acquired Assets;

(h) all avoidance actions and similar rights, claims and causes of action, including under sections 544 through 553, inclusive, of the Bankruptcy Code;

- (i) all rights, claims or causes of action of Seller arising under this Agreement, the Ancillary Documents or the Confidentiality Agreement;
- (j) all rights, claims or causes of action by or in the right of Seller against any current or former director or officer of Seller;
- (k) the Benefit Plans, all assets of such Benefit Plans and all trust agreements, administrative service contracts, insurance policies and other Contracts related thereto and all rights of the Seller with respect to any of the foregoing;
- (l) all receivables, claims or causes of action that relate primarily to any Excluded Asset or Excluded Liability;
- (m) all real property leases;
- (n) all equipment, computers, furniture, furnishings, fixtures, office supplies, vehicles, tools and all other tangible personal property not included in the Acquired Assets;
- (o) all Contracts not included in the Assigned Contracts; and
- (p) the Internet domain name nephrogenex.com.

Section 1.3 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, the Purchaser shall assume from the Seller and thereafter pay, perform or otherwise discharge in accordance with their terms, and the Purchaser shall hold the Seller and its Affiliates harmless from all of the liabilities and obligations (of any nature or kind, and whether based in common law or statute or arising under written Contract or otherwise, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, real or potential) of the Seller and its Affiliates with respect to, arising out of or relating to, only the following (collectively, the “Assumed Liabilities”):

- (a) the ownership, possession or use of the Acquired Assets on and after the Closing Date; and
- (b) all liabilities and obligations arising under the Assigned Contracts (which, for the avoidance of doubt, shall include all Cure Costs).

Section 1.4 Excluded Liabilities. Notwithstanding anything contained in this Agreement to the contrary, the Purchaser shall not assume or agree to pay, perform or otherwise discharge any liabilities or obligations of Seller or any Affiliate thereof other than the Assumed Liabilities (such liabilities and obligations other than Assumed Liabilities, the “Excluded Liabilities”). Without limiting the foregoing, the Purchaser does not assume or agree to pay, perform or otherwise discharge the liabilities or obligations of the Seller with respect to, arising out of or relating to the following Excluded Liabilities:

- (a) all indebtedness for borrowed money of the Seller;

(b) all guarantees of third party indebtedness made by the Seller and reimbursement obligations to guarantors of the Seller's obligations or under letters of credit;

(c) all Actions pending on or before the Closing Date against the Seller or to the extent against or giving rise to liabilities or obligations of the Business based on acts or omissions prior to the Closing Date even if instituted after the Closing Date;

(d) all liabilities or obligations to any current or former owner of capital stock or other equity interests of the Seller or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interests of the Seller, any current or former holder of indebtedness for borrowed money of the Seller or, in respect of obligations for indemnification or advancement of expenses, any current or former officer or director of the Seller;

(e) all drafts or checks outstanding at the Closing under which the Seller is obligated;

(f) all (i) Taxes imposed on Seller that relate to the Acquired Assets, the Business or the Assumed Liabilities for taxable periods (or portions thereof) ending on or before the Closing Date, and (ii) Taxes or payments under any Tax allocation, sharing or similar agreement to which the Seller is a party that relate to the Acquired Assets, the Business or the Assumed Liabilities;

(g) all liabilities and obligations relating to either (i) the Benefit Plans, (ii) the employment or termination of any current or former employee of the Seller or (iii) the employment or termination of any employee of the Seller to the extent arising prior to the Closing Date;

(h) all costs, fees and expenses incurred by the Seller in connection with the administration of the Chapter 11 Case or the negotiation, execution and consummation of the transactions contemplated by this Agreement; and

(i) all liabilities or obligations to the extent relating to the ownership, possession or use of the Excluded Assets, or the ownership, possession or use of the Acquired Assets prior to the Closing Date (including claims related to or arising from rebates, chargebacks, credits, product returns and expirations, death, personal injury or other product liabilities, in each case to the extent relating to events or transactions occurring prior to the Closing Date).

Section 1.5 Assignment of Assigned Contracts. To the maximum extent permitted by the Bankruptcy Code, the Seller shall assume and transfer and assign all Acquired Assets to the Purchaser pursuant to sections 363 and 365 of the Bankruptcy Code as of the Closing Date.

Section 1.6 Purchase Price; Deposit Funds.

(a) In consideration for the Acquired Assets, the Purchaser shall, in addition to the assumption of the Assumed Liabilities, pay to the Seller at the Closing an amount equal to

[\$ _____] (the “Purchase Price”). The Purchaser shall pay the Purchase Price at the Closing to the Seller, net of any Deposit Funds paid to the Seller at the Closing.

(b) On or prior to the Effective Date, the Purchaser shall deposit with [_____], in its capacity as escrow agent (the “Escrow Agent”), an amount equal to ten percent (10%) of the Purchase Price (the “Deposit Funds”), to be released by the Escrow Agent and delivered to either the Purchaser or to the Seller in accordance with the provisions of this Agreement and the Escrow Agreement entered into by and among the Purchaser, the Seller and the Escrow Agent concurrently with the execution of this Agreement (the “Escrow Agreement”). At the Closing, the Purchaser and the Seller shall provide joint written instructions, executed by their respective authorized representatives under the Escrow Agreement, to the Escrow Agent that instruct the Escrow Agent to release the Deposit Funds to the Seller. The Deposit Funds received by the Seller shall be applied at the Closing toward the payment of the Purchase Price.

Section 1.7 Allocation of Purchase Price for Tax Purposes. The Seller and the Purchaser shall cooperate to prepare, within sixty (60) days following the Closing Date, a statement allocating the sum of the Purchase Price and the Assumed Liabilities to the Acquired Assets in accordance with Section 1060 of the Code and the Treasury regulations promulgated thereunder. If there is any adjustment to the Purchase Price, the Acquired Assets or the Assumed Liabilities, the Seller and the Purchaser agree to make appropriate adjustments to such statement. The Seller and the Purchaser shall be bound by such allocation (and if necessary, any revised allocation), and, unless otherwise required by applicable Law, shall file, or cause to be filed, all applicable federal, state, local and foreign income, franchise and excise Tax Returns in a manner that is substantially consistent with such allocation. If such allocation is disputed by any Taxing Authority, the party hereto receiving notice of such dispute shall promptly notify the other party hereto concerning the existence of such dispute and the parties hereto shall consult with each other with respect to all issues related to the allocation in connection with such dispute.

Section 1.8 No Withholding. Any amount paid to Seller shall be made free and clear of any withholding or other Tax.

ARTICLE II

THE CLOSING

Section 2.1 Closing. The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of Cole Schotz P.C., 1500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801, at 10:00 a.m. local time as soon as possible (and in any event within two (2) Business Days after) the conditions set forth in Article VI shall have been satisfied or waived (except for such conditions that, by their nature, are to be satisfied at the Closing, but subject to the satisfaction or waiver thereof at the Closing), unless another time, date and place shall be fixed by written agreement among the parties hereto (the date of the Closing being herein referred to as the “Closing Date”). For financial, accounting, Tax and economic purposes, including risk of loss, and for all other purposes under this Agreement, upon the occurrence of the Closing, the Closing shall be deemed to have occurred at 11:59 p.m. New York City time on the Closing Date.

Section 2.2 Deliveries at Closing.

(a) At the Closing, the Seller shall deliver to the Purchaser:

(i) a duly executed bill of sale substantially in the form of Exhibit A attached hereto (the "Bill of Sale"), transferring the Acquired Assets to the Purchaser;

(ii) the Acquired Assets by making the Acquired Assets available to the Purchaser at their present location;

(iii) the assignment and assumption agreement to be entered into between the Seller and the Purchaser substantially in the form of Exhibit B attached hereto (the "Assignment and Assumption Agreement"), duly executed by the Seller evidencing the assignment by the Seller and assumption by the Purchaser of the Assumed Liabilities;

(iv) an assignment of the Seller's right, title and interest in and to Intellectual Property registrations and applications substantially in the forms of Exhibit C hereto (the "Intellectual Property Assignment Agreements"), duly executed by the Seller, assigning such right, title and interest in and to such Intellectual Property registrations and applications to the Purchaser, as appropriate;

(v) certificates duly executed by Seller, in the form prescribed under Treasury Regulation Section 1.1455-2(b), that Seller is not a foreign person within the meaning of Section 1445(f)(3) of the Code;

(vi) a certificate duly executed by an executive officer of Seller to the effect that the conditions to the Closing set forth in Section 6.3 have been satisfied as of the Closing Date; and

(vii) such other documents reasonably satisfactory to the Purchaser as the Purchaser may reasonably request in writing no later than three (3) Business Days prior to the Closing Date in order to give effect to the Acquisition.

(b) At the Closing, the Purchaser shall deliver to the Seller:

(i) the Purchase Price (including any portion of the Purchase Price to be paid by release of the Deposit Funds to the Seller) by wire transfer of immediately available funds to an account or accounts designated by the Seller;

(ii) the Assignment and Assumption Agreement duly executed by the Purchaser;

(iii) the Intellectual Property Assignment Agreements, duly executed by the Purchaser;

(iv) a certificate duly executed by an executive officer of the Purchaser to the effect that the conditions to the Closing set forth in Section 6.2 have been satisfied as of the Closing Date; and

(v) such other documents reasonably satisfactory to the Seller as the Seller may reasonably request in writing no later than three (3) Business Days prior to the Closing Date in order to give effect to the Acquisition.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller represents and warrants to the Purchaser solely with respect to the Acquired Assets and the Assumed Liabilities as follows:

Section 3.1 Organization; Subsidiaries. Seller is validly existing and in good standing under the laws of the jurisdiction of its organization and has the requisite power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted, except where the failure to be so existing and in good standing or to have such power and authority would not, individually or in the aggregate, have a Material Adverse Effect. Seller is duly qualified or licensed to do business as a foreign entity and is in good standing in each jurisdiction in which the nature of the business conducted by it makes such qualification or licensing necessary, except where the failure to be so duly qualified, licensed and in good standing would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.2 Authority of the Seller. Seller has all requisite corporate power and authority to execute, deliver and, subject to the entry and effectiveness of the Sale Order, perform its obligations under this Agreement and each of the Ancillary Documents to which Seller is a party. The execution, delivery and performance of this Agreement and such Ancillary Documents by Seller and the consummation of the transactions contemplated hereby and thereby have been duly authorized and approved by all requisite corporate action of Seller. Subject to the entry and effectiveness of the Sale Order, this Agreement and each such Ancillary Document have been duly and validly executed and delivered by Seller and (assuming this Agreement and each such Ancillary Document constitute a valid and binding obligation of the Purchaser) constitute a valid and binding obligation of Seller enforceable against Seller in accordance with their terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other Laws affecting creditors' rights generally from time to time in effect and to general equitable principles (the "Bankruptcy and Equity Exceptions").

Section 3.3 Consents and Approvals. No consent, approval or authorization of, or declaration, filing or registration with, any Governmental Entity is required to be made or obtained by Seller in connection with the execution, delivery and performance of this Agreement and the Ancillary Documents to which Seller is a party and the consummation of the transactions contemplated hereby and thereby, except (a) for consents, approvals or authorizations of, or declarations, filings or registrations with, the Bankruptcy Court, (b) if required, pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), (c) for filings, notices and reports by Seller under applicable securities Laws or securities exchange

rules, or (d) for consents, approvals, authorizations, declarations, filings or registrations, which, if not made or obtained, would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.4 No Violations. Assuming that the consents, approvals, authorizations, declarations, filings and registrations referred to in Sections 3.3 and 4.3 have been made or obtained and remain in full force and effect and the conditions set forth in Section 6.1 have been satisfied, neither the execution, delivery or performance of this Agreement and the Ancillary Documents by the Seller nor the consummation by the Seller of the transactions contemplated hereby or thereby will (a) conflict with or result in any breach of any provisions of the certificate of incorporation, bylaws or other organizational documents of Seller, (b) with or without notice or lapse of time or both, result in any breach or violation of or constitute a default or give rise to any right of termination, acceleration, vesting, payment, exercise or revocation under, any Assigned Contract to which Seller is a party or by which any of its properties or assets are bound, (c) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of the Seller or (d) violate any Order or Law applicable to Seller or its respective properties or assets, except in the case of clauses (b), (c) and (d), for breaches, violations, defaults, rights, creations or impositions that (i) would not, individually or in the aggregate, have a Material Adverse Effect or (ii) are excused by or unenforceable as a result of the filing of the Petition or as a result of the entry or effectiveness of the Sale Order.

Section 3.5 Books and Records. The books and records of the Seller maintained with respect to the Business accurately and fairly reflect, in all material respects, the transactions and the assets and liabilities of the Seller with respect to the Business.

Section 3.6 Title to Property; Sufficiency of Assets.

(a) Upon the entry and effectiveness of the Sale Order, the Seller will have the power and right to sell, assign, transfer, convey and deliver, as the case may be, to the Purchaser the Acquired Assets and on the Closing Date will sell, assign, transfer, convey and deliver the Acquired Assets, free and clear of all Encumbrances other than Permitted Encumbrances.

(b) Except as would not, individually or in the aggregate, have a Material Adverse Effect, the Acquired Assets comprise all of the properties and assets used in the Business by the Seller as of the Effective Date other than the Excluded Assets.

Section 3.7 Brokers. Except for Cassel Salpeter & Co., LLC, no Person is entitled to any brokerage, financial advisory, finder's or similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Seller.

Section 3.8 Litigation. Except as would not, individually or in the aggregate, have a Material Adverse Effect and except for the Chapter 11 Case:

(a) there are no Actions currently pending or, to the Knowledge of the Seller, currently threatened, against the Seller or any of its properties or assets, including the Acquired Assets or Assigned Contracts; and

(b) Seller has not received written notice of, and to the Knowledge of the Seller, there are no Orders of a court of competent jurisdiction outstanding against Seller or any of its properties or assets that restrict the operation of the Business.

Section 3.9 Intellectual Property.

(a) Schedule 3.9(a) sets forth the material (i) patents and patent applications, (ii) trademark registrations and applications, (iii) domain names and (iv) copyright registrations and applications that are owned by Seller. To the Knowledge of the Seller, and except as disclosed on Schedule 3.9(a), all such material issued patents and trademark and copyright registrations are subsisting and have not expired, lapsed or been abandoned or cancelled.

(b) To the Knowledge of the Seller, the Seller owns or has a right to use the Intellectual Property used in the conduct of its Business as currently conducted, except as would not, individually or in the aggregate, have a Material Adverse Effect. To the Knowledge of the Seller, Seller is not infringing or misappropriating any Intellectual Property of any other Person, except for such infringements and misappropriations as would not, individually or in the aggregate, have a Material Adverse Effect, and there are no material Actions currently pending or, to the Knowledge of the Seller, currently threatened against the Seller with respect to Intellectual Property of any such other Person.

(c) To the Knowledge of the Seller, no Person is infringing or misappropriating any of the Intellectual Property owned by or exclusively licensed to the Seller, except for such infringements and misappropriations as would not, individually or in the aggregate, have a Material Adverse Effect, and there are no material Actions currently pending or threatened by the Seller against any Person with respect to Intellectual Property owned by or exclusively licensed to the Seller.

(d) There are no material judicial consents, judgments or orders, or litigation settlements, with respect to Intellectual Property issued against the Seller or, to the Knowledge of the Seller, that are otherwise binding on any Intellectual Property owned by or exclusively licensed to the Seller.

(e) To the Knowledge of the Seller, the Seller has taken commercially reasonable measures to maintain the confidentiality of trade secrets of the business of the Seller that the Seller intends to maintain as confidential, except as would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.10 Material Contracts.

(a) Schedule 3.10(a) sets forth, as of the Effective Date, a complete and correct list of material Contracts to which Seller is a party or by which any of its respective properties or assets are bound that are used in the conduct of its Business as currently conducted (collectively, the "Material Contracts").

(b) Complete and correct copies of the Material Contracts have been made available to the Purchaser as of the Effective Date.

(c) With respect to each Assigned Contract, assuming the due authorization, execution and delivery thereof by the other party or parties thereto, (i) each Assigned Contract is a valid and binding obligation of the Seller, and to the Knowledge of the Seller, each other party or parties thereto, in accordance with its terms and is in full force and effect, subject to the Bankruptcy and Equity Exceptions, (ii) the Seller is not, and, to the Knowledge of the Seller, no other party thereto is in default in the performance (including with respect to the due and proper payment required thereunder), observance or fulfillment of any obligation, covenant or condition contained in each of the Assigned Contracts and (iii) to the Knowledge of the Seller, no event has occurred that would, with or without notice or lapse of time or both, result in any breach or violation of or constitute a default or give rise to any right of termination, acceleration, vesting, payment, exercise or revocation under any Assigned Contract, except, with respect to clauses (i), (ii) and (iii) above, where any of the foregoing would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.11 Compliance with Laws; Permits.

(a) To the Knowledge of the Seller, and except as would not, individually or in the aggregate, have a Material Adverse Effect, the Seller (i) is not in violation of any applicable Law or (ii) has not received, at any time since January 1, 2015, any written notice from any Governmental Entity regarding any actual or alleged violation of, or failure on the part of Seller or to comply with, any applicable Law that has not been remedied.

(b) To the Knowledge of the Seller, the clinical trials (including any post-marketing studies) conducted or sponsored by the Seller (which, for the avoidance of doubt, shall not include investigator-sponsored trials) were at all times since January 1, 2015, and if still pending, are, being conducted in all material respects in accordance with all clinical protocols, institutional review board requirements, informed consents and applicable requirements of the United States Food and Drug Administration (the “FDA”), including good clinical practice and good laboratory practice regulations.

(c) Seller is not subject to any investigation that is currently pending and of which it has been notified or, to the Knowledge of the Seller, which is currently threatened, in each case by (i) the FDA or (ii) the Department of Health and Human Services Office of Inspector General or Department of Justice pursuant to the Federal Healthcare Program Anti-Kickback Statute (42 U.S.C. Section 1320a-7b) or the Federal False Claims Act (31 U.S.C. Section 3729).

(d) To the Knowledge of the Seller, Seller has not submitted any claim to any payment program in connection with any referrals that violated in any material respect any applicable self-referral Law, including the Federal Ethics in Patient Referrals Act (42 U.S.C. § 1395nn), or any applicable state self-referral Law.

(e) To the Knowledge of the Seller, Seller has not submitted any claim for payment to any payment program in violation of any applicable Laws relating to false claim or fraud, including the Federal False Claims Act (31 U.S.C. Section 3729) or any applicable state false claim or fraud Law, except for any such violation that would not, individually or in the aggregate, have a Material Adverse Effect.

(f) To the Knowledge of the Seller, Seller has not failed to comply with any applicable security and privacy standards regarding protected health information under the Health Insurance Portability and Accountability Act of 1996, or any applicable state privacy Laws, except for any such failures to comply that would not, individually or in the aggregate, have a Material Adverse Effect.

(g) To the Knowledge of the Seller, and except as would not, individually or in the aggregate, have a Material Adverse Effect, (i) Seller holds and maintains in full force and effect all Permits required to conduct its business in the manner and in such jurisdictions as it is conducted as of the Effective Date, (ii) Seller is in compliance with all such Permits and (iii) Seller has not received, at any time since January 1, 2015, any written notice from any Governmental Entity regarding any actual or alleged violation of, or failure on the part of Seller to comply with, any term or requirement of any such Permit that has not been remedied.

Section 3.12 Taxes.

