UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

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

Date of Report (Date of Earliest Event Reported): January 13, 2020 (January 12, 2020)

KemPharm, Inc.
(Exact Name of Registrant as Specified in Its Charter)

Delaware	**001-36913**	**20-5894398**
(State or Other Jurisdiction of Incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

1180 Celebration Boulevard, Suite 103, Celebration, FL	**34747**
(Address of Principal Executive Offices)	**(Zip Code)**

Registrant's Telephone Number, Including Area Code: (321) 939-3416

(Former Name or Former Address, if Changed Since Last Report)

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock	**KMPH**	**Nasdaq Global Market**

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

Emerging growth company ☒

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

Item 1.01 Entry into a Material Definitive Agreement.

January 2020 Exchange Agreement and Amendment to 2019 Notes

On January 12, 2020, KemPharm, Inc., a Delaware corporation (the "***Company***"), entered into a January 2020 Exchange Agreement (the "***January 2020 Exchange Agreement***") with M. Kingdon Offshore Master Fund, LP (the "***Holder***"). Under the January 2020 Exchange Agreement, the Company is issuing a senior secured convertible note in the aggregate principal amount of $3,037,354.16 (the "***2020 Note***"), in exchange for the cancellation of an aggregate of $3,037,354.16 principal amount and accrued interest of the Company's 5.50% Senior Convertible Notes due 2021 (the "***Indenture Notes***"). Upon entering into the January 2020 Exchange Agreement, the Company agreed to pay the Holder an interest payment of $37,354.17, which represents 50% of the accrued and unpaid interest, as of January 13, 2020, on the Indenture Notes owned by the Holder. The remainder of such interest will be included in the principal amount of the 2020 Note.

The 2020 Note bears interest at 6.75% per annum. The 2020 Note is convertible into shares of the Company's common stock at an initial conversion price of $5.85 per share, subject to adjustment in accordance with the terms of the 2020 Note. As of the date of issuance, the 2020 Note is convertible, by its terms, into an aggregate of 519,206 shares of the Company's common stock. The conversion price of the 2020 Note will be adjusted downward if the Company issues or sells any shares of its common stock, convertible securities, warrants or options at a sale or exercise price per share less than the greater of the 2020 Note's conversion price or the closing sale price of the Company's common stock as reported on the Nasdaq Global Market on the last trading date immediately prior to such issuance, or, in the case of a firm commitment underwritten offering, on the date of execution of the underwriting agreement between the Company and the underwriters for such offering. Although, if the Company effects an "at the market offering" as defined in Rule 415 of the Securities Act or 1933, as amended (the "***Securities Act***"), of its common stock, the conversion price of the 2020 Note will be adjusted downward pursuant to this anti-dilution adjustment only if such sales are made at a price less than $5.85 per share, provided that this anti-dilution adjustment will not apply to any sales made under (x) that certain Purchase Agreement, dated February 28, 2019, by and between the Company and Lincoln Park Capital Fund, LLC, (y) that certain Common Stock Sales Agreement, dated as of September 4, 2018, by and between the Company and RBC Capital Markets, LLC, or (z) that certain September 2019 Exchange Agreement and Amendment to Facility Agreement, dated as of September 3, 2019, by and among the Company, Deerfield Private Design Fund III, L.P. and Deerfield Special Situations Fund, L.P. (as amended). Notwithstanding anything in the contrary in the 2020 Note, the anti-dilution adjustment of the 2020 Note shall not result in the conversion price of the 2020 Note being less than $0.583 per share, representing the average closing price of the common stock (as reflected on Nasdaq.com) for the five trading days immediately preceding signing the January 2020 Exchange Agreement. The 2020 Note is convertible at any time at the option of the Holder, provided that the Holder is prohibited from converting the 2020 Note into shares of the Company's common stock if, as a result of such conversion, the Holder (together with certain affiliates and "group" members) would beneficially own more than 4.985% of the total number of shares of the Company's common stock then issued and outstanding. Pursuant to the 2020 Note, the Holder has the option to demand repayment of all outstanding principal, and any unpaid interest accrued thereon, in connection with a Major Transaction (as defined in the 2020 Note), which shall include, among others, any acquisition or other change of control of the Company; a liquidation, bankruptcy or other dissolution of the Company; or if at any time after March 31, 2021, shares of the Company's common stock are not listed on an Eligible Market (as defined in the 2020 Note). The 2020 Note is subject to specified events of default, the occurrence of which would entitle the Holder to immediately demand repayment of all outstanding principal and accrued interest on the 2020 Note. Such events of default include, among others, failure to make any payment under the 2020 Note when due, failure to observe or perform any covenant under the Facility Agreement (as defined below) or the other transaction documents related thereto (subject to a standard cure period), the failure of the Company to be able to pay debts as they come due, the commencement of bankruptcy or insolvency proceedings against the Company, a material judgement levied against the Company and a material default by the Company under the Warrant or the Notes (each as defined in the Facility Agreement).

The January 2020 Exchange Agreement contains customary representations, warranties and covenants made by the Company and the Holder.

As a result of the transactions contemplated under the January 2020 Exchange Agreement, the Holder has agreed to defer any payments due (including all future accrued interest) under the Indenture Notes until March 31, 2021 and waived any put right under the Indenture Notes with regard to any delisting of the Company's common stock until March 31, 2021. Following the exchange by the Holder of its Indenture Notes, the Company no longer has any Indenture Notes outstanding.

In connection with entering into the January 2020 Exchange Agreement, on January 12, 2020, the Company entered into an Amendment to Facility Agreement and December 2019 Notes and Consent (the "***Amendment***") with the other parties thereto that, among other things, (i) amended the Company's existing Senior Secured Convertible Notes issued on December 18, 2019 (the "***2019 Notes***") to (a) reduce the Conversion Price (as defined in the 2019 Notes) from $17.11 to $5.85 per share

and (b) increase the Floor Price (as defined in the 2019 Notes) from $0.38 to $0.583 per share, and (ii) amended that certain Facility Agreement, dated as of June 2, 2014, as amended (the "***Facility Agreement***"), by and among the Company and the other parties thereto, to (x) provide for the Holder to join the Facility Agreement as a Lender (as defined in the Facility Agreement) and (y) provide that the 2020 Note and shall constitute a "Senior Secured Convertible Note" (as defined in the Facility Agreement) for purposes of the Facility Agreement and other Transaction Documents (as defined in the Facility Agreement). As a result of the Amendment, the 2019 Notes are convertible, by their terms, into an aggregate of 11,753,016 shares of the Company's common stock, assuming a conversion date of January 13, 2020.

The foregoing descriptions of the January 2020 Exchange Agreement, the 2020 Note and the Amendment are a summary and are qualified in their entirety by Exhibits 10.1, 10.2 and 10.3 attached hereto, each of which is incorporated by reference into this Item 1.01.

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

The information contained in Item 1.01 related to the 2020 Note, the Amendment and the January 2020 Exchange Agreement is hereby incorporated herein by reference.

Item 3.02. Unregistered Sales of Equity Securities.

The information contained above in Item 1.01 related to the January 2020 Exchange Agreement, the 2020 Note, the Amendment and the 2019 Notes is hereby incorporated by reference into this Item 3.02.

The 2020 Note was offered and sold to the Holder under the January 2020 Exchange Agreement in reliance on Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D of the Securities Act and in reliance on similar exemptions under applicable state laws. The Holder represented that it is an accredited investor within the meaning of Rule 501(a) of Regulation D. The 2020 Note was offered without any general solicitation by the Company or its representatives.

Any shares of the Company's common stock issuable upon conversion of the 2020 Note or the 2019 Notes will be issued in reliance on the exemption from registration provided in Section 3(a)(9) of the Securities Act.

Item 3.03. Material Modifications to Rights of Security Holders.

The information contained above in Item 1.01 related to the January 2020 Exchange Agreement, the Amendment, the 2019 Notes and the 2020 Note is hereby incorporated by reference into this Item 3.03.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Exhibit Description
10.1	January 2020 Exchange Agreement, dated as of January 12, 2020, by and between KemPharm, Inc. and M. Kingdon Offshore Master Fund, LP.
10.2	Senior Secured Convertible Note, dated as of January 13, 2020.
10.3	Amendment to December 2019 Notes and Consent, dated as of January 12, 2020, by and among KemPharm, Inc. and the signatories party thereto.

SIGNATURES

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

KEMPHARM, INC.

By: /s/ R. LaDuane Clifton

R. LaDuane Clifton, CPA
Chief Financial Officer, Secretary and Treasurer

Date: January 13, 2020

Exhibit 10.1

JANUARY 2020 EXCHANGE AGREEMENT

This **JANUARY 2020 EXCHANGE AGREEMENT** (including the schedules, annexes and exhibits hereto, this "**Agreement**"), dated as of January 12, 2020, is by and among KemPharm, Inc., a Delaware corporation (the "**Borrower**"), and M. Kingdon Offshore Master Fund, LP (the "**Lender**"). Capitalized terms used but not otherwise defined in this Agreement shall have the meanings given to them in the Facility Agreement (as defined below).

RECITALS:

A. The Lender owns an aggregate of $3,000,000.00 principal amount of the Borrower's 5.50% Senior Convertible Notes due 2021 (the "**Indenture Notes**") issued pursuant to the Indenture, dated as of February 9, 2016 (the "**Indenture**"), between the Borrower and U.S. Bank National Association, as trustee under the Indenture (together with any successor thereto, the "**Trustee**").

B. The Borrower and certain holders of the Company's outstanding senior secured convertible promissory notes have entered into that certain Facility Agreement, dated as of June 2, 2014 (as the same has been amended, modified, restated or otherwise supplemented from time to time (including any such amendment, modification or restatement which is effective as of the Effective Date (as defined below), the "**Facility Agreement**").

C. Pursuant to this Agreement (and subject to the terms and conditions hereof), the Lender will exchange all of the Indenture Notes for a Senior Secured Convertible Note of the Borrower in substantially the form attached hereto as Exhibit A (the "**Note**") in an aggregate principal amount equal to the sum of the outstanding principal amount of all of the Indenture Notes, plus 50% of the accrued and unpaid interest thereon through the Effective Date. The Note will be issued pursuant to the Facility Agreement.

D. Subject to the terms and conditions of this Agreement, the Lender has agreed with the Borrower to, among other things, (i) allow the "payment in kind" of interest on the indebtedness currently evidenced by the Indenture Notes, (ii) defer the maturity date in respect of the indebtedness evidenced by the Indenture Notes to March 31, 2021, and (iii) modify certain rights of the Lender under the Indenture Notes that would result from a delisting of the Borrower's Common Stock, all to be effected through the Exchange (as defined below) and the terms of the Note.

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

ARTICLE I.
EXCHANGE

Section 1.01. Exchange. Subject to the terms and conditions hereof, the Lender hereby agrees to exchange all of the Indenture Notes held by it for the issuance by the Borrower to Lender of a Note with an initial principal amount equal to the sum of the outstanding principal amount of

Lender's Indenture Notes (the "**Exchange**"), in each case as set forth on Schedule 1 hereto. The Exchange is being made as part of and pursuant to a plan of reorganization of the Borrower described in Section 368(a)(1)(E) of the Code.

Section 1.02. Exchange Settlement; Joinder to Facility Agreement.

(a) As soon as practicable following the effectiveness of the Exchange, which shall be deemed to occur at 8:00 a.m. (New York time) on January 13, 2020 (such time on such date, the "**Effective Time**") (subject to satisfaction (or waiver by the Lender) of the conditions set forth in Article V hereto), but in any event prior to 4:00 p.m. (New York time) on January 13, 2020 (such date, the "**Effective Date**"), (i) Lender shall assign and transfer all right, title and interest in and to the Indenture Notes to the Borrower, and deliver or cause to be delivered all of the Indenture Notes held by Lender to the Trustee, by book-entry transfer through the facilities of The Depositary Trust Company ("**DTC**") from the account(s) of Lender, free and clear of any mortgage, lien, pledge, charge, security interest, encumbrance, title retention agreement, option, equity or other adverse claim thereto (collectively, "**Liens**"), together with any customary documents of conveyance or transfer that the Borrower or Trustee may reasonably deem necessary or desirable to transfer the Indenture Notes to the Borrower; (ii) the Borrower shall issue and deliver to Lender a Note, duly executed on behalf of the Borrower in the principal amount set forth across from Lender's name on Schedule 1 hereto in the column captioned "Notes (principal amount)" which shall not bear any restrictive legend (or be subject to stop transfer instructions or similar restrictions on the transfer thereof) and shall provide for the 4.985% Cap (as defined in the Note); (iii) the Borrower shall record in the Register the interests of Lender in the Loans and the Note, including the amount of the Loan evidenced by the Note (which, for the avoidance of doubt, shall be the amount set forth across from the Lender's name in Schedule 1 hereto in the column captioned "Notes (principal amount)") and (iv) the Borrower shall pay, in cash, by wire transfer of immediately available funds to an account designated by Lender, fifty percent (50%) of the accrued and unpaid interest on Lender's Indenture Notes through the Effective Date. The Borrower and Lender acknowledge and agree that (y) the aggregate amount of accrued and unpaid interest on the Indenture Notes held by Lender through the Effective Date is the amount set forth across from Lender's name on Schedule 1 hereto under the column captioned "Accrued and Unpaid Interest on Indenture Notes"); and (z) the portion of such interest that is not paid in cash on the Effective Date shall be paid by including such amount in the original principal amount of Lender's Note issued hereunder, as set forth in Schedule 1 hereto.

(b) Upon the Effective Time, (i) Lender shall be deemed for all purposes to have become the legal, beneficial and record holder of the Note to which it is entitled pursuant to Section 1.02(a) and (ii) Lender's Indenture Notes shall be deemed cancelled.

