

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 10-Q**

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(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2012

or

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 0-16159

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**AxoGen, Inc.**

(Exact name of registrant as specified in its charter)

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**Minnesota**  
(State or other jurisdiction of  
incorporation or organization)

**41-1301878**  
(I.R.S. Employer  
Identification No.)

**13859 Progress Blvd., Suite 100, Alachua, FL**  
(Address of principal executive offices)

**32615**  
(Zip Code)

**386-462-6800**  
(Registrant's telephone number, including area code)

**Not Applicable**  
(Former name, former address and former fiscal year, if changed since last report)

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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES  NO

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES  NO

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer   
Non-Accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES  NO

As of November 7, 2012, the registrant had 11,099,143 shares of common stock outstanding.

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#### **Forward-Looking Statements**

From time to time, in reports filed with the Securities and Exchange Commission (including this Form 10-Q), in press releases, and in other communications to shareholders or the investment community, the Company may provide forward-looking statements concerning possible or anticipated future results of operations or business developments. These statements are based on management’s current expectations or predictions of future conditions, events or results based on various assumptions and management’s estimates of trends and economic factors in the markets in which we are active, as well as our business plans. Words such as “expects”, “anticipates”, “intends”, “plans”, “believes”, “seeks”, “estimates”, “projects”, “forecasts”, “may”, “should”, variations of such words and similar expressions are intended to identify such forward-looking statements. The forward-looking statements may include, without limitation, statements regarding product development, product potential, regulatory environment, sales and marketing strategies, capital resources, operating performance or financial performance. The forward-looking statements are subject to risks and uncertainties, which may cause results to differ materially from those set forth in the statements. Forward-looking statements in this Form 10-Q should be evaluated together with the many uncertainties that affect the Company’s business and its market, particularly those discussed in the risk factors and cautionary statements in the Company’s filings with the Securities and Exchange Commission. Forward-looking statements are not guarantees of future performance, and actual results may differ materially from those projected. The forward-looking statements are representative only as of the date they are made, and the Company assumes no responsibility to update any forward-looking statements, whether as a result of new information, future events or otherwise.

[Table of Contents](#)**PART 1 – FINANCIAL INFORMATION****ITEM 1 – CONDENSED CONSOLIDATED FINANCIAL STATEMENTS AND NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**AxoGen, Inc.  
Condensed Consolidated Balance Sheets

	September 30, 2012 (unaudited)	December 31, 2011
<b>Assets</b>		
<b>Current assets:</b>		
Cash and cash equivalents	\$ 4,445,099	\$ 8,190,781
Accounts receivable	925,544	797,654
Inventory	2,722,670	1,760,540
Prepaid expenses and other	89,835	133,500
<b>Total current assets</b>	<u>8,183,148</u>	<u>10,882,475</u>
<b>Property and equipment, net</b>	139,362	247,824
<b>Goodwill</b>	169,987	169,987
<b>Intangible assets</b>	736,772	899,480
<b>Deferred Financing Costs</b>	345,611	295,276
<b>Other assets</b>	118,891	—
<b>Total Assets</b>	<u>\$ 9,693,771</u>	<u>\$ 12,495,042</u>
<b>Liabilities and Stockholders' Equity</b>		
<b>Current liabilities:</b>		
Accounts payable and accrued expenses	\$ 1,863,494	\$ 1,585,100
Current portion of long-term debt	1,885,972	434,734
<b>Total current liabilities</b>	3,749,466	2,019,834
<b>Long-term debt</b>	<u>4,739,305</u>	<u>4,403,737</u>
<b>Total liabilities</b>	8,488,771	6,423,571
<b>Commitments and contingencies</b>	—	—
<b>Stockholders' equity:</b>		
Common stock, \$.01 par value; 50,000,000 shares authorized; 11,104,596 and 11,062,188 shares issued and outstanding	111,046	110,622
Additional paid-in capital	54,900,742	54,391,784
Accumulated deficit	<u>(53,806,788)</u>	<u>(48,430,935)</u>
<b>Total stockholders' equity</b>	1,205,000	6,071,471
<b>Total liabilities and Stockholders' equity</b>	<u>\$ 9,693,771</u>	<u>\$ 12,495,042</u>

See notes to condensed consolidated financial statements.

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AxoGen, Inc.  
Consolidated Statements of Operations  
(unaudited)

	Three Months Ended		Nine Months Ended	
	September 30, 2012	September 30, 2011	September 30, 2012	September 30, 2011
<b>Revenues</b>	\$ 1,980,849	\$ 1,140,768	\$ 5,646,792	\$ 3,487,824
<b>Cost of goods sold</b>	542,235	1,130,332	1,483,310	1,893,412
<b>Gross profit</b>	1,438,614	10,436	4,163,482	1,594,412
<b>Costs and expenses:</b>				
Sales and marketing	1,697,317	1,106,942	4,907,800	2,911,944
Research and development	390,395	229,709	1,053,889	436,417
General and administrative	1,393,890	1,300,219	3,772,659	3,225,654
<b>Total costs and expenses</b>	3,481,602	2,636,870	9,734,348	6,574,015
<b>Loss from operations</b>	(2,042,988)	(2,626,434)	(5,570,866)	(4,979,603)
<b>Other income (expense):</b>				
Interest expense	(145,426)	(318,110)	(395,769)	(954,360)
Interest expense – deferred financing costs	(60,013)	(169,007)	(154,947)	(1,200,413)
Change in fair value of warrant liability	—	—	—	62,305
Other income (expense)	11,618	381	9,295	(10,163)
<b>Total other (expense)</b>	(193,821)	(486,736)	(541,421)	(2,102,631)
<b>Loss before income taxes</b>	(2,236,809)	(3,113,170)	(6,112,287)	(7,082,234)
<b>Income tax benefit</b>	—	—	736,434	—
<b>Net loss</b>	\$ (2,236,809)	\$ (3,113,170)	\$ (5,375,853)	\$ (7,082,234)
Preferred stock dividends (assumes all paid)	—	329,832	—	1,028,351
Net loss available to common shareholders	(2,236,809)	(3,443,002)	(5,375,853)	(8,110,585)
Weighted Average Common Shares outstanding – basic and diluted	11,104,353	1,324,967	11,083,740	1,248,798
Loss Per Common share – basic and diluted	\$ (0.20)	\$ (2.60)	\$ (0.49)	\$ (6.49)

See notes to condensed consolidated financial statements.

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AxoGen, Inc.  
Consolidated Statements of Cash Flows  
(unaudited)

	Nine Months Ended	
	September 30, 2012	September 30, 2011
<b>Cash flows from operating activities:</b>		
Net loss	\$(5,375,853)	\$ (7,082,234)
Adjustments to reconcile net loss to net cash used for operating activities:		
Depreciation	145,891	214,919
Amortization of intangible assets	245,002	36,265
Amortization of deferred financing costs	68,141	1,200,413
Amortization of debt discount	36,806	11,436
Stock-based compensation	478,701	97,499
Change in fair value of warrant liability	—	(62,305)
Interest added to note payable	—	55,562
Change in assets and liabilities:		
Accounts receivable	(127,890)	(109,409)
Inventory	(962,130)	240,446
Prepaid expenses and other	(75,228)	(66,276)
Accounts payable and accrued expenses	278,394	572,833
<b>Net cash used for operating activities</b>	<b>(5,288,166)</b>	<b>(4,890,851)</b>
<b>Cash flows from investing activities:</b>		
Purchase of property and equipment	(37,429)	(7,858)
Acquisition of intangible assets	(82,294)	(45,454)
Cash acquired with Merger	—	7,201,638
<b>Net cash (used for) provided by investing activities</b>	<b>(119,723)</b>	<b>7,148,326</b>
<b>Cash flows from financing activities:</b>		
Proceeds from issuance of long-term debt	1,750,000	10,500,000
Proceeds from issuance of common stock	—	1,000,000
Repayments of long-term debt	—	(4,732,857)
Debt issuance costs	(118,476)	(301,778)
Proceeds from exercise of stock options	30,741	3,649
Payment of fractional shares from Merger	(58)	—
<b>Net cash provided by financing activities</b>	<b>1,662,207</b>	<b>6,469,014</b>
Net increase (decrease) in cash and cash equivalents	(3,745,682)	8,726,489
<b>Cash and cash equivalents, beginning of year</b>	<b>8,190,781</b>	<b>1,799,048</b>
<b>Cash and cash equivalents, end of period</b>	<b>\$ 4,445,099</b>	<b>\$10,525,537</b>
<b>Supplemental disclosures of cash flow activity:</b>		
Cash paid for interest	\$ 447,144	\$ 611,501
<b>Supplemental disclosure of non-cash investing and financing activities:</b>		
Conversion of preferred stock convertible debt and accrued interest into common stock	\$ —	\$21,497,955
Accretion of dividends of Series B preferred stock	—	292,330
Accretion of dividends of Series C preferred stock	—	515,577
Accretion of dividends of Series D preferred stock	—	220,444
Preferred stock dividend payable forfeited with the Merger	—	7,076,729
Warrant Liability forfeited with the Merger	—	2,607,510
Debt discount related to warrants issued with debt	—	173,736
Net assets acquired on Merger	—	11,847,916
Note and accrued interest retired with the Merger	—	4,555,562
Reclassification from common stock to additional paid in capital for change in par value	—	11,639

See notes to condensed consolidated financial statements.

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AxoGen, Inc.  
Notes to Condensed Consolidated Financial Statements  
(unaudited)

### **1. Basis of Presentation**

The accompanying condensed consolidated financial statements include the accounts of AxoGen, Inc. (the “Company” or “AxoGen”) and its wholly owned subsidiary AxoGen Corporation (“AC”) as of September 30, 2012 and December 31, 2011 and for the three month and nine month periods ended September 30, 2012 and 2011. The Company’s condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America and should be read in conjunction with the audited financial statements of the Company for the year ended December 31, 2011, which are included in the Annual Report on Form 10-K for the year ended December 31, 2011. The interim condensed consolidated financial statements are unaudited and in the opinion of management, reflect all adjustments necessary for a fair presentation of results for the periods presented. Results for interim periods are not necessarily indicative of results for the full year. All significant intercompany accounts and transactions have been eliminated in consolidation.

### **2. Organization and Business**

#### **Business Summary**

The Company is a regenerative medicine company dedicated to advancing the science and commercialization of peripheral nerve repair solutions. Peripheral nerves provide the pathways for both motor and sensory signals throughout the body and their damage can result in the loss of function and feeling. In order to improve surgical reconstruction and regeneration of peripheral nerves, the Company has developed and licensed patented and patent-pending technologies which are used in its portfolio of products. AxoGen’s products offer a full suite of surgical nerve reconstruction solutions including Avance® Nerve Graft, which the Company believes is the only commercially available processed nerve allograft for bridging severed nerves, AxoGuard® Nerve Connector, a coaptation aid allowing for close approximation of severed nerves, and AxoGuard® Nerve Protector, a bioscaffold used to reinforce a coaptation site, wrap a partially severed nerve or isolate and protect nerve tissue.

### **3. Summary of Significant Accounting Policies**

#### **Revenue Recognition**

Revenue is recognized when persuasive evidence of an arrangement exists, the price is fixed and determinable, delivery has occurred and there is a reasonable assurance of collection of the sales proceeds. Revenues for products are recognized when products are delivered to the customer, at which time title passes to the customer. Once a product is delivered, the Company has no further performance obligations. Delivery is defined as delivery to a customer location or segregation of a product into a contracted distribution location. At such time, this product cannot be sold to any other customer. Fees charged to customers for storage and shipping of products are recognized as revenues when products are shipped to the customer or end user.

#### **Cash and Cash Equivalents and Concentration**

For purposes of the statement of cash flows, the Company considers all highly liquid debt instruments purchased with a maturity of three months or less to be cash equivalents. Cash and cash equivalents are maintained at financial institutions and, at times, balances may exceed federally insured limits. The Company has never experienced any losses related to these balances and does not believe it is exposed to any significant credit risk on cash and cash equivalents.

#### **Accounts Receivable and Concentration of Credit Risk**

Accounts receivable are carried at the original invoice amount less an estimate made for doubtful accounts based on a review of all outstanding amounts on a monthly basis. Management determines the allowance for doubtful accounts by regularly evaluating individual customer receivables and considering a customer’s financial condition, credit history and current economic conditions. Accounts receivable are written off when deemed uncollectible. Recoveries of accounts receivable previously written off are recorded when received. As of September 30, 2012 and December 31, 2011, there were no amounts deemed uncollectible and there was no allowance for doubtful accounts recorded.

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Concentrations of credit risk with respect to accounts receivable are limited because a large number of geographically diverse customers make up the Company's customer base, thus spreading the trade credit risk. The Company also controls credit risk through credit approvals, credit limits and monitoring procedures.

### Inventories

Inventories are comprised of implantable tissue, nerve grafts, Avance® Nerve Graft, AxoGuard® Nerve Connector, AxoGuard® Nerve Protector, and supplies that are valued at the lower of cost (first-in, first-out) or market and consist of the following:

	September 30, 2012 (unaudited)	December 31, 2011
Finished goods	\$1,886,778	\$1,374,817
Work in process	142,777	145,300
Raw materials	693,115	240,423
	<u>\$2,722,670</u>	<u>\$1,760,540</u>

Inventories was net of reserve of \$297,352 and \$433,706 at September 30, 2012 and December 31, 2011, respectively.

### Income Taxes

The Company has not recorded current income tax expense due to the generation of net operating losses. Deferred income taxes are accounted for using the balance sheet approach which requires recognition of deferred tax assets and liabilities for the expected future consequences of temporary differences between the financial reporting basis and the tax basis of assets and liabilities. A valuation allowance is provided when it is more likely than not that a deferred tax asset will not be realized.