(a) (i) All material income and other Tax Returns required to be filed by or on behalf of Seller have been filed with the appropriate Taxing Authority in all jurisdictions in which such Tax Returns are required to be filed (after giving effect to any valid extensions of time in which to make such filings), and all such Tax Returns are true, complete and correct in all material respects; and (ii) all material amounts of Taxes payable by or on behalf of the Seller have been paid. With respect to any period for which Tax Returns have not yet been filed or for which Taxes are not yet due or owing, to the Knowledge of the Seller, the Seller has made due and sufficient accruals for such Taxes in its financial statements and its books and records.

(b) The Seller has complied in all material respects with all applicable Laws relating to the payment and withholding of Taxes and has duly and timely withheld and paid over to the appropriate Taxing Authority all material amounts required to be so withheld and paid under all applicable Laws.

(c) The Seller has not received written notice of any material Tax deficiency outstanding, proposed or assessed against or allocable to the Seller and has not executed any waiver of any statute of limitations in respect of Taxes nor agreed to any extension of time with respect to a Tax assessment or deficiency with respect to the Business or the Acquired Assets.

(d) The Seller is not and has not been party to any "listed transactions" within the meaning of Treasury Regulations Section 1.6011-4(b).

(e) Seller is not a foreign Person within the meaning of Section 1445 of the Code.

Section 3.13 State Takeover Statutes. The Board of Directors of the Seller or an authorized committee thereof has approved this Agreement and the Acquisition and, assuming the accuracy of the Purchaser's representation in Section 4.7, such approval constitutes approval of the Acquisition for purposes of Section 203 of the General Corporation Law of the State of Delaware and represents the only action necessary to ensure that such section does not and will not apply to the execution and delivery of this Agreement or the consummation of the

Acquisition. To the Knowledge of the Seller, no other state takeover or similar statute or regulation is applicable to this Agreement or the Acquisition.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Seller as follows:

Section 4.1 Organization. The Purchaser is validly existing and in good standing under the laws of the jurisdiction of its organization and has the requisite power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted, except where the failure to be so existing and in good standing or to have such power and authority would not, individually or in the aggregate, materially impair or materially delay the Purchaser's ability to perform its obligations under this Agreement. The Purchaser is duly qualified or licensed to do business as a foreign entity and is in good standing in each jurisdiction in which the nature of the business conducted by it makes such qualification or licensing necessary, except where the failure to be so duly qualified, licensed and in good standing would not, individually or in the aggregate, materially impair or materially delay the Purchaser's ability to perform its obligations under this Agreement.

Section 4.2 Authority of the Purchaser. The Purchaser has all requisite entity power and authority to execute, deliver and perform its obligations under this Agreement and each of the Ancillary Documents to which it is a party. The execution, delivery and performance of this Agreement and such Ancillary Documents by the Purchaser and the consummation by the Purchaser of the transactions contemplated hereby and thereby have been duly authorized by all requisite action of the Purchaser. This Agreement and each such Ancillary Document have been duly and validly executed and delivered by the Purchaser and (assuming this Agreement and each such Ancillary Document constitute a valid and binding obligation of the Seller) constitute a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with their terms, subject to the Bankruptcy and Equity Exceptions.

Section 4.3 Consents and Approvals. No consent, approval or authorization of, or declaration, filing or registration with, any Governmental Entity is required to be made or obtained by the Purchaser or its Affiliates in connection with the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, except (a) for consents, approvals, authorizations, declarations, filings or registrations which, if not made or obtained, would not, individually or in the aggregate, materially impair or materially delay the Purchaser's ability to perform its obligations under this Agreement or (b) those described in Section 3.3 of this Agreement.

Section 4.4 No Violations. Assuming that the consents, approvals, authorizations, declarations, filings and registrations referred to in Sections 3.3 and 4.3 have been made or obtained and remain in full force and effect and the conditions set forth in Section 6.1 have been satisfied, neither the execution, delivery or performance of this Agreement or the Ancillary Documents by the Purchaser nor the consummation by the Purchaser of the transactions contemplated hereby or thereby will (a) conflict with or result in any breach of any

provisions of the certificate of incorporation, bylaws or other organizational documents of the Purchaser, (b) with or without notice or lapse of time or both, result in any breach or violation of or constitute a default or give rise to any right of termination, acceleration, vesting, payment, exercise or revocation under, any Contract to which Purchaser is a party or by which its properties or assets are bound, (c) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of the Purchaser or (d) violate any Order or Law applicable to the Purchaser or its properties or assets, except in the case of clauses (b), (c) and (d), for breaches, violations, defaults, rights, creations or impositions that would not, individually or in the aggregate, materially impair or materially delay the Purchaser's ability to perform its obligations under this Agreement.

Section 4.5 Brokers. No Person is entitled to any brokerage, financial advisory, finder's or similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Purchaser or its Affiliates.

Section 4.6 Solvency.

(a) The Purchaser has, and as of the Closing Date will have, sufficient funds available to deliver the Purchase Price to the Seller and consummate the transactions contemplated by this Agreement, including the timely satisfaction of the Assumed Liabilities. Purchaser acknowledges that the obligations of Purchaser under this Agreement are not contingent upon or subject to any condition regarding Purchaser's, an Affiliate's or any other Person's ability to obtain financing for the consummation of the transaction contemplated hereby.

(b) Immediately after giving effect to the transactions contemplated by this Agreement and the Ancillary Documents (including the payment of the Purchase Price, and the payment of all related fees and expenses), (i) the Purchaser and its Subsidiaries will not have incurred debts beyond their ability to pay such debts as they mature or become due, (ii) the then present fair saleable value of the assets of the Purchaser and its Subsidiaries will exceed the amount that will be required to pay their existing debts (including the probable amount of all contingent liabilities) as such debts become absolute and matured, (iii) the assets of the Purchaser and its Subsidiaries at a fair valuation will exceed their debts (including the probable amount of all contingent liabilities) and (iv) the Purchaser and its Subsidiaries will not have unreasonably small capital to carry on their business as proposed to be conducted following the Closing Date. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby, in either case, with the intent to hinder, delay or defraud either present or future creditors of the Purchaser and its Subsidiaries.

Section 4.7 Interested Stockholders. Neither the Purchaser nor any of its "affiliates" or "associates" has been an "interested stockholder" of the Seller at any time within three (3) years of the Effective Date, as those terms are used in Section 203 of the General Corporation Law of the State of Delaware.

ARTICLE V

COVENANTS

Section 5.1 Conduct of Business Pending the Closing. The Seller covenants and agrees that, except (i) as contemplated by this Agreement or any Ancillary Document, (ii) as required by applicable Order or Law, (iii) with the prior written consent of the Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed) or (iv) as required by, arising out of, relating to or resulting from, the Petition or otherwise approved by the Bankruptcy Court, from the Effective Date through the Closing Date:

(a) the Seller shall use commercially reasonable efforts to conduct the Business only in the ordinary course of business (including the payment when due of accounts payable arising under the Assumed Contracts and accounts payable directly related to the Acquired Assets), taking into account the Seller's status as a debtor in possession; and

(b) the Seller shall not take any of the following actions with respect to the Business, the Acquired Assets or the Assumed Liabilities:

(i) a sale, lease, license or disposition of any of the Acquired Assets, other than in the ordinary course of business, taking into account the Seller's status as a debtor in possession;

(ii) the voluntary Encumbrance (other than Permitted Encumbrances) of any Acquired Assets, tangible or intangible;

(iii) the voluntary termination of, entry into, amendment in any material respect of, or waiver of any material rights under, any Assigned Contract included in the Acquired Assets, or the knowing taking of any action that would cause the legal termination of an Assigned Contract or would provide any third party thereto the legal right to terminate an Assigned Contract;

(iv) abandon or permit to lapse, to the extent within the control of the Seller, any material Intellectual Property registration or application;

(v) other than in the ordinary course of business, settling, compromising or waiving any Action materially affecting the value of the Business, the Acquired Assets or the Assumed Liabilities;

(vi) the failure to use reasonable best efforts to maintain existing insurance policies included in the Acquired Assets or to renew or replace existing insurance policies included in the Acquired Assets following their termination; or

(vii) the authorization of or entry into an agreement to do any of the foregoing.

Section 5.2 Access and Information. Subject to the Bidding Procedures and applicable Law, the Seller shall afford to the Purchaser and its officers, employees, financial

advisors, legal counsel, accountants, consultants, financing sources and other authorized representatives reasonable access during normal business hours throughout the period prior to the Closing Date to the books, records, properties, data, other information, officers of the Seller and employees of the Seller who are involved with or responsible for any Acquired Asset or Assigned Contract in a material manner and, during such period, shall furnish reasonably promptly to the Purchaser such information (whether in physical or electronic form) as the Purchaser may reasonably request, in each case, related to the Business, the Acquired Assets, or the Assumed Liabilities for any purpose related to the consummation of the transactions contemplated by this Agreement provided, that (a) any information obtained pursuant to this Section 5.2 shall be subject to the Confidentiality Agreement, (b) any books and records or other information that is subject to an attorney-client or other legal privilege or obligation of confidentiality or non-disclosure shall not be made so accessible and (c) such access shall occur only following reasonable prior notice to a person designated by the Seller and, at the Seller's sole discretion, only if accompanied by a designee of the Seller.

Section 5.3 Approvals and Consents; Cooperation; Notification.

(a) The parties hereto shall use their respective reasonable best efforts, and cooperate with each other, to obtain as promptly as practicable all consents, approvals or authorizations of Governmental Entities and to take all action necessary to cause the expiration or termination of any waiting periods under applicable Laws required in order to consummate the transactions contemplated by this Agreement (including seeking early termination in respect of any such waiting period); provided, that the obligations of the parties hereto to obtain any consent, approval or waiver from the Bankruptcy Court shall be governed exclusively by Section 5.7.

(b) The Seller and the Purchaser shall take all actions necessary to file as soon as practicable all declarations, filings, registrations and other documents required to obtain all consents, approvals or authorizations from Governmental Entities, including by filing notifications under the HSR Act (if required) within ten (10) days after the Effective Date, and to respond as promptly as practicable to any inquiries received from the Federal Trade Commission, the Antitrust Division of the Department of Justice and any other Governmental Entity for additional information or documentation or any other requests from Governmental Entities in connection therewith. The Purchaser agrees to take promptly any and all steps necessary to avoid or eliminate each and every impediment under any antitrust or competition Law that may be asserted by any Governmental Entity so as to enable the parties hereto to close the transactions contemplated by this Agreement as promptly as practicable, including committing to or effecting, by consent decree, hold separate order or otherwise, the sale or disposition of or the agreement to limitations with respect to, such of its assets or businesses, or of the assets or businesses to be acquired by it pursuant to this Agreement, as may be required in order to avoid the entry of, or to effect the dissolution of, any Order that would otherwise have the effect of materially impairing or materially delaying the consummation of the transactions contemplated by this Agreement. In addition, the parties hereto agree to take promptly any and all steps necessary to defend any proceedings challenging this Agreement or the consummation of the transactions contemplated hereby and to attempt to vacate or lift any Order relating to antitrust or competition matters that would have the effect of making the transactions contemplated by this Agreement illegal or otherwise prohibiting their consummation. The

parties hereto agree to request early termination of the waiting period under the HSR Act (to the extent the HSR Act is applicable in respect of the Acquisition).

(c) Each of the Seller and the Purchaser shall give prompt notice to the other of the occurrence or failure to occur of an event that would, or with or without notice or lapse of time or both would, cause any condition to the consummation of the transactions contemplated hereby for the benefit of the other party hereto not to be satisfied.

Section 5.4 Additional Matters. Subject to the terms and conditions herein provided, each of the parties hereto agrees to use all reasonable best efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the transactions contemplated by this Agreement as promptly as practicable; provided, that the obligations of the parties hereto to obtain any consent, approval or waiver from the Bankruptcy Court shall be governed exclusively by Section 5.7.

Section 5.5 Further Assurances. In addition to the provisions of this Agreement, from time to time after the Closing Date, the Seller and the Purchaser shall use reasonable best efforts to execute and deliver such other instruments of conveyance, transfer or assumption, as the case may be, and take such other action as may be reasonably requested to implement more effectively the conveyance and transfer of the Acquired Assets to the Purchaser and the assumption of the Assumed Liabilities by the Purchaser; provided, that nothing in this Section 5.5 shall (a) require the Seller or any of its Affiliates to make any expenditure or incur any obligation on their own or on behalf of the Purchaser (unless funds in the full amount thereof are advanced to the Seller in cash) or (b) prohibit or delay the Seller or any of its Affiliates from ceasing operations or winding up its affairs following the Closing.

Section 5.6 Cure Costs. At or prior to the Closing, the Purchaser shall pay, pursuant to section 365 of the Bankruptcy Code and the Sale Order, any and all cure and reinstatement costs or expenses (the "Cure Costs") of or relating to the assumption and assignment of the Assigned Contracts included in the Acquired Assets.

Section 5.7 Bankruptcy Court Approval.

(a) The Seller and the Purchaser acknowledge that this Agreement and the sale of the Acquired Assets are subject to Bankruptcy Court approval. The Seller and the Purchaser acknowledge that (i) to obtain such approval, the Seller must demonstrate that it has taken reasonable steps to obtain the highest or otherwise best offer possible for the Acquired Assets, including giving notice of the transactions contemplated by this Agreement to creditors and certain other interested parties as ordered by the Bankruptcy Court, and, if necessary, conducting an auction in respect of the Acquired Assets (the "Auction"), and (ii) the Purchaser must provide adequate assurance of future performance under the Assigned Contracts included in the Acquired Assets.

(b) As soon as reasonably possible after execution of this Agreement, but in any event no later than five (5) Business Days after the Effective Date, the Seller shall file the

Motion to Approve the Bidding Procedures and Sale with the Bankruptcy Court, together with appropriate supporting papers and notices.

(c) The Seller shall use commercially reasonable efforts to obtain entry of the Sale Order.

(d) In the event an appeal is taken or a stay pending appeal is requested, from either the Bidding Procedures Order or the Sale Order, the Seller shall promptly notify the Purchaser of such appeal or stay request and shall promptly provide to the Purchaser a copy of the related notice of appeal or order of stay. The Seller shall also provide the Purchaser with written notice of any motion or application filed in connection with any appeal from either of such orders.

(e) From and after the Effective Date, and to the extent the Purchaser is the Successful Bidder at the Auction, the Seller shall not take any action that is intended to result in, or fail to take any action the intent of which failure to act would result in, the reversal, voiding, modification or staying of the Bidding Procedures Order or the Sale Order.

(f) If an Auction is conducted and the Purchaser is not the Successful Bidder at the conclusion of such Auction, the Purchaser shall be required to serve as the back-up bidder if the Purchaser is the next highest or otherwise next best bidder at the Auction (such party that is the next highest or otherwise best bidder at the Auction, the “Back-Up Bidder”) and, if the Purchaser is the Back-Up Bidder, the Purchaser shall be required to keep its bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon by the Purchaser in the Auction) open and irrevocable until the date on which this Agreement is terminated in accordance with Section 7.1. The Purchaser agrees that if the Purchaser is the Back-Up Bidder, any order approving a sale of some or all of the Acquired Assets to the Successful Bidder shall, subject to approval by the Bankruptcy Court, provide that if the Successful Bidder fails to consummate the sale transaction, the Purchaser shall be deemed to have the new prevailing bid, and the Seller shall be authorized, without further order of the Bankruptcy Court, to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon by the Purchaser in the Auction) with the Purchaser.

(g) The Purchaser agrees to use its commercially reasonable efforts to obtain approval of this Agreement and the sale of the Acquired Assets by the Bankruptcy Court, including by providing adequate assurance of future performance under the Assigned Contracts included in the Acquired Assets.

Section 5.8 Bankruptcy Filings. From and after the Effective Date, the Seller shall use reasonable efforts to provide such prior notice as may be reasonable under the circumstances before filing any papers in the Chapter 11 Case that relate, in whole or in part, to this Agreement or to the Purchaser. The Seller’s inadvertent failure to comply with this Section 5.8 shall not constitute a breach under this Agreement.

Section 5.9 Intentionally Omitted.

Section 5.10 Bidding Procedures; Superior Offers. The bidding procedures to be employed with respect to this Agreement shall be those reflected in the Bidding Procedures Order. The Purchaser agrees and acknowledges that the Seller and its representatives and Affiliates are and may continue soliciting inquiries, proposals or offers for the Business and the Acquired Assets in connection with alternative transactions pursuant to the terms of the Bidding Procedures Order and agree and acknowledge that the bidding procedures contained in the Bidding Procedures Order may be supplemented by other customary procedures not inconsistent with the matters otherwise set forth herein and the terms of this Agreement.

Section 5.11 Communications with Customers and Suppliers. Prior to the Closing, the Purchaser shall not, and shall cause its Affiliates and representatives not to, contact, or engage in any discussions or otherwise communicate with, the Seller's customers, suppliers, licensors, licensees and other Persons with which the Seller has material commercial dealings without obtaining the prior consent of the Seller (other than any such communication in the ordinary course of business of the Purchaser and its Affiliates without reference to or any purpose relating to the Business, the Acquired Assets, the Assumed Liabilities or the transactions contemplated by this Agreement).

Section 5.12 Post-Closing Books and Records. For a period of seven (7) years after the Closing Date (or such longer period as may be required by any Governmental Entity, applicable Order or Law or any ongoing Action):

(a) the Purchaser shall not dispose of or destroy any of the business records and files relating to the Business transferred to it hereunder; and

(b) the Purchaser shall allow the Seller and any of its directors, officers, employees, financial advisors, legal counsel, accountants, consultants and other authorized representatives access to all business records and files of the Seller or the Business that are transferred to the Purchaser hereunder, which are reasonably required by the Seller for purposes related to the Chapter 11 Case, the wind-down of the operations of the Seller, the functions of any trusts or other successors to the Seller, Tax matters and other reasonable business purposes, during regular business hours and upon reasonable prior notice, and the Seller shall have the right to make copies of any such records and files.

Section 5.13 Confidentiality Agreement; Post-Closing Confidentiality.

(a) As of the Closing, the Purchaser's obligations under the Confidentiality Agreement related to (i) non-use, non-disclosure and return or destruction of Evaluation Material (as defined in the Confidentiality Agreement) to the extent related to the Business, the Acquired Assets and the Assumed Liabilities shall terminate and (ii) non-solicitation of employees of the Seller shall terminate. All other provisions of the Confidentiality Agreement shall remain in full force and effect in accordance with their terms.

(b) For a period of five (5) years following the Closing Date, the Seller shall not, and shall cause its Affiliates and directors and officers not to, disclose to any Person other than the directors, officers, employees and authorized representatives of the Purchaser and its Affiliates, or use or otherwise exploit for their benefit, any Confidential Information, except

(i) pursuant to any Order, as required in any Action or as otherwise required by applicable Law, (ii) to enforce its rights and remedies under this Agreement or (iii) disclosure of Confidential Information in connection with the Chapter 11 Case, none of which, shall constitute a breach of this Section 5.13(b). “Confidential Information” shall mean any proprietary or confidential information to the extent related to the Business, the Acquired Assets or the Assumed Liabilities, excluding any information that (x) is (as of the Closing Date) or becomes generally available to the public other than as a result of a breach of this Section 5.13(b) or (y) becomes available to the Seller, its Affiliates or its directors and officers after the Closing Date on a non-confidential basis from a source other than the Purchaser or its Affiliates, provided that such source is not, to the knowledge of the Seller, bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Purchaser or its Affiliates or any other party with respect to such information.