(c) For the avoidance of doubt, from and after the date hereof, the Borrower shall not incur any Indebtedness under the Indenture, or otherwise issue any Global Note (as defined in the Indenture) or any other Note (as defined in the Indenture) pursuant to the Indenture.

Section 1.03. Joinder to Facility Agreement. Lender hereby acknowledges that it has been provided with, and has had an opportunity to review, the Facility Agreement and the Guaranty and Security Agreement and that the Note shall be deemed a "Note" subject to the terms and conditions of the Facility Agreement. Each of the Borrower and Lender hereby agree that,

effective as of the Effective Time, Lender shall (i) become a party to the Facility Agreement as a "Lender" (within the meaning of the Facility Agreement), (ii) be fully bound by, and subject to, all of the covenants, terms, conditions, restrictions and provisions of the Facility Agreement and the other Transaction Documents applicable to a Lender that holds a "Note" under the Facility Agreement, (iii) be entitled to the rights, remedies, benefits and privileges of a Lender that holds a "Note" under the Facility Agreement and the other Transaction Documents, and (iv) acknowledges and agrees that Deerfield Private Design Fund III, L.P. has been designated as collateral agent under the Guaranty and Security Agreement (the "**Collateral Agent**") and as Lender's "representative" for purposes of any filings under the uniform commercial code. Lender acknowledges and agrees that Lender shall have no rights as a Lender in respect of the repayment of any Loans or Disbursements made prior to the date hereof pursuant to the Facility Agreement or any right to receive any Warrants.

ARTICLE II.
REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations and Warranties of the Lender. Lender hereby represents and warrants to the Borrower as of the date of this Agreement and as of the Effective Date as follows:

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

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

(c) Valid and Binding Agreement. This Agreement and each Transaction Document to which Lender is a party have been duly executed and delivered by Lender and constitute the valid and binding obligations of Lender, enforceable against Lender in accordance with their terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

(d) Non-Contravention. The execution and delivery by Lender of this Agreement and each Transaction Document to which Lender is a party and the performance by Lender of its obligations hereunder and thereunder, do not and will not (i) violate any provision of Lender's organizational documents, or (ii) conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which Lender is subject, or by which any of Lender's Indenture Notes is bound or

affected except, in each instance of clauses (i) and (ii) hereof, where such violation or conflict would not reasonably be expected, individually or in the aggregate, to result in a material adverse effect on the ability of Lender to timely perform its obligations under this Agreement or any other Transaction Document to which Lender is a party.

(e) Exemption. Lender has held Lender's Indenture Notes of record and beneficially for a period of at least one (1) year for purposes of Rule 144 under the Securities Act and is not, and during the three-month period prior to the date hereof has not been, an "affiliate" (as such term is used in Rule 144 under the Securities Act) of the Borrower. Lender understands that the Note and the shares of Common Stock issuable upon conversion thereof (the "**Conversion Shares**") are being offered, sold, issued and delivered to it in reliance upon specific exemptions from registration or qualification under federal and applicable state securities laws.

(f) Ownership of the Notes. Lender is the record and beneficial owner of, and has good and valid title to, Lender's Indenture Notes, free and clear of all Liens, and has full power to dispose thereof and to exercise all rights thereunder (other than as restricted by this Agreement or the Indenture and other than pledges or security interests that Lender may have created in favor of a prime broker under and in accordance with its prime brokerage account with such broker), without the consent or approval of, or any other action on the part of, any other Person. Other than the transactions contemplated by this Agreement, there is no outstanding contract, vote, plan, pending proposal or other right of any Person to acquire Lender's Indenture Notes or any portion thereof. Lender has not, in whole or in part, (a) assigned, transferred, hypothecated, pledged, exchanged or otherwise disposed of any of its Indenture Notes or its rights in its Indenture Notes, or (b) except as would not materially and adversely affect the ability of Lender to consummate the transactions contemplated hereby, given any person or entity any transfer order, power of attorney or other authority of any nature whatsoever with respect to its Indenture Notes. Upon Lender's delivery of the Indenture Notes to the Borrower pursuant to the Exchange, the Indenture Notes shall be free and clear of all Liens created by Lender.

(g) Accredited Investor/Qualified Institutional Buyer. Lender is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D under the Securities Act. Lender is a "qualified institutional buyer" as that term is defined in Rule 144A under the Securities Act. Lender understands the economic risk of its investment in the Note and the Conversion Shares, and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of an investment in the Note and the Conversion Shares.

(h) Information. Lender acknowledges and agrees that (i) Lender has had the opportunity to review the Borrower's SEC Reports (as defined below) and this Agreement (including the exhibits hereto) and the Transaction Documents, (ii) Lender has had an opportunity to submit questions to the Borrower concerning the Borrower, its business, operations, financial performance, financial condition and prospects, and the terms and conditions of the Exchange and has all information that it considers necessary in making an informed investment decision, (iii) Lender has had the opportunity to consult with its accounting, tax, financial and legal advisors to be able to evaluate the risks involved in the Exchange and to make an informed investment decision with respect to the Exchange. Notwithstanding anything to the contrary contained herein, the rights and remedies available to Lender, neither any such review nor any due diligence investigation conducted by Lender or its advisors, if any, or its representatives shall modify, amend

or otherwise affect Lender's right to rely on the representations, warranties, covenants and agreements of the Borrower contained in this Agreement and the other Transaction Documents.

(i) Transactions in Borrower's Securities. Lender has not, directly or indirectly, and no person acting on behalf of or pursuant to any understanding with it has, engaged in any purchase or sale of the securities of the Borrower (including, without limitation, any Short Sales (as defined below) involving any of the Borrower's securities) from October 29, 2019 through the date of this Agreement, "**Short Sales**" include, without limitation, all "short sales" as defined in Rule 200 of Regulation SHO promulgated under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and all types of direct and indirect forward sale contracts, options, puts, calls, short sales, swaps, derivatives and similar arrangements (including on a total return basis), and sales and other transactions through non-U.S. broker-dealers or foreign regulated brokers. Solely for purposes of this Section 2.01(i), subject to Lender's compliance with their respective obligations under the U.S. federal securities laws and Lender's internal policies, (a) "Lender" shall not be deemed to include any employees, subsidiaries or affiliates of Lender that are effectively walled off by appropriate information barriers approved by Lender's respective legal or compliance department (and thus have not been privy to any information concerning the Transactions), and (b) the foregoing representations and covenants of this Section 2.01(i) shall not apply to any transaction by or on behalf of an account of Lender that was effected without the advice or participation of, or such account's receipt of information regarding the Transactions provided by, Lender.

Section 2.02. Representations and Warranties of the Borrower. The Borrower hereby represents and warrants to the Lender as of the date of this Agreement and as of the Effective Time as follows:

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

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

(c) Consents. The Borrower is not required to obtain any consent from, authorization or order of, or make any filing or registration with any governmental authority or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by this Agreement, the Note or any other Transaction Document, in accordance with the terms hereof or thereof, other than filing the Announcing 8-K Filing (as defined below) with the U.S. Securities and Exchange Commission (the "**Commission**"). The Note is not being issued in violation of, any preemptive or similar rights

of any Person, or otherwise subject to any preemptive or similar rights of any Person that have not been validly waived.

(d) Valid and Binding Agreement. This Agreement has been duly executed and delivered by the Borrower, and constitutes, and upon the execution and delivery by the Borrower thereof, the Note and each other Transaction Document being executed or amended in connection herewith will constitute the valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

(e) Non-Contravention. The execution and delivery by the Borrower of this Agreement, the Note and each other Transaction Document being executed and delivered by the Borrower in connection herewith and the performance by the Borrower of its obligations hereunder and under the Notes and the other Transaction Documents do not and will not (i) violate any provision of the Borrower's organizational documents, (ii) conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Borrower is subject, or by which any property or asset of the Borrower is bound or affected, (iii) require any permit, authorization, consent, approval, exemption or other action by, notice to or filing with, any court or other federal, state, local or other governmental authority or other Person, other than filing the Announcing 8-K Filing with the Commission, (iv) violate, conflict with, result in a material breach of, or constitute (with or without notice or lapse of time or both) a material default under, or an event which would give rise to any right of notice, modification, acceleration, payment, cancellation or termination under, or in any manner release any party thereto from any obligation under, any permit or contract to which the Borrower is a party or by which any of its properties or assets are bound, (v) violate, conflict with, result in a material breach of, or constitute (with or without notice or lapse of time or both) a material default under, or an event which would give rise to any right of notice, modification, acceleration, payment, cancellation or termination under, or in any manner release any party thereto from any obligation under, the Indenture or the GPC License Agreement, or (vi) result in the creation or imposition of any Lien on any part of the properties or assets of the Borrower, except, in each instance of clauses (ii), (iii), (iv) and (vi) hereof, where such violation, conflict, breach, default or Lien would not reasonably be expected, individually or in the aggregate, to result in a material adverse effect on (a) the business, operations, results of operations, condition (financial or otherwise) or properties of the Borrower and its Subsidiaries, taken as a whole, (b) the legality, validity or enforceability of any provision of this Agreement, the Note or any other Transaction Document, (c) the ability of the Borrower to timely perform its obligations under this Agreement, the Note or any other Transaction Documents, or (d) the rights and remedies of the Lender under this Agreement, the Note or any other Transaction Document. As of the date hereof, no Event of Default (as defined in the Indenture) under the Indenture exists and no Event of Default (as defined in the Facility Agreement) under the Facility Agreement exists, and, to the knowledge of the Borrower, no event has occurred, and no fact or circumstance exists, that, with or without notice, lapse of time or both would reasonably be expected to result in an Event of Default under either the Indenture or the Facility Agreement.

(f) Issuance of Conversion Shares. The Conversion Shares issuable upon conversion of the Note are duly authorized and, when issued in accordance with the applicable Note, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Borrower, and will not be issued in violation of, or subject to, any preemptive or similar rights of any person. The Borrower has reserved from its duly authorized capital stock an aggregate of 519,206 shares of Common Stock for issuance hereafter upon conversion of the Note in accordance with the terms thereof (plus any additional shares of Common Stock that may be issuable as a result of the anti-dilution provisions of the Note), in each case, free and clear of preemptive or similar rights. As of the date of this Agreement, there are 39,350,785 shares of Common Stock issued and outstanding.

(g) SEC Reports; Nasdaq. The Borrower has filed all reports, schedules, forms, statements and other documents required to be filed by it under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "**SEC Reports**"). None of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Except as set forth in the Borrower's Quarterly Report on Form 10-Q for the quarter ended September 30, 2019, as filed with the Commission on November 14, 2019, and the Borrower's Current Reports on Form 8-K filed with the Commission on May 23, 2019, October 3, 2019, November 21, 2019 and December 23, 2019 (such disclosure the "**Potential Delisting**"), the Borrower is not in violation of the requirements of the Nasdaq Global Market ("**Nasdaq GM**") and has no knowledge of any facts or circumstances which could reasonably lead to delisting or suspension of trading of the Common Stock in the foreseeable future.

(h) Certain Fees. No brokerage or finder's fees or commissions are or will be payable by the Borrower or any of its affiliates or representatives to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by this Agreement. The Lender shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 2.02(h) that may be due in connection with the transactions contemplated hereby.

(i) Exemption from Registration. No registration under the Securities Act or any state securities laws is or will be required for the offer and issuance of the Note by the Borrower to the Lender as contemplated hereby or for the offer and issuance of the Conversion Shares by the Borrower to the Lender as contemplated hereby and by the Note. The amendments and transactions contemplated hereby or entered into in connection herewith, including the issuance and sale of the Note hereunder and the issuance and sale of the Conversion Shares pursuant to the terms of the Note do not and will not contravene, or require stockholder approval pursuant to, the rules and regulations of The Nasdaq Stock Market LLC, as currently in effect. Assuming Lender is not as of the date of issuance, and for a period of three (3) months prior to the date of issuance has not been, an "affiliate" (as such term is used in Rule 144 under the Securities Act) of the Borrower (which the Borrower shall assume (and the Lender shall be deemed to represent) unless Lender has otherwise advised the Borrower in writing) and in reliance on Lender's representations

contained in Section 2.01(e) hereof, the Note and the Conversion Shares will be freely tradeable by Lender without restriction or limitation (including volume limitation), pursuant to Rule 144 under the Securities Act, and will not contain or be subject to any legend or stop transfer instructions restricting the sale or transferability thereof. The Borrower has not paid or given (and will not pay or give), directly or indirectly, any commission or other remuneration for soliciting the exchange to be effected pursuant to this Agreement or otherwise in connection with the issuance and sale of the Note or any Conversion Shares pursuant to this Agreement or the Note. The Borrower is not, and never has been, a "shell company" (as defined in Rule 12b-2 under the Exchange Act) and is not an issuer of a type identified in, or subject to, Rule 144(i)(1) under the Securities Act.

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

(k) No Bad Actor Disqualification. None of the Credit Parties, any of its predecessors, any director, executive officer, other officer of any Credit Party participating in the offering of the Note or the Conversion Shares, any beneficial owner (as that term is defined in Rule 13d-3 under the Exchange Act) of 20% or more of any Credit Party's outstanding voting equity securities, calculated on the basis of voting power, any "promoter" (as that term is defined in Rule 405 under the Securities Act) connected with any Credit Party at the time this representation is made, any placement agent or dealer participating in the offering of the Note or the Conversion Shares and any of such agents' or dealer's directors, executive officers, other officers participating in the offering of the Note or the Conversion Shares (each, a "**Covered Person**") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "**Disqualification Event**"). The Borrower has exercised reasonable care to determine (i) the identity of each person that is a Covered Person and (ii) whether any Covered Person is subject to a Disqualification Event. Each Credit Party has complied in all material respects, to the extent applicable, with its disclosure obligations under Rule 506(e). No Credit Party is any other reason disqualified from reliance upon Rule 506 of Regulation D for purposes of the offer, sale and issuance of the Note or the Conversion Shares.