The Company identifies and evaluates uncertain tax positions, if any, and recognizes the impact of uncertain tax positions for which there is a less than more-likely-than-not probability of the position being upheld when reviewed by the relevant taxing authority. Such positions are deemed to be unrecognized tax benefits and a corresponding liability is established on the balance sheet. The Company has not recognized a liability for uncertain tax positions. If there were an unrecognized tax benefit, the Company would recognize interest accrued related to unrecognized tax benefits in interest expense and penalties in operating expenses. The Company's remaining open tax years subject to examination by the Internal Revenue Service include the years ended December 31, 2008 through 2011.

### Stock-Based Compensation

AxoGen's 2010 Stock Incentive Plan is measured at grant date, based on the fair value of the award, and is recognized as an expense over the employee's requisite service period. The Company estimates the fair value of each option award issued under the Plan on the date of grant using a Black-Scholes-Merton option pricing model that uses the assumptions noted in the table below. The Company estimates the volatility of its common stock at the date of grant based on the volatility of comparable peer companies which are publicly traded. The Company determines the expected life based on historical experience with similar awards, giving consideration to the contractual terms, vesting schedules and post-vesting forfeitures. The Company uses the risk-free interest rate on the implied yield currently available on U.S. Treasury issues with an equivalent remaining term approximately equal to the expected life of the award. The Company has never paid any cash dividends on its common stock and does not anticipate paying any cash dividends in the foreseeable future. The Company used the following weighted-average assumptions for options granted during the nine months ended September 30:

Nine months ended September 30,	2012	2011
Expected term (in years)	4.0	4.0
Expected volatility	118.00%	83.42%
Risk free rate	0.60%	1.43%
Expected dividends	0.0%	0.0%

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The Company estimates forfeitures when recognizing compensation expense and this estimate of forfeitures is adjusted over the requisite service period based on the extent to which actual forfeitures differ, or are expected to differ, from such estimates. Changes in estimated forfeitures are recognized through a cumulative catch-up adjustment, which is recognized in the period of change, and also impact the amount of unamortized compensation expense to be recognized in future periods. The Company did not apply a forfeiture allocation to its unvested options outstanding during the nine months ended September 30, 2012 and 2011 as they were deemed insignificant.

### Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

### Recent Accounting Pronouncements

In July 2012, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 2012-02, Intangibles-Goodwill and Other (Topic 350): Testing Indefinite-Lived Intangible Assets for Impairment. This ASU permits an entity the option to first assess qualitative factors to determine whether it is more likely than not that an indefinite-lived intangible asset is impaired. The results of the qualitative assessment would be used as a basis in determining whether it is necessary to perform the two-step quantitative impairment test. If the qualitative assessment supports the conclusion that it is more likely than not that the fair value of the asset exceeds its carrying amount, the entity would not need to perform the two-step quantitative impairment test. The objective of this update is to reduce the cost and complexity of performing impairment tests for indefinite-lived intangible assets other than goodwill, and to improve consistency in impairment testing among long-lived asset categories. This ASU is effective for annual and interim impairment tests performed for fiscal years beginning after September 15, 2012. Early adoption is permitted, including for annual and interim impairment tests performed prior to the issuance of the final ASU, if an entity's financial statements for the most recent annual or interim period have not yet been issued. The Company has not early-adopted this ASU and does not believe adoption will have a material effect on its financial condition and results of operations.

## **4. Merger**

On September 30, 2011, LecTec Corporation completed its business combination with AC pursuant to the terms of the Agreement and Plan of Merger Agreement dated May 31, 2011, as amended.

The following table sets forth the unaudited pro forma results of the Company for the three months and nine months ended September 30, 2011, as if the Merger had taken place on the first day of the period presented. These combined results are not necessarily indicative of the results that may have been achieved had the companies always been combined.

	Three Months Ended September 30, 2011	Nine Months Ended September 30, 2011
Revenues	<u>\$ 1,162,118</u>	<u>\$ 3,553,292</u>
Net Loss	<u>(3,029,404)</u>	<u>(6,472,645)</u>
Basic and diluted net loss per common share	<u>(0.28)</u>	<u>(0.59)</u>
Weighted average shares – basic and diluted	<u>10,949,812</u>	<u>10,943,767</u>



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### 5. Intangible Assets

The Company's intangible assets consist of the following:

	September 30, 2012 <u>(unaudited)</u>	December 31, 2011 <u></u>
License agreements	\$ 772,250	\$ 899,231
Patents	291,907	291,907
Less: accumulated amortization	<u>(327,385)</u>	<u>(291,658)</u>
<b>Intangible assets, net</b>	<b><u>\$ 736,772</u></b>	<b><u>\$ 899,480</u></b>

License agreements are being amortized over periods ranging from 17-20 years. Patent costs are being amortized over three years. Pending patent costs are not amortizable. Amortization expense was approximately \$36,000 and \$12,000 for the three months and \$100,000 and \$36,000 for the nine months ended September 30, 2012 and 2011, respectively. As of September 30, 2012, future amortization of license agreements is expected to be approximately \$32,000 for the remainder of fiscal 2012, \$137,000 for 2013, \$115,000 for 2014 and \$50,000 each year for 2015 through 2017.

#### License Agreements

The Company has entered into license agreements (the "License Agreements") with the University of Florida Research Foundation ("UFRF") and University of Texas at Austin ("UTA"). Under the terms of the License Agreements, the Company acquired exclusive worldwide licenses for underlying technology used in repairing and regenerating nerves. The licensed technologies include the rights to issued patents and patents pending in the United States and international markets. The effective term of the License Agreements extends through the term of the related patents and the agreements may be terminated by the Company with 60 days prior written notice. Additionally, in the event of default, licensors may terminate an agreement if the Company fails to cure a breach after written notice. The License Agreements contain the key terms listed below:

- AxoGen pays royalty fees ranging from 1% to 3% under the License Agreements based on net sales of licensed products. One of the agreements also contains a minimum royalty of \$12,500 per quarter, which may include a credit in future quarters in the same calendar year for the amount the minimum royalty exceeds the royalty fees. Also, when AxoGen pays royalties to more than one licensor for sales of the same product, a royalty stack cap applies, capping total royalties at 3.75%;
- If AxoGen sublicenses technologies covered by the License Agreements to third parties, AxoGen would pay a percentage of sublicense fees received from the third party to the licensor. Currently, AxoGen does not sublicense any technologies covered by License Agreements. The Company is not considered a sub-licensee under the License Agreements and does not owe any sublicensee fees for its own use of the technologies;
- AxoGen reimburses the licensors for certain legal expenses incurred for patent prosecution and defense of the technologies covered by the License Agreements; and
- Currently, under one of the License Agreements, AxoGen would owe a \$15,000 milestone fee upon receiving a Phase II Small Business Innovation Research or Phase II Small Business Technology Transfer grant involving the licensed technology. The Company has not received either grant and does not owe such a milestone fee. Other milestone fees are due if AxoGen develops certain pharmaceutical or medical device products under the License Agreements. No such products are currently under development.

Royalty fees were approximately \$43,000 and \$30,000 for the three months and approximately \$125,000 and \$86,000 for the nine months ended September 30, 2012 and 2011, respectively, and are included in sales and marketing expense on the accompanying condensed consolidated statements of operations.

In July 2012, the Company terminated its license agreement with Emory University (the "Emory Agreement"). The Company does not believe that this termination will have any material adverse effect on the Company's operations.

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### 6. Long-Term Debt

On August 14, 2012, the Company entered into a two year Interim Revenue Interest Purchase Agreement (the "Interim Royalty Contract") with PDL BioPharma, Inc. ("PDL"), pursuant to which PDL paid the Company \$1,750,000 in exchange for the purchase of specified "Acquired Revenues," from the Company in an amount equal to the following: (i) during the period from August 1, 2012 to December 31, 2012, 3% of the Company's Net Revenues per month, and (ii) during the period from January 1, 2013 to August 31, 2014, the greater of 5% of the Company's Net Revenues or \$112,257 per month.

Long-term debt consists of the following:

	September 30, 2012 (unaudited)	December 31, 2011
Loan and Security Agreement with financial institutions for aggregate of \$5,000,000 with 9.9% interest payable monthly through September 2012; principal and interest payable monthly for the 30 months thereafter maturing on April 1, 2015, collateralized by all the assets of the Company and subject to certain financial covenant restrictions including minimum revenue or cash requirements. Amount was paid in full in October 2012.	\$ 5,000,000	\$5,000,000
Interim Revenue Interest Purchase Agreement with PDL for aggregate of \$1,750,000 with interest payable monthly of 3% based on the Net Revenues through December 2012; and during the period from January 1, 2013 to August 31, 2014, the greater of 5% of the Company's Net Revenues or \$112,257 per month	<u>1,750,000</u>	<u>—</u>
<b>Total Debt</b>	<b>6,750,000</b>	<b>5,000,000</b>
Less unamortized debt discount	(124,723)	(161,529)
Less current portion	<u>(1,885,972)</u>	<u>(434,734)</u>
<b>Long-term portion</b>	<b><u>\$ 4,739,305</u></b>	<b><u>\$4,403,737</u></b>

Future principal payments on long-term debt at September 30 are \$483,871 for 2012, \$1,935,484 for 2013, \$3,685,484 for 2014, and \$645,161 for 2015, however, such future principal payments were eliminated as the debt was paid in full in October 2012.

#### Loan and Security Agreements and Warrants

On September 30, 2011, the Company entered into the Loan and Security Agreement with MidCap Financial SBIC, LP ("MidCap"), as administrative agent, and the Lenders listed on Schedule 1 thereto. The Loan and Security Agreement was subsequently amended on May 14 and August 14, 2012 (the Loan and Security Agreement, as amended, the "MidCap Loan"). The credit facility under the MidCap loan has a principal amount of \$5.0 million and a term of 42 months, and is subject to prepayment penalties. Under the MidCap Loan, AxoGen is required to make interest only payments for the first 12 months, and payments of both interest and straight line amortization of principal for the remaining 30 months. The interest rate is 9.9% per annum, and interest is computed on the basis of a 360-day year and the actual number of days elapsed during which such interest accrues.

The agreement contains customary affirmative and negative covenants, including, without limitation, (i) covenants requiring AxoGen to comply with applicable laws, provide to MidCap copies of AxoGen's financial statements, maintain appropriate levels of insurance, protect, defend and maintain the validity and enforceability of AxoGen's material intellectual property, (ii) covenants restricting AxoGen's ability to dispose of all or any part of its assets (subject to certain exceptions), engage in other lines of business, change its senior management, enter into merger or consolidation transactions, incur or assume additional indebtedness, or incur liens on its assets, and (iii) covenants requiring the Company to meet certain minimum Net Invoiced Revenue, as defined in the agreement, or maintain a cash balance not less than 80% of the loan principal amount.

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The MidCap Loan is secured by all of AxoGen's assets. The lenders also received a ten-year warrant to purchase 89,686 shares of AxoGen's common stock at \$2.23 per share. The fair value of the warrant was \$173,736 and was recorded as debt discount and is being amortized through interest expense – deferred financing costs using the effective interest method over the term of the debt. Amortization of debt discount was \$12,299 and \$36,806 for the three months and nine months ended September 30, 2012, respectively. The Company also recorded \$317,990 in deferred financing costs which is being amortized over the term of the loan. Amortization of the deferred financing cost was \$22,714 and \$68,141 for the three months and nine months ended September 30, 2012, respectively.

In addition, on August 14, 2012, the Company and MidCap entered into an amendment to the MidCap Loan, under which (i) the lenders to the MidCap Loan consented to the Company's entry into the Interim Royalty Contract, and (ii) the parties agreed that PDL's right in the Acquired Revenues under the Interim Royalty Contract are subordinated to the MidCap Loan.

On October 5, 2012, AxoGen entered into a Revenue Interests Purchase Agreement (the "Royalty Contract") with PDL. Proceeds from the PDL transaction were used to fully repay the MidCap Loan and extinguish AxoGen's obligations thereunder.

### **7. Stockholders' Equity**

In June 2012, the Company issued 7,500 shares of its common stock to an individual as compensation for investor relations services. The aggregate value of the shares issued, determined based on the market value of the Company's common stock, was \$21,375 and was reported as an operating expense in the Company's consolidated statements of operations.

### **8. Stock Options**

The Company granted 240,076 shares of stock options for the nine months ended September 30, 2012. Stock-based compensation expense was \$171,017 and \$37,498 for the three months and \$478,701 and \$97,499 for the nine months ended September 30, 2012 and 2011, respectively. Total future stock compensation expense related to nonvested awards is expected to be approximately \$1,880,000 at September 30, 2012.

Subsequent to quarter end, the Company granted stock options for an additional 15,000 shares to employees.

### **9. Income Taxes**

Income tax benefit of approximately \$736,000 for the nine months ended September 30, 2012 was the result of the Company's ability to utilize net operating losses and franchise tax adjustments which resulted in tax refunds. As of September 30, 2012 the tax refund has been received in full.

### **10. Subsequent Event**

On October 5, 2012, the Company entered into the Royalty Contract with PDL, pursuant to which the Company sold to PDL the right to receive specified royalties on the Company's Net Revenues (as defined in the Royalty Contract) generated by the sale, distribution or other use of the Company's products Avance®Nerve Graft, AXOGUARD®Nerve Protector and AXOGUARD®Nerve Connector. The Royalty Contract has a term of eight years. Under the Royalty Contract, PDL is to receive a royalty payment based on a high single digit royalty rate of the Company's Net Revenues (the "Assigned Interests"), subject to certain agreed upon minimum payment requirements beginning in the fourth quarter of 2014 as provided in the Royalty Contract. The total consideration PDL paid to the Company was \$20,800,000 (the "Funded Amount"), including \$19,050,000 PDL paid to the Company on October 5, 2012, and \$1,750,000 PDL paid to the Company on August 14, 2012 pursuant to the Interim Royalty Contract. Upon the closing (the "Closing") of PDL's purchase of the specified royalties described above, which was concurrent with the execution of the Royalty Contract, the

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Interim Royalty Contract was terminated. There are no financial covenants or other restrictions on the use of capital by AxoGen as a result of the Royalty Contract, however, PDL has a first perfected security interest in the Assigned Interests.