Section 5.14 Payments Received. The Seller and the Purchaser each agree that after the Closing they will hold and will promptly transfer and deliver to the other, from time to time as and when received by them or their respective Subsidiaries, any cash, checks with appropriate endorsements (using their best efforts not to convert such checks into cash) or other property that they may receive on or after the Closing which properly belongs to the other party hereto or its Subsidiaries and will account to the other for all such receipts.

Section 5.15 Use of Names and Marks. The Purchaser acknowledges and agrees that, notwithstanding the transfer of Intellectual Property included in the Acquired Assets, (a) the Seller will continue using its current corporate name during the pendency of the Chapter 11 Case and any additional time during which the Seller winds down its affairs, and (b) the Seller shall be entitled to refer to names and marks included in the Acquired Assets in filings with Governmental Entities, for factual or historical reference and for any other purposes that do not constitute trademark infringement and are not otherwise prohibited by applicable Law.

ARTICLE VI

CONDITIONS PRECEDENT

Section 6.1 Conditions Precedent to Obligation of the Seller and the Purchaser. The respective obligations of each party hereto to effect the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of the following conditions:

(a) the Sale Order, in form and substance reasonably acceptable to the Seller and the Purchaser, shall have been entered by the Bankruptcy Court and the Sale Order shall have become a Final Order;

(b) the waiting period (and any extensions thereof) under the HSR Act (if applicable to the Acquisition) shall have expired or been terminated; and

(c) no Governmental Entity of competent jurisdiction shall have enacted, enforced or entered any Law or final and non-appealable Order that is in effect on the Closing Date and prohibits the consummation of the Closing.

Section 6.2 Conditions Precedent to Obligation of the Seller. The obligation of the Seller to effect the transactions contemplated by this Agreement shall be subject to the satisfaction or waiver by the Seller at or prior to the Closing of the following conditions:

(a) the Purchaser shall have performed in all material respects the covenants under this Agreement required to be performed by the Purchaser at or prior to the Closing; and

(b) the representations and warranties of the Purchaser contained in this Agreement shall be true and correct as of the Closing Date as if made at and as of such date (except to the extent such representations and warranties speak as of another date, in which case such representations and warranties shall be true and correct as of such other date), except where the failure of such representations and warranties to be so true and correct (disregarding any exception or qualification in such representations and warranties relating to “material” or “materiality”) would not, individually or in the aggregate, materially impair or materially delay the Purchaser’s ability to perform its obligations under this Agreement.

Section 6.3 Conditions Precedent to Obligation of the Purchaser. The obligation of the Purchaser to effect the transactions contemplated by this Agreement shall be subject to the satisfaction or waiver by the Purchaser at or prior to the Closing of the following conditions:

(a) the Seller shall have performed in all material respects the covenants under this Agreement required to be performed by the Seller at or prior to the Closing; and

(b) the representations and warranties of the Seller contained in this Agreement shall be true and correct as of the Closing Date as if made at and as of such date (except to the extent such representations and warranties speak as of another date, in which case such representations and warranties shall be true and correct as of such other date), except where the failure of such representations and warranties to be so true and correct (disregarding any exception or qualification in such representations and warranties relating to “material” or “materiality”) would not, individually or in the aggregate, have a Material Adverse Effect.

ARTICLE VII

TERMINATION

Section 7.1 Termination Events. Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing Date:

(a) by mutual written consent of the Seller and the Purchaser;

(b) by either the Seller or the Purchaser, by giving written notice of such termination to the other, if a Governmental Entity of competent jurisdiction shall have enacted,

enforced or entered any Law or a final and non-appealable Order shall be in effect that prohibits the consummation of the Closing; provided, that the party hereto seeking to terminate this Agreement shall have used reasonable best efforts to have any such Law declared invalid or inapplicable or Order vacated;

(c) by either the Seller or the Purchaser, by giving written notice of such termination to the other, if the Closing shall not have occurred prior to the date that is forty-five (45) days after entry of the Sale Order and as of such date all conditions to the Closing set forth in Article VI shall have been satisfied or waived or shall be capable of being satisfied at the Closing (but subject to the satisfaction or waiver at or prior to the Closing of all such conditions), unless the failure of the Closing to occur prior to such date results from the failure of the party hereto seeking to terminate this Agreement to materially perform any of its obligations under this Agreement required to be performed by it at or prior to the Closing;

(d) by the Purchaser in the event of (i) any breach by the Seller of any of its covenants, representations or warranties contained in this Agreement, which breach would (if occurring or continuing as of the Closing) give rise to the failure of a condition to the Closing set forth in Section 6.3, or (ii) any material breach by the Seller of the Bidding Procedures Order or the Sale Order, and in either case, the failure of the Seller to cure such breach within fourteen (14) days after receipt of the Purchaser Termination Notice; provided, that (A) the Purchaser is not itself in material breach of its covenants, representations or warranties contained in this Agreement or the provisions of the Bidding Procedures Order or the Sale Order, (B) the Purchaser notifies the Seller in writing (the "Purchaser Termination Notice") of its intention to exercise its rights under this Agreement as a result of the breach and (C) the Purchaser specifies in such Purchaser Termination Notice the covenant, representation or warranty contained in this Agreement or the provision of the Bidding Procedures Order or the Sale Order of which the Seller is allegedly in breach;

(e) by the Seller in the event of (i) any breach by the Purchaser of any of its covenants, representations or warranties contained in this Agreement, which breach would (if occurring or continuing as of the Closing) give rise to the failure of a condition to the Closing set forth in Section 6.2, or (ii) any material breach by the Purchaser of the Bidding Procedures Order or the Sale Order, and in either case, the failure of the Purchaser to cure such breach within fourteen (14) days after receipt of the Seller Termination Notice; provided, that (A) the Seller is not itself in material breach of its covenants, representations or warranties contained in this Agreement or the provisions of the Bidding Procedures Order or the Sale Order, (B) the Seller notifies the Purchaser in writing (the "Seller Termination Notice") of its intention to exercise its rights under this Agreement as a result of the breach and (C) the Seller specifies in such Seller Termination Notice the covenant, representation or warranty contained in this Agreement or the provision of the Bidding Procedures Order or the Sale Order of which the Purchaser is allegedly in breach; or

(f) by either the Purchaser or the Seller, by giving written notice of such termination to the other, if the Seller consummates any transaction (i) in which a material portion of the Business or the Acquired Assets are to be sold, transferred or otherwise disposed of and (ii) that the Bankruptcy Court has finally approved in an Order as "superior" in accordance with the Bidding Procedures Order, to the Acquisition.

Section 7.2 Effect of Termination.

(a) Except as otherwise provided in this Section 7.2 or Section 8.15, in the event of termination of this Agreement by either party hereto in accordance with Section 7.1, all rights and obligations of the parties under this Agreement shall terminate without any liability of any party to any other parties hereto, except for liability for fraud or intentional breach of this Agreement prior to such termination. The provisions of clause (a) of Section 5.2, this Section 7.2 and Article VIII (other than Sections 8.1 and 8.2) shall expressly survive the termination of this Agreement.

(b) In the event of termination of this Agreement pursuant to Section 7.1(a), Section 7.1(b), Section 7.1(c), Section 7.1(d) or Section 7.1(f), the Purchaser and the Seller shall, within two (2) Business Days following such termination, provide joint written instructions to the Escrow Agent directing the Escrow Agent to promptly release the Deposit Funds to the Purchaser.

(c) If this Agreement is terminated pursuant to Section 7.1(e), then the Purchaser and the Seller shall, within two (2) Business Days following such termination, provide joint written instructions to the Escrow Agent directing the Escrow Agent to promptly release the Deposit Funds to the Seller.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.1 Tax Matters.

(a) All sales, use, excise, transfer, documentary, conveyance and other similar Taxes (“Transfer Taxes”), if any, payable in connection with the sale, conveyance, assignments, transfers and deliveries with respect to real or personal property to be made to the Purchaser hereunder shall be borne by the Purchaser and paid when due. The Purchaser shall be responsible for preparing and filing Tax Return(s) with respect to Transfer Taxes and shall file all such Tax Return(s) when due.

(b) The Seller and the Purchaser shall promptly provide each other with any reasonably requested information for purposes of determining any Tax liability in respect of the Business, any Acquired Asset or any Assumed Liability, and shall otherwise make available to each other all information, records or documents relating to liabilities for Taxes in respect of the Business, the Acquired Assets and the Assumed Liabilities. The Seller and the Purchaser shall preserve all such information, records and documents until the expiration of any statute of limitations or extensions thereof.

(c) As to any Acquired Asset acquired by the Purchaser, the Seller and the Purchaser shall apportion the liability for real and personal property Taxes, ad valorem Taxes, and similar Taxes (“Periodic Taxes”) for all Tax periods including but not beginning or ending on the Closing Date applicable to such Acquired Asset (all such periods of time being hereinafter called “Proration Periods”). The Periodic Taxes described in this Section 8.1(c) shall be

apportioned between the Seller and the Purchaser as of the Closing Date, with the Purchaser liable for that portion of the Periodic Taxes equal to the Periodic Tax for the Proration Period multiplied by a fraction, the numerator of which is the number of days remaining in the applicable Proration Period on and after the Closing Date, and the denominator of which is the total number of days covered by such Proration Period. The Seller shall be liable for that portion of the Periodic Taxes for a Proration Period for which the Purchaser is not liable under the preceding sentence. The Purchaser and the Seller shall pay or be reimbursed for Periodic Taxes (including instances in which such Periodic Taxes have been paid before the Closing Date) on this prorated basis at Closing. To the extent the liability for Periodic Taxes for a certain Proration Period or pre-Closing Tax period is not determinable at the time of Closing or such Periodic Taxes are charged in arrears, such Periodic Taxes shall be prorated for such Proration Period, or, in the case of Periodic Taxes for a pre-Closing Tax period, the amount shall be determined for purposes of this Agreement, based on the most recent ascertainable full tax year without adjustment. The party hereto responsible under applicable Law for paying a Tax described in this Section 8.1(c) shall be responsible for administering the payment of such Tax. For purposes of this Section 8.1(c), the Proration Period for ad valorem Taxes and real and personal property Taxes shall be the fiscal period for which such Taxes were assessed by the applicable Tax jurisdiction.

(d) The Seller, on the one hand, or the Purchaser, on the other hand, as the case may be (the “Reimbursing Party”), shall provide reimbursement for any Tax paid by the other (the “Paying Party”), all or a portion of which is the responsibility of the Reimbursing Party in accordance with the terms of this Section 8.1 or which represents an overpayment for Taxes by the Paying Party. Within a reasonable time prior to the payment of any such Tax, the Paying Party shall give notice to the Reimbursing Party of the Tax payable and the Paying Party’s and Reimbursing Party’s respective liability therefor, although failure to do so will not relieve the Reimbursing Party from its liability hereunder except to the extent the Reimbursing Party is prejudiced thereby.

Section 8.2 Bulk Sales. The Purchaser hereby waives compliance by the Seller and its Affiliates with the requirements and provisions of any “bulk-transfer” laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Acquired Assets to the Purchaser.

Section 8.3 Survival of Representations, Warranties and Covenants. No representations or warranties in this Agreement or in any Ancillary Document shall survive the Closing. No covenants in this Agreement or in any Ancillary Document shall survive the Closing except to the extent the terms thereof expressly contemplate performance following the Closing.

Section 8.4 Public Announcements. Unless otherwise required by applicable Law or by obligations of the Seller or the Purchaser or their respective Affiliates pursuant to any listing agreement with or rules of any securities exchange, the Seller and the Purchaser shall consult with each other before issuing any other press release or otherwise making any public statement with respect to this Agreement, the transactions contemplated hereby or the activities and operations of the other and shall not issue any such release or make any such statement

without the prior written consent of the other (such consent not to be unreasonably withheld, conditioned or delayed).

Section 8.5 Notices. All notices, requests, claims, demands or other communications hereunder shall be deemed to have been duly given and made if in writing and (a) at the time personally delivered if served by personal delivery upon the party hereto for whom it is intended, (b) at the time received if delivered by registered or certified mail (postage prepaid, return receipt requested) or by a national courier service (delivery of which is confirmed), or (c) upon confirmation if sent by facsimile; in each case to the Person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such Person:

(a) if to:

the Purchaser, to:

[_____
[_____
[_____]

Facsimile: [_____]

Attention: [_____]

with a copy (which shall not constitute notice) to:

[_____
[_____
[_____]

Facsimile: [_____]

Attention: [_____]

and

(b) if to the Seller, to

NephroGenex, Inc.
3200 Beechleaf Court, Suite 900
Raleigh, NC 27604
Attention: John P. Hamill

with a copy (which shall not constitute notice) to:

Cole Schotz P.C.
500 Delaware Avenue
Suite 1410
Wilmington, DE 19801
Facsimile: (646) 563-7952
Attention: David R. Hurst

Section 8.6 Descriptive Headings; Interpretative Provisions. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The words “hereof”, “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. Whenever the last day for the exercise of any right or the discharge of any duty under this Agreement falls on other than a Business Day, the party hereto having such right or duty shall have until the next Business Day to exercise such right or discharge such duty. Unless otherwise indicated, the word “day” shall be interpreted as a calendar day. References to “dollars” or “\$” mean United States dollars, unless otherwise clearly indicated to the contrary. No summary of this Agreement prepared by or on behalf of any party hereto shall affect the meaning or interpretation of this Agreement.

Section 8.7 No Strict Construction. The Seller and the Purchaser participated jointly in the negotiation and drafting of this Agreement, and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Seller and the Purchaser, and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of the authorship of any provision of this Agreement. Without limitation as to the foregoing, no rule of strict construction construing ambiguities against the draftsman shall be applied against any person with respect to this Agreement.

Section 8.8 Entire Agreement; Assignment. This Agreement, the Ancillary Documents and the Confidentiality Agreement constitute the entire agreement and supersede all other prior agreements and understandings, both written and oral, among the parties hereto or any of them, with respect to the subject matter hereof and thereof. Neither this Agreement nor any of the rights, interests or obligations under it may be directly or indirectly assigned, delegated, sublicensed or transferred by any of the parties hereto, in whole or in part, to any other Person by operation of law or otherwise, without the prior written consent of the other parties, and any attempted or purported assignment in violation of this Section 8.8 will be null and void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and permitted assigns.

Section 8.9 Governing Law; Submission of Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to the rules of conflict of laws of the State of Delaware or any other jurisdiction. Each of the parties hereto irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the Bankruptcy Court for any litigation arising out of or relating to this Agreement and the transactions contemplated thereby (and agrees not to commence any

litigation relating thereto except in the Bankruptcy Court), and waives any objection to the laying of venue of any such litigation in the Bankruptcy Court. Each party hereto hereby consents to service of process in the manner and at the address set forth in Section 8.5. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 8.10 Expenses. Except as otherwise expressly provided herein, whether or not the transactions contemplated by this Agreement are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated thereby shall be paid by the party hereto incurring such expenses.

Section 8.11 Amendment. This Agreement may not be amended except by an instrument in writing signed on behalf of all the parties hereto.

Section 8.12 Waiver. At any time prior to the Closing, the parties hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

Section 8.13 Counterparts; Effectiveness. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

Section 8.14 Severability; Validity; Parties in Interest. If any provision of this Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to other Persons or circumstances, shall not be affected thereby, and to such end, the provisions of this Agreement are agreed to be severable. Nothing in this Agreement, express or implied, is intended to confer upon any Person not a party to this Agreement any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 8.15 Specific Performance; Sole and Exclusive Remedy for Seller Breach.

(a) The parties hereto recognize that if Purchaser breaches this Agreement or refuses to perform under the provisions of this Agreement, monetary damages alone would not be adequate to compensate the Seller for its injuries. The Seller shall therefore be entitled, in addition to any other remedies that may be available, to obtain specific performance of the terms of this Agreement, without posting bond or other undertaking. If any action is brought by the Seller to enforce this Agreement, the Purchaser shall waive the defense that there is an adequate remedy at Law.

(b) In the event of any breach prior to the Closing by Seller of any of its agreements, covenants, representations or warranties contained herein or in the Bidding Procedures Order or the Sale Order, including any breach that is material or willful, the Purchaser's sole and exclusive remedy shall be to exercise the Purchaser's rights to terminate this Agreement pursuant to Section 7.1(d), in accordance with the terms of such Section 7.1(d), and the Purchaser shall not have any further cause of action for damages, specific performance or any other legal or equitable relief against the Seller or any of its former, current or future equity holders, directors, officers, Affiliates, agents or representatives with respect thereto.

ARTICLE IX

DEFINITIONS

As used herein, the terms below shall have the following meanings:

"Acquired Assets" has the meaning set forth in Section 1.1.

"Acquisition" has the meaning set forth in the Recitals.

"Action" means any claim, charge, action, suit, arbitration, mediation, inquiry, proceeding or investigation by any Person or Governmental Entity before any Governmental Entity or any arbitrator or mediator.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person.

"Agreement" has the meaning set forth in the Preamble and shall include the Exhibits and Schedules annexed hereto or referred to herein.

"Ancillary Documents" means the Bill of Sale, Assignment and Assumption Agreement, Intellectual Property Assignment Agreements, Escrow Agreement and each other agreement, document or instrument (other than this Agreement) executed and delivered by the parties hereto in connection with the consummation of the transactions contemplated by this Agreement.

"Assigned Contracts" has the meaning set forth in Section 1.1(a).

"Assignment and Assumption Agreement" has the meaning set forth in Section 2.2(a)(iv).

"Assumed Liabilities" has the meaning set forth in Section 1.3.

"Auction" has the meaning set forth in Section 5.7(a).

"Back-Up Bidder" has the meaning set forth in Section 5.7(f).

"Bankruptcy and Equity Exceptions" has the meaning set forth in Section 3.2.

"Bankruptcy Code" has the meaning set forth in the Recitals.

“*Bankruptcy Court*” has the meaning set forth in the Recitals.

“*Benefit Plan*” means a plan, program, agreement or other arrangement providing for employment, compensation, retirement, deferred compensation, severance, separation, relocation, repatriation, expatriation, termination pay, performance awards, bonus, incentive, stock option, stock purchase, stock bonus, phantom stock, stock appreciation right, supplemental retirement or other pension or welfare benefits, whether written or unwritten, including each “employee benefit plan” within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, which is or has been sponsored, maintained, contributed to, or required to be contributed to by the Seller or any of its Subsidiaries and any trade or business (whether or not incorporated) that is or at any relevant time was treated as a single employer with the Seller or any of its Subsidiaries within the meaning of Section 414(b), (c), (m) or (o) of the Code for the benefit of any employee or former employee of the Seller or any of its Subsidiaries.

“*Bidding Procedures*” means bid procedures to be approved by the Bankruptcy Court pursuant to the Bidding Procedures Order.

“*Bidding Procedures Order*” means an Order of the Bankruptcy Court authorizing and approving, among other things, the Bidding Procedures, which Order shall be in form and substance reasonably acceptable to the parties hereto.

“*Bill of Sale*” has the meaning set forth in Section 2.2(a)(i).

“*Business*” has the meaning set forth in the Recitals.

“*Business Day*” means any day that is not a Saturday, Sunday or other day on which banking institutions in New York City, New York are authorized or required by Law or Order to close.

“*Chapter 11 Case*” has the meaning set forth in the Recitals.

“*Closing*” has the meaning set forth in Section 2.1.

“*Closing Date*” has the meaning set forth in Section 2.1.

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

“*Confidential Information*” has the meaning set forth in Section 5.13(b).

“*Confidentiality Agreement*” means that certain confidentiality agreement, dated as of [____], by and between the Seller and the Purchaser.