(l) No Unlawful Payments. Neither the Borrower, to the knowledge of the Borrower, nor any of its directors or officers or any employee, agent, affiliate, representative of or other person associated with or acting on behalf of the Borrower, has (a) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (b) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds, (c) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended, or (d) made any bribe, unlawful rebate, payoff, influence payment, kickback or other unlawful payment.

(m) Compliance with Money Laundering Laws. The operations of the Borrower are and have been conducted at all times in compliance with all financial recordkeeping and reporting requirements applicable to the Borrower, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools

Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, and the money laundering and any related or similar laws of all jurisdictions in which the Borrower conducts business (collectively, the "**Money Laundering Laws**"), and no action, suit or proceeding by or before any governmental authority involving the Borrower with respect to the Money Laundering Laws is pending or, to the knowledge of the Borrower, threatened.

(n) OFAC. The Borrower is not (a) a country, the government of a country, or an agency of the government of a country, (b) an organization directly or indirectly controlled by a country or its government, or (c) a person resident in or determined to be resident in a country, in each case, that is subject to a comprehensive country sanctions program administered and enforced by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**"), and the Borrower is not a person named on the list of Specially Designated Nationals maintained by OFAC.

(o) Application of Takeover Protections. The Borrower and its board of directors have taken all necessary action, if any, in order to render inapplicable the Borrower's issuance of the Note and Conversion Shares and the Lender's ownership of such securities from the provisions of any control share acquisition, interested stockholder, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the organizational documents of the Borrower or the laws of the state of its incorporation which is applicable to the Lender as a result of the transactions contemplated by this Agreement, including the Borrower's issuance of the Note and Conversion Shares and the Lender's ownership of such securities.

(p) Litigation. No proceeding is pending before or, to the knowledge of Borrower, threatened by any Governmental Authority (a) to which any Credit Party is a party, (b) that purports to affect or pertain to the Transaction Documents or the transactions contemplated hereby or thereby or (c) that has as the subject thereof any assets owned by any Credit Party or any of its Subsidiaries, in each case, that could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. No injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement or any other Transaction Document or directing that the transactions provided for herein or therein not be consummated as herein or therein provided.

(q) Compliance with Laws. Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, each Credit Party is in compliance with all Applicable Laws and authorizations.

ARTICLE III.
COVENANTS

Section 3.01. Reservation of Shares. On and after the date hereof, the Borrower shall at all times reserve and keep available, free of preemptive or similar rights, a sufficient number of shares of Common Stock for the purpose of enabling the Borrower to issue all of the Conversion Shares pursuant to the Note (without regard to the 4.985% Cap (as defined in the Note).

Section 3.02. Blue Sky Filings. The Borrower shall take such action as is necessary in order to obtain an exemption for, or to qualify the Note and the Conversion Shares for, issuance and sale to the Lender under applicable securities or "Blue Sky" laws of the states of the United States, and shall provide evidence of such actions promptly upon request of the Lender.

Section 3.03. Listing. The Borrower has submitted an application for the listing of the Conversion Shares on the Nasdaq GM and will use its commercially reasonable efforts to secure such listing. For so long as the Note remains outstanding, the Borrower shall use commercially reasonable efforts to maintain the Common Stock's listing on the Nasdaq GM. The Borrower shall not take any action which would be reasonably expected to result in the delisting or suspension of trading the Common Stock on the Nasdaq GM. If the Common Stock is, or is reasonably expected to be, delisted from the Nasdaq GM, the Borrower shall use its best efforts to cause the Common Stock to be listed on the Nasdaq Capital Market contemporaneously with such delisting and, thereafter, (i) shall use commercially reasonable efforts to maintain the Common Stock's listing on the Nasdaq Capital Market and (ii) shall not take any action which would be reasonably expected to result in the delisting or suspension of trading the Common Stock on the Nasdaq Capital Market. The Borrower shall pay all fees and expenses in connection with satisfying its obligations under this Section 3.03. Lender hereby (x) acknowledges and agrees that Lender has been made aware of the Potential Delisting, and (y) agrees that any delisting or suspension of trading the Common Stock on the Nasdaq GM in connection with the Potential Delisting will not be deemed a breach of this Section 3.03.

Section 3.04. Disclosure; Confidentiality. On or before 8:00 a.m., New York time, on the first Business Day following the date of this Agreement, the Borrower shall file with the Commission a Current Report on Form 8-K describing all the material terms of the transactions contemplated by this Agreement, disclosing the effectiveness of this Agreement and the other Transaction Documents entered into pursuant to, or in connection with, this Agreement, attaching this Agreement and the other Transaction Documents entered into pursuant to, or in connection with, this Agreement (in each case, without any redaction therefrom) and disclosing any other presently material non-public information (if any) provided or made available to Lender (or Lender's agents or representatives) on or prior to the date hereof (the "**Announcing 8-K Filing**"). The Borrower represents and warrants that, from and after the filing of the Announcing 8-K Filing, it shall have publicly disclosed all material, non-public information (if any) provided or made available to Lender (or Lender's agents or representatives) by the Borrower or any of its officers, directors, employees, Affiliates or agents in connection with the transactions contemplated by this Agreement or otherwise on or prior to the date hereof. Notwithstanding anything contained in this Agreement to the contrary, and without implication that the contrary would otherwise be true, the Borrower expressly acknowledges and agrees that, from and after the Announcing 8-K Filing, no Lender nor any affiliate of Lender shall have (unless expressly agreed to by Lender after the date hereof in a written definitive and binding agreement executed by the Borrower and Lender or customary oral (confirmed by e-mail) "wall cross" agreement), any duty of trust or confidence with respect to, or a duty not to trade in any securities while aware of, any information regarding the Borrower.

Section 3.05. Taxes. The Borrower shall be responsible for paying all present or future stamp, court or documentary, intangible, recording, filing or similar taxes that arise from any

payment or issuance made under, from the execution, delivery, performance or enforcement of, or otherwise with respect to, this Agreement.

Section 3.06. License Acknowledgement. Lender hereby acknowledges that the Borrower is a party to the GPC License Agreement, and that Lender has had an opportunity to review the GPC License Agreement, including the provisions thereunder relating to portions of the Collateral.

ARTICLE IV.
ACKNOWLEDGMENT OF THE BORROWER

Section 4.01. The Borrower irrevocably and unconditionally acknowledges, affirms and covenants to Lender that:

(a) Lender is not in default under the Indenture and has not otherwise breached any obligations to the Borrower; and

(b) there are no offsets, counterclaims or defenses to the obligations under the Indenture as of the date hereof, including the liabilities and obligations of the Borrower under the Indenture Notes or the rights, remedies or powers of Lender in respect of any of the obligations under the Indenture, and the Borrower agrees not to interpose (and each does hereby waive and release) any such defense, set off or counterclaim in any action brought by Lender with respect thereto.

ARTICLE V.
CONDITIONS PRECEDENT.

Section 5.01. Conditions. The consummation of the Exchange is subject to the following conditions on or prior to the Effective Time:

(a) Delivery of Documents. The Borrower and the Lender shall each have executed and delivered this Agreement, the Borrower shall have executed and delivered to Lender its Note in accordance with Section 1.02.

(b) Performance; No Default. The representations and warranties of the Borrower and Lender contained herein and in each other document, agreement or instrument being executed and delivered pursuant to, or in connection with the execution and delivery of, this Agreement shall be true and correct, and the Borrower and Lender shall have performed and complied with all agreements and conditions contained in this Agreement and in each such other document, agreement or instrument, in each case, to be performed by or complied with by the Borrower or Lender, as applicable, prior to the Effective Time in all respects, and the Lender shall have received a certification from the chief executive officer or chief financial officer of the Borrower to the foregoing effect.

(c) Authorization. The Borrower shall have delivered to the Lender evidence of authority, officer’s certificates and good standing certificates in the jurisdiction of organization of the Borrower, in form and substance satisfactory to the Lender.

(d) Financing Statements. All Uniform Commercial Code financing statements required to be filed, registered or recorded in connection with the Guaranty and Security Agreement shall have been filed, registered and recorded, and the Borrower is not aware of any defect with respect thereto.

(e) Security Interest. The Collateral Agent shall have, for the benefit of the Lender, a first priority security interest (subject to Permitted Liens) in all Collateral in which a lien can be perfected by (i) the filing of a Uniform Commercial Code financing statement, and (ii) the filing of the Intellectual Property Security Agreements.

ARTICLE VI.
MISCELLANEOUS

Section 6.01. Entire Agreement. This Agreement together with the Note and the other Transaction Document constitute the entire agreement, and supersede all other prior and contemporaneous agreements and understandings, both oral and written, among the Lender and the Borrower with respect to the subject matter hereof.

Section 6.02. Amendments and Waivers. No provision of this Agreement may be waived or amended except in a written instrument signed by the Borrower and (i) prior to the Effective Time, the Lender and (ii) following the Effective Time, the Required Lenders. Any amendment that is approved by the Required Lenders following the Effective Time as aforesaid shall bind the Lender, provided that any such amendment applies to the rights and obligations of the Lender and the holders of December 2019 Notes on substantially the same basis. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

Section 6.03. Successors and Assigns. All of the covenants and provisions of this Agreement by or for the benefit of the Lender or the Borrower shall bind and inure to the benefit of their respective successors and permitted assigns. No party hereunder may assign its rights or obligations hereunder without the prior written consent of the other parties hereto, except that after the Effective Time, Lender may assign or otherwise transfer its rights hereunder to any transferee or assignee of the Note (in whole or in part), provided that (a) Lender agrees in writing with the transferee or assignee to assign such rights, and such assignee or transferee agrees in writing to accept such rights subject to, and to be bound by, the terms of this Agreement, and a copy of such agreement is furnished to the Borrower after such transfer or assignment; and (b) in the case of an assignment or transfer of rights or obligations hereunder to a transferee or assignee of the Note, such assignment or transfer is effected in compliance with the Facility Agreement.

Section 6.04. Notices. Any notice, request or other communication to be given or made under this Agreement shall be in writing. Such notice, request or other communication shall be deemed to have been duly given or made when it shall be delivered by hand, overnight mail, international courier (confirmed by facsimile), electronic mail or facsimile to the party to which it is required or permitted to be given or made at such party's address specified below or at such other address as such party shall have designated by notice to the other parties.

If to the Borrower:

KemPharm, Inc.
1180 Celebration Blvd.
Suite 103
Celebration, FL 34747
Fax: (321) 250-3698
E-mail: lclifton@kempharm.com
Attention: R. LaDuane Clifton, Chief Financial Officer

With a copy to (which shall not constitute notice hereunder):

Cooley LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
Fax: (703) 456-8100
Email: bsiler@cooley.com
Attention: Brent Siler

If to Lender:

M. Kingdon Offshore Master Fund, LP
c/o Kingdon Capital Management, LLC
152 W. 57th Street, 50th Floor
New York, NY 10019
Fax: 212-849-4901
Email: rweinstein@kingdon.com

With a copy to (which shall not constitute notice hereunder):

legal@kingdon.com

Section 6.05. Applicable Law; Consent to Jurisdiction.

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

(b) The parties hereto agree that all claims, controversies and disputes of any kind or nature relating in any way to the enforcement or interpretation of this Agreement or to the

parties' dealings, rights or obligations in connection herewith, shall be brought exclusively in the state and federal courts sitting in The City of New York, borough of Manhattan. With respect to any such claims, controversies or disputes, each of the parties hereby irrevocably:

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

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

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

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

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

transmitted or communicated through the use of a facsimile machine or e-mail delivery of a ".pdf" format data file as a defense to the formation or enforceability of a contract, and each party hereto forever waives any such defense.

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

Section 6.08. Remedies; Specific Performance. The rights and remedies provided in this Agreement shall be cumulative and in addition to all other remedies available under the Facility Agreement, the Note, the other Transaction Documents and/or otherwise at law or in equity. No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy, and nothing herein shall limit Lender's right to pursue actual damages for any failure by the Borrower to comply with the terms of this Agreement, the Facility Agreement, the Note and the other Transaction Documents. The parties to this Agreement agree that irreparable damage would occur and that the parties to this Agreement would not have any adequate remedy at law in the event that any of the provisions of this Agreement, the Facility Agreement or any other Transaction Document were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each of the parties to this Agreement shall be entitled to an injunction or injunctions to prevent breaches of this Agreement, the Facility Agreement or any other Transaction Document and to enforce specifically the terms and provisions of this Agreement, the Facility Agreement, and the other Transaction Documents in each case without the necessity of posting bond or other security or showing actual damages, and this being in addition to any other remedy to which such party is entitled at law or in equity.

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

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

Section 6.11. Reservation of Rights. Lender has not hereby waived any of Lender's rights or remedies arising from any breach or default or any right otherwise available under the Facility Agreement, any other Transaction Document or at law or in equity as to Lender's Note. Lender expressly reserves all such rights and remedies. Notwithstanding anything else to the contrary herein, Lender hereby agrees that the issuance of the Note to Lender satisfies in full any and all obligations of the Borrower under the Indenture as to the Indenture Notes held by Lender and

Lender's remedies with regard to such Indenture Notes shall be solely as described in this Agreement.