Under the Royalty Contract, on October 1, 2016, or in the event of the occurrence of a material adverse event or the Company's bankruptcy or material breach of the Royalty Contract, PDL may require the Company to repurchase the Assigned Interests at the "Put Price." The Put Price is equal to the sum of (i) an amount that, when paid to PDL, would generate a specified internal rate of return to PDL on the Funded Amount, taking into consideration payments made to PDL by the Company, and (ii) any "Delinquent Assigned Interests Payment" (as defined in the Royalty Contract) the Company owed to PDL.

In addition, in the event of a "Change of Control" (as defined in the Royalty Contract), the Company must repurchase the Assigned Interests from PDL for a repurchase price equal to the "Change of Control Price" on or prior to the third business day after the occurrence of the Change of Control. The Change of Control Price is an amount that, when paid to PDL, would generate a specified internal rate of return to PDL on the Funded Amount, taking into consideration payments made to PDL by the Company.

In addition, at any time after September 30, 2016, the Company, at its option, can call the Royalty Contract for a price equal to the Change of Control Price.

During the term of the Royalty Contract, PDL is entitled to designate, and the Company shall appoint an individual designated by PDL, who shall serve on the Board of Directors of the Company (the "Board") until the Company's 2013 Annual Meeting of Shareholders (the "2013 Annual Meeting"). For the 2013 Annual Meeting and each annual meeting thereafter during the term of the Royalty Contract, the Board shall nominate and recommend the PDL designee as a director nominee to serve on the Board until the next annual meeting and shall include such nomination in the Company's proxy statement for the 2013 Annual Meeting and each annual meeting thereafter, provided that the election of the PDL designee is subject to shareholders' approval.

Under the Royalty Contract, PDL has preemptive rights with respect to new issuances of the Company's equity securities and securities convertible, exchangeable or exercisable into such equity securities.

During the period from the October 5, 2012 to December 4, 2016 (or the payment of the Put Price in the event PDL exercises its put option on or prior to December 4, 2016), the Company shall not, nor shall it permit any subsidiary to, declare, pay or make any dividend or distribution on any shares of the common stock or preferred stock of such entity (other than dividends or distributions payable in its stock, or split-ups or reclassifications of its stock) or apply any of its funds, property or assets to the purchase, redemption or other retirement of any common or preferred stock, or of any options to purchase or acquire any such shares of common or preferred stock of any such entity (collectively, "Restricted Payments").

The Company was required to use a portion of the proceeds from the Royalty Contract to pay off the outstanding balance under its Loan and Security Agreement, dated September 30, 2011, with MidCap Financial SBIC, LP ("MidCap"). Upon the Closing, the Company paid off the outstanding balance and approximately \$370,000 in prepayment penalty.

### Guarantee and Collateral Agreement

In connection with the Royalty Contract, the Company and its wholly owned subsidiary, AxoGen Corporation ("AC"), entered into a Guarantee and Collateral Agreement (the "Guarantee and Collateral Agreement") with PDL, pursuant to which (i) AC unconditionally and irrevocably guarantees to PDL the prompt and complete payment and performance by the Company when due of the "Secured Obligations," which include the Company's obligations under the Royalty Contract, and any other obligations that the Company may owe to PDL under the Royalty Contract and other transaction documents; and (ii) each of the Company and AC grants to PDL a security interest in certain collateral as specified in the Guarantee and Collateral Agreement for the prompt and complete payment and performance when due of the Secured Obligations.

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### **ITEM 2 – MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

Unless the context otherwise requires, all references in this report to “AxoGen,” “the Company,” “we,” “us” and “our” refer to AxoGen, Inc. and its wholly owned subsidiary AxoGen Corporation (“AC”) after the Merger (as defined below), and AC before the Merger.

#### **OVERVIEW**

On September 30, 2011, LecTec Corporation (“LecTec”) completed its business combination with AC in accordance with the terms of an Agreement and Plan of Merger, dated as of May 31, 2011, by and among LecTec, Nerve Merger Sub Corp., a subsidiary of LecTec (“Merger Sub”), and AC, which the parties amended on September 30, 2011 and August 9, 2011 (as amended, the “Merger Agreement”). Pursuant to the Merger Agreement, Merger Sub merged with and into AC, with AC continuing after the merger as the surviving corporation and a wholly owned subsidiary of LecTec (the “Merger”). Immediately following the Merger, LecTec changed its name to AxoGen, Inc.

The Company is a regenerative medicine company dedicated to advancing the science and commercialization of peripheral nerve repair solutions. Peripheral nerves provide the pathways for both motor and sensory signals throughout the body and their damage can result in the loss of function and feeling. In order to improve surgical reconstruction and regeneration of peripheral nerves, the Company has developed and licensed patented and patent-pending technologies which are used in its portfolio of products. AxoGen’s products offer a full suite of surgical nerve reconstruction solutions including Avance® Nerve Graft, which the Company believes is the only commercially available processed nerve allograft for bridging severed nerves, AxoGuard® Nerve Connector, a coaptation aid allowing for close approximation of severed nerves, and AxoGuard® Nerve Protector, a bioscaffold used to reinforce a coaptation site, wrap a partially severed nerve or isolate and protect nerve tissue.

Revenue from the distribution of these products is the main contributor to AxoGen’s total reported sales and has been the key component of its growth to date. AxoGen revenues increased in the third quarter of 2012 as compared to the third quarter of 2011, as a result of increased penetration into key accounts and establishing new accounts through both its direct sales force and independent distributors. AxoGen has continued to broaden its sales and marketing focus which is expected to have a positive contribution to its revenue growth in the long term, even though in the near term revenue growth lags behind expense increase.

#### **Results of Operations**

##### *Comparison of the Three and Nine Months Ended September 30, 2012 and 2011*

###### Revenues

Revenues for the three months ended September 30, 2012 increased 73.6% to approximately \$1,981,000 as compared to approximately \$1,141,000 for the three months ended September 30, 2011. Additionally, revenues for the nine months ended September 30, 2012 increased 61.9% to approximately \$5,647,000 as compared to approximately \$3,488,000 for the nine months ended September 30, 2011. These increases were principally due to increased sales penetration into key accounts and establishing new accounts as a result of expanding the Company’s sales and marketing efforts.

###### Gross Profit

Gross profit for the three months ended September 30, 2012 increased significantly to approximately \$1,439,000 as compared to approximately \$10,000 for the three months ended September 30, 2011, attributable in part to the increased revenues combined with reduced processing, travel and temporary labor costs related to manufacturing in 2012. In addition, in the third quarter of 2011 the Company took inventory write-offs aggregating approximately \$828,000 which did not occur in the third quarter of 2012. Product sales mix also has an effect on gross profit. As a result of the above items, gross margin improved to 72.6% for the three months ended September 30, 2012 as compared to 0.9% for the same period in 2011.

Gross profit for the nine months ended September 30, 2012 increased 161.1% to approximately \$4,163,000 as compared to approximately \$1,594,000 for the nine months ended September 30, 2011, attributable to the increased revenues and reduced

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processing, travel and temporary labor costs related to manufacturing in 2012 and not incurring certain 2011 manufacturing start-up expenses to resume production of the Avance® Nerve Graft or the third quarter 2011 inventory write-offs described above. Product sales mix also has an effect on gross profit. As a result, gross margin also improved to 73.7% for the nine months ended September 30, 2012 as compared to 45.7% for the same period in 2011.

### Costs and Expenses

Total cost and expenses increased 32.0% to approximately \$3,482,000 for the three months ended September 30, 2012 as compared to approximately \$2,637,000 for the three months ended September 30, 2011. These increases were primarily due to increasing sales and marketing activities and increases in salaries as AxoGen hired additional personnel to meet its growth demand. To a lesser extent, these increases were also attributable to expenses associated with being a public company and research and development costs associated with the Company's preparation for its clinical trial and certain product pipeline activities. As a percentage of revenues, total operating expenses were 175.8% for the three months ended September 30, 2012 as compared to 231.1% for the three months ended September 30, 2011. This decrease in total costs and expenses for the third quarter of 2012 as a percentage of revenue was primarily a result of the Company's increase in revenues outpacing the increase in expenses as compared to the third quarter 2011.

Total cost and expenses increased 48.1% to approximately \$9,734,000 for the nine months ended September 30, 2012 as compared to approximately \$6,574,000 for the nine months ended September 30, 2011. These increases were primarily due to increasing sales and marketing activities and increases in salaries as AxoGen hired additional personnel to meet its growth demand. Additionally, these increases were attributable to expenses associated with being a public company and research and development costs associated with the Company's preparation for its clinical trial and certain product pipeline activities. As a percentage of revenues, total operating expenses were 172.4% for the nine months ended September 30, 2012 as compared to 188.5% for the nine months ended September 30, 2011. This decrease in total costs and expenses for 2012 as a percentage of revenue is primarily a result of the Company's increase in revenues outpacing the increase in expenses as compared to the same period in 2011.

Sales and marketing expenses increased 53.3% to approximately \$1,697,000 for the three months ended September 30, 2012 as compared to approximately \$1,107,000 for the three months ended September 30, 2011. This increase was primarily due to expansion of the direct sales force and increased support for both its direct sales force and independent distributors. As a percentage of revenues, sales and marketing expenses were 85.7% for the three months ended September 30, 2012 as compared to 97.0% for the three months ended September 30, 2011. The lower sales and marketing expenses as a percentage of revenue were primarily a result of the Company's increase in revenues outpacing the increase in sales and marketing costs during the third quarter of 2012 as compared to the third quarter of 2011.

Sales and marketing expenses increased 68.5% to approximately \$4,908,000 for the nine months ended September 30, 2012 as compared to approximately \$2,912,000 for the nine months ended September 30, 2011. This increase was primarily due to expansion of the direct sales force and increased support for both its direct sales force and independent distributors. As a percentage of revenues, sales and marketing expenses were 86.9% for the nine months ended September 30, 2012 as compared to 83.5% for the nine months ended September 30, 2011. Such higher sales and marketing expenses as a percentage of revenue were a result of the additional expenses associated with the expansion of the direct sales force.

General and administrative expenses increased 7.2% to approximately \$1,394,000 for the three months ended September 30, 2012 as compared to approximately \$1,300,000 for the three months ended September 30, 2011. As a percentage of revenues, general and administrative expenses were 70.4% for the three months ended September 30, 2012 as compared to 114.0% for the three months ended September 30, 2011. The percentage decrease was principally a result of a decrease in legal and consulting services as the company experienced higher costs in 2011 associated with the Merger, partially offset by an increase in payroll and benefits and expenses associated with being a public company in 2012.

General and administrative expenses increased 17.0% to approximately \$3,773,000 for the nine months ended September 30, 2012 as compared to approximately \$3,226,000 for the nine months ended September 30, 2011. This increase was principally a result of an increase in payroll and benefits as the company hired additional personnel to support its growth demand, partially offset by a decrease in legal and consulting charges as the costs associated with the Merger did not recur in 2012. As a percentage of revenues, general and administrative expenses were 66.8% for the nine months ended September 30, 2012 as compared to 92.5% for the nine months ended September 30, 2011. This decrease was principally a result of a decrease in legal and consulting services as the Company experienced higher costs in 2011 associated with its financing activity and the Merger, partially offset by an increase in payroll and benefits and expenses associated with being a public company in 2012.

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Research and development expenses increased 70.0% to approximately \$390,000 in the three months ended September 30, 2012 as compared to approximately \$230,000 for the three months ended September 30, 2011. Research and development expenses increased 141.5% to approximately \$1,054,000 in the nine months ended September 30, 2012 as compared to approximately \$436,000 for the nine months ended September 30, 2011. Development includes AxoGen's clinical efforts and substantially all of the increase in research and development expenses from 2011 to 2012 related to expenditures for such clinical activity. Because AxoGen's products are developed for sale in their current use, it conducts limited direct research and product development, but intends to pursue new products and new applications for existing products in the future that are expected to result in increased spending.

### Other Income and Expenses

Interest expense decreased 54.3% to approximately \$145,000 for the three months ended September 30, 2012 as compared to approximately \$318,000 for the three months ended September 30, 2011. Interest expense decreased 58.5% to approximately \$396,000 for the nine months ended September 30, 2012 as compared to approximately \$954,000 for the nine months ended September 30, 2011. These decreases were primarily due to the interest accrued that was related to the 2010 Convertible Debt (see Note 7 to the audited Consolidated Financial Statements included in AxoGen's Annual Report on Form 10-K for the year ended December 31, 2011) and the increase in the stated interest rate during 2011 pursuant to the amendment to AxoGen's Loan and Security Agreement originally entered into in April 2008.

Interest expense – deferred financing costs decreased to approximately \$60,000 for the three months ended September 30, 2012, as compared to \$169,000 for the three months ended September 30, 2011. This decrease was the result of the amortization of the financing fees associated with the current debt decreasing as compared the prior year's amortization due to the extinguishment of the previous debt and write off of the remaining unamortized fees. Interest expense – deferred financing costs decreased to approximately \$155,000 for the nine months ended September 30, 2012, as compared to approximately \$1,200,000 for the nine months ended September 30, 2011. This decrease is primarily due to certain deferred financing costs associated with warrants issued as consideration for several amendments executed during 2010 related to the Loan and Security agreement originally entered into in April 2008 becoming fully amortized by March 31, 2011. The warrants were forfeited upon completion of the Merger on September 30, 2011.

Also due to forfeiture of the warrants, there were no gain in fair value of warrant liability for the three month and nine month periods ended September 30, 2012, respectively as compared to approximately \$0 and \$62,000 for the three month and nine month periods ended September 30, 2011, respectively.

### Income Taxes

Income tax benefit of approximately \$736,000 for the three months and nine months ended September 30, 2012 was the result of the Company's ability to utilize net operating losses and franchise tax adjustments which resulted in tax refunds. The entire amount of the approximately \$736,000 tax refund has been received. The Company does not believe there are any additional tax refund opportunities currently available.