“*Contract*” means any loan or credit agreement, bond, debenture, note, mortgage, indenture, lease, supply agreement, license agreement, development agreement or other contract, agreement, obligation, commitment or instrument that is legally binding.

“*Cure Costs*” has the meaning set forth in Section 5.6.

“*Deposit Funds*” has the meaning set forth in Section 1.6(b).

“*Effective Date*” means the date as of which this Agreement was executed as set forth in the first sentence of this Agreement.

“*Encumbrance*” means any charge, lien, claim, mortgage, lease, hypothecation, deed of trust, pledge, security interest, easement, servitude, encroachment, encumbrance or other similar restriction of any kind.

“*Escrow Agent*” has the meaning set forth in Section 1.6(b).

“*Escrow Agreement*” means the Escrow Agreement attached hereto as Exhibit D.

“*Excluded Assets*” has the meaning set forth in Section 1.2.

“*Excluded Liabilities*” has the meaning set forth in Section 1.4.

“*FDA*” has the meaning set forth in Section 3.11(b).

“*Final Order*” means an action taken or Order issued by the applicable Governmental Entity as to which: (i) no request for stay of the action or Order is pending, no such stay is in effect, and, if any deadline for filing any such request is designated by statute or regulation, it is passed, including any extensions thereof, (ii) no petition for rehearing or reconsideration of the action or Order, or protest of any kind, is pending before the Governmental Entity and the time for filing any such petition or protest is passed, (iii) the Governmental Entity does not have the action or Order under reconsideration or review on its own motion and the time for such reconsideration or review has passed, and (iv) the action or Order is not then under judicial review, there is no notice of appeal or other application for judicial review pending, and the deadline for filing such notice of appeal or other application for judicial review has passed, including any extensions thereof; provided, that a request for a stay, appeal, motion to rehear or reconsider or petition for certiorari referred to above shall, at the Seller’s option, be disregarded for purposes of such clause if such request for a stay, appeal, motion to rehear or reconsider or petition for certiorari would not, individually or in the aggregate, and after giving effect to section 363(m) of the Bankruptcy Code, reasonably be expected to result in the Purchaser being required to pay more than the Purchase Price (as the same may be improved upon by the Purchaser in the Auction).

“*GAAP*” means United States generally accepted accounting principles.

“*Governmental Entity*” means any federal, state, provincial, local, county or municipal government, governmental, judicial, regulatory or administrative agency, commission, board, bureau or other authority or instrumentality, domestic or foreign.

“*HSR Act*” has the meaning set forth in Section 3.3.

“*Intellectual Property*” has the meaning set forth in Section 1.1(d).

“*Intellectual Property Assignment Agreement*” has the meaning set forth in Section 2.2(a) (iv).

“*Knowledge of the Seller*” means the actual knowledge of John P. Hamill, the Seller’s Chief Executive Officer and Chief Financial Officer.

“*Law*” means any federal, state, local or foreign statute, law, ordinance, regulation, rule or code.

“*Material Adverse Effect*” means any event or condition that, individually or in the aggregate, results in a material adverse effect on the Acquired Assets or the Business, taken as a whole, excluding the effects of events or conditions, either alone or in combination, resulting from or arising out of (i) the Chapter 11 Case, (ii) the Excluded Assets or the Excluded Liabilities, (iii) changes in general economic, financial or securities markets or geopolitical conditions, (iv) general changes or developments in macroeconomic conditions or the industries and markets in which the Business operates, (v) the entry into this Agreement, the announcement of the Acquisition, the identity of the Purchaser or the consummation of the transactions contemplated by this Agreement, including termination of, reduction in or similar negative impact on relationships, contractual or otherwise, with any customers, suppliers, distributors, licensors, licensees, partners or employees of the Business, (vi) any actions required to be taken or omitted by the Seller under this Agreement or any action or omission by the Purchaser in breach of this Agreement, (vii) changes in (or proposals to change) any applicable Laws or applicable accounting regulations or principles or the enforcement or interpretation thereof, (viii) any outbreak or escalation of hostilities or war or any act of terrorism or natural disaster or act of God and (ix) any failure of the Business to meet any budgets, plans, projections or forecasts (internal or otherwise).

“*Material Contracts*” has the meaning set forth in Section 3.10(a).

“*Motion to Approve the Bidding Procedures and Sale*” means the motion to be filed by the Seller requesting that the Bankruptcy Court enter the Bidding Procedures Order and the Sale Order.

“*Order*” means any order, injunction, judgment, decree, ruling, writ, assessment or award of a Governmental Entity.

“*Paying Party*” has the meaning set forth in Section 8.1(d).

“*Periodic Taxes*” has the meaning set forth in Section 8.1(c).

“*Permits*” means any permit, approval, concession, grant, franchise, license and other approval of or by any Governmental Entity.

“*Permitted Encumbrances*” means (i) statutory liens for current property Taxes and assessments not yet due and payable, including liens for ad valorem Taxes and statutory liens not yet due and payable, (ii) statutory liens and rights of set-off of landlords, banks, carriers, warehousemen, mechanics, repairmen, workmen, suppliers and materialmen, in each case, incurred in the ordinary course of business (A) for amounts not yet overdue, (B) for amounts that

are overdue and that (in the case of any such amounts overdue for a period in excess of thirty (30) days) are being contested in good faith or (C) for amounts as to which payment and enforcement is stayed under the Bankruptcy Code or pursuant to orders of the Bankruptcy Court, (iii) purchase money liens and liens securing rental payments under capitalized lease obligations, (iv) rights of setoff or banker's liens upon deposits of cash in favor of banks or other depository institutions, (v) pledges or deposits under worker's compensation, unemployment insurance and social security laws to the extent required by applicable Law, (vi) rights of third parties pursuant to ground leases, leases, subleases, licenses, concessions or similar agreements, (vii) easements, covenants, conditions, restrictions and other similar matters of record or imperfections of title with respect to real or personal property that do not individually or in the aggregate in any material respect interfere with the present use of the property subject thereto, (viii) local, county, state and federal ordinances, regulations, building codes or permits, now or hereafter in effect, relating to real property, (ix) restrictions or requirements set forth in any Permits relating to the Business, (x) violations, if any, arising out of the adoption, promulgation, repeal, modification or reinterpretation of any Order or Law which occurs subsequent to the Effective Date, (xi) Encumbrances caused by or resulting from the acts or omissions of the Purchaser or any of its Affiliates, employees, officers, directors, agents, contractors, invitees or licensees, (xii) encroachments, overlaps, boundary line disputes and any other matters which would be disclosed by an accurate survey and inspection of real property and that do not materially impair the use of real property for its intended purpose, (xiii) Encumbrances arising by operation of Law under Article 2 of any state's Uniform Commercial Code (or successor statute) in favor of a seller of goods or buyer of goods, and (xiv) rights granted to any licensee of any Intellectual Property.

"*Person*" means any individual, corporation, partnership, limited partnership, joint venture, limited liability company, trust or unincorporated organization or Governmental Entity or any other entity.

"*Petition*" has the meaning set forth in the Recitals.

"*Petition Date*" has the meaning set forth in the Recitals.

"*Proration Periods*" has the meaning set forth in Section 8.1(c).

"*Purchase Price*" has the meaning set forth in Section 1.6(a).

"*Purchaser*" has the meaning set forth in the Preamble.

"*Purchaser Termination Notice*" has the meaning set forth in Section 7.1(d).

"*Reimbursing Party*" has the meaning set forth in Section 8.1(d).

"*Sale Order*" means an Order of the Bankruptcy Court authorizing and approving the sale of the Acquired Assets to the Purchaser on the terms and conditions set forth herein, which Order shall be in form and substance reasonably acceptable to the parties hereto.

"*Seller*" has the meaning set forth in the Preamble.

“*Seller Termination Notice*” has the meaning set forth in Section 7.1(e).

“*Subsidiary*” means with respect to any Person, any other Person as to which it owns, directly or indirectly, or otherwise controls, more than fifty percent (50%) of the voting shares or other similar interests.

“*Successful Bidder*” has the meaning set forth in the Bidding Procedures.

“*Tax*” or “*Taxes*” means all taxes, assessments, duties, fees, levies, imposts or other similar charges, including all federal, state, or foreign income, environmental, franchise, transfer, sales, gross receipt, use, ad valorem, property, excise, severance, stamp, payroll, social security, employment, unemployment, withholding, and estimated taxes, and all additions to tax, penalties, and interest related thereto.

“*Tax Return*” means any tax return, filing or information statement required to be filed in connection with or with respect to any Tax.

“*Transfer Taxes*” has the meaning set forth in Section 8.1(a).

[Signature Page Follows]

IN WITNESS WHEREOF, the Seller and the Purchaser have caused this Agreement to be executed on their behalf by their officers thereunto duly authorized, as of the date first above written.

SELLER:

NEPHROGENEX, INC.

By: _____
Name: John P. Hamill
Title: Chief Executive Officer and
Chief Financial Officer

PURCHASER:

[_____]

By: _____
Name:
Title:

EXHIBIT A TO ACQUISITION AGREEMENT

Form Bill of Sale

BILL OF SALE

This BILL OF SALE (this “Bill of Sale”) is made as of _____, 2016, by NephroGenex, Inc. (the “Seller”) in favor and for the benefit of [_____] (the “Purchaser”).

WHEREAS, the Seller and the Purchaser have entered into that certain Acquisition Agreement, dated as of _____, 2016 (the “Acquisition Agreement”), pursuant to which the Seller has agreed to sell, assign, transfer, convey and deliver to the Purchaser all right, title and interest of the Seller in and to the Acquired Assets. Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Acquisition Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller agrees as follows:

1. The Seller, intending to be legally bound, does hereby sell, assign, transfer, convey and deliver to the Purchaser all of the Seller’s right, title and interest in and to the Acquired Assets in accordance with the terms and conditions of the Acquisition Agreement.
2. Upon the reasonable request of the Purchaser, the Seller shall on and after the date hereof use reasonable best efforts to execute and deliver such other instruments of conveyance, transfer or assumption, as the case may be, and take such other action as may be reasonably requested to implement more effectively the conveyance and transfer of the Acquired Assets to the Purchaser; provided, that nothing in this Section 2 shall (a) require the Seller or any of its Affiliates to make any expenditure or incur any obligation on their own or on behalf of the Purchaser (unless funds in the full amount thereof are advanced to the Seller in cash) or (b) prohibit or delay the Seller or any of its Affiliates from ceasing operations or winding up their affairs following the Closing.
3. Without limiting paragraph 2 hereof, in the event of the dissolution of the Seller, the Seller constitutes and appoints the Purchaser, its successors and assigns, to the extent permissible under applicable law, the true and lawful agent(s) and attorney(s) in fact of the Seller, with full power of substitution and resubstitution, in whole or in part, in the name and stead of the Seller but on behalf of and for the benefit of the Purchaser and its successors and assigns, from time to time, to execute and deliver all regulatory filings and such other instruments of conveyance, transfer or assumption required to fully effectuate the transfer of the Acquired Assets to the Purchaser, the Seller hereby declaring that the foregoing powers are coupled with an interest and are and shall be irrevocable by the Seller in the event of the dissolution of the Seller.
4. Nothing in this Bill of Sale, express or implied, is intended or shall be construed to confer upon, or give to, any Person other than the parties hereto and their respective successors and permitted assigns, any remedy or claim under or by reason of this Bill of Sale or any term, covenant or condition hereof, and all the terms, covenants, conditions and agreements contained in this instrument shall be for the sole and exclusive benefit of the parties hereto and their successors and permitted assigns.

5. The Seller acknowledges and agrees that the representations, warranties, covenants and agreements contained in the Acquisition Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. Nothing in this Bill of Sale shall in any way supersede, modify, replace, amend, rescind, waive, narrow or broaden any provision set forth in the Acquisition Agreement (including, without limitation, all representations, warranties, covenants and agreements therein contained) or any of the rights, remedies or obligations arising therefrom. In the event of a conflict between this Bill of Sale and the Acquisition Agreement, the terms of the Acquisition Agreement shall take precedence and control.

6. This Bill of Sale (a) may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, (b) shall be governed by and construed in accordance with the laws of the State of Delaware without regard to the rules of conflict of laws of the State of Delaware or any other jurisdiction, and (c) shall be binding upon and inure to the benefit of the Seller and the Purchaser and their respective successors and permitted assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned Seller has executed this Bill of Sale as of the date first written above.

NEPHROGENEX, INC.

By: _____

Name: John P. Hamill

Title: Chief Executive Officer and Chief
Financial Officer

EXHIBIT B TO ACQUISITION AGREEMENT

Form of Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this "Agreement"), dated as of _____, 2016, is by and between NephroGenex, Inc. (the "Assignor"), and [_____] ("Assignee"). Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in that certain Acquisition Agreement, dated as of _____, 2016, by and between the Assignor and Assignee (the "Acquisition Agreement").

WHEREAS, this Agreement is executed and delivered by the Assignor and Assignee pursuant to the Acquisition Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Assignor and Assignee agree as follows:

1. Assignment and Assumption of Assumed Liabilities. As of the Closing, the Assignor hereby assigns, and Assignee hereby assumes and agrees to pay, perform or otherwise discharge, the Assumed Liabilities in accordance with the terms and conditions of the Acquisition Agreement.
2. Further Assurances. In addition to the provisions of this Agreement, from time to time after the Closing Date, the Assignor and the Assignee shall use reasonable best efforts to execute and deliver such other instruments of conveyance, transfer or assumption, as the case may be, and take such other action as may be reasonably requested to implement more effectively the assumption of the Assumed Liabilities by Assignee; provided that nothing in this Section 2 shall (a) require the Assignor or any of its Affiliates to make any expenditures or incur any obligation on their own or on behalf of the Assignor (unless funds in the full amount thereof are advanced to the Assignor in cash) or (b) prohibit or delay the Assignor or any of its Affiliates from ceasing operations or winding up their affairs following the Closing.
3. Power of Attorney. Without limiting Section 2 hereof, in the event of the dissolution of the Assignor, the Assignor constitutes and appoints the Assignee, its successors and assigns, to the extent permissible under applicable law, the true and lawful agent(s) and attorney(s) in fact of the Assignor, with full power of substitution and resubstitution, in whole or in part, in the name and stead of the Assignor but on behalf of and for the benefit of the Assignee and its successors and assigns, from time to time, to execute and deliver all regulatory filings and such other instruments of conveyance, transfer or assumption required to fully effectuate the assumption of the Assumed Liabilities by the Assignee, the Assignor hereby declaring that the foregoing powers are coupled with an interest and are and shall be irrevocable by the Assignor in the event of the dissolution of the Assignor.
4. Acquisition Agreement; Order of Precedence. The Assignor acknowledges and agrees that the representations, warranties, covenants and agreements contained in the Acquisition Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. Nothing in this Agreement shall in any way supersede, modify, replace, amend, rescind, waive, narrow or broaden any provision set forth in the Acquisition Agreement (including, without limitation, all representations, warranties, covenants and agreements therein contained) or any of the rights, remedies or obligations arising therefrom. In

the event of a conflict between this Agreement and the Acquisition Agreement, the terms of the Acquisition Agreement shall take precedence and control.

5. Successors and Assigns; Parties in Interest. This Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any Person not a party to this Agreement any rights or remedies of any nature whatsoever under or by reason of this Agreement.

6. Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware without regard to the rules of conflict of Laws of the State of Delaware or any other jurisdiction.

7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. Signed counterparts may be delivered by facsimile and by scanned .PDF image, and the facsimile or scanned signature of any party shall be considered to have the same binding legal effect as an original signature.

[Signature Page Follows]

IN WITNESS WHEREOF, the Assignors and Assignee have executed this Agreement as of the date first above written.

ASSIGNOR:

NEPHROGENEX, INC.

By: _____

Name: John P. Hamill

Title: Chief Executive Officer and Chief
Financial Officer

ASSIGNEE:

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT C TO ACQUISITION AGREEMENT

Form of Intellectual Property Assignment Agreements

PATENT ASSIGNMENT

THIS PATENT ASSIGNMENT (this "Patent Assignment") is entered into as of _____, 2016 (the "Effective Date"), by and between NephroGenex, Inc., a Delaware corporation (the "Seller") and [_____] a [_____] (the "Purchaser"). Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Acquisition Agreement (as defined below).

RECITALS

WHEREAS, the Seller and the Purchaser have entered into that certain Acquisition Agreement, dated as of _____, 2016 (the "Acquisition Agreement"), pursuant to which, among other things, the Seller has agreed to sell, assign, transfer, convey and deliver to the Purchaser all right, title and interest of the Seller in and to the Assigned Patents (as defined below), and the Purchaser has agreed to purchase and accept all right, title and interest of the Seller in and to the Assigned Patents from the Seller.

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

1. Assigned Patents. "Assigned Patents" means the patents and patent applications listed on Schedule 1 attached hereto, together with any provisionals, continuations, continuations-in-part, divisionals, substitutions, reissues, reexaminations, extensions, foreign equivalents and supplementary protection certificates of any of the foregoing listed on Schedule 1.
2. Assignment. The Seller does hereby sell, assign, transfer, convey and deliver to the Purchaser all right, title and interest of the Seller in and to the Assigned Patents for the Purchaser's own use and enjoyment, and for the use and enjoyment of its successors, assigns or other legal representatives, as fully and entirely as the same would have been held and enjoyed by Seller if this Patent Assignment and sale had not been made, together with all income, royalties, damages or payments due or payable as of the Effective Date or thereafter, including, without limitation, the right to sue and recover damages for past, present and future infringement of any of the Assigned Patents.
3. Recordation. The Seller hereby requests and authorizes the Commissioner of Patents and Trademarks, and any other applicable Governmental Entity, to record the Purchaser as the owner of the Assigned Patents, as assignee of the entire right, title and interest in and to the same. The Purchaser shall have the right to record this Patent Assignment with all applicable Governmental Entities so as to perfect its ownership of the Assigned Patents.
4. Counterparts. This Patent Assignment may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. Signed counterparts may be delivered by facsimile and by scanned .PDF image, and the facsimile or scanned signature of any party shall be considered to have the same binding legal effect as an original signature.

5. Further Assurances. Each of the parties hereto agrees to execute and deliver such documents, and to take such actions, as may be reasonably requested by the other party to give effect to this Patent Assignment and to vest, perfect, confirm, record or otherwise reflect the parties' rights as set forth herein.

6. Governing Law; Submission of Jurisdiction; Waiver of Jury Trial. This Patent Assignment shall be governed by and construed in accordance with the Laws of the State of Delaware without regard to the rules of conflict of Laws of the State of Delaware or any other jurisdiction. Each of the parties hereto irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the Bankruptcy Court for any litigation arising out of or relating to this Patent Assignment and the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in the Bankruptcy Court), and waives any objection to the laying of venue of any such litigation in the Bankruptcy Court. Each party hereto hereby consents to service of process in the manner and at the address set forth in Section 8.5 of the Acquisition Agreement. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR RELATING TO THIS PATENT ASSIGNMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have caused this Patent Assignment to be duly executed and delivered as of the date first set forth above.

SELLER:

NEPHROGENEX, INC.

By: _____

Name: John P. Hamill

Title: Chief Executive Officer and Chief
Financial Officer

PURCHASER:

[_____]

By: _____

Name: _____

Title: _____

Schedule 1

Assigned Patents

TRADEMARK ASSIGNMENT

THIS TRADEMARK ASSIGNMENT (this “Trademark Assignment”) is entered into as of _____, 2016, by and between NephroGenex, Inc., a Delaware corporation (the “Seller”) and [_____] , a [_____] (the “Purchaser”). Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Acquisition Agreement (as defined below).