Section 6.12. Further Assurances. The parties hereby agree, from time to time, as and when reasonably requested by any other party hereto, to execute and deliver or cause to be executed and delivered, all such documents, instruments and agreements, including secretary's certificates, stock powers and irrevocable transfer agent instructions, and to take or cause to be taken such further or other action, as any party may reasonably deem necessary or desirable in order to carry out the intent and purposes of this Agreement. Without limiting the foregoing, the Borrower shall take such action, and deliver such notices, documents, instruments and agreements as the Trustee may reasonably require to effectuate the exchange and surrender of Indenture Notes in accordance with this Agreement.

Section 6.13. No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

Section 6.14. Interpretative Matters. Unless otherwise indicated or the context otherwise requires, (a) all references to Sections, Schedules, Appendices or Exhibits are to Sections, Schedules, Appendices or Exhibits contained in or attached to this Agreement, (b) words in the singular or plural include the singular and plural and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter, (c) the words "hereof," "herein" and words of similar effect shall reference this Agreement in its entirety, and (d) the use of the word "including" in this Agreement shall be by way of example rather than limitation. Unless otherwise indicated, references to "Transaction Documents" in this Agreement refer to Transaction Documents (as defined in the Facility Agreement), each as amended as of the Effective Date.

Section 6.15. Reaffirmation. Other than as expressly provided in this Agreement, the execution and delivery of this Agreement shall not operate as a waiver of any right, power or remedy of the Lender, constitute a waiver of any provision of the Facility Agreement, any other Transaction Documents (as currently in effect) or any other document executed in connection therewith or serve to effect a novation of the obligations thereunder. The Borrower, as issuer, debtor, grantor, pledger, mortgagor, guarantor or assignor, or in other any other similar capacity in which it grants liens or security interests in its property hereby (i) acknowledges and agrees that it has reviewed this Agreement, (ii) ratifies and reaffirms all of its obligations, contingent or otherwise, under each of the Transaction Documents, and (iii) to the extent the Borrower granted Liens on or security interests in any of its property pursuant to any such Transaction Document as security for the Obligations under or with respect to the Transaction Documents, ratifies and reaffirms such grant of security interests and Liens as provided in the Transaction Documents and confirms and agrees that such security interests and Liens continue to secure all of the currently outstanding or future Obligations on the terms and conditions of the Transactions Documents (for the avoidance of doubt as amended as of the Effective Date). The Borrower hereby consents to this Agreement and acknowledges that this Agreement, the Note and each document or agreement executed and delivered pursuant to, or in connection with, the execution and delivery of this Agreement is a Transaction Document and each of the other Transaction Documents, each as amended as of the Effective Date (including as provided in this Agreement), remains in full force

and effect and is hereby ratified and reaffirmed; provided that, nothing in this Section 6.15 shall obligate the Borrower to restate, or be considered to be a restatement of, the representations of the Borrower contained in Article 3 of the Facility Agreement as of the date hereof. Any reference in the Transaction Documents to "hereunder," "hereof," "herein," or words of like import referring to such agreement shall refer to such Transaction Document as amended as of the Effective Date. For the avoidance of doubt, the parties acknowledge and agree that, nothing contained herein or in the Facility Agreement shall be deemed or construed as an agreement by Lender to make any Disbursement or additional Loan on or after the date hereof.

Section 6.16. Payment Set Aside. Notwithstanding anything to the contrary contained herein, if any payment or transfer (or any portion thereof) to the Lender shall be subsequently invalidated, declared to be fraudulent or a fraudulent conveyance or preferential, avoided, rescinded, set aside or otherwise required to be returned or repaid, whether in bankruptcy, reorganization, insolvency or similar proceedings involving the Borrower or otherwise, then the Obligations purportedly satisfied with such payment or transfer, to the extent that such payment is or must be invalidated, declared to be fraudulent or a fraudulent conveyance or preferential, avoided, rescinded, set aside or otherwise required to be return or repaid, shall immediately be reinstated, without need for any action by any Person, and shall be enforceable against the Borrower, any guarantor and their successors and permitted assigns as if such payment had never been made (in which case this Agreement shall in no way impair the claims of Lender with respect to such payment or transfer). The provisions of this Section 6.16 shall survive the satisfaction in full of the Obligations and the termination of the Facility Agreement.

Section 6.17. Termination. Except to the extent otherwise agreed in writing by the Lender prior to the Effective Time, this Agreement shall terminate and be of no further force or effect if any of the conditions set forth in Article V are not satisfied or waived by the Lender on or prior to January 13, 2020.

Section 6.18. Independent Nature of Facility Agreement Lenders. The obligations of Lender under this Agreement and each of the other Transaction Documents are several and not joint with the obligations of any other "Lender" (as defined in the Facility Agreement) party to the Facility Agreement (the "**Facility Agreement Lenders**"), and no Facility Agreement Lender shall be responsible in any way for the performance of the obligations of any other Facility Agreement Lender under any Transaction Document. Each Facility Agreement Lender shall be responsible only for its own representations, warranties, agreements and covenants under the Transaction Documents. The decision of Lender to enter into this Agreement, consummate the Exchange and acquire the Note pursuant to this Agreement has been made by Lender independently of any other Facility Agreement Lender and independently of any information, materials, statements or opinions as to the business, affairs, operations, assets, properties, liabilities, results of operations, condition (financial or otherwise) or prospects of the Borrower that may have been made or given by any other Facility Agreement Lender or by any agent, attorney, advisor, representative or employee of any other Facility Agreement Lender, and no Facility Agreement Lender or any of its agents, attorneys, advisors, representatives or employees shall have any liability to Lender (or any other Person) relating to or arising from any such information, materials, statements or opinions. Nothing contained in this Agreement, and no action taken by any Facility Agreement Lender pursuant hereto or thereto (including a Facility Agreement Lender's acquisition of Obligations, Notes, Conversion Shares or any other securities at the same time as any other Facility Agreement

Lender), shall be deemed to constitute the Facility Agreement Lenders as, and the Borrower acknowledges and agrees that the Facility Agreement Lenders do not thereby constitute, a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Facility Agreement Lenders are in any way acting in concert or as a group with respect to such Obligations or the transactions contemplated by this Agreement or any other Transaction Document, and the Borrower shall not assert any contrary position.

Section 6.19. No Fiduciary Relationship. The Borrower acknowledges and agrees that (a) Lender is acting at arm's length from the Borrower with respect to this Agreement and the Transaction Documents and the transactions contemplated hereby and thereby; (b) Lender will not, solely by virtue of this Agreement or any of the Transaction Documents or any transaction contemplated hereby or thereby, become an Affiliate of, or have any agency, tenancy or joint venture relationship with, the Borrower; (c) Lender has not acted, or is or will be acting, as a financial advisor to, or fiduciary (or in any similar capacity) of, or has any fiduciary or similar duty to, the Borrower with respect to, or in connection with, this Agreement and the Transaction Documents and the transactions contemplated hereby and thereby, and the Borrower agrees not to assert, and hereby waives, any claim that Lender has any fiduciary duty to the Borrower; (d) any advice given by Lender or any of its representatives or agents in connection with this Agreement and the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to Lender's performance of its obligations hereunder and thereunder (including, in the case of the Lender, its acquisition of the Note and any Conversion Shares); and (e) the Borrower's decision to enter into this Agreement has been based solely on the independent evaluation by the Borrower and their representatives.

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

THE BORROWER:

KEMPHARM, INC.

By: /s/ R. LaDuane Clifton
Name: R. LaDuane Clifton
Title: Chief Financial Officer

LENDER:

M. KINGDON OFFSHORE MASTER FUND, LP

By: KINGDON CAPITAL MANAGEMENT, LLC,
As agent and investment advisor

By: /s/ William Walsh
Name: William Walsh
Title: CFO

[*Signature Page to January 2020 Exchange Agreement*]

Schedule 1

LENDER	Indenture Notes (principal amount)	Accrued and Unpaid Interest on Indenture Notes as of the Effective Date	Accrued and Unpaid Interest on Indenture Notes Paid in Cash	Accrued and Unpaid Interest on Indenture Notes Paid in Kind	Note (principal amount)*
M. Kingdon Offshore Master Fund, LP	$3,000,000.00	$74,708.33	$37,354.17	$37,354.16	$3,037,354.16
Total:	$3,000,000.00	$74,708.33	$37,354.17	$37,354.16	$3,037,354.16

* Includes 50% of the accrued and unpaid interest on the Indenture Notes as of the Effective Date.

Exhibit A
Form of Note

[Included as Exhibit 10.2 to the Company's Current Report on Form 8-K as filed on January 13, 2020]

Exhibit 10.2

THIS NOTE IS ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID") FOR U.S. FEDERAL INCOME TAX PURPOSES. THE ISSUE PRICE, AMOUNT OF OID, ISSUE DATE AND YIELD TO MATURITY WITH RESPECT TO THIS NOTE MAY BE OBTAINED BY WRITING TO THE COMPANY AT THE FOLLOWING ADDRESS: 1180 CELEBRATION, FL., SUITE 103, ATTENTION: R. LADUANE CLIFTON**,** FAX NUMBER: 321-250-3698.

SENIOR SECURED CONVERTIBLE NOTE

Issuance Date: January 13, 2020 Principal: U.S. $3,037,354.16

FOR VALUE RECEIVED, KEMPHARM, INC., a Delaware corporation (the "**Company**"), hereby promises to pay to M. Kingdon Offshore Master Fund, LP or its registered assigns (the "**Holder**"), the principal amount of Three Million Thirty-Seven Thousand Three Hundred and Fifty-Four Dollars and Sixteen Cents ($3,037,354.16) pursuant to, and in accordance with, the terms of that certain Facility Agreement, dated as of June 2, 2014, by and among the Company and the Lenders party thereto (together with all exhibits and schedules thereto and as may be amended, restated, modified and supplemented from time to time, the "**Facility Agreement**"). The Company hereby promises to pay accrued and unpaid Interest (as defined below) and premium, if any, on the Principal on the dates, at the rates and in the manner provided for in the Facility Agreement. All capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Facility Agreement.

Except as set forth herein, the Company has no right, but under certain circumstances may have an obligation, to make payments of Principal prior to the due date for such payments set forth in Section 2.3(b) of the Facility Agreement. At any time an Event of Default exists, the Principal of this Note, together with all accrued and unpaid Interest and any applicable premium due, if any, may be declared, or shall otherwise become, due and payable in the manner, at the price and with the effect provided in the Facility Agreement.

1. Definitions.

(a) Certain Defined Terms. For purposes of this Note, the following terms shall have the following meanings:

(i) "**Affiliate**" means any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act ("**Rule 144**"). With respect to a Holder, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Holder will be deemed to be an Affiliate of such Holder.

(ii) "**Applicable Value**" means (i) at any time that the Company is subject to the reporting requirements under the Exchange Act, (A) the product of (x) the number of issued and outstanding shares of Common Stock on the date the Company delivers

the Major Transaction Notice (as defined in Section 3(b)) multiplied by (y) the per share closing price of the Common Stock on such date plus (B) the amount of the Company's debt as shown on the latest financial statements filed with the SEC (the "**Current Financial Statements**") plus (C) the aggregate liquidation preference of each class of the Company's preferred stock less (D) the amount of cash and cash equivalents of the Company as shown on the Current Financial Statements; and (ii) at any time that the Company is not subject to the reporting requirements under the Exchange Act, the book value of the Company's assets as shown on the most recent financial statements of the Company.

(iii) "**Bylaws**" means the Amended and Restated Bylaws of the Company, as amended from time to time.

(iv) "**Cash-Out Major Transaction**" means a Major Transaction in which the consideration payable to holders of capital stock in connection with the Major Transaction (whether paid directly or in liquidation of the Company following such Major Transaction) consists solely of cash (whether or not subject to escrows, holdbacks or other contingencies).

(v) Intentionally Deleted.

(vi) "**Common Stock**" means the common stock, par value $0.0001 per share, of the Company.

(vii) "**Conversion Amount**" means the sum of (A) the Principal to be converted, redeemed or otherwise exchanged with respect to which this determination is being made and (B) the amount of all accrued and unpaid Interest on the Principal to be converted, redeemed or otherwise exchanged with respect to which this determination is being made (the "**Interest Amount**").

(viii) "**Conversion Price**" means, as of any Conversion Date or other date of determination, $5.85 per share of Common Stock, subject to adjustment as provided herein.

(ix) "**Dollars**" or "**$**" means United States Dollars.

(x) "**Eligible Market**" means the New York Stock Exchange, Inc., the NYSE American, the NASDAQ Capital Market, the NASDAQ Global Market, or the NASDAQ Global Select Market (or, in each case, any successor thereto).

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

(xii) "**Fair Market Value**" means the fair market value as mutually determined by the Company and Required Note Holders, subject to the dispute resolution provisions set forth in Section 2(c)(iii) below.

(xiii) "**Initial Holder**" means M. Kingdon Offshore Master Fund, LP.

(xiv) "**Interest**" means any interest (including any default interest) accrued on the Principal pursuant to the terms of this Note and the Facility Agreement.

(xv) Intentionally Deleted.

(xvi) Intentionally Deleted.

(xvii) "**Issuance Date**" means January 13, 2020, regardless of any exchange or replacement hereof.