The Company had no income tax expense or income tax benefit for the three months and nine months ended September 30, 2011 due to incurrence of net operating losses.

### **Effect of Inflation**

Inflation has not had a significant impact on the Company's operations or cash flow.

### **Liquidity and Capital Resources**

#### Long-Term Debt

On September 30, 2011, the Company, entered into the Loan and Security Agreement with MidCap Financial SBIC, LP ("MidCap"), as administrative agent, and the Lenders listed on Schedule 1 thereto. The Loan and Security Agreement was subsequently amended on May 14 and August 14, 2012 (the Loan and Security Agreement, as amended, the "MidCap Loan"). The MidCap Loan has a principal amount of \$5.0 million and a term of 42 months, and is subject to prepayment penalties. Under this agreement, AxoGen is

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required to make interest only payments for the first 12 months, and payments of both interest and straight line amortization of principal for the remaining 30 months. The interest rate is 9.9% per annum, and interest is computed on the basis of a 360-day year and the actual number of days elapsed during which such interest accrues.

The MidCap Loan contains customary affirmative and negative covenants, including, without limitation, (i) covenants requiring AxoGen to comply with applicable laws, provide to MidCap copies of AxoGen financial statements, maintain appropriate levels of insurance and protect, defend and maintain the validity and enforceability of AxoGen's material intellectual property, (ii) covenants restricting AxoGen's ability to dispose of all or any part of its assets (subject to certain exceptions), engage in other lines of business, changes in its senior management, enter into merger or consolidation transactions, incur or assume additional indebtedness, or incur liens on its assets, and (iii) covenants requiring the Company to meet certain minimum Net Invoiced Revenue, as defined in the agreement, or maintain a cash balance not less than 80% of the loan principal amount.

The MidCap Loan is secured by all of AxoGen's assets. The Lenders also received a ten-year warrant to purchase 89,686 shares of AxoGen's common stock at \$2.23 per share.

On October 5, 2012, AxoGen entered into the Royalty Contract with PDL. Proceeds from the PDL transaction were used to fully repay the MidCap Loan and extinguish AxoGen's obligations thereunder.

On August 14, 2012, the Company entered into the Interim Royalty Contract with PDL, pursuant to which PDL paid the Company \$1,750,000 in exchange for the purchase of specified "Acquired Revenues," from the Company in an amount equal to the following: (i) during the period from August 1, 2012 to December 31, 2012, 3% of the Company's Net Revenues per month, and (ii) during the period from January 1, 2013 to August 31, 2014, the greater of 5% of the Company's Net Revenues or \$112,257 per month. On October 5, 2012, AxoGen entered into the Royalty Contract with PDL that, among other things, resulted in the termination of the Interim Royalty Contract.

The Company had no material commitments for capital expenditures at September 30, 2012 or 2011.

On October 5, 2012, the Company entered into the Royalty Contract with PDL, pursuant to which the Company sold to PDL the right to receive specified royalties on the Company's Net Revenues (as defined in the Royalty Contract) generated by the sale, distribution or other use of the Company's products Avance®Nerve Graft, AXOGUARD®Nerve Protector and AXOGUARD®Nerve Connector (the "Acquired Revenues"). The Royalty Contract has a term of eight years. Under the Royalty Contract, PDL is to receive a royalty payment based on a high single digit royalty rate of the Company's Net Revenues (the "Assigned Interests"), subject to certain agreed upon minimum payment requirements beginning in the fourth quarter of 2014 as provided in the Royalty Contract. The total consideration PDL paid to the Company was \$20,800,000 (the "Funded Amount"), including \$19,050,000 PDL paid to the Company on October 5, 2012, and \$1,750,000 PDL paid to the Company on August 14, 2012 pursuant to the Interim Royalty Contract). Upon the closing of PDL's purchase of the specified royalties described above, which was concurrent with the execution of the Royalty Contract, the Interim Royalty Contract was terminated. There are no financial covenants or other restrictions on the use of capital by AxoGen as a result of the Royalty Contract, however, PDL has a first perfected security interest in the Assigned Interests. Proceeds from the PDL transaction were used to fully repay the MidCap Loan and extinguish AxoGen's obligations thereunder.

### **Cash Flow Information**

AxoGen had working capital of approximately \$4,435,000 and a current ratio of 2.18 at September 30, 2012, as compared to working capital of \$8,863,000 and a current ratio of 5.39 at December 31, 2011. The decrease in working capital and the current ratio at September 30, 2012 as compared to December 31, 2011 was primarily due to the use of working capital for operations in excess of revenues. AxoGen's future capital requirements depend on a number of factors, including, without limitation, revenue increases consistent with its business plan, cost of products and acquisition and/or development of new products.

On August 14, 2012, the Company entered into the "Interim Royalty Contract with PDL. See the description of the Interim Royalty Contract under "—Long Term Debt" above.



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On October 5, 2012, AxoGen entered into the Royalty Contract with PDL. See the description of the Royalty Contract under “—Long Term Debt” above.

The Company currently has sufficient capital to maintain its operations for more than 12 months. If future capital is necessary, the Company may raise additional funds through public or private equity offerings, debt financings or from other sources. The sale of additional equity may result in dilution to AxoGen’s shareholders. There is no assurance that if necessary, AxoGen will be able to secure additional funding on terms acceptable to it, or at all. Should additional capital not become available to AxoGen if needed, AxoGen may be required to take certain action, such as, slowing sales and marketing expansion, delaying certain regulatory activities or reducing headcount.

During the nine months ended September 30, 2012, the Company had a net decrease in cash and cash equivalents of approximately \$3,746,000 as compared to a net increase of cash and cash equivalents of approximately \$8,726,000 in the nine months ended September 30, 2011. The Company’s principal sources and uses of funds are explained below:

### Cash used in operating activities

The Company used approximately \$5,288,000 of cash for operating activities in the nine months ended September 30, 2012, as compared to using approximately \$4,891,000 of cash for operating activities in the nine months ended September 30, 2011. This increase in cash used in operating activities is primarily attributed to the net loss generated in the nine months ended September 30, 2012, along with an increase in our accounts receivable and inventory, partially offset by a decrease in accounts payable and accrued expenses.

### Cash used for investing activities

Investing activities for the nine months ended September 30, 2012 used approximately \$120,000 of cash as compared to providing approximately \$7,148,000 of cash in the nine months ended September 30, 2011. This use of cash is principally attributable to the purchase of certain fixed and intangible assets.

### Cash provided by financing activities

Financing activities in the nine months ended September 30, 2012 provided approximately \$1,662,000 of cash as compared to providing approximately \$6,469,000 of cash in the nine months ended September 30, 2011. The Company received proceeds from the Interim Royalty Contract of \$1.75 million, which was partially offset by debt issuance costs of \$118,476. In the nine months ended September 30, 2011, the Company received proceeds from the issuance of long-term debt of \$3.0 million.

### Off-Balance Sheet Arrangements

AxoGen does not have any off-balance sheet arrangements.

## **RECENT ACCOUNTING PRONOUNCEMENTS**

In July 2012, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 2012-02, Intangibles-Goodwill and Other (Topic 350): Testing Indefinite-Lived Intangible Assets for Impairment. This ASU permits an entity the option to first assess qualitative factors to determine whether it is more likely than not that an indefinite-lived intangible asset is impaired. The results of the qualitative assessment would be used as a basis in determining whether it is necessary to perform the two-step quantitative impairment test. If the qualitative assessment supports the conclusion that it is more-likely-than-not that the fair value

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of the asset exceeds its carrying amount, the entity would not need to perform the two-step quantitative impairment test. The objective of this update is to reduce the cost and complexity of performing impairment tests for indefinite-lived intangible assets other than goodwill, and to improve consistency in impairment testing among long-lived asset categories. This ASU is effective for annual and interim impairment tests performed for fiscal years beginning after September 15, 2012. Early adoption is permitted, including for annual and interim impairment tests performed prior to the issuance of the final ASU, if an entity's financial statements for the most recent annual or interim period have not yet been issued. The Company chose not to adopt this ASU early and does not believe adoption will have a material effect on its financial condition and results of operations.

### **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Not Applicable.

### **ITEM 4. CONTROLS AND PROCEDURES**

#### **Evaluation of Disclosure Controls and Procedures**

The Company maintains "disclosure controls and procedures" as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, (the "Exchange Act"), that are designed to ensure that information required to be disclosed by us in reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, and Board of Directors, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating our disclosure controls and procedures, management recognizes that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable assurance of achieving the desired objectives, and we necessarily are required to apply our judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures.

Our management, including our principal executive officer and principal financial officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of September 30, 2012 and concluded that our disclosure controls and procedures were effective

#### **Changes in Internal Controls Over Financial Reporting**

During the quarter ended September 30, 2012, there were no changes in the Company's internal control over financial reporting (as defined in Rule 13a-15(f) and 15d-15(f) under the Exchange Act) that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

**PART II – OTHER INFORMATION**

**ITEM 1 – Legal Proceedings**

The Company is not a party to any material litigation as of September 30, 2012.

**ITEM 1A – RISK FACTORS**

The Company faces a number of risks and uncertainties. In addition to the other information in this report and the Company's other filings with the Securities and Exchange Commission, readers should consider carefully the risk factors discussed in Part I "Item 1A. Risk Factors" in the Company's Annual Report on Form 10-K for the year ended December 31, 2011. There have been no material changes to these risk factors. If any of these risks actually occur, the Company's business, results of operations or financial condition could be materially adversely affected.

**ITEM 2 – UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

None.

**ITEM 3 – DEFAULTS UPON SENIOR SECURITIES**

None.

**ITEM 4 MINE SAFETY DISCLOSURES**

Not Applicable.

**ITEM 5 – OTHER INFORMATION**

None.

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### ITEM 6 – EXHIBITS

<u>Exhibit Number</u>	<u>Description</u>
3.1	Amended and Restated Articles of Incorporation of AxoGen, Inc. (incorporated by reference to Appendix B to the Proxy Statement/Prospectus included as part of LecTec Corporation's Amendment No. 2 to Registration Statement on Form S-4 filed on August 29, 2011)
3.2	AxoGen, Inc. Amended and Restated Bylaws (incorporated by reference to Appendix C to the Proxy Statement/Prospectus included as part of LecTec Corporation's Amendment No. 2 to Registration Statement on Form S-4 filed on August 29, 2011).
10.1	Interim Revenue Interests Purchase Agreement dated August 14, 2012, by and between AxoGen, Inc. and PDL BioPharma, Inc.
10.2	Subordination and Intercreditor Agreement dated August 14, 2012, by and between AxoGen, Inc., PDL BioPharma, Inc. and Midcap Financial SBIC, LP.
10.3	First Amendment to Loan and Security Agreement dated August 14, 2012, by and between AxoGen, Inc. and Midcap Financial SBIC, LP.
31.1†	Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2†	Certification of Principle Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32†	Certification Pursuant to 18 U.S.C. §1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS††	XBRL Instance Document.
101.SCH††	XBRL Taxonomy Extension Schema Document.
101.CAL††	XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF††	XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB††	XBRL Extension Labels Linkbase.
101.PRE††	XBRL Taxonomy Extension Presentation Linkbase Document.

† Filed herewith.

†† Furnished herewith.

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**SIGNATURES**

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

Dated November 7, 2012

**AXOGEN, INC.**

/s/ Karen Zaderej  
Karen Zaderej  
Chief Executive Officer  
(Principal Executive Officer)

/s/ Gregory G. Freitag  
Gregory G. Freitag  
Chief Financial Officer  
(Principal Financial Officer)

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**EXHIBIT INDEX**

<u>Exhibit Number</u>	<u>Description</u>
3.1	Amended and Restated Articles of Incorporation of AxoGen, Inc. (incorporated by reference to Appendix B to the Proxy Statement/Prospectus included as part of LecTec Corporation's Amendment No. 2 to Registration Statement on Form S-4 filed on August 29, 2011)
3.2	AxoGen, Inc. Amended and Restated Bylaws (incorporated by reference to Appendix C to the Proxy Statement/Prospectus included as part of LecTec Corporation's Amendment No. 2 to Registration Statement on Form S-4 filed on August 29, 2011).
10.1	Interim Revenue Interests Purchase Agreement dated August 14, 2012, by and between AxoGen, Inc. and PDL BioPharma, Inc.
10.2	Subordination and Intercreditor Agreement dated August 14, 2012, by and between AxoGen, Inc., PDL BioPharma, Inc. and Midcap Financial SBIC, LP.
10.3	First Amendment to Loan and Security Agreement dated August 14, 2012, by and between AxoGen, Inc. and Midcap Financial SBIC, LP.
31.1†	Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2†	Certification of Principle Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32†	Certification Pursuant to 18 U.S.C. §1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS††	XBRL Instance Document.
101.SCH††	XBRL Taxonomy Extension Schema Document.
101.CAL††	XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF††	XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB††	XBRL Extension Labels Linkbase.
101.PRE††	XBRL Taxonomy Extension Presentation Linkbase Document.

† Filed herewith.

†† Furnished herewith.

This instrument or other agreement and the indebtedness, rights and obligations evidenced hereby and any liens or other security interests securing such rights and obligations are subordinate in the manner and to the extent set forth in that certain Subordination and Intercreditor Agreement (as amended, restated, supplemented or modified from time to time, the "Subordination Agreement"), dated as of August 14, 2012, by and among the Subordinated Oblige identified therein and MidCap Financial SBIC, LP, in its capacity as agent for certain lenders (together with its successors and assigns, "Agent"), to certain indebtedness, rights and obligations of AxoGen, Inc. and AxoGen Corporation, to Agent and Lenders (as defined therein) and all liens and security interests of Agent securing the same all as described in the Subordination Agreement, and each holder and transferee of this instrument, by its acceptance hereof, irrevocably agrees to be bound by the provisions of the Subordination Agreement.

INTERIM REVENUE INTERESTS PURCHASE AGREEMENT

Dated as of August 14, 2012

between

AxoGen, Inc.

and

PDL BioPharma, Inc.