RECITALS

WHEREAS, the Seller and the Purchaser have entered into that certain Acquisition Agreement, dated as of _____, 2016 (the “Acquisition Agreement”), pursuant to which, among other things, the Seller has agreed to sell, assign, transfer, convey and deliver to the Purchaser all right, title and interest of the Seller in and to the Assigned Trademarks (as defined below), and the Purchaser has agreed to purchase and accept all right, title and interest of the Seller in and to the Assigned Trademarks from the Seller.

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

1. Assigned Trademarks. “Assigned Trademarks” means the trademark and service mark registrations and applications listed on Schedule 1 attached hereto.
2. Assignment. The Seller does hereby sell, assign, transfer, convey and deliver to the Purchaser all right, title and interest of the Seller in and to the Assigned Trademarks for the Purchaser’s own use and enjoyment, and for the use and enjoyment of its successors, assigns or other legal representatives, as fully and entirely as the same would have been held and enjoyed by Seller if this Trademark Assignment and sale had not been made, together with the goodwill symbolized by the Assigned Trademarks, and all income, royalties, damages or payments due or payable as of the Effective Date or thereafter, including, without limitation, the right to sue and recover damages for past, present and future infringement or dilution of any of the Assigned Trademarks.
3. Recordation. The Seller hereby requests and authorizes the Commissioner of Patents and Trademarks, and any other applicable Governmental Entity, to record the Purchaser as the owner of the Assigned Trademarks, as assignee of the entire right, title and interest in and to the same. The Purchaser shall have the right to record this Trademark Assignment with all applicable Governmental Entities so as to perfect its ownership of the Assigned Trademarks.
4. Counterparts. This Trademark Assignment may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. Signed counterparts may be delivered by facsimile and by scanned .PDF image, and the facsimile or scanned signature of any party shall be considered to have the same binding legal effect as an original signature.
5. Further Assurances. Each of the parties hereto agrees to execute and deliver such documents, and to take such actions, as may be reasonably requested by the other party to give

effect to this Trademark Assignment and to vest, perfect, confirm, record or otherwise reflect the parties' rights as set forth herein.

6. Governing Law; Submission of Jurisdiction; Waiver of Jury Trial. This Trademark Assignment shall be governed by and construed in accordance with the Laws of the State of Delaware without regard to the rules of conflict of Laws of the State of Delaware or any other jurisdiction. Each of the parties hereto irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the Bankruptcy Court for any litigation arising out of or relating to this Trademark Assignment and the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in the Bankruptcy Court), and waives any objection to the laying of venue of any such litigation in the Bankruptcy Court. Each party hereto hereby consents to service of process in the manner and at the address set forth in Section 8.5 of the Acquisition Agreement. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR RELATING TO THIS TRADEMARK ASSIGNMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have caused this Trademark Assignment to be duly executed and delivered as of the date first set forth above.

SELLER:

NEPHROGENEX, INC.

By: _____

Name: John P. Hamill

Title: Chief Executive Officer and Chief
Financial Officer

PURCHASER:

[_____]

By: _____

Name: _____

Title: _____

Schedule 1

Assigned Trademarks

EXHIBIT D TO ACQUISITION AGREEMENT

Escrow Agreement

[To Be Provided by Seller]

Schedule 1.1(a)

Acquired Assets—Assigned Contracts

[To Be Provided by Purchaser]

Schedule 1.1(d)

Acquired Assets—Intellectual Property

[To Be Provided by Purchaser]

Schedule 1.1(g)

Acquired Assets—Insurance Policies

None.

Schedule 1.1(i)

Acquired Assets—Other Assets

Quality Assurance/Quality Control

1. All Manufacturing Batch Records and all Production Batch Records for each lot or batch of the drug product Pyridorin (“Product”), with all analytical and micro data for same, in the Seller’s possession as of the Closing Date.
2. All past data relating to testing and stability requirements for the Product in the Seller’s possession as of the Closing Date.
3. All supplier audits for the Product in the Seller’s possession as of the Closing Date.

Regulatory

1. All correspondence with the FDA relating to the Product in the Seller’s possession as of the Closing Date.

Research & Development/Clinical

1. All Investigational New Drug (IND) documentation related to the Product in the Seller’s possession as of the Closing Date.

Schedule 3.9(a)Material Intellectual PropertyPatents

Title	Patent No.	Jurisdiction	Expiration Date
Methods For The Treatment And Prevention Of Urinary Stone Disease	6521645	USA	11/14/2021
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	E526023	Austria	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Belgium	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Bulgaria	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	2529538	Canada	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Republic of Cyprus	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Czech Republic	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Denmark	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Estonia	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	European Patent Convention	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Finland	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	France	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Germany	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Greece	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Hungary	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Ireland	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Italy	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Luxembourg	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Monaco	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Netherlands	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Poland	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Portugal	6/18/2024

Title	Patent No.	Jurisdiction	Expiration Date
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Romania	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Slovakia	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Slovenia	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Spain	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Sweden	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Switzerland	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	Turkey	6/18/2024
Pyridoxamine for the Treatment of Diabetic Nephropathy in Type II Diabetes	1643999	United Kingdom	6/18/2024
Pyridoxamine for the Treatment of Diabetic Intermediaries and Post Amadori Inhibition	8067444	USA	6/18/2024
Pyridoxamine for the Treatment of Diabetic Kidney Disease	US-2016-0045481-A1	USA	6/18/2024 (if issued, not including any extension)
Methods for the Synthesis of Pyridoxamine	7214799	USA	2/9/2025
Methods for the Synthesis of Pyridoxamine	8431712	USA	2/9/2025
Inhibitors of Advanced Glycation End Products	2041114	European Patent Convention	7/03/2027
Inhibitors of Advanced Glycation End Products	2041114	France	7/03/2027
Inhibitors of Advanced Glycation End Products	2041114	Germany	7/03/2027
Inhibitors of Advanced Glycation End Products	2041114	United Kingdom	7/03/2027
Inhibitors of Advanced Glycation End Products	US-2014-0187506-A1	USA	7/03/2027 (if issued, not including any extensions)
Use of Pyridoxamine to Treat and/or Prevent Disease Processes	US-2014-0296303-A1	USA	10/31/2026 (if issued, not including any extensions)
Methods for Limiting Acute Kidney Injury	US-2016-0128992 A1	USA	11/10/2035 (if issued, absent any extensions)
Methods for Limiting Acute Kidney Injury	PCT/US2015/059843	PCT	11/10/2035 (if issued)
Advanced glycation end-product intermediaries and post-amadori inhibition	717485	Australia	9/11/2016

Title	Patent No.	Jurisdiction	Expiration Date
Methods for inhibiting diabetic complications	762030	Australia	10/21/2019
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	1190713	Austria	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibitors	0871443	Austria	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	1190713	Belgium	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibitors	0871443	Belgium	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	2331772	Canada	9/11/2016
Methods for inhibiting diabetic complications	2347117	Canada	10/21/2019
Improved Dialysis Solutions and Methods	2360311	Canada	4/6/2020
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	1190713	Denmark	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibitors	0871443	Denmark	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibitors	0871443	European Patent Convention	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	1190713	European Patent Convention	9/11/2016
Methods for inhibiting diabetic complications	1121121	European Patent Convention	10/21/2019
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	1190713	Finland	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibitors	0871443	Finland	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	1190713	France	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibitors	0871443	France	9/11/2016
Methods for inhibiting diabetic complications	1121121	France	10/21/2019
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	1190713	Germany	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibitors	69621645.0	Germany	9/11/2016
Methods for inhibiting diabetic complications	1121121	Germany	10/21/2019
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibitors	0871443	Greece	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	20030403031	Greece	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibitors	0871443	Ireland	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	1190713	Ireland	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibitors	0871443	Italy	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	1190713	Italy	9/11/2016
Methods for inhibiting diabetic complications	1121121	Italy	10/21/2019

Title	Patent No.	Jurisdiction	Expiration Date
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	3769003	Japan	9/11/2016
Methods for inhibiting diabetic complications	3864050	Japan	10/21/2019
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibitors	0871443	Luxembourg	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	1190713	Luxembourg	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibitors	0871443	Monaco	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	1190713	Monaco	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibitors	0871443	Netherlands	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	1190713	Netherlands	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibitors	0871443	Portugal	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	1190713	Portugal	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	1190713	Spain	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibitors	0871443	Spain	9/11/2016
Methods for inhibiting diabetic complications	1121121	Spain	10/21/2019
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibitors	0871443	Sweden	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	1190713	Sweden	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	1190713	Switzerland	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibitors	0871443	Switzerland	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibitors	0871443	United Kingdom	9/11/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	1190713	United Kingdom	9/11/2016
Methods for inhibiting diabetic complications	1121121	United Kingdom	10/21/2019
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	5985857	USA	9/10/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	6472400	USA	9/10/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	6750209	USA	9/10/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	6228858	USA	9/10/2016
Advanced Glycation End-Product Intermediaries and Post-Amadori Inhibition	6472411	USA	9/10/2016
Methods for Inhibiting Oxidative Modification of Proteins	6730686	USA	9/10/2016
Methods for Inhibiting Diabetic Complications	6716858	USA	9/10/2016
Methods for Inhibiting Diabetic Complications	6740668	USA	9/10/2016
Methods for Treating Diabetic Neuropathy	7030146	USA	9/30/2016

Title	Patent No.	Jurisdiction	Expiration Date
Post-Amadori Inhibitors of Advanced Glycation Reactions	6342500	USA	3/03/2020
Post-Amadori Inhibitors of Advanced Glycation Reactions	6610852	USA	3/03/2020
Dialysis Solutions and Methods	6436969	USA	9/10/2016

Trademarks

Jurisdiction	Trademark	App. No.	App. Date	Reg. No.	Reg. Date	Status	Next Renewal
USA	NEPHROGENEX (Word Mark)	86/692063	7/14/15	N/A	N/A	Published	N/A
Canada	PYRIDORIN	1121059	11/5/01	614575	7/9/04	Registered	7/9/19
European Union (Community)	PYRIDORIN	00237633 3	9/14/01	00237633 3	12/17/0 2	Registered	9/14/21
New Zealand	PYRIDORIN	645598	9/17/01	645598	9/17/01	Registered	9/17/18
USA	PYRIDORIN	75/887638	1/5/00	2707434	4/15/03	Registered	4/15/23
Canada	PYRIDORIN XR	1121058	11/16/01	N/A	N/A	Pending	N/A
New Zealand	PYRIDORIN XR	645599	9/17/01	645599	9/17/01	Registered	9/17/18

Schedule 3.10(a)Material Contracts

Counterparty	Contract Type	Effective Date	Description
Baker IDI Heart and Diabetes Institute Holdings Limited	Consulting Agreement	4/15/14	Identify, and assist with, clinical sites and investigators
BioClinica, Inc.	General Services Agreement #46101	4/16/14	Medical imaging core laboratory services and centralized cardiac safety and efficacy services
BioClinica, Inc.	General Services Agreement #46102	4/16/14	Medical imaging core laboratory services and centralized cardiac safety and efficacy services
Carbogen AMCIS AG	Master Services Agreement	4/30/2008	Manufacturing services and sale of materials
Catalent Pharma Solutions, LLC	Product Development and Clinical Manufacture for a Pyridoxamine Dihydrochloride IV Product	3/18/15	Product development and manufacturing activities
Catalent Pharma Solutions, LLC	Quality Agreement	6/2015	Checklist of activities associated with pharmaceutical manufacturing, release testing and stability testing
Catalent Pharma Solutions, LLC	PIONEER Phase III Clinical Supplies Management Support for Study Transfer and Monitoring	8/4/15	Clinical supplies management services
Catalent Pharma Solutions, LLC	PIONEER Phase III Packaging, Storage & Distribution	8/21/15	Packaging, storage, distribution and returns services
Catalent Pharma Solutions, LLC	In-Use Stability Study of Formulated Pyridoxamine Dihydrochloride IV Drug Product	9/10/15	Conduct in-use study
Catalent Pharma Solutions, LLC	Product Development and Clinical Manufacture for a Pyridoxamine Dihydrochloride IV Product	9/11/15	Product development
Catalent Pharma Solutions, LLC	Importer of Record Services Agreement	1/8/16	Importer of record services for investigational medicinal product

Counterparty	Contract Type	Effective Date	Description
Collaborative Study Group, Inc.	Coordination Center Agreement	3/21/14 Amended 7/1/14 Amended 8/1/14 Amended 4/1/15	Coordination of clinical trials, including adhering to specific protocol and communicating between sites
DPx Fine Chemicals Regensburg GmbH (Patheon)	Pyridoxamine Dihydrochloride Drug Substance Proposal, A-REGA-82294-R1	3/12/15	Product manufacture
DPx Fine Chemicals Regensburg GmbH (Patheon)	Development Program for Pyridoxamine Dihydrochloride Campaign, A-REGA-95509-R0	9/17/15	Development work for product manufacture
DPx Fine Chemicals Austria GmbH & Co KG (Patheon)	Research and Manufacturing Services Agreement	12/10/15	Process research, chemical synthesis services and related consulting services
DPx Fine Chemicals Austria GmbH & Co KG (Patheon)	Registration Campaign for Pyridoxamine 2HCl, A-LFCAA-95525-R2	12/10/15	Registration campaign to support NDA filing
Impact Pharmaceutical Services, Inc.	Master Service Agreement	5/19/14	Services including strategic planning, expert consultation, clinical trial services, clinical data management, biostatistics, medical writing and other research and development services
MHAT Tokuda Hospital Sofia JSC	Clinical Study Agreement	7/31/15	Conduct and perform clinical study
Mark Klausner	Amended and Restated Consulting Agreement	3/15/10	Services agreement
Medpace, Inc.	Amended and Restated Master Services Agreement	3/25/14	Clinical trial services
Patheon Pharmaceuticals Inc.	Quality Agreement Clinical Trial Material	5/15/14	Quality assurance for manufacturing and testing services
Patheon Pharmaceuticals Inc.	Pharmaceutical Development Services Agreement P-CRP-30079-R9	12/13/13	Preformulation and manufacturing of clinical trial materials
Pharmaceutics International, Inc.	Master Services Agreement	2/8/08	Manufacture pharmaceutical products
Pharmaceutics International, Inc.	Master Quality Agreement	5/8/09	Manufacture bulk pharmaceutical products

Counterparty	Contract Type	Effective Date	Description
Reneta Koycheva Department of Nephrology	Clinical Study Agreement	7/29/15	Conduct and perform clinical study
Reneta Koycheva Department of Nephrology	Clinical Study Agreement	7/30/15	Conduct and perform clinical study
University of Kansas Medical Center	Amended and Restated License Agreement	11/19/98 Amended 4/30/07 Amended 6/25/08	Use of patent rights to develop diabetes therapeutics
University of South Carolina Research Foundation	License Agreement	8/27/04 Amended 6/20/11 Amended 4/2/12 Amended 8/9/13 Amended 1/14/14	Use of technology and patent rights to develop diabetes therapeutics
Uppsala Monitoring Centre	License Agreement	5/19/14	License of commercial databases
VA WNY Healthcare System Buffalo VA Medical Center	Cooperative Research and Development Agreement	9/29/14	Collaborative research and development
Vanderbilt University Center for Technology Transfer and Commercialization	Restated and Amended License Agreement	7/18/12 Amended 11/6/13 Amended 3/16/15	License to use patent rights and related know-how to make, use and sell licensed products
Vanderbilt University Medical Center Office of Contracts Management	Coordination Center Agreement	7/1/14 Amended 8/1/14 Amended 4/1/15	Coordination of clinical trials, including adhering to specific protocol and communicating between sites

EXHIBIT B TO MOTION

Bidding Procedures Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----- X
 :
 In re: : Chapter 11
 :
 NEPHROGENEX, INC., : Case No. 16-11074 (KG)
 :
 Debtor.¹ : Related to Docket No. ____
 :
 ----- X

ORDER (I) SCHEDULING A HEARING TO CONSIDER APPROVAL OF THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS, AND THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (II) APPROVING CERTAIN BIDDING PROCEDURES, ASSUMPTION AND ASSIGNMENT PROCEDURES, AND THE FORM AND MANNER OF NOTICE THEREOF AND (III) GRANTING RELATED RELIEF

Upon the motion (the “Motion”)² of the debtor and debtor-in-possession in the above-captioned chapter 11 case for entry of:

- (A) an order, (i) scheduling a hearing (the “Sale Hearing”) to consider approval of (a) the sale (the “Sale”) of substantially all of the Debtor’s Assets (the “Assets”), free and clear of all liens, claims, encumbrances and other interests (collectively, the “Encumbrances”), other than those Encumbrances permitted by an applicable asset purchase agreement or other agreement for the Sale (the “Transaction Agreement”), which Sale may include the acquisition of the equity or the Assets of the Debtor through a section 363 sale or pursuant to a chapter 11 plan (a “Plan”), and (b) the assumption and assignment of certain executory contracts and unexpired leases (each, an “Assumed Contract” and, collectively, the “Assumed Contracts”) in connection therewith, (ii) authorizing and approving certain proposed bidding procedures for the Sale in the form attached hereto as Exhibit 1 (collectively, the “Bidding Procedures”), certain proposed assumption and assignment procedures (collectively, the “Assumption and Assignment Procedures”), and the form and manner of notice thereof; and (iii) granting related relief; and

¹ The last four digits of the Debtor’s federal tax identification number are 5171. The mailing address for the Debtor is 3200 Beechleaf Court, Suite 900, Raleigh, NC 27604.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

- (B) an order (the “Sale Order”),³ (i) authorizing and approving the Debtor’s entry into the Transaction Agreement with a Successful Bidder, Back-Up Bidder or Stalking Horse Purchaser; (ii) authorizing and approving the Sale of the Assets, free and clear of all Encumbrances other than those permitted by the Transaction Agreement; (iii) authorizing and approving the assumption and assignment of the Assumed Contacts in connection therewith; and (iv) granting related relief;

and the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and (c) due and sufficient notice of the Motion has been given under the particular circumstances and no other or further notice need be provided; and the relief requested being a reasonable exercise of the Debtor’s sound business judgment consistent with its fiduciary duties and in the best interests of the Debtor and its estate and creditors; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby

FOUND, CONCLUDED AND DETERMINED THAT:⁴

- A. The Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334.
- B. Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
- C. The statutory and legal predicates for the relief requested in the Motion and provided for herein are sections 105(a), 363, 365, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 6004-1 of the

³ The Debtor will file a form of Sale Order as soon as practicable after such document is negotiated with a Purchaser.

⁴ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

D. In the Motion and at the hearing on the Motion (the “Bidding Procedures Hearing”), the Debtor demonstrated that good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and all other interested parties.

E. The Sale Notice (as defined below) is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of this Order, the Bidding Procedures, the Auction, the Sale and the Sale Hearing, and any and all objection deadlines related thereto, and no other or further notice is required of the foregoing.

F. The Bidding Procedures are fair, reasonable and appropriate and are designed to maximize recovery with respect to the Sale.

G. The Assumption and Assignment Procedures provided for herein and the Assumption Notice (as defined below) are reasonable and appropriate and consistent with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006. The Assumption and Assignment Procedures and the Assumption Notice have been tailored to provide an adequate opportunity for all Counterparties (as defined below) to assert any Contract Objections.