(xviii) "**Major Transaction**" means any of the following events:

(A) a consolidation, merger, exchange of shares, recapitalization, reorganization, business combination or other similar event, (1) following which the holders of shares of voting stock immediately preceding such consolidation, merger, exchange, recapitalization, reorganization, combination or event either (a) no longer hold a majority of the shares of voting stock of the Company or (b) no longer have the ability to elect a majority of the board of directors of the Company, or (2) as a result of which Shares or shares of the Company's voting stock shall be changed into (or the holders of Shares or shares of the Company's voting stock become entitled to receive) the same or a different number of shares of the same or another class or classes of stock or securities of another entity, other than such an event undertaken to adopt a holding company structure without otherwise changing the relative holdings of capital stock (any event following which or resulting in the conditions described in the foregoing clauses (1) or (2), collectively, a "**Change of Control Transaction**");

(B) the sale or transfer in one transaction or a series of related transactions of (i) all or substantially all of the assets of the Company to any Person or (ii) assets of the Company for a purchase price equal to more than 50% of the Applicable Value;

(C) a third-party purchase, tender or exchange offer made to the holders of outstanding Conversion Shares or shares of any class(es) or series capital stock, such that following such purchase, tender or exchange offer a Change of Control Transaction shall have occurred;

(D) the liquidation, bankruptcy, insolvency, dissolution or winding-up (or the occurrence of any analogous proceeding) affecting the Company;

(E) at any time after March 31, 2021 the shares of Common Stock are not listed on an Eligible Market;

(F) the shares of Common Stock cease to be registered under Section 12 of the Exchange Act; or

(G) an "Event of Liquidation" under the Company's certificate of incorporation, as in effect on June 2, 2014.

provided, however, that a Major Transaction or Change of Control shall not be deemed to have occurred solely as a result of the transfer of ownership of any shares of capital stock of the

Company without the consent or agreement of the Company; provided that such proviso shall not apply to an event specified in subsection (G) of the definition of Major Transaction.

(xix) Intentionally Deleted.

(xx) "**Note**" means this Senior Secured Convertible Note (including all Senior Secured Convertible Notes issued in exchange, transfer or replacement hereof, and as may be amended, restated or supplemented from time to time).

(xxi) "**Notes**" means this Note, the December 2019 Notes and the Senior Secured Convertible Notes issued pursuant to Section 2.2(a) of the Facility Agreement (including all Senior Secured Convertible Notes issued in exchange, transfer or replacement thereof, and as may be amended, restated or supplemented from time to time).

(xxii) "**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest enterprise value as of the date of consummation of a Major Transaction.

(xxiii) Intentionally Deleted.

(xxiv) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

(xxv) "**Principal**" means the outstanding principal amount of this Note as of any date of determination.

(xxvi) "**Publicly Traded Successor Entity**" means a Successor Entity that is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market.

(xxvii) Intentionally Deleted.

(xxviii) Intentionally Deleted.

(xxix) "**Required Note Holders**" means, as of any date of determination, holders of at least 50% of the aggregate outstanding principal amount of the Notes.

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

(xxxi) Intentionally Deleted.

(xxxii) Intentionally Deleted.

(xxxiii) "**Shares**" means shares of Common Stock.

(xxxiv) "**Standard Settlement Period**" means the standard settlement period for equity trades effected by U.S. broker-dealers, expressed in a number of Trading Days, as in effect on the date the applicable Conversion Notice (as defined below) is received or deemed received by the Company.

(xxxv) "**Successor Entity**" means any Person purchasing the Company's assets sold in a Major Transaction or a majority of the Company's capital stock in a Major Transaction, or any successor entity resulting from such Major Transaction, or if the Note is to be convertible for shares of capital stock of its Parent Entity (as defined above), its Parent Entity.

(xxxvi) "**Trading Day**" means any day on which trading occurs on the principal securities exchanges or other securities markets in the United States.

2. Conversion Rights. This Note may be converted into shares of Common Stock on the terms and conditions set forth in this Section 2.

(a) Conversion at Option of the Holder. At any time, the Holder shall be entitled to convert all or any part of the Principal (and the Interest Amount thereon) or any Interest accrued hereunder into fully paid and nonassessable shares of Common Stock (the "**Conversion Shares**") in accordance with this Section 2 at the Conversion Rate (as defined in Section 2(b)). The Company shall not issue any fraction of a Share upon any conversion. If the issuance would result in the issuance of a fraction of a Share, then the Company shall round such fraction of a Share up or down to the nearest whole share (with 0.5 rounded up).

(b) Conversion Rate. The number of Conversion Shares issuable upon a conversion of any portion of this Note pursuant to this Section 2 shall be determined according to the following formula (the "**Conversion Rate**"):

$$\frac{\text{Conversion Amount}}{\text{Conversion Price}}$$

(c) Mechanics of Conversion. The conversion of this Note shall be conducted in the following manner:

(i) Holder's Delivery Requirements. To convert a Conversion Amount into Conversion Shares on any date (the "**Conversion Date**"), the Holder shall (A) transmit by facsimile or electronic mail (or otherwise deliver), for receipt on or prior to 5:00 p.m. New York City time on such date, a copy of an executed conversion notice in the form attached hereto as Exhibit A (the "**Conversion Notice**") to the offices of the Company, 1180 Celebration Blvd., Suite 103, Celebration, FL 34747 (Attention: Chief Financial Officer, Fax: (321) 250-3698, Email: lclifton@kempharm.com), or such other address, facsimile number or email address as the Company may designate in writing, and (B) if required by Section 2(c)(vi), surrender to a common carrier for delivery to the Company, no later than three (3) Business Days after the Conversion Date, the original Note being converted (or an indemnification undertaking in customary form with respect to this Note in the case of its loss, theft or destruction).

(ii) Company's Response. Upon receipt or deemed receipt by the Company of a copy of a Conversion Notice, the Company (I) shall as soon as practicable send, via facsimile or electronic mail, a confirmation of receipt of such Conversion Notice to the Holder and the Company's designated transfer agent (the "**Transfer Agent**"), if applicable, which confirmation shall constitute an instruction to any such Transfer Agent to process such Conversion Notice in accordance with the terms herein and (II) on or before the second (2nd) Trading Day (or, if earlier, the last day of the Standard Settlement Period) following the date of receipt or deemed receipt by the Company of such Conversion Notice (the "**Share Delivery Date**"), issue and deliver to the address as specified in the Conversion Notice or otherwise specified by the Holder, a stock certificate, registered in the name of the Holder or its designee, for the number of Conversion Shares to which the Holder shall be entitled. If this Note is submitted for conversion, as may be required by Section 2(c)(vi), and the Principal represented by this Note is greater than the Principal being converted, then the Company shall, as soon as practicable and in no event later than two (2) Trading Days after receipt of this Note (the "**Note Delivery Date**") and at its own expense, issue and deliver to the Holder a new Note representing the Principal not converted and cancel this Note.

(iii) Dispute Resolution. In the case of a dispute as to the determination of the Conversion Price or the Major Transaction Note Early Termination Price (including any determination as to Fair Market Value) or the arithmetic calculation of the Conversion Rate, the Company shall issue, or instruct the Transfer Agent to issue, as applicable, to the Holder the number of Conversion Shares that is not disputed and shall transmit an explanation of the disputed determinations or arithmetic calculations to the Holder via facsimile within two (2) Business Days of receipt or deemed receipt of the Holder's Conversion Notice or other date of determination. If the Holder and the Company are unable to agree upon the determination of the Conversion Price, Major Transaction Note Early Termination Price or arithmetic calculation of the Conversion Rate within one (1) Business Day of such disputed determination or arithmetic calculation being transmitted to the Holder, then the Company shall promptly (and in any event within two (2) Business Days) submit via facsimile or email (A) the disputed determination of the Conversion Price or Major Transaction Note Early Termination Price to an independent, reputable investment banking firm agreed to by the Company and the Required Note Holders, or (B) the disputed arithmetic calculation of the Conversion Rate to the Company's independent registered public accounting firm, as the case may be. The Company shall use commercially reasonable best efforts to direct the investment bank or the accounting firm, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than two (2) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accounting firm's determination or calculation, as the case may be, shall be binding upon all parties absent manifest error.

(iv) Record Holder. The person or persons entitled to receive the Conversion Shares issuable upon a conversion of this Note shall be treated for all purposes as the legal and record holder or holders of such Shares as of immediately following the delivery of the Conversion Notice applicable to such conversion, or in the case of Conversion Shares the issuance of which is subject to a *bona fide* dispute that is subject to and being resolved pursuant to, and in compliance with the time periods and other provisions of, the dispute resolution provisions of Section 2(c)(iii), the first Business Day after the resolution of such *bona fide*

dispute and the fees and expenses of such investment bank or accountant shall be paid by the Company.

(v) Company's Failure to Timely Convert.

(A) Cash Damages. If, on or before the Share Delivery Date, the Company shall fail to issue and deliver a certificate to the Holder for the number of Conversion Shares (free of any restrictive legend, subject to the terms of Section 2(e) hereof) to which the Holder is entitled upon the Holder's conversion of any Conversion Amount, or if the Company fails to issue and deliver a new Note representing the Principal to which such Holder is entitled on or before the Note Delivery Date pursuant to Section 2(c)(ii), then in addition to all other available remedies that the Holder may pursue hereunder and under the Facility Agreement, the Company shall pay additional damages to the Holder for each 30-day period (prorated for any partial period) after the Share Delivery Date such conversion is not timely effected and/or each day after the Note Delivery Date such Note is not delivered in an amount equal to (x) in the case of a failure to deliver a certificate for the Conversion Shares, one percent (1%) of the Conversion Amount or (y) in the case of a failure to deliver a new Note, one percent (1%) of the outstanding balance of the new Note. If the Company fails to pay the additional damages set forth in this Section 2(c)(v)(A) within five (5) Business Days of the date incurred, then the Holder entitled to such payments shall have the right at any time, so long as the Company continues to fail to make such payments, to require the Company, upon written notice, to immediately issue, in lieu of such damages payments described herein, the number of Shares equal to the quotient of (X) the aggregate amount of the damages payments described in this Section 2(c)(v)(A) divided by (Y) the lower of (i) the Conversion Price in effect on such Conversion Date as specified by the Holder in the Conversion Notice and (ii) the Fair Market Value Price per Conversion Share on the date of the Conversion Notice.

(B) Void Conversion Notice. If for any reason the Holder has not received all of the Conversion Shares prior to the tenth (10^{th}) Business Day after the Share Delivery Date (a "**Conversion Failure**"), then the Holder, upon written notice to the Company (a "**Void Conversion Notice**") delivered prior to the receipt of such Conversion Shares, may void such applicable conversion with respect to, and retain or have returned, as the case may be, any portion of this Note that has not been converted pursuant to such notice; provided, that the voiding of such conversion shall not affect the Company's obligations to make any payments that have accrued prior to the date of such notice pursuant to Section 2(c)(v)(A), 2(c)(v)(C) or otherwise.

(C) Event of Default. A Conversion Failure shall constitute an Event of Default under the Facility Agreement and entitle the Lenders to all payments and remedies provided under the Facility Agreement upon the occurrence of an Event of Default.

(vi) Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion or redemption of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless all of the Principal is being converted or redeemed. The Holder and the Company shall maintain records showing the Principal converted or redeemed and the dates of such conversions or redemptions

or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Note upon any such partial conversion or redemption. Notwithstanding the foregoing, if this Note is converted or redeemed as aforesaid, the Holder may not transfer this Note unless the Holder first physically surrenders this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note of like tenor, registered as the Holder may request, representing in the aggregate the remaining Principal represented by this Note. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion or redemption of any portion of this Note, the Principal of this Note may be less than the principal amount stated on the face hereof.

(d) Taxes. The Company shall pay any and all taxes (excluding income taxes, franchise taxes or other taxes levied on gross earnings, profits or the like of the Holder) that may be payable with respect to the issuance and delivery of Conversion Shares upon the conversion of this Note.

(e) Legends; Delivery of Electronic Shares.

(i) Unless the Holder is an Affiliate of the Company as of the Issuance Date, neither this Note nor any note issued in substitution or replacement of this Note (or portion thereof) shall contain or be subject to, any legend, stop transfer instruction or similar notation, in each case, restricting the transfer hereof or thereof. Provided the Holder to which Conversion Shares are to be issued represents that it is not as of the applicable Conversion Date, and for a period of three (3) months prior to the applicable Conversion Date has not been, an "affiliate" (as such term is used in Rule 144 under the Securities Act) of the Company, upon each conversion of this Note (in whole or in part) the Conversion Shares shall be issued and delivered without (and without being subject to) any legend, stop transfer instruction or similar notation, in each case, restricting the transfer hereof or thereof. For the avoidance of doubt, by delivering a Conversion Notice, the Holder shall be deemed to have made the representations contemplated by the immediately preceding sentence as of the applicable Conversion Date, unless the applicable Holder otherwise indicates in such Conversion Notice. The Company shall use best efforts to cause its counsel to issue a legal opinion to the Transfer Agent, if required by the Transfer Agent to issue certificates evidencing the Conversion Shares without restrictive legends (and without being subject to any stop transfer instruction or similar notation) in accordance with this Agreement.

(ii) Holder agrees that the issuance of Conversion Shares without any restrictive legends is predicated upon the Company's reliance that the Holder will sell such Conversion Shares pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if such securities are sold pursuant to a registration statement, they will be sold in compliance with the plan of distribution set forth therein.

(iii) Delivery of Electronic Shares. In lieu of delivering physical certificates representing the Common Stock issuable upon conversion, or representing Conversion Shares, upon written request of Holder, the Company shall cause its Transfer Agent to electronically transmit the Conversion Shares issuable upon conversion of this Note to the Holder by crediting the account of Holder's prime broker with the Depository Trust Company through its Deposit/Withdrawal at Custodian (DWAC) system. The time periods for delivery and penalties described herein shall apply to the electronic transmittals described herein. Any delivery not effected by electronic transmission shall be effected by delivery of physical certificates.

(f) Adjustments to Conversion Price.