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## INTERIM REVENUE INTERESTS PURCHASE AGREEMENT

This **INTERIM REVENUE INTERESTS PURCHASE AGREEMENT** (as amended, supplemented or otherwise modified from time to time, this "Agreement") is made and entered into as of August 14, 2012, by and between AxoGen, Inc., a Minnesota corporation (the "Company"), and PDL BioPharma, Inc., a Delaware corporation ("Purchaser").

**WHEREAS**, the Company wishes to obtain financing in respect of the commercialization of the Product (as hereinafter defined) and to sell, assign, convey and transfer to Purchaser in consideration for its payment of the Purchase Price (as hereinafter defined), and Purchaser wishes to purchase from the Company, the Assigned Interests (as hereinafter defined), all upon and subject to the terms and conditions hereinafter set forth; and

**WHEREAS**, the Company and Purchaser desire to enter into this Agreement, pursuant to which, Purchaser shall pay \$1,750,000 for the acquisition of certain of the Company's revenue rights.

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements representations and warranties set forth herein, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

#### Section 1.01 Definitions.

The following terms, as used herein, shall have the following meanings:

"Adjustment Payment" shall have the meaning set forth in Section 5.02(f).

"Affiliate" shall mean any Person that controls, is controlled by, or is under common control with another Person. For purposes of this definition, "control" shall mean (i) in the case of corporate entities, direct or indirect ownership of at least fifty percent (50%) of the stock or shares having the right to vote for the election of directors, and (ii) in the case of non-corporate entities, direct or indirect ownership of at least fifty percent (50%) of the equity interest with the power to direct the management and policies of such non-corporate entities.

"Agreement" shall have the meaning set forth in the first paragraph hereof.

"Amendment" shall mean the First Amendment to Loan and Security Agreement entered into by and among the Company the Senior Creditors, which shall be substantially in the form of Exhibit B.

"Assigned Interests" shall mean the following amounts of the Company's Net Revenues, the payment of which shall be subject to those Liens held by Senior Creditors under the Senior Loan Documents other than the limited release of such Liens by the Senior Creditors in respect of any Permitted Subordination Obligation Payments as provided in the Subordination Agreement:

(a) for each calendar month starting on the Counting Date until December 31, 2012, an amount equal to three percent (3%) of the Company's Net Revenues for each such calendar month; and

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(b) for each of the following twenty (20) calendar months thereafter, the greater of (i) five (5%) of the Company's Net Revenues for such calendar month or (ii) one hundred twelve thousand two hundred-fifty seven dollars (\$112,257.00).

"Audit Costs" shall mean, with respect to any audit of the books and records of the Company with respect to amounts payable or paid under this Agreement, the reasonable out-of-pocket cost of such audit, including all fees, costs and expenses incurred in connection therewith.

"Bankruptcy Event" shall mean the occurrence of any of the following:

(i) the Company shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, relief of debtors or the like, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any portion of its assets, or the Company shall make a general assignment for the benefit of its creditors;

(ii) there shall be commenced against the Company any case, proceeding or other action of a nature referred to in clause (i) above which remains undismissed, undischarged or unbonded for a period of sixty (60) Business Days;

(iii) there shall be commenced against the Company any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against (A) all or any substantial portion of its assets and/or (B) the Product or any substantial portion of the Intellectual Property related to the Product, which results in the entry of an order for any such relief which shall not have been vacated, discharged, stayed, satisfied or bonded pending appeal within sixty (60) Business Days from the entry thereof;

(iv) the failure of the Company to take action to object to any of the acts set forth in clause (ii) or (iii) above within ten (10) days of the Company receiving written notice of such act; or

(v) the Company shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its respective debts as they become due.

"Bill of Sale" shall mean the Bill of Sale pursuant to which the Company shall assign to Purchaser all of its rights and interests in and to the Assigned Interests purchased hereunder, except those Liens (subject to any Permitted Subordination Obligation Payments) held by Senior Creditors under the Senior Loan Documents, which Bill of Sale shall be substantially in the form of Exhibit A.

"BLA" shall mean a biologics license application and all amendments and supplements thereto, submitted to the FDA with respect to Avance® Nerve Graft.

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“Business Day” shall mean any day other than a Saturday, a Sunday, any day which is a legal holiday under the laws of the State of New York, or any day on which banking institutions located in the State of New York are required by law or other governmental action to close.

“Change of Control” shall mean:

(a) the acquisition by any Person or group (within the meaning of Sections 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended) of beneficial ownership of any capital stock of the Company, if after such acquisition, such Person or group would be the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company’s then outstanding securities entitled to vote generally in the election of directors;

(b) a merger or consolidation of the Company, with any other Person, other than a merger or consolidation which would result in the Company’s voting securities outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than fifty percent (50%) of the combined voting power of the Company’s voting securities or such surviving entity’s voting securities outstanding immediately after such merger or consolidation;

(c) the bona fide sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any of its Subsidiaries of all or substantially all the assets of the Company and its Subsidiaries, taken as a whole, or the sale or disposition (whether by merger or otherwise) of one or more Subsidiaries of the Company if substantially all of the assets of the Company and its Subsidiaries, taken as a whole, are held by such Subsidiary or Subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned (direct or indirect) Subsidiary of the Company.

“Closing” shall have the meaning set forth in Section 2.03(a).

“Closing Date” shall have the meaning set forth in Section 2.03(a).

“Company” shall have the meaning set forth in the first paragraph hereof.

“Company Indemnified Party” shall have the meaning set forth in Section 7.05(a).

“Confidential Information” shall mean, as it relates to the Company and its Affiliates and the Product, the Intellectual Property, confidential business information, financial data and other like information (including ideas, research and development, know-how, formulas, schematics, compositions, technical data, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals), inventory, ideas, algorithms, processes, computer software programs or applications (in both source code and object code form), client lists and tangible or intangible proprietary information or material, or such other information that either party identifies to the other as confidential or the nature of which or the circumstances of the disclosure of which would reasonably indicate that such information is confidential. Notwithstanding the foregoing definition, Confidential Information shall not include information that (i) is already in the public domain at the time the information is disclosed, (ii) thereafter becomes lawfully obtainable from other sources who, to the knowledge

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of the recipient, have no obligation of confidentiality, (iii) can be shown to have been independently developed by the recipient or its representatives without reference to any Confidential Information of the other party, or (iv) is required to be disclosed under securities laws, rules and regulations applicable to the Company or its Affiliates or the Purchaser or its Affiliates, as the case may be, or pursuant to the rules and regulations of any securities exchange or trading system or pursuant to any other laws, rules or regulations of any Governmental Authority having jurisdiction over the Company and its Affiliates or Purchaser and its Affiliates.

“Controlled” or “Control” shall mean, with respect to Intellectual Property, the right, possession of the right, whether directly or indirectly, and whether by ownership, license or otherwise, to grant a license, sublicense or other right to or under such Intellectual Property without violating the terms of any agreement with a third party related to such Intellectual Property.

“Counting Date” shall mean August 1, 2012.

“Default” shall mean the occurrence of any event or circumstance that would, with the giving of notice, lapse of time, or both, be an Event of Default.

“Delinquent Assigned Interests Payment” shall mean, with respect to any Assigned Interests Payment and, if owed by the Company to Purchaser, any Adjustment Payment that is not paid when due shall, in each case, an amount equal to the product of the amount so owed multiplied by the lower of (i) the highest rate permitted by applicable law, and (ii) one and one-half percent (1.5%) per month, compounded monthly.

“Dispute” shall have the meaning set forth in Section 3.12(e).

“Early Repurchase Price” shall mean the sum of (a) the balance amount stated on Schedule 1 for the corresponding calendar month on which such payment is made, (b) all amounts due for such calendar month on which such payment is made, (c) any Delinquent Assigned Interests Payment owed and (d) \$150,000.00.

“Event of Default” shall mean the occurrence of any Put Option Event (other than pursuant to clause of (a) of said definition) and any material breach by the Company of this Agreement, whether or not constituting a Put Option Event.

“Excluded Liabilities and Obligations” shall have the meaning set forth in Section 2.04.

“FDA” shall mean the United States Food and Drug Administration or any successor federal agency thereto.

“Financial Statements” shall mean (i) the audited consolidated balance sheets of the Company and its Subsidiary as of December 31, 2012 and 2011, and the related audited consolidated statements of operations, cash flows and shareholders’ equity for the Fiscal Years then ended and (ii) the unaudited consolidated balance sheet of the Company and its Subsidiary as of March 31, 2012, and the related unaudited consolidated statements of operations, cash flows and shareholders’ equity for the three (3) month periods then ended.

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“Financing Event” shall mean the Company receives, other than from Purchaser, an equity investment or debt placement (including a credit facility) in an amount greater than \$5,000,000 in the aggregate measured during any consecutive sixty (60) day period after the Closing Date.

“Fiscal Quarter” shall mean each calendar quarter.

“Fiscal Year” shall mean the calendar year.

“GAAP” shall mean generally accepted accounting principles in the United States in effect from time to time.

“Governmental Authority” shall mean any government, court, regulatory or administrative agency or commission, or other governmental authority, agency or instrumentality, whether foreign, federal, state or local (domestic or foreign), including the United States Patent and Trademark Office, the FDA, or the United States National Institutes of Health.

“Gross Product Revenues” means, for any period of determination, the sum of the following for such period: (i) the amounts invoiced and recognized as revenue in accordance with GAAP by the Company, its Subsidiaries or any of their Affiliates with respect to the sale of Product to a Third Party by the Company, its Subsidiaries or any of their Affiliates, (ii) the amounts invoiced and recognized as revenue in accordance with GAAP by the Company, its Subsidiaries or any of their Affiliates from a Third Party with respect to the sale, distribution or other use of the Product by such Third Party in connection with any marketing, royalty, manufacturing, co-promotion, co-development, equity investment, cost sharing or other strategic arrangements, and (iii) any collections in respect of write-offs or allowances for bad debts in respect of items described in the preceding clauses (i) and (ii). For purposes of prevention of duplication, “Gross Product Revenue” shall not include amounts invoiced by distributors, wholesalers or other Persons acting in similar capacities.

“Intellectual Property” shall mean all proprietary information; technical data; laboratory notebooks; clinical data; priority rights; trade secrets; know-how; confidential information; inventions (whether patentable or unpatentable and whether or not reduced to practice or claimed in a pending patent application) and improvements thereto; Patents; registered or unregistered trademarks, trade names, service marks, including all goodwill associated therewith; registered and unregistered copyrights and all applications thereof; in each case that are owned, Controlled by, generated by, issued to, licensed to, licensed by or hereafter acquired by or licensed by the Company, in each case relating to, or otherwise relevant or desirable, now or in the future, for the manufacture and sale of the Product.

“Knowledge” shall mean the actual knowledge, or that which would or should have been known after reasonable inquiry, of any officer, director or employee of the Company or its Subsidiaries relating to a particular matter.

“License Agreement” shall mean any existing or future license, commercialization, co-promotion, collaboration, distribution, marketing or partnering agreement entered into before or during the Revenue Interest Period by the Company or any of its Affiliates relating to the Product and/or under the Intellectual Property.

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“Licenses” shall mean, collectively, the licensees, sublicensees or distributors under the License Agreements; each a “Licensee”.

“Liens” shall mean any lien, hypothecation, charge, instrument, license, preference, priority, security agreement, security interest, interest, mortgage, deed of trust, option, privilege, pledge, liability, covenant, order, tax, right of recovery, trust or deemed trust (whether contractual, statutory or otherwise arising) or any encumbrance, right or claim of any other person of any kind whatsoever whether choate or inchoate, filed or unfilled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown, including, without limitation, any conditional sale or other title retention agreement, any lease having the same financial effect as any of the foregoing, and the filing of, or agreement to give, any financing statement under the UCC.

“Losses” shall mean collectively, any and all claims, damages, losses, judgments, awards, penalties, liabilities, costs and expenses (including reasonable expenses of investigation and reasonable attorneys’ fees and expenses incurred in connection with investigating, preparing for or defending any action, suit or proceeding).

“Major Countries” shall mean the United States.

“Material Adverse Change” shall mean, with respect to the Company and its Subsidiaries, any event, change, circumstance, occurrence, effect or state of facts that has caused or is reasonably likely to cause a material adverse change on the business, operations, assets, condition (financial or otherwise), results of operations or prospects of the Company and its Subsidiaries, taken as a whole.

“Material Adverse Effect” shall mean (i) the effect of a Material Adverse Change, (ii) a material adverse effect on the validity or enforceability of any of the Transaction Documents, (iii) material adverse effect on the ability of the Company to perform any of its obligations under the Transaction Documents, (iv) the inability or failure of Company to make payment of the Assigned Interests or any other amounts in violation of this Agreement, and (v) any material adverse effect on the Product or the ability of the Company to distribute, market and/or sell the Product.

“Material Contract” shall mean: (i) any marketing agreement, co-promotion agreement or partnering agreement related to the manufacture, sale or distribution of the Product in any of the Major Countries; or (ii) any agreement relating to any Intellectual Property, including any license, assignment, or agreement related to Control of such Intellectual Property.

“Material Patents” shall have the meaning set forth in Section 3.12(d).

“Monthly Report” shall mean, with respect to the relevant calendar month, (i) a report showing Gross Profit Revenues for such calendar month and the adjustments and other reconciliations used to arrive at Net Revenues.

“Net Revenues” shall mean, for any period of determination, the difference of

(a) Gross Product Revenues for such period, less



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(b) the sum, with respect to the items described in clauses (i) and (ii) of the definition of Gross Product Revenues, of

(i) cash, trade discounts and rebates actually granted or paid Third Parties in accordance with customary industry standards,

(ii) allowances and adjustments actually credited to customers for Product that is spoiled, damaged, outdated, obsolete, returned or otherwise recalled, but only if and to the extent the same are in accordance with sound business practices and not in excess of customary industry standards,

(iii) charges for freight, postage, shipping, delivery, service and insurance charges, to the extent invoiced,

(iv) taxes, duties or other governmental charges to the extent invoiced,

(v) write-offs or allowances for bad debts,

(vi) rebates and chargebacks and other price reduction programs granted to managed care entities, Governmental Authorities, group purchasing organizations or pharmaceutical benefit management companies, and

(vii) other payments required by law to be made under Medicaid, Medicare or other government special medical assistance programs.