H. Entry of this Order is in the best interests of the Debtor, its estate and creditors and all other interested parties.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. Those portions of the Motion seeking approval of (a) the Assumption and Assignment Procedures, (b) the Bidding Procedures, (c) the date, time and place of the Auction and Sale Hearing, and (d) the noticing and objection procedures related to each of the foregoing,

including, without limitation, the Sale Notice, substantially in the form attached hereto as Exhibit 2 (the “Sale Notice”), and the Assumption Notice, substantially in the form attached hereto as Exhibit 3 (the “Assumption Notice”), are GRANTED as set forth herein.

2. Any objections to the Motion or the relief granted by this Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits with prejudice.

Approval of Bidding Procedures; Auction

3. The Bidding Procedures hereby are approved. The failure to specifically include or reference any particular provision of the Bidding Procedures in the Motion or this Order shall not diminish or otherwise impair the effectiveness of such procedures, it being the Court’s intent that the Bidding Procedures are approved in their entirety, as if fully set forth in this Order. The Debtor hereby is authorized to conduct the Auction of the Assets pursuant to the terms of the Bidding Procedures and this Order. The Bidding Procedures shall apply to the Potential Bidders and the Qualifying Bidders (each as defined in the Bidding Procedures), as well as the conduct of the Auction.

4. The Debtor shall have the right, in its sole discretion, to withhold or limit access to any due diligence information that the Debtor determines is business-sensitive or otherwise not appropriate for disclosure to a Qualifying Bidder (as defined in the Bidding Procedures). Notwithstanding any limitations provided for in such information, including, without limitation, any non-disclosure, confidentiality or similar provisions, the Debtor and its estate shall be authorized to provide due diligence information to Qualifying Bidders, provided that such Qualifying Bidders have delivered executed confidentiality agreements in form and substance acceptable to the Debtor. The Debtor and its estate are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualifying

Bidders in connection with the Bidding Procedures and the Sale, provided that the information was provided in accordance with this Order.

5. A Qualifying Bidder that desires to make a bid shall deliver a written and electronic copy of its bid in both PDF and MS-WORD format to the Notice Parties so as to be received on or before **November 10, 2016 at 5:00 p.m. (ET)** (the "**Bid Deadline**"); **provided** that the Debtor may extend the Bid Deadline without further order of the Court. Any party that does not submit a bid by the Bid Deadline will not be allowed to: (a) submit any offer after the Bid Deadline or (b) participate in the Auction. The term "**Notice Parties**" shall mean: (i) the Debtor, NephroGenex, Inc., 3200 Beechleaf Court, Suite 900, Raleigh, NC 27604 (Attn: John P. Hamill) and Email: jhamill@nephrogenex.com; (ii) counsel to the Debtor, Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801 (Attn: David R. Hurst, Esq. and Jacob S. Frumkin, Esq.) and Email: dhurst@coleschotz.com and jfrumkin@coleschotz.com; (iii) counsel to any official committee appointed in the Chapter 11 Case; and (iv) counsel to the Stalking Horse Purchaser, if any.

6. All Qualifying Bidders submitting a Qualifying Bid are deemed to have submitted to the exclusive jurisdiction of the Court with respect to all matters related to the Auction and the terms and conditions of the sale or transfer of the assets identified under the Transaction Agreement.

7. If less than two Qualifying Bids (including any Stalking Horse Purchaser's Qualifying Bid) are submitted on or before the Bid Deadline, the Debtor shall not hold an Auction and shall request at the Sale Hearing that the Court approve the sole Qualifying Bid (which may be the Stalking Horse Agreement) and the transactions contemplated thereunder.

8. The Auction shall be held at the offices of Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware, 19801, beginning at **10:00 a.m. (ET) on November 14, 2016**. Each Auction Bidder (as defined in the Bidding Procedures) shall confirm in writing and/or on the record at the Auction that: (a) it has not engaged in any collusion with respect to the submission of any bid, the bidding or the Auction and (b) its Qualifying Bid is a good faith *bona fide* offer that it intends to consummate if selected as a Successful Bidder. All proceedings at the Auction shall be transcribed.

9. The Debtor shall determine after each bid is made at the Auction whether such bid is the prevailing highest or otherwise best bid. The Debtor shall assess each bid to determine whether it is the highest or otherwise best bid for the Assets, considering, among other things: (a) the transaction structure and execution risk, including conditions to, timing of and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approvals; (b) variations between competing bids and any incremental execution risk that the Debtor reasonably determines exists as a result of those variations; (c) the time needed to close a Sale or other transaction compared with other Qualifying Bids and the cost to the Debtor and its estate of any incremental delay; (d) the total consideration to be received by the Debtor and its estate; (e) the net benefit to the Debtor's estate, taking into account any Stalking Horse Purchaser's rights to any break-up fee, expense reimbursement or similar bid protection; (f) the impact on employees, contract and lease counterparties (including claims that may be asserted related to rejection and objections to adequate assurance), and other creditors; and (g) any other factors the Debtor may reasonably deem relevant.

10. The Debtor shall have the right as it may reasonably determine to be in the best interests of its estate to carry out the Bidding Procedures, including, without limitation, to:

(a) determine which bidders are Qualifying Bidders; (b) determine which bids are Qualifying Bids; (c) determine which Qualifying Bid is a Baseline Bid (as defined in the Bidding Procedures); (d) permit Qualifying Bidders to bid on less than all of the Assets; (e) subject to the terms of the Bidding Procedures, determine which bids are the Successful Bid and Back-Up Bid, each as it relates to the Auction; (f) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtor and its estate; (g) adjourn or cancel the Auction and/or the Sale Hearing in open court without further notice or as provided in this Order and in the Bidding Procedures; (h) modify the Bidding Procedures consistent with its fiduciary duties and bankruptcy law; and (i) withdraw the Motion at any time with or without prejudice.

Assumption and Assignment Procedures; Contract Objections

11. The following “Assumption and Assignment Procedures” hereby are approved:

- (a) On or before **October 7, 2016** (the “Assumption Notice Deadline”), the Debtor shall file with the Court and serve on each counterparty (each, a “Counterparty” and, collectively, the “Counterparties”) to an Assumed Contract an Assumption Notice. If, after serving the initial Assumption Notice, the Debtor (i) identifies any additional Assumed Contracts that a potential purchaser may seek to acquire by assumption or assumption and assignment or (ii) seeks to modify a Cure Amount (as defined herein) for an Assumed Contract, the Debtor shall promptly file a supplemental Assumption Notice (a “Supplemental Assumption Notice”).
- (b) The Assumption Notice (or Supplemental Assumption Notice, if applicable) shall include, without limitation, the cure amount (each, a “Cure Amount”), if any, that the Debtor believes is required to be paid to the applicable Counterparty under sections 365(b)(1)(A) and (B) of the Bankruptcy Code for each of the Assumed Contracts. If a Counterparty

objects to (i) the Debtor's ability to assume and/or assign the Assumed Contract or (ii) the Cure Amount for its Assumed Contract, the Counterparty must file with the Court and serve on the Notice Parties a written objection (a "Contract Objection").

- (c) Any Contract Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, **on or before 4:00 p.m. (ET) on October 28, 2016** (the "Contract Objection Deadline"), provided that if the Debtor files any Supplemental Assumption Notice, such notice shall provide that the Contract Objection Deadline shall be at least 14 calendar days after service of such notice; (iv) be served, so as to be actually received on or before the Contract Objection Deadline, upon the Notice Parties; and (v) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under sections 365(b)(1)(A) and (B) of the Bankruptcy Code for the Assumed Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto. Any objections to adequate assurance of future performance by a Successful Bidder shall be filed in accordance with paragraph 11(e) below.
- (d) No later than one (1) calendar day after the conclusion or cancellation of the Auction, the Debtor shall file with the Court a notice identifying the Successful Bidder (a "Notice of Successful Bidder"), which shall set forth, among other things, (i) the Successful Bidder and Back-Up Bidder (as defined in the Bidding Procedures), if any, (ii) the Assumed Contracts included in the Successful Bid or Back-Up Bid (as defined in the Bidding Procedures); (iii) the proposed assignee of such Assumed Contracts; and (iv) instructions for contacting the Successful Bidder to obtain Adequate Assurance Information, which shall be provided to each affected Counterparty on a confidential basis.
- (e) No later than one (1) calendar day after the conclusion or cancellation of the Auction, the Debtor will cause to be served by overnight mail upon each affected Counterparty the Notice of Successful Bidder. Counterparties may submit objections solely on the basis of adequate assurance of future performance by a Successful Bidder **on or before November 16, 2016 at 12:00 Noon (ET)**.
- (f) If no Contract Objection is timely received with respect to an Assumed Contract: (i) the Counterparty to such Assumed Contract shall be deemed to have consented to the assumption by the Debtor and (if applicable) assignment of such Assumed Contract, and be forever barred from asserting any objection with regard to such assumption and assignment

(including, without limitation, with respect to adequate assurance of future performance); (ii) any and all defaults under such Assumed Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code; and (iii) the Cure Amount included in the Assumption Notice or Supplemental Assumption Notice, if applicable, for such Assumed Contract shall be controlling, notwithstanding anything to the contrary in such Assumed Contract, or any other related document, and the Counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Assumed Contract against the Debtor and (if applicable) the Debtor's assignee, or the property of any of them, that existed prior to the entry of the Sale Order.

- (g) To the extent that the parties are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the Cure Amount required to be paid to the applicable Counterparty under sections 365(b)(1)(A) and (B) of the Bankruptcy Code (any such dispute, a "Cure Dispute"), such Contract Objection will be adjudicated at the Sale Hearing or at such other date and time as may be mutually agreed to by the Debtor and the objecting Counterparty or scheduled by the Court; provided, however, that if the Contract Objection relates solely to a Cure Dispute, such Assumed Contract may be assumed by the Debtor and assigned, provided that the cure amount that the Counterparty asserts is required to be paid under sections 365(b)(1)(A) and (B) of the Bankruptcy Code (or such lower amount as agreed to by the Counterparty) is deposited in a segregated account by the proposed assignee pending the Court's adjudication of the Cure Dispute or the parties' consensual resolution of the Cure Dispute.

12. As part of its bid, each Qualifying Bidder (including any Stalking Horse Purchaser) must make available, for review by the Counterparties to Assumed Contracts of which such Qualifying Bidder may seek to take assignment, information supporting the Qualifying Bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code (the "Adequate Assurance Information"), including (a) the Qualifying Bidder's financial wherewithal and willingness to perform under any contracts that are assumed and assigned to such Qualifying Bidder; (b) a contact person for the proposed assignee that the applicable Counterparty may directly contact in

connection with the adequate assurance of future performance; and (c) the assignee's identity. To the extent available, the Adequate Assurance Information may also include: (x) a corporate organization chart or similar disclosure identifying ownership and control of the proposed assignee; and (y) financial statements, tax returns and annual reports. Adequate Assurance Information shall be provided on a confidential basis and must be kept confidential and shall only be used and disclosed as agreed to by the Qualifying Bidder that provided such Adequate Assurance Information or ordered by the Court. This Order authorizes the filing of any Adequate Assurance Information under seal, and on the docket with such non-public information redacted, without further order of the Court; provided that unreacted versions of such pleadings shall be served upon the Debtor, with a copy to the Court's chambers. Any representative receiving Adequate Assurance Information shall be notified and shall agree to be bound by the restrictions set forth in this Order.

13. The Assumption and Assignment Procedures are appropriate and fair to all Counterparties and comply in all respects with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

14. The inclusion of a contract, lease or other agreement on an Assumption Notice shall not constitute or be deemed a determination or admission by the Debtor and its estate or any other party in interest that such contract, lease or other agreement is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights with respect thereto shall be reserved.

Sale Hearing and Objections to the Sale

15. The Sale Hearing shall be held in the Court on **November 17, 2016 at 10:00 a.m. (ET)**, unless otherwise determined by the Court. The Debtor may adjourn or reschedule the Sale Hearing without notice or with limited and shortened notice to parties,

including by: (a) an announcement of such adjournment at the Sale Hearing or at the Auction or (b) the filing of a notice of adjournment with the Court prior to the commencement of the Sale Hearing.

16. Any objections to the Sale or the relief requested in connection with the Sale (a "Sale Objection"), other than a Contract Objection, which shall be governed by the Assumption and Assignment Procedures, must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) set forth the specific basis for the Sale Objection; (d) be filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, **on or before 4:00 p.m. (ET) on October 28, 2016** (the "Sale Objection Deadline"); and (e) be served, so as to be actually received on or before the Sale Objection Deadline, upon the Notice Parties. If a Sale Objection is not filed and served on or before the Sale Objection Deadline in accordance with the foregoing requirements, the objecting party shall be barred from objecting to the Sale and shall not be heard at the Sale Hearing, and the Court may enter the Sale Order without further notice to such party.

17. Failure to file a Sale Objection on or before the Sale Objection Deadline (a) shall forever bar the assertion, whether at any Sale Hearing or thereafter, of any objection to the Motion, to entry of the Sale Order, and/or to the consummation and performance of the Sale contemplated by a Stalking Horse Agreement or any Transaction Agreement with a Successful Bidder or Back-Up Bidder, and (b) for purposes of section 363(f) of the Bankruptcy Code, shall be deemed to be "consent" to entry of the Sale Order and consummation of the Sale and all transactions related thereto.

Form and Manner of Notice of Sale Hearing

18. The Sale Notice, the Assumption Notice, the Notice of Successful Bidder, the Bidding Procedures, the Auction, the Sale Hearing and the Assumption and Assignment

Procedures and the objection periods associated with each of the foregoing are reasonably calculated to provide sufficient and effective notice to any affected party of the opportunity to exercise any rights affected by the Motion as it relates to the Bidding Procedures, the Auction, the Sale, the Sale Hearing and the assumption and assignment of the Assumed Contracts pursuant to Bankruptcy Rules 2002(a)(2), 6004 and 6006, and such notices and objection periods are hereby approved.

19. Within three (3) business days of entry of the Bidding Procedures Order, the Debtor shall serve the Sale Notice by first class mail on: (1) the U.S. Trustee; (2) counsel to any official committee appointed in the Chapter 11 Case; (3) all parties known by the Debtor to assert a lien on any of the Assets; (4) all non-Debtor parties to any of the Assumed Contracts; (5) all parties that have expressed an interest in acquiring the Assets of the Debtor during the Debtor's postpetition marketing process; (6) the Office of the United States Attorney for the District of Delaware; (7) the Office of the Attorney General in each state in which the Debtor operates; (8) the Office of the Secretary of State in each state in which the Debtor operates or is organized; (9) all taxing authorities having jurisdiction over any of the Assets, including the Internal Revenue Service; (10) all environmental authorities having jurisdiction over any of the Assets, including the Environmental Protection Agency; (11) the Securities and Exchange Commission; (12) the United States Attorney General/Antitrust Division of Department of Justice; and (13) all other parties that had filed a notice of appearance and demand for service of papers in the Chapter 11 Case as of the date of service. In addition, the Debtor will serve the Sale Notice on all of the Debtor's known creditors and equity holders (for whom identifying information and addresses are available to the Debtor).

20. The Debtor also shall post the Sale Notice and the Bidding Procedures Order on the website of the Debtor's claims and noticing agent, at <http://www.kccllc.net/NephroGenex>.

21. Not later than twenty-one (21) calendar days prior to the date of the Sale Hearing, the Debtor shall cause the Sale Notice to be published once in the national edition of *The Wall Street Journal*, *The New York Times* or *USA Today*. Such publication conforms to the requirements of Bankruptcy Rules 2002(1) and 9008, and is reasonably calculated to provide notice to any affected party, including any Potential Bidders, and afford the affected party the opportunity to exercise any rights affected by the Motion and the relief granted by this Order.

Miscellaneous

22. The Debtor's right to seek the Court's approval of a Stalking Horse Purchaser, with notice and a hearing, is hereby preserved.

23. The Debtor is authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

24. In the event that there is a conflict between this Order or the Bidding Procedures, on the one hand, and the Motion, a Transaction Agreement or a Stalking Horse Agreement, on the other hand, this Order and the Bidding Procedures shall control and govern.

25. Prior to mailing and publishing the Sale Notice and the Assumption Notice, as applicable, the Debtor may fill in, or cause to be filled in, any missing dates and other information, correct any typographical errors, conform the provisions thereof to the provisions of this Order, and make such other, non-material changes as the Debtor deems necessary or appropriate.

26. All persons or entities that participate in the bidding process shall be deemed to have knowing and voluntarily: (a) consented to the entry of a final order by the Court

in connection with the Motion or this Order (including any disputes relating to the bidding process, the Auction and/or any Sale) to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution and (b) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

27. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in the Chapter 11 Case, any subsequent chapter 7 or chapter 11 case of the Debtor, or any related proceeding subsequent to entry of this Order, shall conflict with or derogate from the provisions of this Order. This Order shall be binding on any trustees, examiners or other fiduciaries under any section of the Bankruptcy Code, if any, subsequently appointed in the Chapter 11 Case or upon conversion of the Debtor's Chapter 11 Case to chapter 7 of the Bankruptcy Code.

28. This Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rules 6004(h) or 6006(d) or any other provision of the Bankruptcy Code, the Bankruptcy Rules or the Local Rules is expressly waived. The Debtor is not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and may, in its sole discretion and without further delay, take any action and perform any act authorized or approved under this Order.

29. The requirements set forth in Local Rules 6004-1, 9006-1 and 9013-1 hereby are satisfied or waived.

30. The Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation or interpretation of the Order.

Dated: _____, 2016
Wilmington, Delaware

The Honorable Kevin Gross
United States Bankruptcy Judge

EXHIBIT 1 TO ORDER

Bidding Procedures

BIDDING PROCEDURES

On April 30, 2016, NephroGenex, Inc., as debtor and debtor-in-possession (the “Debtor”), filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). The Debtor is managing and operating its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

On October ____, 2016, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order [Docket No. ____] (the “Bidding Procedures Order”), which, among other things, authorized the Debtor to solicit bids and approved these procedures (collectively, the “Bidding Procedures”) to be employed by the Debtor in connection with the proposed sale or other acquisition transaction (the “Sale”) of substantially all of the Debtor’s assets (the “Assets”), free and clear of all liens, claims, encumbrances and other interests (collectively, the “Encumbrances”), other than those Encumbrances permitted by the applicable asset purchase agreement or other agreement (the “Transaction Agreement”). For the avoidance of doubt, a Sale proposed under these Bidding Procedures includes the acquisition of the equity or the Assets of the Debtor through a section 363 sale or pursuant to a chapter 11 plan (a “Plan”).

The Debtor has reserved the right to seek Court approval, with notice and an opportunity for hearing, of a party to serve as a stalking horse purchaser (the “Stalking Horse Purchaser”) to acquire the Assets pursuant to a Transaction Agreement between the Debtor and the Stalking Horse Purchaser (the “Stalking Horse Agreement”).

Any party interested in bidding on the Assets should contact Cassel Salpeter & Co., LLC, Attn: James S. Cassel (Phone: 305-438-7701; Email: jcassel@cs-ib.com).

Summary of Important Dates

Milestone	Proposed Dates
Bidding Procedures Hearing	October 4, 2016 2:00 p.m. (ET)
Deadline to serve Sale Notice	October 7, 2016
Deadline to serve Assumption Notice	
Deadline to object to Sale	October 28, 2016 4:00 p.m. (ET)
Deadline to object to Assumption Notice (other than adequate assurance)	
Bid Deadline	November 10, 2016 5:00 p.m. (ET)
Auction commencement	November 14, 2016 10:00 a.m. (ET)
Deadline to object to adequate assurance	November 16, 2016 12:00 Noon (ET)
Sale Hearing	November 17, 2016 10:00 a.m. (ET)

1. Assets to be Sold

The Debtor is offering to sell substantially all of its assets, provided that the Debtor determines that the consideration offered by any bid satisfies the requirements set forth in these Bidding Procedures.