(i) Adjustment of Conversion Price upon Issuance of Common Stock, Options, Convertible Securities, Etc.

(A) If at any time after the Issuance Date for so long as this Note is outstanding, the Company (x) issues or sells any Common Stock, Convertible Securities, warrants, or Options or (y) directly or indirectly effectively reduces the conversion, exercise or exchange price for any Convertible Securities or Options which are currently outstanding, at or to an effective Per Share Selling Price (as defined below) which is less than the greater of (I) the closing sale price per share of the Common Stock on the principal securities exchange, trading market or quotation system on which shares of Common Stock are then traded, listed or quoted on the Trading Day immediately preceding such issue or sale ("**Fair Market Price**"), or (II) the Conversion Price, then in each such case the Conversion Price in effect immediately prior to such issue or sale date, as applicable, shall be automatically reduced effective concurrently with such issue or sale to an amount determined by multiplying the Conversion Price then in effect by a fraction, (x) the numerator of which shall be the sum of (1) the number of shares of Common Stock outstanding immediately prior to such issue or sale, plus (2) the number of shares of Common Stock which the aggregate consideration received by the Company for such additional shares would purchase at such Fair Market Price or Conversion Price, as the case may be, and (y) the denominator of which shall be the number of shares of Common Stock of the Company outstanding immediately after such issue or sale. The foregoing provision shall not apply to any issuances or sales of (i) Common Stock or Convertible Securities (A) pursuant to any Convertible Securities or Options outstanding on the Issuance Date in accordance with the terms of such Convertible Securities in effect on the Issuance Date provided that such securities have not been amended since the date hereof to directly or indirectly effectively reduce the conversion, exercise or exchange price for any Convertible Securities or Options which are currently outstanding, (B) to a Lender in connection with the conversion or exchange of any Notes (as defined in the Facility Agreement) or the conversion or exchange of any Convertible Security or Options issued to a Lender pursuant to any such conversion or exchange of Notes, or (ii) any Common Stock issued or issuable upon exercise of any options to employees, officers, directors, consultants and advisors (and any individuals who have accepted an offer of employment), in each case in connection with any Approved Stock Plan (defined below).

Notwithstanding anything herein to the contrary, nothing in this Section 2(f)(i)(A) shall result in the Conversion Price of this Note, or any other Note, equaling a price per share less than $0.583 (subject to adjustment as provided herein (the "**Floor Price**")).

Notwithstanding anything to the contrary contained in the immediately preceding paragraph, if the Company issues or sells any Common Stock, Convertible Securities, warrants, or Options in a firm commitment underwritten public offering (an "**Underwritten Public Offering**"), then for purposes of determining any adjustment to the Conversion Price under this Section 2(f)(i)(A) in respect of such Underwritten Public Offering the Fair Market Price shall be the closing sale price per share of the Common Stock on the principal securities exchange, trading market or quotation system on which shares of Common Stock are then traded, listed or quoted on the date of execution of the underwriting agreement (the "**Offering Effective Date**") between the Company and the underwriters in such offering, *provided*, that (x) if the Offering Effective Date is not a Trading Day, then the Fair Market Price shall be the closing sale price per share of the Common Stock on the principal securities exchange, trading market or quotation system on which shares of Common Stock are then traded, listed or quoted on the Trading Day immediately preceding the Offering Effective Date and (y) if the underwriting agreement in such offering is executed prior to closing of trading on the principal securities exchange, trading market or quotation system on which shares of Common Stock are then traded, listed or quoted on a given date, then the Fair Market Price shall be the closing sale price per share of the Common Stock on such principal securities exchange, trading market or quotation system on the Trading Day immediately preceding such date.

Notwithstanding anything to the contrary contained herein, this Section 2(f)(i)(A) shall not apply to any issuance or sale of Common Stock by the Company if such issuance or sale is made in an "at the market offering" (as defined in Rule 415 under the Securities Act) at a Per Share Selling Price equal to or greater than the then applicable Conversion Price, provided that, if the Company makes any such sale of Common Stock at a Per Share Selling Price less than the then applicable Conversion Price then (x) this Section 2(f)(i)(A) shall apply, but (y), for purposes of calculating any adjustment of the Conversion Price hereunder, the Fair Market Price for such sale shall be the price per share at which shares of Common Stock are sold in such "at the market offering."

Notwithstanding anything to the contrary contained herein, this Section 2(f)(i)(A) shall not apply to any issuance or sale of Common Stock, Convertible Securities or Options by the Company if such issuance or sale is made pursuant to the terms of (x) that certain Purchase Agreement, dated February 28, 2019, by and between the Company and Lincoln Park Capital Fund, LLC, (y) that certain Common Stock Sales Agreement, dated as of September 4, 2018, by and between the Company and RBC Capital Markets, LLC, or (z) that certain September 2019 Exchange Agreement and Amendment to Facility Agreement, dated as of September 3, 2019, by and among the Company, Deerfield Private Design Fund III, L.P. and Deerfield Special Situations Fund, L.P. (as amended as of the Issuance Date).

For the purposes of the foregoing adjustments, in the case of the issuance of any Convertible Securities or Options, the maximum number of shares of Common Stock issuable upon exercise, exchange or conversion of such Convertible Securities or Options shall be deemed to be outstanding, provided that no further adjustment shall be made upon the actual issuance of

Common Stock upon exercise, exchange or conversion of such Convertible Securities or Options, and provided further that to the extent such Convertible Securities or Options expire or terminate unconverted or unexercised, then at such time the Conversion Price shall be readjusted as if such portion of such Convertible Securities or Options had not been issued.

For purposes of this Section 2(f), if an event occurs that triggers more than one of the above adjustment provisions, then only one adjustment shall be made and the calculation method which yields the greatest downward adjustment in the Conversion Price shall be used.

(B) Record Date. If the Company takes a record of the holders of Shares for the purpose of entitling them (1) to receive a dividend or other distribution payable in shares of Common Stock, Options or in Convertible Securities or (2) to subscribe for or purchase shares of Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issue or sale of the Shares deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(C) Certain Definitions. For purposes of this Section 2(f), the following terms have the respective meanings set forth below:

(I) "**Approved Stock Plan**" means any employee benefit plan which has been duly adopted by a majority of the non-employee members of the Board of Directors of the Company or a majority of the members of a committee of non-employee directors established for such purpose, pursuant to which the Company's securities may be issued to any employee, consultant, advisor, officer or director (or any individual who has accepted an offer of employment) for services provided to the Company, and in all cases, providing for a Conversion Price that is at or above the fair market value (as defined in such Approved Stock Plan).

(II) "**Convertible Securities**" means any stock or securities (other than Options) directly or indirectly convertible into or exchangeable or exercisable for shares of Common Stock.

(III) "**Exempt Issuances**" shall mean: the issuance of (a) any Common Stock issued or issuable upon exercise of any options to employees, officers, directors, consultants and advisors (and any individuals who have accepted an offer of employment), in each case in connection with any Approved Stock Plan, up to a maximum amount of Common Stock not to exceed in any one calendar year 5% of the total number of outstanding shares of the Company (as of the beginning of such calendar year), (b) securities upon the exercise, exchange of, conversion or redemption of, or payment of interest or liquidated or similar damages on, any Common Stock issued hereunder, (c) other securities exercisable, exchangeable for, convertible into, or redeemable for shares of Common Stock issued and outstanding on the date of this Note, provided that such securities have not been amended since the date of this Note to directly or indirectly increase the number of such securities or to decrease the exercise, exchange or conversion price of such securities (and including any issuances of securities pursuant to the anti-dilution provisions of any such securities), and (d) the issuance of Common Stock, Options, Convertible Securities, stock appreciation rights, phantom stock rights

or other rights with equity features (collectively, "**Management Incentives**") issued or granted to employees, officers, directors, consultants and advisors (and individuals who have accepted an offer of employment), which Management Incentives have been approved by the Required Note Holders.

(IV) "**Options**" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(V) "**Per Share Selling Price**" shall include the amount actually paid by third parties for each share of Common Stock in a sale or issuance by the Company. In the event a fee is paid by the Company in connection with such transaction directly or indirectly to such third party or its affiliates, any such fee shall be deducted from the selling price pro rata to all shares sold in the transaction to arrive at the Per Share Selling Price, provided that, for the avoidance of doubt, if a fee is paid to a placement agent, sales agent or party operating in a similar capacity for sales made in an "at the market offering" (as defined in Rule 415 under the Securities Act), such fee shall not be deducted from the selling price for purposes of determining the Per Share Selling Price hereunder. A sale of shares of Common Stock shall include the sale or issuance of Convertible Securities or Options, and in such circumstances the Per Share Selling Price of the Common Stock covered thereby shall also include the exercise, exchange or conversion price thereof (in addition to the consideration received by the Company upon such sale or issuance less the fee amount as provided above). In case of any such security issued in a transaction in which the purchase price or the conversion, exchange or exercise price is directly or indirectly subject to adjustment or reset based on a future date, future trading prices of the Common Stock, specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock, or otherwise (but excluding standard stock split anti-dilution provisions or weighted-average anti-dilution provisions similar to that set forth herein, provided that any actual reduction of such price under any such security pursuant to such weighted-average anti-dilution provision shall be included and cause an adjustment hereunder), the Per Share Selling Price shall be deemed to be the lowest conversion, exchange, exercise or reset price at which such securities are converted, exchanged, exercised or reset or might have been converted, exchanged, exercised or reset, or the lowest adjustment, as the case may be, over the life of such securities. If shares are issued for a consideration other than cash, the Per Share Selling Price shall be the fair value of such consideration as determined in good faith by independent certified public accountants mutually acceptable to the Company and the Holder. In the event the Company directly or indirectly effectively reduces the conversion, exercise or exchange price for any Convertible Securities or Options which are currently outstanding, then the Per Share Selling Price shall equal such effectively reduced conversion, exercise or exchange price.

(ii) Adjustment of Conversion Price and Floor Price upon Subdivision or Combination of Shares. If the Company at any time on or after the Issuance Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) outstanding Shares into a greater number of Shares, each of the Conversion Price and Floor Price in effect immediately prior to such subdivision will be proportionately reduced. If the Company at any time on or after the Issuance Date combines (by combination, reverse stock split or otherwise) its outstanding Shares into a lesser number of Shares, each of the Conversion Price and Floor Price in effect immediately prior to such combination will be proportionately increased.

(iii) Adjustment of Conversion Price and Floor Price upon a Distribution of Assets. If the Company at any time on or after the Issuance Date shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of Shares, by way of return of capital or otherwise (including any distribution of cash, stock or other securities, property or options by way of a dividend, spin-off, reclassification, corporate rearrangement or other similar transaction (a "**Distribution**")), then, in each such case, the applicable Conversion Price and Floor Price in effect immediately prior to the close of business on the date fixed for the determination of holders of Shares entitled to receive the Distribution shall be reduced, effective as of the close of business on such date, to a price determined by multiplying such applicable Conversion Price and Floor Price by a fraction of which (A) the numerator shall be the Fair Market Value of one Share immediately preceding such date minus the Fair Market Value of the Distribution applicable to one Share, and (B) the denominator shall be the Fair Market Value of one Share on the Trading Day immediately preceding such date.

(iv) Recapitalization or Reclassification. In the event of any reclassification, recapitalization, reorganization, or change affecting the Shares, or any automatic or mandatory conversion of all of the outstanding shares of the class or series of capital stock for which this Note is then convertible, this Note shall become convertible for the kind and amount of shares of stock and other securities and property receivable in connection with such reclassification, reorganization, change or conversion by a holder of the same number of Conversion Shares as were purchasable by the Holder pursuant to conversion hereof immediately prior to such reclassification, reorganization, change or conversion. In any such case, appropriate provisions shall be made with respect to the rights and interest of the Holder so that the provisions hereof shall thereafter be applicable with respect to any shares of stock or other securities and property deliverable upon conversion hereof, and appropriate adjustments shall be made to the Conversion Price payable hereunder and the applicable Floor Price, provided the aggregate Conversion Price shall remain the same.

(v) Adjustment for Tax Purposes. The Company shall be entitled to make such reductions in the Conversion Price, in addition to those otherwise required by this Section 2(f), as the Company's Board of Directors in its discretion shall determine to be advisable in order that any stock dividends, subdivisions of shares, distribution of rights to purchase stock or securities, or any distribution of securities convertible into or exchangeable for stock, made after the Issuance Date by the Company to its stockholders shall not be taxable.

(vi) Other Events. If any event occurs of the type contemplated by the provisions of this Section 2(f) but not expressly provided for by such provisions (including the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Company's Board of Directors will make an appropriate adjustment in the Conversion Price and the Floor Price so as to protect the rights of the Holder; provided that no such adjustment will increase the Conversion Price or the Floor Price as otherwise determined pursuant to this Section 2(f).

(vii) Notices. Promptly upon any adjustment of the Conversion Price, the Company will give written notice thereof to the Holder, setting forth in reasonable detail, and certifying, the calculation of such adjustment. The Company will give written notice to the Holder at least ten (10) Business Days prior to the date on which the Company closes its

books or takes a record (I) with respect to any dividend or distribution upon the Common Stock or the Shares, (II) with respect to any pro rata subscription offer to holders of Common Stock or Shares or (III) for determining rights to vote with respect to any Major Transaction, provided that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder. The Company will also give written notice to the Holder with respect to any Major Transaction as provided under Section 3(b) below.

(g) Intentionally Deleted.

(h) Intentionally Deleted.