Net Revenues shall be determined in accordance with GAAP as applied by the Company and its Subsidiary on the date of this Agreement.

“Obligations” shall mean any and all obligations of the Company under the Transaction Documents.

“Patents” shall mean all patents, patent rights, patent applications, patent disclosures and invention disclosures issued or filed, together with all reissues, divisions, continuations, continuations-in-part, revisions, term extensions, substitutes, supplementary protection certificates and reexaminations, including the inventions claimed in any of the foregoing and any priority rights arising therefrom, covering or related to the manufacture, use and sale of the Product that are issued or filed as of the date hereof or during the Revenue Interest Period, including, without limitation, those identified in Schedule 3.12 in each case, which are owned, Controlled by, issued to, licensed to or licensed by the Company, its Subsidiary or any of its Affiliates.

“Permitted Subordination Obligation Payments” shall have the meaning given it in the Subordination Agreement.

“Person” shall mean an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, but not including a government or political subdivision or any agency or instrumentality of such government or political subdivision.

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“Product” shall mean Avance® Nerve Graft, AXOGUARD® Nerve Protector and AXOGUARD® Nerve Connector, regardless of the purpose for which such products are marketed or sold, and any and all future iterations of such products developed or licensed by the Company as a solution to repair or protect nerves as marketed in any jurisdiction.

“Purchase Price” shall mean \$1,750,000.

“Purchaser” shall have the meaning set forth in the first paragraph hereof.

“Purchaser Indemnified Party” shall have the meaning set forth in Section 7.05(b).

“Put Option” shall have the meaning set forth in Section 5.06(b).

“Put Option Closing Date” shall have the meaning set forth in Section 5.06(b).

“Put Option Event” shall mean any one of the following events:

(a) any Bankruptcy Event;

(b) occurrence of a Material Adverse Effect;

(c) any Transfer by the Company of its interests in the Revenue Interests or substantially all of its interest in the Product;

(d) any material breach of any representation or warranty made by the Company in this Agreement or any breach of or default under any covenant or agreement by the Company in this Agreement, which breach is not cured within thirty (30) days after written notice thereof is delivered by Purchaser to the Company; or

(e) acceleration of the Senior Loan.

“Quarterly Report” shall mean, with respect to the relevant Fiscal Quarter of the Company, (i) a report showing on a monthly basis the Gross Profit Revenues for each month in such quarter and the adjustments and other reconciliations used to arrive at Net Revenues for each month, with the aggregate quarterly amounts reconciled, in each case, to the most applicable line item in the Company’s consolidated statements of operations as most recently filed or to be filed with the Securities and Exchange Commission or furnished to Purchaser pursuant to Section 5.02(h) and (ii) a reconciliation of all Assigned Interest Payments made by the Company to Purchaser pursuant to this Agreement during such quarter.

“Regulatory Agency” shall mean a Governmental Authority with responsibility for the approval of the marketing and sale of pharmaceuticals in the United States or other regulation of pharmaceuticals.

“Regulatory Approval” shall mean all approvals (including, without limitation, where applicable, pricing and reimbursement approval and schedule classifications), product and/or establishment licenses, registrations or authorizations of any Governmental Authority necessary for the manufacture, use, storage, import, export, transport, offer for sale, or sale of the Product in a regulatory jurisdiction.

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“Revenue Interest Period” shall mean the period from and including the Counting Date through the earliest of:

(a) August 31, 2014; and

(b) payment of the Early Repurchase Price.

“Revenue Interests” shall mean all of the Company’s interest in the Gross Product Revenues.

“Secretary’s Certificate” shall mean the duly executed Secretary’s and Officer’s Certificate, dated as of the Closing Date, in form and substance reasonably satisfactory to Purchaser, (W) attaching certified copies of the Company’s organizational documents (together with any and all amendments thereto); (X) attaching certified copies of the resolutions adopted by the board of directors of the Company authorizing and approving the execution, delivery and performance by the Company of the Agreement and the Bill of Sale and the transactions contemplated herein and therein; (Y) setting forth the incumbency of the officer or officers of the Company who have executed and delivered the Agreement and the Bill of Sale; and (Z) attaching copies, certified by such officer as true and complete, of a certificate of the appropriate Governmental Authority of the Company’s jurisdiction of formation, stating that the Company is in good standing under the laws of the State of Minnesota.

“Senior Creditors” shall mean MidCap Financial SBIC, LP, the Lenders (as defined in the Senior Loan Agreement) from time to time party to the Senior Loan Agreement and any other holder or holders of the Senior Loan as may from time to time exist.

“Senior Loan” shall have the meaning set forth in the Subordination Agreement.

“Senior Loan Agreement” shall have the meaning set forth in the Subordination Agreement.

“Senior Loan Documents” shall have the meaning set forth in the Subordination Agreement.

“Subordination Agreement” shall mean that Subordination and Intercreditor Agreement by and among Company, Purchaser, AxoGen Corporation, and MidCap Financial SBIC, LP on August 14, 2012, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Subsidiary” shall mean, with respect to any Person, any other Person controlled by such first Person, directly or indirectly, through one or more intermediaries.

“Tax” or “Taxes” means any federal, state, local or foreign tax, levy, impost, duty, assessment, fee, deduction or withholding or other charge, including all excise, sales, use, value added, transfer, stamp, documentary, filing, recordation and other fees imposed by any taxing authority (and interest, fines, penalties and additions related thereto).

“Tax Return” means any report, return, form (including elections, declarations, statements, amendments, claims for refund, schedules, information returns or attachments thereto) or other information supplied or required to be supplied to a Governmental Authority with respect to Taxes.

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“Term” shall have the meaning set forth in Section 6.01.

“Term Sheet” shall mean the Term Sheet between the Company and Purchaser, dated July 26, 2012.

“Third Party” shall mean any Person other than the Company.

“Transaction Documents” shall mean, collectively, this Agreement, the Bill of Sale and the Secretary’s Certificate and any related ancillary documents or agreements.

“Transfer” shall mean any sale, conveyance, assignment, disposition, pledge, hypothecation or transfer.

“United States” shall mean the United States of America.

## **ARTICLE II PURCHASE OF INTERESTS**

### **Section 2.01 Purchase.**

Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, the Company agrees to sell, assign, transfer and convey to Purchaser, and Purchaser agrees to purchase from the Company, free and clear of all Liens (except those Liens held by the Senior Creditors (subject to the Permitted Subordination Obligation Payments)), all of the Company’s rights and interests in and to the Assigned Interests. Purchaser’s ownership interest in each of the Assigned Interests so acquired shall vest immediately upon the Company’s receipt of payment for such Assigned Interests pursuant to Section 2.03(a).

### **Section 2.02 Payments by the Company.**

(a) Payments in Respect of the Assigned Interests. In connection with the purchase of the Assigned Interest, Purchaser shall be entitled to receive the Assigned Interests in respect of Net Revenues earned during the Revenue Interest Period in accordance with subsection (b) below.

(b) Monthly Report/Disbursement. During the Term, the Company shall, within twenty (20) days after the end of each calendar month (i) produce and deliver to Purchaser a Monthly Report, together with a certificate of the Company, certifying that to the best Knowledge of the Company (x) such Monthly Report is a true and complete copy and (y) any statements and any data and information therein prepared by the Company are true, correct and accurate in all material respects, and (ii) a payment (the “Assigned Interest Payment”) equal to the Assigned Interest owed for such calendar month.

(c) Payment Procedure. All payments to be made by the Company to Purchaser hereunder, including any Delinquent Assigned Interests Payment and Adjustment Payment, shall be made by wire transfer of immediately available funds.

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**Section 2.03 Closing; Payment Purchase Price; Closing Deliveries.**

(a) Closing. The closing of the purchase of the Assigned Interests pursuant to this Agreement (the "Closing") will take place concurrently with the execution of this Agreement on the date hereof (the "Closing Date") and will be held at the offices of PDL or at such other time and place as shall be agreed upon by the Company and PDL.

(b) Payment of Purchase Price. At the Closing, Purchaser shall pay to the Company the Purchase Price by wire transfer of immediately available funds to the account designated by the Company prior to the date hereof.

(c) Closing Deliveries. At the Closing, (i) the Company will deliver to Purchaser (X) its duly executed counterpart to the Bill of Sale, (Y) a fully executed copy of the Amendment by the Company and the required Senior Creditors, and (Z) a fully executed and complete Secretary's Certificate, and (ii) Purchaser will deliver to the Company its duly executed counterpart to the Bill of Sale.

**Section 2.04 No Assumed Obligations.**

Notwithstanding any provision in this Agreement or any other writing to the contrary, Purchaser is acquiring only the Assigned Interests and is not assuming any liability or obligation of the Company or any of its Affiliates of whatever nature, whether presently in existence or arising or asserted hereafter, whether under any Transaction Document or otherwise. All such liabilities and obligations shall be retained by and remain obligations and liabilities of the Company or its Affiliates (the "Excluded Liabilities and Obligations").

**ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF COMPANY**

For purposes of all the representations and warranties contained in Article III, the term "Product" shall mean Avance® Nerve Graft, AXOGUARD® Nerve Protector and AXOGUARD® Nerve Connector as such products currently exist and are marketed in any jurisdiction, and no broader definition shall be implied. The Company hereby represents and warrants to Purchaser, as of the Closing Date, the following:

**Section 3.01 Organization.**

Each of the Company and its Subsidiary is a corporation duly incorporated, validly existing and in good standing under the laws of the States of Minnesota and Delaware, respectively, and has all corporate powers and all licenses, authorizations, consents and approvals required to carry on its respective business as now conducted and as proposed to be conducted in connection with the transactions contemplated by the Transaction Documents. Each of the Company and its Subsidiary is duly qualified to do business as a foreign corporation and is in good standing in every jurisdiction in which the failure to do so would have a Material Adverse Effect. The Company has no direct or indirect Subsidiaries, other than AxoGen Corporation, a Delaware corporation.

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**Section 3.02 Authorization.**

The Company has all necessary power and authority to enter into, execute and deliver the Transaction Documents and to perform all of the obligations to be performed by it hereunder and thereunder and to consummate the transactions contemplated hereunder and thereunder. The Transaction Documents have been duly authorized, executed and delivered by the Company and each Transaction Document constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with their respective terms, subject, as to enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally or general equitable principles.

**Section 3.03 Governmental Authorization.**

The execution and delivery by the Company of the Transaction Documents, and the performance by the Company of its obligations hereunder and thereunder, does not require any notice to, action or consent by, or in respect of, or filing with, any Governmental Authority.

**Section 3.04 Ownership.**

(a) The Company owns, Controls, or holds a valid license under, all of the Intellectual Property and the Regulatory Approvals which it currently purports to own related to the Product free and clear of all Liens, except those Liens held by Senior Creditors under the Senior Loan Documents, and no license, either direct or implied, or covenant not to sue under any Intellectual Property has been granted to or exists in any Third Party. Neither the Company nor its Subsidiary has granted, nor does there exist, any Lien on the Revenue Interests or the Assigned Interests, except those Liens held by the Senior Creditors under the Senior Loan Documents (subject to the Permitted Subordination Obligation Payments).

(b) The Company, immediately prior to the purchase of the Assigned Interests, owns, and is the sole holder of, all the Revenue Interests; and the Company owns, and is the sole holder of, and/or has and holds a valid, enforceable and subsisting license to, all of those other assets that are required to produce or receive any payments from any Licensee or payor under and pursuant to, and subject to the terms of any License Agreement, in each case free and clear of any and all Liens, except those Liens held by Senior Creditors under the Senior Loan Documents. The Company has not transferred, sold, or otherwise disposed of, or agreed to transfer, sell, or otherwise dispose of any portion of the Revenue Interests other than as contemplated by this Agreement. No Person other than the Company and the Senior Creditors has any right to receive the payments payable under any License Agreement, other than Purchaser's rights with respect to the Assigned Interests, from and after the Closing Date. The Company has the full right to sell, transfer, convey and assign to Purchaser all of the Company's rights and interests in and to the Assigned Interests being sold, transferred, conveyed and assigned to Purchaser pursuant to this Agreement without any requirement to obtain the consent of any Person, which has not already been obtained. At the Closing, and upon delivery of the Bill of Sale to Purchaser by the Company, Purchaser shall have acquired good and valid rights and interests of the Company in and to the Assigned Interests being sold, transferred, conveyed and assigned to Purchaser pursuant to this Agreement, free and clear of any and all Liens, except those Liens held by Senior Creditors under the Senior Loan Documents (subject to the Permitted Subordination Obligation Payments).

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**Section 3.05 Financial Statements.**

The Financial Statements are complete and accurate in all material respects, were prepared in conformity with GAAP and present fairly in all material respects the financial position and the financial results of the Company and its Subsidiary as of the dates and for the periods covered thereby.

**Section 3.06 No Undisclosed Liabilities.**

Except for those liabilities (a) specifically identified on the face of the Financial Statements, (b) incurred by the Company in the ordinary course of business since March 31, 2012, or (c) in connection with the Obligations under the Transaction Documents, there are no material liabilities of the Company or its Subsidiary of any kind whatsoever, whether accrued, contingent, absolute, determined or determinable.

**Section 3.07 Solvency.**

The Company and its Subsidiary, taken as a whole, are not insolvent as defined in any statute of the United States Bankruptcy Code or in the fraudulent conveyance or fraudulent transfer statutes of the States of Delaware, Florida, Minnesota or New York. Assuming consummation of the transactions contemplated by the Transaction Documents, (a) the present fair saleable value of the Company's and its Subsidiary's assets and the fair value of the Company's and its Subsidiary's assets are each greater than the total amount of liabilities (including contingent and unliquidated liabilities) of the Company and its Subsidiary as such liabilities mature, (b) neither the Company nor its Subsidiary has unreasonably small capital with which to engage in its respective business, and (c) neither the Company nor its Subsidiary has incurred, nor does either have present plans to or intend to incur, debts or liabilities beyond their respective ability to pay such debts or liabilities as they become absolute and matured.