Potential Bidders may submit a proposal to purchase the equity or the Assets of the Debtor through a sale pursuant to section 363 of the Bankruptcy Code or pursuant to a plan of liquidation or reorganization.

2. Participation Requirements

Any person or entity that wishes to participate in the bidding process for the Assets (each, a "Potential Bidder") must first become a "Qualifying Bidder." Parties may be qualified as a Qualified Bidder up to the Bid Deadline (*i.e.*, November 10, 2016 at 5:00 p.m. (ET)).

As a prerequisite to becoming a Qualifying Bidder (and thus being able to conduct due diligence and gain access to the Debtor's confidential electronic data room concerning the Assets (the "Data Room")), a Potential Bidder must submit to the Debtor and its advisors:

- (a) documentation identifying the interested party, its principals and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (b) an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtor, which by its terms will inure to the benefit of the Successful Bidder to the extent of confidential information relating to the Assets acquired by such party;
- (c) a statement and other factual support demonstrating to the Debtor's reasonable satisfaction that the interested party has a *bona fide* interest in consummating a transaction to acquire the Assets; and
- (d) sufficient information, as determined by the Debtor, to allow the Debtor to determine that the interested party (i) has, or can obtain, the financial wherewithal and any required internal corporate, legal or other authorizations to close a sale transaction, including, but not limited to, current audited financial statements of the interested party (or such other form of financial disclosure acceptable to the Debtor in its discretion) and (ii) can provide adequate assurance of future performance under any executory contracts and unexpired leases to be assumed by the Debtor and assigned to such bidder, pursuant to section 365 of the Bankruptcy Code, in connection with the Sale.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtor or its advisors regarding the ability of such Potential Bidder to consummate its contemplated transaction.

Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures, any designated Stalking Horse Purchaser shall be considered a Qualifying Bidder and any Stalking Horse Agreement shall be a Qualifying Bid (as defined below).

3. Bankruptcy Court Jurisdiction

Any Potential Bidders and Qualifying Bidders shall be deemed to have (a) waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating to the Bidding Procedures, the Sale, the Auction (as defined below) and the construction and enforcement of the contemplated transaction documents of such parties, (b) agreed to bring any such action or proceeding in the Court, and (c) consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

4. Form of Agreement

Potential Bidders intending to submit bids must include with their bids:

- (a) (i) a modified Transaction Agreement marked against the form asset purchase agreement attached as Exhibit A to the Debtor's motion for approval of the Bidding Procedures Order (the "Form APA") to show all changes requested by the Proposed Bidder and (ii) a clean and duly executed version of such modified Transaction Agreement;
- (b) a statement that such Potential Bidder offers to purchase the Assets upon the terms set forth in their modified Transaction Agreement; provided that, in the event that the Debtor enters into a Stalking Horse Agreement, such statement shall provide that the Potential Bidder offers to purchase the Assets upon substantially the same terms as, or terms more favorable to the Debtor and its estate than, the terms set forth in the Stalking Horse Agreement; and
- (c) if the Qualifying Bidder proposes to implement an acquisition transaction through a Plan, a detailed term sheet that includes a description of (i) the treatment of each class of creditors proposed under the Plan, (ii) the transactions that will be implemented and occur under the Plan, (iii) the consideration to be received by existing creditors, existing equity holders, and any other party receiving distributions under the Plan and the source thereof, (iv) any conditions to the occurrence of the effective date of the proposed Plan, and (v) any other matters that are material to the Plan and the implementation thereof.

5. Due Diligence

The Debtor will provide any Qualifying Bidder with reasonable access to the Data Room and any other additional information that the Debtor believes to be reasonable and appropriate

under the circumstances. All additional due diligence requests shall be directed to Cassel Salpeter & Co., LLC, Attn: James S. Cassel (Phone: 305-438-7701; Email: jcassel@cs-ib.com). All due diligence materials provided to Qualifying Bidders shall be subject to the limitations on use and disclosure included in any confidentiality agreement entered into pursuant to the Bidding Procedures or otherwise.

The due diligence period shall extend through and including the Bid Deadline. The Debtor may, but shall not be obligated to, in its sole discretion, furnish any due diligence information after the Bid Deadline.

The Debtor reserves the right, in its sole discretion, to withhold or limit access to any due diligence information that the Debtor determines is business-sensitive or otherwise not appropriate for disclosure to a Qualifying Bidder. Notwithstanding any limitations provided for in such information, including, without limitation, any non-disclosure, confidentiality or similar provisions, the Debtor and its estate shall be authorized to provide due diligence information to the Qualifying Bidders, provided that such Qualifying Bidders have delivered executed confidentiality agreements in form and substance acceptable to the Debtor. The Debtor and its estate are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualifying Bidders in connection with the Bidding Procedures and the Sale.

6. Bid Requirements

Other than in the case of a Stalking Horse Purchaser, to be deemed a "Qualifying Bid," a bid must be received from a Qualifying Bidder on or before the Bid Deadline and satisfy each of the following requirements (each, a "Bid Requirement"):

- (a) be in writing;
- (b) fully disclose the identity of the Qualifying Bidder and whether such party is an insider (as defined in section 101 of the Bankruptcy Code) of the Debtor, and provide the contact information of the specific person(s) whom the Debtor or its advisors should contact in the event that the Debtor has any questions or wishes to discuss the bid submitted by the Qualifying Bidder;
- (c) in the case of a Sale, set forth the purchase price to be paid by such Qualifying Bidder, including what amount is being paid as cash, and identify the liabilities proposed to be paid or assumed by such Qualifying Bidder;
- (d) to the extent a Stalking Horse Purchaser is designated, state that such Qualifying Bidder offers to purchase the Assets described in the Stalking Horse Agreement upon substantially the same terms as, or terms more favorable to the Debtor and its estate than, the terms set forth in the Stalking Horse Agreement;
- (e) be accompanied by a clean and marked modified Transaction Agreement that reflects any variations from the Form APA;

- (f) state that such Qualifying Bidder's offer is formal, binding and unconditional and is irrevocable until (i) two (2) business days after the closing of the Sale, or (ii) in the case of a Sale proposed to be consummated pursuant to a Plan, the conclusion of the Sale Hearing;
- (g) state that such Qualifying Bidder is financially capable of consummating the transactions contemplated by the Transaction Agreement or proposed Plan and provide written evidence in support thereof;
- (h) contain such financial and other information to allow the Debtor to make a reasonable determination as to the Qualifying Bidder's financial and other capabilities to close the transactions contemplated by its proposed Transaction Agreement, including, without limitation, such financial and other information supporting the Qualifying Bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code, including the Qualifying Bidder's financial wherewithal and willingness to perform under any contracts that are assumed and assigned to the Qualifying Bidder, in a form that allows the Debtor to make available such information to any counterparties to any contracts or leases being assumed and assigned in connection with the Sale that have requested, in writing, such information;
- (i) identify with particularity each and every executory contract and unexpired lease the assumption and assignment of which is a condition to close the transactions contemplated by the proposed Transaction Agreement;
- (j) a commitment to close the transactions contemplated by the Transaction Agreement by no later than fourteen (14) calendar days after entry of the Sale Order; provided that if the proposed transaction will be implemented through a Plan, the Debtor shall have ninety (90) calendar days after entry of the Sale Order to obtain confirmation of such Plan.
- (k) not request or entitle such Qualifying Bidder to any break-up fee, termination fee, expense reimbursement or similar type of fee or payment;
- (l) in the event that there is a Stalking Horse Purchaser, and the Qualifying Bidder wishes to bid on the Assets that are included in the Stalking Horse Agreement, the aggregate consideration proposed by the Qualifying Bidder must equal or exceed the sum of the amount of (A) the purchase price under the Stalking Horse Agreement, plus (B) any break-up fee, expense reimbursement or other bid protection provided under the Stalking Horse Agreement, plus (C) the Bid Increment (as defined below);
- (m) not contain contingencies of any kind, including, without limitation, contingencies related to financing, internal approval or due diligence;
- (n) contain written evidence satisfactory to the Debtor that the Qualifying Bidder has a commitment for financing or other evidence of the ability to close the

transactions contemplated by the Transaction Agreement or to consummate a proposed Plan transaction, with appropriate contact information for such financing sources to verify funds;

- (o) contain a written acknowledgement and representation that the Qualifying Bidder (i) has had an opportunity to conduct any and all due diligence regarding the Assets, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and other information in making its Qualifying Bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any documents or other information provided in connection with the Bidding Procedures and the Sale;
- (p) sets forth (i) a statement or evidence that the Qualifying Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if applicable, and pay the fees associated with such filings and (ii) any regulatory and third-party approvals required for the Qualifying Bidder to close the transactions contemplated by the Transaction Agreement, and the time period within which the Qualifying Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approvals is expected to take more than ten (10) business days following execution and delivery of such Qualifying Bidder's Transaction Agreement, those actions the bidder will take to ensure receipt of such approvals as promptly as possible); provided that a Qualifying Bidder agrees that its legal counsel will coordinate in good faith with Debtor's legal counsel to discuss and explain Qualifying Bidder's regulatory analysis, strategy and timeline for securing all such approvals as soon as reasonably practicable, and in no event later than the time period contemplated in the Transaction Agreement; provided, further that the offer contains a covenant to cooperate with the Debtor to provide pertinent factual information regarding the bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements;
- (q) provides for the Qualifying Bidder to serve as a backup bidder (the "Back-Up Bidder") if the Qualifying Bidder's bid is the next highest or otherwise best bid (the "Back-Up Bid") after the Successful Bid (as defined below), in accordance with the terms of the Transaction Agreement;
- (r) includes written evidence of authorization and approval from the Qualifying Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Transaction Agreement;
- (s) provides a good faith cash deposit (the "Deposit") in an amount equal to (i) ten percent (10%) of the cash purchase price to be paid under the proposed Transaction Agreement or (ii) in the event of a transaction proposed to be implemented through a Plan, such amount as may be determined by the Debtor in

its reasonable discretion, to be deposited, prior to the Bid Deadline, with an escrow agent selected by the Debtor pursuant to the escrow agreement to be provided by the Debtor to the Qualifying Bidders; and

- (t) provides that in the event of the Qualifying Bidder's breach of, or failure to perform under, the Transaction Agreement, the Debtor may retain the Qualifying Bidder's Deposit as part of the damages resulting to the Debtor and its estate for such breach or failure to perform.

A bid from a Qualifying Bidder satisfying all of the above requirements, as determined by the Debtor, shall constitute a Qualifying Bid. The Debtor reserves the right to work with any Qualifying Bidder in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualifying Bid.

Each Qualifying Bidder submitting a bid shall be deemed to: (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures; and (b) have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures and the Sale.

7. Bid Deadline

A Qualifying Bidder, other than any Stalking Horse Purchaser, that desires to make a bid shall deliver a written and electronic copy of its bid in both PDF and MS-WORD format to the Notice Parties so as to be received on or before **November 10, 2016 at 5:00 p.m. (ET)** (the "Bid Deadline"); provided that the Debtor may extend the Bid Deadline without further order of the Court. **Any party that does not submit a bid by the Bid Deadline will not be allowed to (a) submit any offer after the Bid Deadline, or (b) participate in the Auction.**

8. Evaluation of Qualifying Bids

The Debtor shall make a determination regarding whether a timely submitted bid from a Qualifying Bidder is a Qualifying Bid, and shall notify all Qualifying Bidders whether their bids have been determined to be a Qualifying Bid by no later than two (2) calendar days prior to the Auction Date. In the event that a bid is determined not to be a Qualifying Bid, the Qualifying Bidder shall be notified by the Debtor and shall have one (1) calendar day from the date of such notification to modify its bid to increase the purchase price or otherwise improve the terms of the Qualifying Bid; provided that any Qualifying Bid may be improved at the Auction as set forth herein.

One (1) calendar day prior to the Auction Date, the Debtor shall determine which of the Qualifying Bids, at such time, is the highest or otherwise best bid for purposes of constituting the opening bid of the Auction (the "Baseline Bid" and, the Qualifying Bidder submitting the Baseline Bid, the "Baseline Bidder"), and shall promptly notify any Stalking Horse Purchaser and all Qualifying Bidders with Qualifying Bids of the Baseline Bid.

9. Insufficient Qualifying Bids

If less than two Qualifying Bids (including any Stalking Horse Purchaser's Qualifying Bid) are submitted on or before the Bid Deadline, the Debtor shall not hold an Auction and shall request at the Sale Hearing (as defined in the Bidding Procedures Order) that the Court approve the sole Qualifying Bid (which may be the Stalking Horse Agreement) and the transactions contemplated thereunder.

10. Auction

In the event that the Debtor timely receives more than one Qualifying Bid (including any Stalking Horse Purchaser's Qualifying Bid), the Debtor shall conduct an auction (the "Auction"). Following the Auction, the Debtor will determine which Qualifying Bid is the highest or otherwise best bid for the Assets, which will be determined by considering, among other things, the following non-binding factors: (a) the transaction structure and execution risk, including conditions to, timing of and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approvals, as well as additional costs or savings to the Debtor in the event that a bid is implemented through a chapter 11 plan or a section 363 sale; (b) variations between competing bids and any incremental execution risk that the Debtor reasonably determines exists as a result of those variations; (c) the time needed to close a Sale or other transaction compared with other Qualifying Bids and the cost to the Debtor and its estate of any incremental delay; (d) the total consideration to be received by the Debtor and its estate; (e) the net benefit to the Debtor's estate, taking into account any Stalking Horse Purchaser's rights to any break-up fee, expense reimbursement or similar bid protection; (f) the impact on employees, contract and lease counterparties (including claims that may be asserted related to rejection and objections to adequate assurance), and other creditors; and (g) any other factors the Debtor may reasonably deem relevant.

The Auction shall be governed by the following procedures:

- (a) the Auction shall be held on **November 14, 2016 at 10:00 a.m. (ET)** (the "Auction Date") at the offices of Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801;
- (b) only a Stalking Horse Purchaser and the other Qualifying Bidders with Qualifying Bids (collectively, the "Auction Bidders") shall be entitled to make any subsequent bids at the Auction;
- (c) the Auction Bidders shall appear in person at the Auction, or through a duly authorized representative;
- (d) only the Debtor, the Auction Bidders and all creditors of the Debtor, together with the professional advisors to each of the foregoing parties, may attend the Auction; provided that such creditors must provide counsel for the Debtor one (1) business day's written notice of their intent to attend the Auction;

- (e) the Debtor and its professional advisors shall direct and preside over the Auction, which shall be transcribed;
- (f) the Auction Bidders shall confirm that they have not engaged in any collusion with respect to the Bidding Procedures, the Auction or the Sale;
- (g) bidding on the Assets shall commence at the amount of the Baseline Bid, and the Auction Bidders may submit successive bids in increments of at least 2% of the Baseline Bid (the “Bid Increment”), provided that: (i) each such successive bid must be a Qualifying Bid; (ii) any bid made by a Stalking Horse Purchaser shall be deemed to include the sum of the amount of any break-up fee, expense reimbursement or other bid protection available to such Stalking Horse Purchaser in addition to the cash and other consideration provided for in its bid; and (iii) the Debtor shall retain the right to modify the bid increment requirements at the Auction;
- (h) the Auction may include individual negotiations with any of the Auction Bidders, but all bids shall be made on the record and in the presence of all of the Auction Bidders;
- (i) all material terms of the bid that is deemed to be the highest or otherwise best bid for each round of bidding shall be fully disclosed to the Auction Bidders, and the Debtor shall use reasonable efforts to clarify any and all questions that the Auction Bidders may have regarding the Debtor’s announcement of the then-current highest or otherwise best bid;
- (j) the Debtor and its professional advisors may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time allotted to make subsequent bids) for conducting the Auction, provided that such rules are (i) not inconsistent with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware or any applicable order of the Court entered in connection with the chapter 11 case, including, without limitation, the Bidding Procedures Order, and (ii) disclosed to the Auction Bidders;
- (k) each Auction Bidder shall be deemed to have (i) waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating to the Bidding Procedures, the Sale, the Auction and the construction and enforcement of the contemplated transaction documents of the Auction Bidders, (ii) agreed to bring any such action or proceeding in the Court, and (iii) consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law;

- (l) the Auction Bidders shall have the right to make additional modifications to their Transaction Agreement or Stalking Horse Agreement, as applicable, in conjunction with each Qualifying Bid submitted in each round of bidding during the Auction, provided that (i) any such modifications on an aggregate basis and viewed in whole, shall not, in the Debtor's discretion, be less favorable to the Debtor and its estate than the terms of any Stalking Horse Agreement for the Assets, and (ii) each Qualifying Bid shall constitute an irrevocable offer and shall be binding on the Auction Bidder submitting such bid until such party shall have submitted a subsequent Qualifying Bid at the Auction or the conclusion of the Sale Hearing, whichever occurs sooner, unless such bid is selected as the Successful Bid or the Back-Up Bid, which shall remain binding as provided herein;
- (m) the Debtor shall have the right to request any additional financial information that will allow the Debtor to make a reasonable determination as to an Auction Bidder's financial and other capabilities to consummate the transactions contemplated by the Transaction Agreement or Stalking Horse Agreement, as applicable, as may be amended during the Auction, and any further information that the Debtor may believe is reasonably necessary to clarify and evaluate any bid made by an Auction Bidder during the Auction;
- (n) upon the conclusion of the Auction, the Debtor shall determine, subject to Court approval, the offer for the Assets that is the highest or otherwise best from among the Qualifying Bids submitted at the Auction (the "Successful Bid"). The bidder submitting such Successful Bid shall become the "Successful Bidder," and shall have such rights and responsibilities of the purchaser as set forth in the Transaction Agreement or a Stalking Horse Agreement, as applicable. The Debtor may, in its sole discretion, designate a Back-Up Bid (and the corresponding Back-Up Bidder) in the event that a Successful Bidder does not close a Sale; and
- (o) prior to the Sale Hearing, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

THE SUCCESSFUL BID AND ANY BACK-UP BID SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE SUCCESSFUL BIDDER AND THE BACK-UP BIDDER, RESPECTIVELY, FROM THE TIME THE BID IS SUBMITTED UNTIL TWO (2) BUSINESS DAYS AFTER THE SALE HAS CLOSED. EACH QUALIFYING BID THAT IS NOT THE SUCCESSFUL BID OR THE BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.

11. Sale Hearing

If an Auction is held, the Successful Bid and any Back-Up Bid will be subject to approval by the Court. The Sale Hearing to approve the Successful Bid and any Back-Up Bid or the Stalking Horse Agreement shall take place on **November 17, 2016 at 10:00 a.m. (ET)**. The Sale Hearing may be adjourned by the Debtor from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a notice on the docket of the Debtor's chapter 11 case.

12. Backup Bidder

Notwithstanding any of the foregoing, in the event that a Successful Bidder fails to close the Sale prior to thirty (30) calendar days after the completion of the Auction (or such date as may be extended by the Debtor), the Back-Up Bid will be deemed to be the Successful Bid, the Back-Up Bidder will be deemed to be the Successful Bidder, and the Debtor will be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any interested parties.