(i) Limitations on Conversion. Notwithstanding anything herein to the contrary, the Company shall not issue to the Holder, and the Holder may not acquire, a number of Conversion Shares upon conversion of this Note to the extent that, upon such exercise, the number of shares of Common Stock then beneficially owned by the Holder and its Affiliates and any other persons or entities whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which the Holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) would exceed 4.985% of the total number of the shares of Common Stock then issued and outstanding (the "**4.985% Cap**"); provided that the 4.985% Cap shall not apply to the extent that shares of Common Stock are not deemed to constitute "equity securities" pursuant to Rule 13d-1(i) under the Exchange Act and, provided further, that the 4.985% Cap shall not apply to an exercise effected following receipt of a Major Transaction Notice (as defined below) in respect of a Major Transaction described in clause (A) of the definition of Major Transaction above in which the Company will not be the surviving entity, until consummation or abandonment of such Major Transaction. For the avoidance of doubt, a conversion hereunder (whether at the election of the Holder or the Company) shall be null and void to the extent the issuance of shares upon such conversion would violate this subsection (i).

3. Rights Upon Major Transaction. Notwithstanding anything contained herein or in the Facility Agreement to the contrary, in the event that a Major Transaction occurs, then the Holder, at its option, may require the Company to redeem all or any portion of the Principal (and the Interest Amount thereon) outstanding on the Holder's Notes for cash in accordance with Section 3(b) below. In the event the Holder shall not have exercised any of its rights under the immediately preceding sentence within the applicable time periods set forth herein, then the Major Transaction shall be treated as an Assumption (as defined below) in accordance with Section 3(a) below unless the Holder waives its rights under this Section 3 with respect to such Major Transaction. For the avoidance of doubt, the Holder may waive the above provisions of this Section 3 with respect to any Major Transaction and, without limitation, may elect to convert this Note in accordance with the other terms hereof prior to any Major Transaction.

(a) Assumption. The Company shall not enter into or be party to a Major Transaction that is to be treated as an Assumption pursuant to this Section 3, unless any Successor Entity assumes in writing all of the obligations of the Company under this Note and provides (a) registration rights that are comparable to those provided to the initial Holder under

the Investor Rights Agreement, if the Successor Entity is not a Publicly Traded Successor Entity, or (b) resale registration rights reasonably acceptable to the Holder, if the Successor Entity is a Publicly Traded Successor Entity, in accordance with the provisions of this Section 3(a) pursuant to written agreements and instruments in form and substance reasonably satisfactory to the Holder and approved by the Holder prior to such Major Transaction (not to be unreasonably withheld or delayed), including a security of the Successor Entity evidenced by a written instrument (a "**Replacement Note**") substantially similar in form and substance to this Note, including, without limitation, representing the appropriate number of shares of the Successor Entity, having similar conversion rights as this Note (including but not limited to a similar Conversion Price and similar Conversion Price adjustment provisions based on the price per share or conversion ratio, and taking into account any cash consideration, to be received by the holders of Conversion Shares in the Major Transaction) and providing for conversion into the shares of the Successor Entity into or for which shares of the same class and series as the Shares are to be converted or exchanged ("**Successor Conversion Shares**"). Upon the occurrence of any Major Transaction, but only if a Replacement Note has not been delivered to the Holder in connection therewith, any Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Major Transaction, the provisions of this Note referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Note with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of the Major Transaction, but only if a Replacement Note has not been delivered to the Holder in connection therewith, any Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion or redemption of this Note at any time after the consummation of the Major Transaction, in lieu of the Conversion Shares (or other securities, cash, assets or other property) issuable upon the conversion of this Note prior to such Major Transaction, such Successor Conversion Shares in accordance with the provisions of this Note. The provisions of this Section shall apply similarly and equally to successive Major Transactions and shall be applied without regard to any limitations on the conversion of this Note, including any applicable beneficial ownership limitations. Any assumption of Company obligations under this paragraph shall be referred to herein as an "**Assumption**."

(b) Notice; Major Transaction Early Termination Right. At least fifteen (15) days prior to the consummation of any Major Transaction, but, in any event, within five (5) Business Days following the first to occur of (y) the date of the public announcement of such Major Transaction if such announcement is made before 4:00 p.m., New York City time, and (z) the day following the public announcement of such Major Transaction if such announcement is made on and after 4:00 p.m., New York City time, the Company shall deliver written notice thereof via facsimile and overnight courier to the Holder (a "**Major Transaction Notice**"). At any time during the period beginning after the Holder's receipt of a Major Transaction Notice and ending five (5) Trading Days prior to the consummation of such Major Transaction (the "**Early Termination Period**"), the Holder may require the Company to redeem (an "**Early Termination Upon Major Transaction**") all or any portion of the outstanding portion of this Note (without regard to any ownership limitations) by delivering written notice thereof ("**Major Transaction Early Termination Notice**") to the Company, which Major Transaction Early Termination Notice shall indicate the portion (the "**Early Termination Portion**") of this Note that the Holder is electing to have so redeemed. The Early Termination Portion shall be redeemed by the Company at a price (the "**Major Transaction Note Early Termination**

Price") payable in cash equal to the greater of (1) the Principal amount of the Early Termination Portion and the Interest Amount thereon (additionally including, for this purpose, any interest that would have accrued on such Principal amount from the date of the Major Transaction until the then applicable maturity date of the Note were such Principal amount on the Note outstanding throughout such period), and (2) the amount of cash payable or distributable per Conversion Share plus the Fair Market Value of any property (other than cash) payable or distributable per Conversion Share (or the shares of Common Stock into which such Conversion Shares are then convertible, if greater), in each case, pursuant to the terms of the Company's certificate of incorporation, as it may be amended from time to time, in connection with such Major Transaction.

(c) Payment of Major Transaction Note Early Termination Price. Following the receipt of a Major Transaction Early Termination Notice from the Holder, the Company shall not effect a Major Transaction that is being treated as an early termination unless it obtains the written agreement of any Successor Entity that payment of the Major Transaction Note Early Termination Price shall be made to the Holder prior to or concurrently with consummation of such Major Transaction (subject to any holdbacks or escrows applicable to such payment pursuant to the applicable acquisition agreement and subject to standard non-material conditions on such payment imposed by such Successor Entity, such as surrender of this Note and delivery of a letter of transmittal and an applicable IRS Form W-9 or applicable W-8, if applicable), and such payment shall be a condition precedent or concurrent to consummation of such Major Transaction.

(d) Injunction. Following the receipt of a Major Transaction Early Termination Notice from the Holder, in the event that the Company attempts to consummate a Major Transaction without the Major Transaction Note Early Termination Price being paid to the Holder prior to or concurrently with the consummation of such Major Transaction in accordance with Section 3(c) above, or obtaining any written agreement of the Successor Entity required by Section 3(c) above, the Holder shall have the right to apply for an injunction in any state or federal courts sitting in the City of New York, borough of Manhattan to prevent the closing of such Major Transaction until the Major Transaction Note Early Termination Price is paid to the Holder, in full.

Any payment determined pursuant to clause (1) of Section 3(b) in connection with an early termination shall have priority to payments to holders of capital stock in connection with a Major Transaction and to the extent an early termination required by this Section 3 is deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such early termination shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 3, until the Major Transaction Note Early Termination Price is paid in full (excluding any amount subject to escrows or holdbacks and any other contingent consideration that has not accrued), this Note may be converted, in whole or in part, by the Holder into Shares, or in the event the Conversion Date is after the consummation of a Major Transaction, Successor Conversion Shares pursuant to this Section 3. The parties hereto agree that in the event of the early termination of any portion of the Note under this Section 3, the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any premium due under

this Section 3 is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty.

4. Amendment; Waiver. The terms and provisions of this Note shall not be amended or waived except in a writing signed by the Company and the Required Note Holders. Any amendment so approved shall bind all holders of the Notes, provided that such amendment applies to all of the Notes on substantially the same basis.

5. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note, the Facility Agreement, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy, and nothing herein shall limit the Holder's right to pursue actual damages for any failure by the Company to comply with the terms of this Note. The Company covenants to the Holder that, except as may be set forth in the Facility Agreement, there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

6. Specific Shall Not Limit General; Construction. No specific provision contained in this Note shall limit or modify any more general provision contained herein. This Note shall be deemed to be jointly drafted by the Company and all purchasers of this Note pursuant to the Facility Agreement and shall not be construed against any Person as the drafter hereof.

7. Failure or Indulgence Not Waiver. No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

8. Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 4.1 of the Facility Agreement.

9. Restrictions on Transfer.

(a) Intentionally Deleted.

(b) Assignment. Subject to Section 6.5 of the Facility Agreement, the Holder may sell, transfer, assign, pledge, hypothecate or otherwise dispose (collectively, "**Transfer**") of this Note, in whole or in part. Holder shall deliver a written notice to Company, substantially in

the form of the Assignment attached hereto as Exhibit B, indicating the Person or Persons to whom the Note shall be Transferred and the respective principal amount of this Note to be Transferred to each assignee. The Company shall effect the Transfer within three (3) Business Days (the "**Transfer Delivery Period**"), and shall deliver to the assignee(s) designated by Holder a Note or Notes of like tenor and terms for the appropriate principal amount. This Note and the rights evidenced hereby shall inure to the benefit of and be binding upon the successors and assigns of the Holder. The provisions of this Note are intended to be for the benefit of all Holders from time to time of this Note, and shall be enforceable by any such Holder.

10. Payment of Collection, Enforcement and Other Costs. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; or (b) an attorney is retained to represent the Holder in any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the costs incurred by the Holder for such collection, enforcement or action, including reasonable attorneys' fees and disbursements.

11. Cancellation. After all Principal, Interest and other amounts at any time owed under, or on account of, this Note have been paid in full or converted into Shares in accordance with the terms hereof, this Note shall automatically be deemed cancelled, shall be surrendered to the Company for cancellation and shall not be reissued.

12. Registered Note. This Note may be transferred only upon notation of such transfer on the Register, and no assignment thereof shall be effective until recorded therein.

13. Waiver of Notice. To the extent permitted by law, the Company hereby waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Facility Agreement.

14. Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Note shall be governed by and construed and enforced in accordance with the laws of the State of New York applicable to contracts made and to be performed in such State. All legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Note (whether brought against a party or its respective affiliates, directors, officers, shareholders, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Note and agrees that such service shall constitute good and sufficient service of process and notice thereof.

Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. The parties hereby waive all rights to a trial by jury.

15. Interpretative Matters. Unless the context otherwise requires, (a) all references to Sections or Exhibits are to Sections or Exhibits contained in or attached to this Note, (b) each accounting term not otherwise defined in this Note has the meaning assigned to it in accordance with GAAP, (c) words in the singular or plural include the singular and plural and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter and (d) the use of the word "including" in this Note shall be by way of example rather than limitation. If a stock split, stock dividend, stock combination or other similar event occurs during any period over which an average price is being determined, then an appropriate adjustment will be made to such average to reflect such event.

16. Execution. A facsimile, telecopy, PDF or other reproduction of this Note may be delivered by the Company, and an executed copy of this Note may be delivered by the Company by facsimile, e-mail or other similar electronic transmission device pursuant to which the signature of or on behalf of the Company can be seen, and such execution and delivery shall be considered valid, binding and effective for all purposes. The Company hereby agrees that it shall not raise the execution of facsimile, PDF or other reproduction of this Note, or the fact that any signature was transmitted by facsimile, e-mail or other similar electronic transmission device, as a defense to the Company's execution of this Note. Notwithstanding the foregoing, the Company shall be required to deliver an originally executed Note to the Holder.

IN WITNESS WHEREOF, the Company has caused this Senior Secured Convertible Note to be duly executed as of the date first set forth above.

COMPANY:

KEMPHARM, INC.

By: /s/ R. LaDuane Clifton
R. LaDuane Clifton
Chief Financial Officer

Exhibit A

CONVERSION NOTICE

Reference is made to the Senior Secured Convertible Note (the "**Note**") of **KEMPHARM, INC.**, a Delaware corporation (the "**Company**"), in the original principal amount of $3,037,354.16. In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into shares of the Company, as of the date specified below.

Date of Conversion: _____

Aggregate Conversion Amount to be converted at the Conversion Price (as defined in the Note): _____

Principal, applicable thereto, to be converted: _____

Interest, applicable thereto, to be converted: _____

Please confirm the following information:

Conversion Price: _____

Number of shares of [ ] to be issued: _____

Please issue the [ ] into which the Note is being converted in the following name and to the following address:

☐ Deposit/Withdrawal at Custodian ("**DWAC**") system; or

☐ Physical Certificate

Issue to: _____

Facsimile Number: _____

DTC Participant Number and Name (if through DWAC): _____

Account Number (if through DWAC): _____

Authorization: _____
By: _____
Title: _____

Dated: _____

ACKNOWLEDGMENT

The Company hereby acknowledges this Conversion Notice and hereby directs [TRANSFER AGENT] to issue the above indicated number of shares of Common Stock in accordance with the Irrevocable Transfer Agent Instructions dated [ ], 2020 from the Company and acknowledged and agreed to by [TRANSFER AGENT].

KEMPHARM, INC.

By: _____

Name: _____

Title: _____

Exhibit B

ASSIGNMENT

(To be executed by the registered holder
desiring to transfer the Note)

FOR VALUE RECEIVED, the undersigned holder of the attached Senior Secured Convertible Note (the "**Note**") hereby sells, assigns and transfers unto the person or persons below named the right to receive the principal amount of $ from KEMPHARM, INC., a Delaware corporation, evidenced by the attached Note and does hereby irrevocably constitute and appoint attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

Dated: _____

_____
Signature

Fill in for new registration of Note:

_____
Name

_____
Address

_____
Please print name and address of assignee (including zip code number)

NOTICE

The signature to the foregoing Assignment must correspond to the name as written upon the face of the attached Note in every particular, without alteration or enlargement or any change whatsoever.