**Section 3.08 Litigation.**

There is no (a) action, suit, arbitration proceeding, claim, investigation or other proceeding pending or, to the Knowledge of the Company, threatened against the Company or its Subsidiary or (b) any governmental inquiry pending or, to the Knowledge of the Company, threatened against the Company or its Subsidiary, in each case with respect to clauses (a) and (b) above, which, if adversely determined, would question the validity of, or could adversely affect the transactions contemplated by the Transaction Documents or could reasonably be expected to have a Material Adverse Effect. There is no action, suit, arbitration proceeding, claim, investigation or other proceeding pending or, to the Knowledge of the Company, threatened against the Company, its Subsidiary or any other Person relating to the Product, the Intellectual Property, the Regulatory Approvals, the Revenue Interests or the Assigned Interests.

**Section 3.09 Compliance with Laws.**

Neither the Company nor its Subsidiary (a) is in violation of, has violated, or to the Knowledge of the Company, is under investigation with respect to, and, (b) has been threatened to be charged with or been given notice of any violation of any law, rule, ordinance or regulation of, or any judgment, order, writ, decree, permit or license entered by any Governmental Authority applicable to the Company, the Assigned Interests or the Revenue Interests which would reasonably be expected to have a Material Adverse Effect.

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**Section 3.10 Conflicts.**

Neither the execution and delivery of any of this Agreement or the other Transaction Documents to which the Company is a party nor the performance or consummation of the transactions contemplated hereby or thereby will: (a) contravene, conflict with, result in a breach or violation of, constitute a default under, or accelerate the performance provided by, in any material respects any provisions of: (i) any law, rule, ordinance or regulation of any Governmental Authority, or any judgment, order, writ, decree, permit or license of any Governmental Authority, to which the Company or its Subsidiary or any of their respective assets or properties may be subject or bound; or (ii) any contract, agreement, commitment or instrument to which the Company or its Subsidiary is a party or by which the Company or its Subsidiary or any of their respective assets or properties is bound or committed; (b) contravene, conflict with, result in a breach or violation of, constitute a default under, or accelerate the performance provided by, any provisions of the articles or certificate of incorporation or bylaws (or other organizational or constitutional documents) of the Company or its Subsidiary; (c) require any notification to, filing with, or consent of, any Person or Governmental Authority other than those that have been obtained; (d) give rise to any right of termination, cancellation or acceleration of any right or obligation of the Company, its Subsidiary or any other Person or to a loss of any benefit relating to the Revenue Interests or the Assigned Interests; or (e) result in the creation or imposition of any Lien on (i) the assets or properties of the Company or its Subsidiary or (ii) the Assigned Interests or the Revenue Interests, except, in the case of the foregoing clauses (a), (c), (d) or (e), for any such breaches, defaults or other occurrences that would not, individually or in the aggregate, have a Material Adverse Effect.

**Section 3.11 Subordination.**

The claims and rights of Purchaser created by any Transaction Document in and to the Assigned Interests and the Revenue Interests are (a) subordinated to the Senior Creditors as provided in the Subordination Agreement and (b) not and shall not be subordinated to any creditor of the Company or any other Person other than the Senior Creditors as provided in the Subordination Agreement.

**Section 3.12 Intellectual Property.**

(a) Schedule 3.12(a) sets forth an accurate, true and complete list of all (i) Patents and utility models, (ii) trade names, registered trademarks, registered service marks, and applications for trademark registration or service mark registration, (iii) registered copyrights and (iv) domain name registrations and websites, in each case with respect to clauses (i), (ii), (iii) and (iv) above in this subsection (a) that the Company owns or licenses and which are necessary to make, have made, use, sell, have sold, offer for sale, import, develop, promote, market, distribute, manufacture, commercialize or otherwise exploit the Product in the jurisdictions where the Product marketed and sold. For each item of Intellectual Property listed on Schedule 3.12(a), the Company has identified (x) the owner, (y) the countries in which such listed item is patented or registered or in which an application for Patent or registration is pending and (z) the application number, the Patent number or registration number. To the Company's Knowledge, except as disclosed therein, each Patent and trademark listed on Schedule 3.12(a) is valid, enforceable and subsisting and none has lapsed, expired, been cancelled or become abandoned. The Patent applications listed in Schedule 3.12(a) have been prosecuted by competent patent counsel in a



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diligent manner. After due inquiry, the Company has determined that there are no published patents, patent applications, articles, prior art references, public uses, undisclosed information (including best mode) or other grounds, factors or circumstances that could adversely affect the validity or enforceability of any of the Patents listed in Schedule 3.12(a). After due inquiry, the Company has determined that all Persons relevant to the prosecution of any of the Material Patents or applications related thereto have complied with the duty to disclose information and/or the duty of candor, including obligations to the United States Patent and Trademark Office specified under Rule 56. To the Company's Knowledge, each of the Material Patents and Material Patent applications correctly identifies each and every inventor of the claims thereof as determined in accordance with the laws of the jurisdiction in which such Material Patent is issued or such Material Patent application is pending. To the Company's Knowledge, each Person who has or has had any rights in or to the Intellectual Property listed on Schedule 3.12(a) that are owned by, or licensed to, the Company, including, each inventor named on the Patents and Patent applications listed in Schedule 3.12(a), has executed an agreement assigning his, her or its entire right, title and interest in and to such Intellectual Property, and the inventions embodied, described and/or claimed therein, to the purported owner and no such Person has any contractual or other obligation that would preclude or conflict with any such assignment or otherwise conflict with the obligations of such Person to the applicable owner of each listed Intellectual Property. To the Company's Knowledge, all Persons having a claim to inventorship to any pending or issued claim of the Patents are currently listed as inventors with respect to such Patents, and that the Company has performed an appropriate inquiry with respect to such inventorship.

(b) Except for Intellectual Property licensed to and owned by the Company and set forth on Schedule 3.12(a), no other Intellectual Property is necessary to make, have made, offer to sell, sell, have sold, use, import, distribute, commercialize or market the Product in the Major Countries. The use, manufacture, import, export, offer for sale, distribution, marketing and sale of the Product does not infringe any patents that are owned by a Third Party in the Major Countries.

(c) The Company has the full right, power and authority to grant all of the rights and interests granted to Purchaser in this Agreement.

(d) To the Company's Knowledge, there are no unpaid maintenance, annuity or renewal fees currently overdue for any of the Patents that cover the manufacture, use or sale of the Product or which cover compositions of matter and/or processes which relate to the Product or alternatives thereto ("Material Patents").

(e) There is, and has been, no pending, decided or settled opposition, interference proceeding, reexamination proceeding, cancellation proceeding, injunction, claim, lawsuit, declaratory judgment, administrative post-grant review proceeding, other administrative or judicial proceeding, hearing, investigation, complaint, arbitration, mediation, International Trade Commission investigation, decree, or any other filed claim (collectively referred to hereinafter as "Disputes") related to any of the Material Patents, nor, to the Knowledge of the Company, has any such Dispute been threatened challenging the legality, validity, enforceability or ownership of any Material Patents or which would give rise to a credit against the revenues or royalties due to the Company for the manufacture, sale offer for sale, use, importation or exportation of the Product and the Company has no notice of any facts that would form the basis for such a

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Dispute. There are no Disputes by any Person or Third Party against the Company, its Licensees or its licensor, and the Company has not received any written notice or claim of any such Dispute as pertaining to the Product. Neither the Company nor its licensor has sent any notice of any such Dispute to a Third Party. The Company is not subject to any outstanding injunction, judgment, order, decree, ruling charge, settlement or other disposition of Dispute which relates to the Product or the Patents.

(f) There is no pending or threatened action, suit, or proceeding, or any investigation or claim by any Governmental Authority to which the Company is a party (1) that would be the subject of a claim for indemnification by any Person or Third Party under any agreement, or (2) that the marketing, sale or distribution of the Product worldwide by the Company or its by Licensees pursuant to the related License Agreement, as applicable, does or will infringe on any patent of any other Person, and there is no basis for any such action, suit, proceeding, investigation or claim of the type described in clause (1) or (2) above. To the Company's Knowledge, there are no pending published or unpublished United States, international or foreign patent applications owned by any other Person, which, if issued, would limit or prohibit, in any material respect, the use of the Product or the licensed Intellectual Property relating to the Product.

(g) The Company has taken all commercially reasonable measures and precautions necessary to protect and maintain (1) the confidentiality of all Intellectual Property that it owns and (2) the value of all Intellectual Property related to the Product, except where such failure to take action would not have a Material Adverse Effect.

(h) No material trade secret of the Company has been published or disclosed to any Person except pursuant to a written agreement requiring such Person to keep such trade secret confidential, except where such disclosure would not have a Material Adverse Effect.

(i) Each Product, or its manufacture or use, is covered by one or more claims of an issued Patent in the United States.

**Section 3.13 Regulatory Approval.**

(a) The Company and its Subsidiary have made available to Purchaser any written reports or other written communications received from a Governmental Authority that would indicate that any Regulatory Agency (A) is not likely to approve the BLA, (B) is likely to revise or revoke any current Regulatory Approval granted by any Regulatory Agency with respect to the Product, or (C) is likely to pursue any material compliance actions against the Company.

(b) The Company and its Subsidiary possess all Regulatory Approvals issued or required by the appropriate Regulatory Agencies, which Regulatory Approvals are necessary to conduct the current clinical trials relating to the Product, and neither the Company nor its Subsidiary has received any notice of proceedings relating to the revocation, suspension, termination or modification of any such Regulatory Approvals.

(c) The Company and its Subsidiary are in material compliance with, and has materially complied with, all applicable federal, state, local and foreign laws, rules, regulations, standards, orders and decrees governing its business, including all regulations promulgated by each Regulatory Agency, the failure of compliance with which could reasonably be expected to

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result in a Material Adverse Effect; the Company and its Subsidiary have not received any notice citing action or inaction by any of them that would constitute any material non-compliance with any applicable federal, state, local and foreign laws, rules, regulations, or standards, which could reasonably be expected to result in a Material Adverse Effect; and to the Company's Knowledge, no prospective change in any applicable federal, state, local or foreign laws, rules, regulations or standards has been adopted which, when made effective, could reasonably be expected to result in a Material Adverse Effect.

(d) Preclinical and clinical trials conducted on behalf of the Company or its Subsidiary relating to the Product were conducted in compliance with applicable laws and, in all material respects, in accordance with experimental protocols, procedures and controls pursuant to, where applicable, accepted professional and scientific standards; the descriptions of the results of such trials provided to Purchaser are accurate in all material respects. Neither the Company nor its Subsidiary has received any notices or correspondence from any Regulatory Agency or comparable authority requiring the termination, suspension, or material modification or clinical hold of any clinical trials conducted by or on behalf of the Company or its Subsidiary with respect to the Product, which termination, suspension, material modification or clinical hold could reasonably be expected to result in a Material Adverse Effect.

**Section 3.14 Material Contracts.**

Neither the Company nor its Subsidiary is in breach of or in default under any Material Contract which default, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. To the Knowledge of the Company, nothing has occurred and no condition exists that would permit any other party thereto to terminate any Material Contract. Neither the Company nor its Subsidiary has received any notice or, to the Knowledge of the Company, any threat of termination of any such Material Contract. To the Knowledge of the Company, no other party to a Material Contract is in breach of or in default under such Material Contract. All Material Contracts are valid and binding on the Company or its Subsidiary and, to the Knowledge of the Company, on each other party thereto, and are in full force and effect. The Company is in compliance with all obligations of the Amended and Restated Standard Exclusive License Agreement with Sublicensing Terms between AxoGen Corporation and the University of Florida Research Foundation dated February 21, 2006, and the Patent License Agreement between AxoGen Corporation and the Board of Regents of The University of Texas System dated July 19, 2005.

**Section 3.15 Place of Business.**

The Company's principal place of business and chief executive office are set forth on Schedule 3.15.

**Section 3.16 Broker's Fees.**

The Company and its Subsidiary have not taken any action that would entitle any Person to any commission or broker's fee in connection with this Agreement except fees, commissions and expenses to be paid to JMP Securities LLC, all of which will be paid by the Company.

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**Section 3.17 Other Information.**

No written statement, information, report or materials prepared by or on behalf of the Company or its Subsidiary and furnished to Purchaser by or on behalf of the Company or its Subsidiary in connection with any Transaction Document or any transaction contemplated hereby or thereby, no written representation, warranty or statement made by the Company or its Subsidiary in any Transaction Document, and no Schedule or Exhibit hereto or thereto, in each case taken in the aggregate, contains any untrue statement of a material fact or omits any statement of material fact necessary in order to make the statements made therein in light of the circumstances under which they were made not misleading.

**Section 3.18 Insurance.**

There are in full force and effect insurance policies maintained by the Company with an insurance company rated not less than "A-" by A.M. Best Company, Inc., with coverages and in amounts customary for companies of comparable size and condition similarly situated in the same industry as the Company, including product liability insurance, directors and officers insurance and insurance against litigation liability, subject only to such exclusions and deductible items as are usual and customary in insurance policies of such type. All material insurable risks in respect of the business and assets of the Company and its Subsidiary are covered by such insurance policies. A schedule of the Company's insurance policy or insurance policies is attached hereto as Schedule 3.18.

**Section 3.19 Taxes.**

The Company has timely filed (taking into account all extensions of due dates) all Tax returns required to be filed by, or on behalf of, it and has timely paid all Taxes required to be paid with such returns. To Company Knowledge, (a) all Tax Returns filed by the Company (or on its behalf) have been true, correct and complete; (b) there is no outstanding or threatened action, claim or other examination or proceeding with respect to Taxes of the Company or its assets (including with respect to the Assigned Interests and the Revenue Interests); and (c) there are no Taxes of the Company that form or could form the basis for an encumbrance (other than encumbrances for current taxes not yet past due) on any of its assets (including the Assigned Interests and the Revenue Interests).