13. Return of Deposits

All Deposits shall be returned to each bidder not selected by the Debtor as a Successful Bidder or Back-Up Bidder no later than five (5) business days following the conclusion of the Sale Hearing. The deposit of a Back-Up Bidder shall be returned within five (5) business days of the closing of the Sale to the Successful Bidder; the deposit of the Successful Bidder or, if the Sale is closed with the Back-Up Bidder, the deposit of the Back-Up Bidder, shall be applied to the purchase price for the Sale. If the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Transaction Agreement or any Stalking Horse Agreement, as applicable, the Debtor and its estate shall be entitled to retain the Deposit of the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) as part of the damages resulting to the Debtor and its estate for such breach or failure to perform.

14. Notice Parties

The term "Notice Parties" as used in these Bidding Procedures shall mean: (i) the Debtor, NephroGenex, Inc., 3200 Beechleaf Court, Suite 900, Raleigh, NC 27604 (Attn: John P. Hamill) and Email: jhamill@nephrogenex.com; (ii) counsel to the Debtor, Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801 (Attn: David R. Hurst, Esq. and Jacob S. Frumkin, Esq.) and Email: dhurst@coleschotz.com and jfrumkin@coleschotz.com; (iii) counsel to any official committee appointed in the chapter 11 case; and (iv) counsel to the Stalking Horse Purchaser, if any.

15. Reservation of Rights

Notwithstanding any of the foregoing, the Debtor and its estate reserve the right to modify these Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, modify bidding increments, waive terms and conditions set forth herein with respect to any or all potential bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all Potential Bidders, adjourn or cancel the Auction at or prior to the Auction and adjourn the Sale Hearing.

EXHIBIT 2 TO ORDER

Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	X	
	:	
In re:	:	Chapter 11
	:	
NEPHROGENEX, INC.,	:	Case No. 16-11074 (KG)
	:	
Debtor. ¹	:	Related to Docket No. ____
	:	
	X	

NOTICE OF SALE OF ASSETS

NephroGenex, Inc., the debtor and debtor-in-possession in the above-captioned case (the “Debtor”), is seeking to sell substantially all of its assets (the “Assets”). The Debtor will consider proposals to acquire the Assets through a sale under section 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), or pursuant to chapter 11 plan. The Debtor has reserved the right to seek Court approval, with notice and an opportunity for hearing, of a party to serve as a stalking horse purchaser (the “Stalking Horse Purchaser”) to acquire the Assets pursuant to a Transaction Agreement between the Debtor and the Stalking Horse Purchaser.

By order dated October ____, 2016 [Docket No. ____] (the “Bidding Procedures Order”), the Bankruptcy Court approved certain “Bidding Procedures” that govern the sale of, or other transaction to acquire, the Assets by the bidder submitting the highest or otherwise best bid. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Order.

The Debtor has requested that the Bankruptcy Court enter an order (the “Sale Order”) which provides, among other things, for the sale of the Assets free and clear of all liens, claims, encumbrances and other interests, to the extent permissible by law, and the assumption of certain liabilities. A separate notice will be provided to counterparties to executory contracts and unexpired leases with the Debtor that may be assumed and assigned in connection with the Sale Order.

Copies of the Bidding Procedures Order, the Bidding Procedures and other pleadings are available upon request to the Debtor’s claims and noticing agent, Kurtzman Carson Consultants LLC, at (888) 733-1437, and are available for download at <http://www.kccllc.net/NephroGenex>.

Any interested bidder should contact Cassel Salpeter & Co., LLC, Attn: James S. Cassel (Phone: 305-438-7701; Email: jcassel@cs-ib.com).

¹ The last four digits of the Debtor’s federal tax identification number are 5171. The mailing address for the Debtor is 3200 Beechleaf Court, Suite 900, Raleigh, NC 27604.

PLEASE TAKE NOTE OF THE FOLLOWING INFORMATION AND IMPORTANT DEADLINES:

- The deadline to file an objection with the Bankruptcy Court to the proposed sale of the Assets (the “Sale Objection Deadline”) is **October 28, 2016 at 4:00 p.m. (ET)**. Objections must be filed and served in accordance with the Bidding Procedures Order.
- The deadline to be qualified as a Qualified Bidder and to submit a Qualified Bid is **November 10, 2016 at 5:00 p.m. (ET)**. Qualified Bids must be accompanied with a deposit equal to ten percent (10%) of the purchase price to be paid under the proposed Transaction Agreement.
- An auction for the Assets will commence on **November 14, 2016 at 10:00 a.m. (ET)** at the offices of Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801.
- The Bankruptcy Court will conduct a hearing (the “Sale Hearing”) to consider the proposed sale on: **November 17, 2016 at 10:00 a.m. (ET)**.

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THE FAILURE OF ANY PERSON OR ENTITY TO FILE AND SERVE AN OBJECTION BY THE SALE OBJECTION DEADLINE SHALL BE A BAR TO THE ASSERTION BY SUCH PERSON OR ENTITY OF ANY OBJECTION TO THE MOTION, THE SALE ORDER, THE PROPOSED TRANSACTION, OR THE DEBTOR'S CONSUMMATION AND PERFORMANCE OF THE TRANSACTION AGREEMENT (INCLUDING, WITHOUT LIMITATION, THE DEBTOR'S TRANSFER OF ANY OF THE ASSETS AND ASSUMPTION AND ASSIGNMENT OF ANY ASSUMED CONTRACTS, FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS).

Dated: Wilmington, Delaware
October __, 2016

COLE SCHOTZ P.C.

David R. Hurst (I.D. No. 3743)
500 Delaware Avenue, Suite 1410
Wilmington, Delaware 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117

– and –

Jacob S. Frumkin
1325 Avenue of the Americas, 19th Floor
New York, New York 10019
Telephone: (212) 752-8000
Facsimile: (212) 752-8393

*Counsel for Debtor and
Debtor-in-Possession*

EXHIBIT 3 TO ORDER

Assumption Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	X		
	:		
In re:	:		Chapter 11
	:		
NEPHROGENEX, INC.,	:		Case No. 16-11074 (KG)
	:		
Debtor. ¹	:		Related to Docket No. ____
	:		
	X		

NOTICE OF ASSUMPTION, ASSIGNMENT AND CURE AMOUNT WITH RESPECT TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF THE DEBTOR

NephroGenex, Inc., the debtor and debtor-in-possession in the above-captioned case (the “Debtor”), is seeking to sell substantially all of its assets (the “Assets”). The Debtor will consider proposals to acquire the Assets through a sale under section 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), or pursuant to chapter 11 plan. The Debtor has reserved the right to seek Court approval, with notice and an opportunity for hearing, of a party to serve as a stalking horse purchaser (the “Stalking Horse Purchaser”) to acquire the Assets pursuant to a Transaction Agreement between the Debtor and the Stalking Horse Purchaser.

The Debtor has requested that the Bankruptcy Court enter an order (the “Sale Order”) which provides, among other things, for the sale of the Assets free and clear of all liens, claims, encumbrances and other interests, to the extent permissible by law, and the assumption by the applicable purchaser of certain liabilities. In connection with the marketing and sale process, the Debtor may seek to assume or assume and assign certain of its executory contracts and unexpired leases related to the Assets (collectively, the “Assumed Contracts”).

By order dated October ____, 2016 [Docket No. ____] (the “Bidding Procedures Order”), the Bankruptcy Court approved certain “Bidding Procedures” that govern the sale of the Assets to the bidder submitting the highest or otherwise best bid. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Order. Copies of the Bidding Procedures Order, the Bidding Procedures, and other pleadings are available upon request to the Debtor’s claims and noticing agent, Kurtzman Carson Consultants LLC, at (888) 733-1437, and are available for download at <http://www.kccllc.net/NephroGenex>.

You are receiving this Notice because you may be a party to an Assumed Contract. A list of the Assumed Contracts is attached hereto as Exhibit A. The Debtor has determined the current amounts owing (the “Cure Amounts”) under each Assumed Contract and has listed the applicable Cure Amounts on Exhibit A. The Cure Amounts are the only amounts proposed to be

¹ The last four digits of the Debtor’s federal tax identification number are 5171. The mailing address for the Debtor is 3200 Beechleaf Court, Suite 900, Raleigh, NC 27604.

paid upon any assumption or assumption and assignment of the Assumed Contracts, in full satisfaction of all amounts outstanding under the Assumed Contracts.

To the extent that a non-Debtor party to an Assumed Contract objects to (i) the assumption and assignment of such party's Assumed Contract or (ii) the applicable Cure Amounts, the non-Debtor counterparty must file and serve an objection in accordance with the Bidding Procedures Order, so as to be received by the undersigned counsel for the Debtor and the other parties specified therein by October 28, 2016 at 4:00 p.m. (ET). See below regarding objections based on adequate assurance.

If no objection is timely received with respect to Cure Amounts or the assumption of an Assumed Contract, (i) a non-Debtor party to a Contract shall be forever barred from objecting to the Cure Amounts and from asserting any additional cure or other amounts with respect to such Contract, (ii) the Cure Amounts set forth on Exhibit A attached hereto shall be controlling, notwithstanding anything to the contrary in any Assumed Contract, or any other document, and the non-Debtor party to an Assumed Contract shall be deemed to have consented to the Cure Amounts, (iii) the non-Debtor party to a Contract shall be forever barred and estopped from asserting any other claims related to such Contract against the Debtor or the transferee, or the property of either of them; and (iv) the non-Debtor party to a Contract shall be deemed to consent to, and the Debtor shall be permitted to proceed with, the assumption and assignment of the applicable Assigned Contract.

An auction (the "Auction") for the Assets, including the Assumed Contracts, will be conducted on November 14, 2016, at 10:00 a.m. (ET). After the Auction occurs (or after the cancellation of the Auction, if applicable), the Debtor will file and serve a notice that identifies the proposed acquirer of the Assets, and the proposed assignee of any Assumed Contracts. **The deadline to object to adequate assurance of future performance with respect to such proposed assignee shall be November 16, 2016 at Noon (ET); provided that the deadline to make any other objection to assumption of the Assumed Contracts or to object to the Cure Amounts with respect to such Assumed Contracts shall not be extended.**

[Remainder of Page Left Intentionally Blank]

The Debtor will seek to assume and assign the Assumed Contracts that have been selected by the Successful Bidder or the Stalking Horse Purchaser, if applicable, at a hearing before the Honorable Kevin Gross, in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801 (the “Sale Hearing”) on November 17, 2016 at 10:00 a.m. (ET), or such other date as determined by the Debtor in accordance with the terms of the Bidding Procedure Order. A hearing regarding the Cure Amounts, if any, may be adjourned by agreement of the Debtor and applicable objection party or by order of the Court.

Dated: Wilmington, Delaware
October __, 2016

COLE SCHOTZ P.C.

David R. Hurst (I.D. No. 3743)
500 Delaware Avenue, Suite 1410
Wilmington, Delaware 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117

– and –

Jacob S. Frumkin
1325 Avenue of the Americas, 19th Floor
New York, New York 10019
Telephone: (212) 752-8000
Facsimile: (212) 752-8393

*Counsel for Debtor and
Debtor-in-Possession*

EXHIBIT A TO ASSUMPTION NOTICECure Schedule¹

Counterparty	Contract Type ²	Effective Date	Cure Amount
Baker IDI Heart and Diabetes Institute Holdings Limited	Consulting Agreement	4/15/14	\$1,500.00
BioClinica, Inc.	General Services Agreement #46101	4/16/14	\$0.00
BioClinica, Inc.	General Services Agreement #46102	4/16/14	\$0.00
Carbogen AMCIS AG	Master Services Agreement	4/30/08	\$2,857.79
Catalent Pharma Solutions, LLC	Mutual Confidentiality and Non-Disclosure Agreement	4/7/14	\$0.00
Catalent Pharma Solutions, LLC	Product Development and Clinical Manufacture for a Pyridoxamine Dihydrochloride IV Product	3/18/15	\$0.00
Catalent Pharma Solutions, LLC	Quality Agreement	6/15	\$0.00

¹ In accordance with Fed. R. Bankr. P. 6006(f), all of the Debtor's contracts subject to possible assumption and assignment under the Debtor's Motion are arranged alphabetically below by name of the non-Debtor party to such contract. You should locate your name and contract, if any, hereunder. The indication below that a contract is to be assumed and assigned is only a preliminary determination and such determination ultimately will be made the Successful Bidder for the Acquired Assets. Accordingly, it is important for you to review this list and the foregoing notice carefully and proceed in accordance with its terms. The inclusion on the attached list is without prejudice to the Debtor's rights and claims, including that the executory contracts hereon are not executory in nature. Subject to further notice, the Debtor reserves all rights with respect to the cure amount listed hereon, including that there is no cure amount due or the amounts necessary to cure were paid pursuant to order of the Court. Nothing herein shall bind or be deemed to bind the Debtor or any proposed assignee to the alleged cure amount asserted hereon.

² The "Contract Type" set forth in this column is for reference purposes only and shall not limit the Debtor's right to assume and assign any executory contract between you and the Debtor, including those not described more particularly (or misdescribed) in this column. The "Cure Amount" is intended to include all amounts that the Debtor asserts are owed to cure any defaults existing under each contract, including those amounts that may be due for contracts not more particularly described (or misdescribed), and are the amounts that the Debtor believes will cure any and all defaults and actual pecuniary losses in respect of any contract to which you are a party with the Debtor.

Counterparty	Contract Type²	Effective Date	Cure Amount
Catalent Pharma Solutions, LLC	PIONEER Phase III Clinical Supplies Management Support for Study Transfer and Monitoring	8/4/15	\$0.00
Catalent Pharma Solutions, LLC	PIONEER Phase III Packaging, Storage & Distribution	8/21/15	\$0.00
Catalent Pharma Solutions, LLC	In-Use Stability Study of Formulated Pyridoxamine Dihydrochloride IV Drug Product	9/10/15	\$0.00
Catalent Pharma Solutions, LLC	Product Development and Clinical Manufacture for a Pyridoxamine Dihydrochloride IV Product	9/11/15	\$0.00
Catalent Pharma Solutions, LLC	Importer of Record Services Agreement	1/8/16	\$0.00
Collaborative Study Group, Inc.	Coordination Center Agreement	3/21/14 Amended 7/1/14 Amended 8/1/14 Amended 4/1/15	\$47,873.00
DPx Fine Chemicals Regensburg GmbH & Co (Patheon)	Pyridoxamine Dihydrochloride Drug Substance Proposal, A-REGA-82294-R1	3/12/15	267,852.20 EUR
DPx Fine Chemicals Regensburg GmbH & Co (Patheon)	Development Program for Pyridoxamine Dihydrochloride Campaign, A-REGA-95509-R0	3/20/15	55,000 EUR
DPx Fine Chemicals Austria GmbH & Co KG (Patheon)	Research and Manufacturing Services Agreement	12/10/15	\$0.00
DPx Fine Chemicals Austria GmbH & Co KG (Patheon)	Registration Campaign for Pyridoxamine 2HCl, A-LFCAA-95525-R2	12/10/15	78,000 EUR
Impact Pharmaceutical Services, Inc.	Master Service Agreement	5/19/14	\$9,757.25

Counterparty	Contract Type²	Effective Date	Cure Amount
Impact Pharmaceutical Services, Inc.	Nondisclosure Agreement	4/8/14	\$0.00
Mark Klausner	Amended and Restated Consulting Agreement	3/15/10	\$0.00
Medpace, Inc.	Amended and Restated Master Services Agreement	3/25/14	\$3,020,288.51
Pharmaceutics International, Inc.	Master Services Agreement	2/8/08	\$0.00
Pharmaceutics International, Inc.	Master Quality Agreement	5/8/09	\$0.00
Patheon Pharmaceuticals Inc.	Quality Agreement Clinical Trial Material	5/15/14	\$0.00
Patheon Pharmaceuticals Inc.	Pharmaceutical Development Services Agreement P-CRP-30079-R9	12/13/13	\$17,476.99
University of Kansas Medical Center	Amended and Restated License Agreement	11/19/98 Amended 4/30/07 Amended 6/25/08	\$0.00
University of South Carolina Research Foundation	License Agreement	8/27/04 Amended 6/20/11 Amended 4/2/12 Amended 8/9/13 Amended 1/14/14	\$30,000.00
Uppsala Monitoring Centre	License Agreement	5/19/14	\$0.00
VA WNY Healthcare System Buffalo VA Medical Center	Cooperative Research and Development Agreement	9/29/14	\$0.00
Vanderbilt University Center for Technology Transfer and Commercialization	Restated and Amended License Agreement	7/18/12 Amended 11/6/13 Amended 3/16/15	\$0.00
Vanderbilt University Medical Center Office of Contracts Management	Coordination Center Agreement	7/1/14 Amended 8/1/14 Amended 4/1/15	\$18,302.83

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11

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NEPHROGENEX, INC., : Case No. 16-11074 (KG)

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Debtor.¹ : Hearing Date: 10/4/2016 at 2:00 p.m. (ET)

: Objection Deadline: 9/20/2016 at 4:00 p.m. (ET)

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**NOTICE OF HEARING ON DEBTOR’S MOTION FOR ENTRY OF
(A) ORDER (I) SCHEDULING A HEARING TO CONSIDER APPROVAL
OF THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS,
AND THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, (II) APPROVING CERTAIN BIDDING
PROCEDURES, ASSUMPTION AND ASSIGNMENT PROCEDURES AND THE FORM
AND MANNER OF NOTICE THEREOF AND (III) GRANTING RELATED RELIEF;
AND (B) ORDER (I) APPROVING THE SALE OR OTHER ACQUISITION
TRANSACTION FOR THE ASSETS, (II) AUTHORIZING THE SALE FREE
AND CLEAR OF ALL ENCUMBRANCES, (III) AUTHORIZING THE
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS
AND UNEXPIRED LEASES AND (IV) GRANTING RELATED RELIEF**

TO: (i) the U.S. Trustee; (ii) the parties included on the Debtor’s list of twenty (20) largest unsecured creditors; (iii) any party that may assert a lien on the Debtor’s assets; (iv) all applicable federal, state and local taxing and regulatory authorities having jurisdiction over the Assets; and (v) all parties entitled to notice under Del. Bankr. L.R. 2002-1(b).

PLEASE TAKE NOTICE that, on August 31, 2016, the above-captioned debtor and debtor-in-possession (the “Debtor”) filed the **Debtor’s Motion For Entry of (A) Order (I) Scheduling a Hearing to Consider Approval of the Sale of Substantially All of the Debtor’s Assets, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures, Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof and (III) Granting Related Relief; and (B) Order (I) Approving the Sale or Other Acquisition Transaction For the Assets, (II) Authorizing the Sale Free and Clear of All Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and (IV) Granting Related Relief** (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

¹ The last four digits of the Debtor’s federal tax identification number are 5171. The mailing address for the Debtor is 3200 Beechleaf Court, Suite 900, Raleigh, NC 27604.

An objection, if any, to the Motion must be in writing, filed with the Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon undersigned counsel for the Debtor, so that it is received **on or before 4:00 p.m. (ET) on September 20, 2016.**

A HEARING ON THE MOTION WILL BE HELD ON **OCTOBER 4, 2016 AT 2:00 P.M. (ET)** BEFORE THE HONORABLE KEVIN GROSS, UNITED STATES BANKRUPTCY JUDGE, UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 6TH FLOOR, COURTROOM NO. 3, WILMINGTON, DE 19801.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: Wilmington, Delaware
August 31, 2016

COLE SCHOTZ P.C.

/s/ David R. Hurst
David R. Hurst (I.D. No. 3743)
500 Delaware Avenue, Suite 1410
Wilmington, Delaware 19801
Telephone: (302) 652-3131
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*Counsel for Debtor and
Debtor-in-Possession*