Exhibit 10.3

January 12, 2020

KemPharm, Inc.
1180 Celebration Boulevard, Suite 103
Celebration, FL 34747

Re: Amendment to Facility Agreement and December 2019 Notes and Consent

Ladies and Gentlemen:

Reference is hereby made to (i) that certain Facility Agreement, dated as of June 2, 2014, as amended (as the same has been previously or in the future may be amended, modified, restated or otherwise supplemented from time to time, the "**Facility Agreement**"), by and among KemPharm, Inc., a Delaware corporation (the "**Company**"), Deerfield Private Design Fund III, L.P., a Delaware limited partnership ("**DPD**"), Deerfield Special Situations Fund, L.P., a Delaware limited partnership ("**DSS**"), Delaware Street Capital Master Fund, L.P., a Cayman Islands limited partnership ("**DSCM**"), and the other lenders from time to time party thereto (together with DPD, DSS and DSCM, the "**Lenders**"), and (ii) the December 2019 Notes (as defined in the Facility Agreement). As of the date hereof, DSS, DPD and DSCM constitute the "Required Lenders" (as defined in the Facility Agreement) and the "Required Note Holders" (as defined in the December 2019 Notes). Capitalized terms used herein which are defined in the Facility Agreement, unless otherwise defined herein, shall have the meanings ascribed to them in the Facility Agreement.

Each December 2019 Note provides that (i) the principal amount thereof, together with interest thereon, may be converted at the election of the Holder (as defined in the December 2019 Notes) into fully paid and nonassessable shares of Common Stock, based on a Conversion Price (as defined in the December 2019 Notes) of $17.11 per share of Common Stock, subject to adjustment as provided therein; and (ii) such December 2019 Note may only be amended in a writing signed by the Company and the Required Note Holders, and that any amendment so approved shall bind all holders of the December 2019 Notes, provided that such amendment applies to all of the December 2019 Notes on substantially the same basis. Upon the execution and delivery of this letter agreement (this "**Letter**") by the Company, DPD, DSS and DSCM, and effective as of the Effective Time (as defined in the Exchange Agreement (as defined below)), each December 2019 Note is hereby amended as follows:

1. The definition of "Conversion Price" in Section 1(a)(viii) of each December 2019 Note is hereby amended and restated to read in its entirety as follows:

   "(viii) "**Conversion Price**" means, as of any Conversion Date or other date of determination, $5.85 per share of Common Stock, subject to adjustment as provided herein."

2. The definition of "Floor Price" in the second paragraph of 2(f)(i)(A) of each December 2019 Note is hereby amended and restated to read in its entirety as follows:

"Notwithstanding anything herein to the contrary, nothing in this Section 2(f)(i)(A) shall result in the Conversion Price of this Note, or any other December 2019 Note, equaling a price per share less than $0.583 (subject to adjustment as provided herein (the "**Floor Price**"))."

In addition, effective as of the Effective Time, the Facility Agreement shall hereby be amended as follows:

1. The definition of "Senior Secured Convertible Notes" in Section 1.1 of the Facility Agreement shall be amended and restated to read in its entirety as follows:

   ""**Senior Secured Convertible Notes**" means the Senior Secured Convertible Notes issued to the Lenders pursuant to Section 2.2, each of which will be substantially in the form attached hereto as Exhibit A."

2. The definition of "Notes" in Section 1.1 of the Facility Agreement shall be amended and restated to read in its entirety as follows:

   ""Notes" means the Term Notes, the Senior Secured Convertible Notes, the December 2019 Notes and the January 2020 Note."

3. Section 2.2 of the Facility Agreement shall be amended by adding the following as Section 2.2(d) of the Facility Agreement:

   "(d) Subject to the satisfaction of the conditions set forth in the January 2020 Exchange Agreement (as defined below), M. Kingdon Offshore Master Fund, LP ("Kingdon") shall be deemed to make certain loans to the Borrower on January 13, 2020 by assigning and transferring all right, title and interest in and to its Indenture Notes (as defined in the January 2020 Exchange Agreement) to the Borrower in accordance with the terms of the January 2020 Exchange Agreement, in exchange for the January 2020 Note (as defined below), duly executed on behalf of the Borrower in the principal amount set forth across from such Lender's name on Schedule 1 to the January 2020 Exchange Agreement in the column captioned "Notes (principal amount)". All Obligations of the Borrower under the January 2020 Note shall constitute a "Loan" for all purposes of this Agreement and the Transaction Documents. The Borrower shall record in the Register the interests of Kingdon in the Loans and the January 2020 Note, including the amount of the Loan evidenced by the January 2020 Note. Kingdon shall be deemed a "Lender" for all purposes of this Agreement and the Transaction Documents, except as otherwise provided herein or in the January 2020 Exchange Agreement. For purposes hereof: (i) "January 2020 Exchange Agreement" means that certain January 2020 Exchange Agreement, dated as of January 12, 2020, between the Borrower and Kingdon; and (ii) "January 2020 Note" means the Senior Secured Convertible Note issued to Kingdon pursuant to this Section 2.2(d) in substantially the form annexed

to the January 2020 Exchange Agreement as Exhibit A (including all Senior Secured Convertible Notes issued in exchange, transfer or replacement thereof)."

In consideration for the foregoing amendments and other good and valuable consideration, each of DPD, DSS and DSCM hereby consents to (i) the execution and delivery by the Company of, and the consummation of the transactions contemplated by, the January 2020 Exchange Agreement, in the last form furnished to DPD, DSS and DSCM on the date (and prior to the execution and delivery) of this Letter (the "**Exchange Agreement**"), between the Company and M. Kingdon Offshore Master Fund, LP (the "**January 2020 Lender**") (including without limitation the issuance by the Company of a senior secured convertible promissory note in the form attached as Exhibit A to the Exchange Agreement in the aggregate principal amount of $3,037,354.16 to the January 2020 Lender (the "**January 2020 Note**") in accordance with the terms of the Exchange Agreement). Without limiting the foregoing, each of DPD, DSS and DSCM acknowledges and agrees that, effective as of the Effective Time (as defined in the Exchange Agreement), (y) the January 2020 Lender shall be deemed a "Lender" for purposes of the Facility Agreement and the other Transaction Documents and (z) the obligations of the Company under the January 2020 Note shall constitute a "Loan" for all purposes of the Facility Agreement and the other Transaction Documents.

Except as expressly set forth herein, (i) the Facility Agreement and the other Transaction Documents remain unchanged and in full force and effect, (ii) this Letter shall not be deemed to be a waiver, amendment or modification of, or consent to or departure from, any provision of the Facility Agreement or any other Transaction Document or to be a waiver of any Default or Event of Default under the Facility Agreement or any other Transaction Document, whether arising before or after the date hereof or as a result of the transactions contemplated hereby, and (iii) this Letter shall not preclude the future exercise of any right, remedy, power or privilege available to the Lenders and/or the Collateral Agent, whether under the Facility Agreement, any other Transaction Document or otherwise, and shall not be construed or deemed to be a satisfaction, novation, cure, modification, amendment or release of the Obligations, the Facility Agreement or any other Transaction Document (or any other liability or obligation thereunder) or establish a course of conduct with respect to future requests for amendments, modifications or consents.

The Company hereby reaffirms, confirms and ratifies its obligations and liabilities set forth in the Facility Agreement and the other Transaction Documents, all of which shall remain in full force and effect, as modified by this Letter.

This Letter (i) is a Transaction Document and constitutes (with the other Transaction Documents) the entire understanding of the parties with respect to the subject matter hereof, and any other prior or contemporaneous agreements, whether written or oral, with respect thereto are expressly superseded hereby, and (ii) shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Letter may be executed in counterparts (which taken together shall constitute one and the same instrument) and by facsimile or other electronic transmission, which facsimile or other electronic signatures shall be considered original executed counterparts.

Upon the execution and delivery of this Letter, any reference in a December 2019 Note to "this Note," "hereunder," hereof," "herein," or words of like import referring to such December 2019 Note shall refer to such December 2019 Note, as amended by this Letter.

On or before 8:00 a.m., New York time, on the first Business Day following the date of this Letter, the Company shall file with the Securities and Exchange Commission a Current Report on Form 8-K describing all the material terms of the transactions contemplated by this Letter and the Exchange Agreement, disclosing the effectiveness of this Letter and the Exchange Agreement, attaching this Letter and the Exchange Agreement (in each case, without any redaction therefrom) and disclosing any other presently material non-public information (if any) provided or made available to DPD, DSS or and DSCM (or any of their respective agents or representatives) on or prior to the date hereof (the "**Announcing 8-K Filing**"). The Company represents and warrants that, from and after the filing of the Announcing 8-K Filing, it shall have publicly disclosed all material, non-public information (if any) provided or made available to any Lender (or any of their respective agents or representatives) by the Company or any of its officers, directors, employees, Affiliates or agents in connection with the transactions contemplated by this Letter, the Exchange Agreement or otherwise on or prior to the date hereof. The Company shall, and shall cause each of its employees, officers, directors (or equivalent persons), Affiliates, attorneys, agents and representatives to not, provide any Lender (including, as applicable, in its capacity as the Collateral Agent) or any of its Affiliates, attorneys, agents or representatives with any material nonpublic information regarding any Credit Party, its securities, any of its Affiliates or any other Person from and after the filing of the Announcing Form 8-K with the SEC without the express prior written consent of such Lender. Notwithstanding anything contained in this Letter to the contrary, and without implication that the contrary would otherwise be true, the Company expressly acknowledges and agrees that, from and after the Announcing 8-K Filing, neither DPD, DSS, DSCM nor any of their respective affiliates shall have (unless expressly agreed to by such particular Lender after the date hereof in a written definitive and binding agreement executed by the Company and such particular Lender or customary oral (confirmed by e-mail) "wall cross" agreement (it being understood and agreed that no Lender may bind any other Lender with respect thereto)), any duty of trust or confidence with respect to, or a duty not to trade in any securities while aware of, any information regarding the Company.

Promptly following the date hereof, the Company shall pay the reasonable and documented fees, costs and expenses of DPD and DSS incurred in connection with this Letter and the transactions contemplated hereby, together with any other amounts payable as of the date hereof pursuant to Section 4.06 of the December 2019 Exchange Agreement.

This Letter, and disputes concerning the interpretation, enforceability, performance, breach, termination or validity of all or any portion of this Letter, shall be governed by the laws of the State of New York without giving effect to any laws, rules or provisions that would cause the application of the laws of any jurisdiction other than the State of New York.

The Company hereby agrees, from time to time, as and when requested by a Lender, to execute and deliver or cause to be executed and delivered, all such documents, instruments and agreements, and to take or cause to be taken such further or other action, as the Lender may reasonably deem

necessary or desirable in order to carry out the intent and purposes of this Letter, including executing and delivering to such Lender, promptly following a request therefor, a replacement December 2019 Note that gives effect to the amendments contemplated by this Letter (it being acknowledged, for the avoidance of doubt, that the amendments contemplated by this Letter shall become effective automatically, regardless of whether any such replacement note is requested, executed or delivered).

The Company hereby represents and warrants to each Lender party hereto that, as of the date of this Letter: (i) the Company has the requisite corporate power and authority, as applicable, to enter into and to consummate the transactions contemplated by this Letter and the other Transaction Documents (as amended hereby) and otherwise to carry out its obligations hereunder and thereunder; (ii) the execution and delivery by the Company of this Letter and the other Transaction Documents (as amended hereby) and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company, and no further action of the Company, its board of directors, managers, members or stockholders, as applicable, is required in connection herewith or therewith; and (iii) the Company is not required to obtain any consent from, authorization or order of, or make any filing or registration with any governmental authority or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by this Letter or any other Transaction Document (as amended hereby), in accordance with the terms hereof or thereof, other than filing the Announcing 8-K Filing and a Form D regarding the issuance of the January 2020 Note, each with the Securities and Exchange Commission. The amendments to the December 2019 Notes and the Facility Agreement contemplated hereby are not being effected in violation of any preemptive or similar rights of any Person, or otherwise subject to any preemptive or similar rights of any Person that have not been validly waived. In addition, each of the representations and warranties set forth in Sections 3.02(e) (Non-Contravention), (f) (Issuance of Conversion Shares), (i) (Exemption from Registration) and (j) (No Integrated Offering) of the December 2019 Exchange Agreement is incorporated herein by reference and shall be deemed made as of the date hereof (provided that to the extent any such representations and warranties are specifically made as of a particular date in the December 2019 Exchange Agreement, then such representations and warranties shall be deemed made as of such date), *mutatis mutandis*, with the same force and effect as if fully set forth herein.

The provisions of Sections 6.1 (Notices), 6.4 (Governing Law) and 6.7 (Severability) of the Facility Agreement are incorporated by reference herein and made applicable to this Letter, *mutatis mutandis*, with the same force and effect as if fully set forth herein.

[Signature pages follow]

Very truly yours,

DEERFIELD PRIVATE DESIGN FUND III, L.P.

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

By: /s/ David Clark
Name: David Clark
Title: Authorized Signatory

DEERFIELD SPECIAL SITUATIONS FUND, L.P.

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

By: /s/ David Clark
Name: David Clark
Title: Authorized Signatory

DELAWARE STREET CAPITAL MASTER FUND, L.P.

By: /s/ Andrew G. Bluhm
Name: Andrew G. Bluhm
Title: Manager of the General Partner

Acknowledged and Agreed To
as of the date set forth above

KEMPHARM, INC.

By: /s/ R. LaDuane Clifton
Name: R. LaDuane Clifton
Title: Chief Financial Officer