**ARTICLE IV  
REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser represents and warrants to the Company the following:

**Section 4.01 Organization.**

Purchaser is a corporation duly incorporated and validly existing under the laws of the State of Delaware.

**Section 4.02 Authorization.**

Purchaser has all necessary power and authority to enter into, execute and deliver the Transaction Documents and to perform all of the obligations to be performed by it hereunder and thereunder and to consummate the transactions contemplated hereunder and thereunder. The Transaction Documents have been duly authorized, executed and delivered by Purchaser and

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each Transaction Document constitutes the valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with their respective terms, subject, as to enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally or general equitable principles.

**Section 4.03 Broker's Fees.**

Purchaser has not taken any action that would entitle any Person to any commission or broker's fee in connection with the transactions contemplated by the Transaction Documents.

**Section 4.04 Conflicts.**

Neither the execution and delivery of this Agreement or any other Transaction Document to which Purchaser is a party nor the performance or consummation of the transactions contemplated hereby will: (a) contravene, conflict with, result in a breach or violation of, constitute a default under, or accelerate the performance provided by, in any material respects any provisions of: (i) any law, rule or regulation of any Governmental Authority, or any judgment, order, writ, decree, permit or license of any Governmental Authority, to which Purchaser or any of its assets or properties may be subject or bound; or (ii) any contract, agreement, commitment or instrument to which Purchaser is a party or by which Purchaser or any of its assets or properties is bound or committed; (b) contravene, conflict with, result in a breach or violation of, constitute a default under, or accelerate the performance provided by, any provisions of the organizational or constitutional documents of Purchaser; or (c) require any notification to, filing with, or consent of, any Person or Governmental Authority, except, in the case of the foregoing clauses (a) or (c), for any such breaches, defaults or other occurrences that would not, individually or in the aggregate, have a material adverse effect on the ability of Purchaser to perform any of its obligations under the Transaction Documents.

**ARTICLE V  
COVENANTS**

From the date hereof through and including the end of the Revenue Interest Period, the following covenants shall apply:

**Section 5.01 Consents and Waivers.**

The Company shall use its commercially reasonable efforts to obtain and maintain any required consents, acknowledgements, certificates or waivers so that the transactions contemplated by this Agreement or any other Transaction Document may be consummated and shall not result in any default or breach or termination of any of the Material Contracts.

**Section 5.02 Access; Information.**

(a) License Notices. Subject to any applicable confidentiality restrictions, the Company shall promptly provide Purchaser with copies of any material written notices received or given by the Company under any Material Contract, and to the extent the Company is barred from providing Purchaser with copies of such notices due to any applicable confidentiality restrictions, the Company shall (i) inform Purchaser of the existence of such notice accompanied by a written description of the substance contained in such notice and (ii) promptly seek the

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removal or waiver of any such confidentiality restrictions so as to permit a free exchange of information with the Purchaser regarding the substance of such notice. The Company shall promptly notify Purchaser of any breaches or alleged breaches under any Material Contracts and of any other events with respect to any Material Contract or the subject matter thereof which could reasonably be expected to have a Material Adverse Effect.

(b) Litigation or Investigations. The Company shall promptly notify Purchaser of (i) any action, demand, suit, claim, cause of action, proceeding or investigation pending or, to the best knowledge of the Company, threatened by or against the Company, or (ii) proceeding or inquiry of any Governmental Authority pending or, to the best knowledge of the Company, threatened against the Company, related to any Material Contract, the Product, the Patents or any Transaction Document.

(c) Maintenance of Books and Records. The Company shall keep and maintain, or cause to be kept and maintained, at all times accurate and complete books and records. During the Term, the Company shall keep and maintain, or cause to be kept and maintained, at all times full and accurate books of account and records adequate to correctly reflect all payments paid and/or payable with respect to the Revenue Interests and Assigned Interests.

(d) Inspection Rights. Purchaser and any of Purchaser's representatives shall have the right, once a year (and at any other time a Default or Event of Default shall have occurred or be continuing), to visit the Company and its Subsidiaries' offices and properties where the Company and its Subsidiaries keep and maintain their books and records relating or pertaining to the Revenue Interests and the Assigned Interests for purposes of conducting an audit of such books and records, and to inspect, copy and audit such books and records, during normal business hours, and, upon five (5) Business Days' written notice given by Purchaser to the Company (provided one (1) Business Day's notice shall be required if a Default or Event of Default shall have occurred and be continuing), the Company will provide Purchaser and any of Purchaser's representatives reasonable access to such books and records, and shall permit Purchaser and any of Purchaser's representatives to discuss the business, operations, properties and financial and other condition of the Company or any of its Affiliates including, but not limited to, matters relating or pertaining to the Revenue Interests and the Assigned Interests with officers of such parties, and with their independent certified public accountants.

(e) Audit Costs. In the event any audit of the books and records of the Company and its Subsidiaries relating to the Revenue Interests and Assigned Interests by Purchaser and/or any of Purchaser's representatives reveals that the amounts paid to Purchaser hereunder for the period of such audit have been understated by more than five percent (5%) of the amounts determined to be due for the period subject to such audit, then the Audit Costs in respect of such audit shall be borne by the Company; and in all other cases, such Audit Costs shall be borne by Purchaser.

(f) Quarterly Reports. During the Term, the Company shall, promptly after the end of each Fiscal Quarter of the Company (but in no event later than forty-five (45) days following the end of such quarter (unless such Fiscal Quarter is the last Fiscal Quarter of a Fiscal Year in which case no later than ninety (90) days after the end of such Fiscal Quarter)), produce and deliver to Purchaser a Quarterly Report for such quarter, together with a certificate of the Company, certifying that to the best Knowledge of the Company (i) such Quarterly Report is a

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true and complete copy and (ii) any statements and any data and information therein prepared by the Company are true, correct and accurate in all material respects. Following the Company's delivery of each Quarterly Report to Purchaser, Purchaser shall have 30 days to review such Quarterly Report and dispute the amount of any of the Assigned Interests Payments that were paid or are to be paid for the particular Fiscal Quarter. The Company and Purchaser in good faith shall seek to resolve in writing any differences that they may have with respect to the computation of the applicable Assigned Interests Payments. Any additional payments (the "Adjustment Payment"), whether owed to the Company or Purchaser, shall be paid by the party owing such Adjustment Payment within five (5) days of the final determination of the amount of the Adjustment Payment.

(g) GAAP Accounting. The Company shall maintain a system of accounting established and administered in accordance with sound business practices to permit preparation of financial statements in conformity with GAAP.

(h) Periodic Reports. In the event that the Company is not subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, the Company shall deliver to Purchaser the following financial statements:

(i) Within forty-five (45) days after the end of each Fiscal Quarter, copies of the unaudited consolidated financial statements of the Company and its Subsidiaries for such Fiscal Quarter; and

(ii) Within ninety (90) days after the end of each Fiscal Year, copies of the audited consolidated financial statements of the Company and its Subsidiaries for such Fiscal Year.

**Section 5.03 Material Contracts.**

The Company shall comply with all material terms and conditions of and fulfill all of its obligations under all the Material Contracts. The Company shall not amend, modify or supplement any Material Contract in a manner which would adversely affect Purchaser or issue any waivers, consents, or other approvals under any Material Contract in a manner which would adversely affect Purchaser without the prior written consent of Purchaser. Upon the occurrence of a material breach of any Material Contract by any Third Party thereto, which is not cured pursuant to the express terms as provided therein (disregarding any rights of waiver or extensions of time or other rights or consents that are excisable at the discretion of the Company), the Company shall, in its discretion but in accordance with its sound business judgment, use its commercially reasonable efforts to enforce its rights and remedies thereunder.

**Section 5.04 Confidentiality; Public Announcement.**

(a) All Confidential Information furnished by Purchaser to the Company or by the Company to Purchaser in connection with this Agreement and the transactions contemplated hereby, as well as the terms, conditions and provisions of this Agreement, shall be kept confidential by the Company and Purchaser. Notwithstanding the foregoing, the Company and Purchaser may disclose such Confidential Information to their partners, directors, employees, managers, officers, investors, bankers, advisors, trustees and representatives, provided that such Persons shall be informed of the confidential nature of such information and shall be obligated to

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keep such information confidential pursuant to the terms of this Section 5.04(a). The Company will consult with Purchaser, and Purchaser will consult with the Company, on the form, content and timing of any such disclosures of Confidential Information, including, without limitation, any disclosures made pursuant to applicable securities laws or made to investment or other analysts.

(b) Except as required by law or the rules and regulations of any securities exchange or trading system or the FDA or any Governmental Authority with similar regulatory authority, or except with the prior written consent of the other party (which consent shall not be unreasonably withheld), no party shall issue any press release or make any other public disclosure with respect to the transactions contemplated by this Agreement; provided, however, that the Company and Purchaser may jointly prepare a press release for dissemination promptly following the Closing Date.

**Section 5.05 Efforts; Further Assurance.**

(a) Subject to the terms and conditions of this Agreement, each of Purchaser and the Company will use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary under applicable laws and regulations to consummate the transactions contemplated by this Agreement. Purchaser and the Company agree to execute and deliver such other documents, certificates, agreements and other writings (including any financing statement filings requested by Purchaser) and to take such other actions as may be reasonably necessary in order to consummate or implement expeditiously the transactions contemplated by this Agreement and to vest in Purchaser good, valid and marketable rights and interests in and to the Assigned Interests free and clear of all Liens, except those Liens held by Senior Creditors under the Senior Loan Documents (subject to the Permitted Subordination Obligation Payments).

(b) Purchaser and the Company shall execute and deliver such additional documents, certificates and instruments, and perform such additional acts, as may be reasonably requested and necessary or appropriate to carry out and effectuate all of the provisions of this Agreement and to consummate all of the transactions contemplated by this Agreement.

(c) Purchaser and the Company shall cooperate and provide assistance as reasonably requested by the other party in connection with any Third Party litigation, arbitration or other Third Party proceeding (whether threatened, existing, initiated, or contemplated prior to, on or after the date hereof) to which any party hereto or any of its officers, directors, shareholders, agents or employees is or may become a party or is or may become otherwise directly or indirectly affected or as to which any such Persons have a direct or indirect interests, in each case relating to this Agreement, the Assigned Interests, or the transactions described herein.

**Section 5.06 Change of Control/Financing Event; Put Option.**

(a) Change of Control/Financing Event. In the event that a Change of Control or a Financing Event shall occur during the Revenue Interest Period, the Company shall repurchase the Assigned Interests from Purchaser for a repurchase price equal to the Early Repurchase Price on the date of the Change of Control or Financing Event, respectively. Such payment shall be made by wire transfer of immediately available funds to the account designated by Purchaser.



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(b) Put Option. In the event that a Put Option Event shall occur during the Term, Purchaser shall have the right, but not the obligation (the "Put Option") to require the Company to repurchase from Purchaser the Assigned Interests at the Early Repurchase Price. In the event Purchaser elects to exercise its Put Option, Purchaser shall deliver written notice to the Company specifying the closing date (the "Put Option Closing Date"), which notice must be given within sixty (60) Business Days of Purchaser's receipt of written notice from the Company of a Put Option Event. Failure to provide notice by such times will be deemed an irrevocable waiver of the right to exercise the Put Option. On the Put Option Closing Date, the Company shall repurchase from Purchaser the Assigned Interests at the Early Repurchase Price in cash, the payment of which shall be made by wire transfer of immediately available funds to the account designated by Purchaser. Notwithstanding anything to the contrary contained herein, immediately upon the occurrence of a Bankruptcy Event, Purchaser shall be deemed to have automatically and simultaneously elected to have the Company repurchase from Purchaser the Assigned Interests for the Early Repurchase Price in cash and the Early Repurchase Price shall be immediately due and payable without any further action or notice by any party.

**Section 5.07 Intellectual Property.**

(a) The Company shall, at its sole expense, either directly or by causing any Licensee to do so, take any and all actions (including taking legal action to specifically enforce the applicable terms of any License Agreement), and prepare, execute, deliver and file any and all agreements, documents or instruments which are necessary to diligently maintain the Material Patents. The Company shall ensure that all patent applications corresponding to the Material Patents are diligently prosecuted with the intent to protect the Product. In the exercise of its reasonable business discretion, the Company shall diligently defend or assert such Intellectual Property and such Patents against infringement or interference by any other Persons, and against any claims of invalidity or unenforceability, in any jurisdiction (including, without limitation, by bringing any legal action for infringement or defending any counterclaim of invalidity or action of a Third Party for declaratory judgment of non-infringement or non-interference). The Company shall not, and shall use its commercially reasonable efforts to cause any Licensee not to, disclaim or abandon, or fail to take any action necessary or desirable to prevent the disclaimer or abandonment of, the Material Patents.

(b) In the event that the Company becomes aware that any intellectual property licensed by it to a Licensee under any License Agreement infringes or violates any Third Party intellectual property, the Company shall, in the exercise of its reasonable business discretion, use commercially reasonable efforts to attempt to secure the right to use such intellectual property on behalf of itself and the affected Licensee and shall pay all costs and amounts associated with obtaining any such license, without any reduction in the Assigned Interests.

(c) The Company shall directly, or through a Licensee, take any and all actions and prepare, execute, deliver and file any and all agreements, documents or instruments that are necessary or commercially reasonable or desirable to secure and maintain, all Regulatory Approvals in the United States.

(d) The Company shall notify PDL regarding any material developments with the Intellectual Property, including new filings, allowance and issuance, abandonment, or the initiation of any interference, reexamination, reissue, post-grant review proceeding and litigation, and shall provide PDL with an updated patent schedule upon request, but at least once per year.

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**Section 5.08 Negative Covenants.**

The Company shall not, without the prior written consent of Purchaser:

- (a) Forgive, release or compromise any amount owed to the Company or its Subsidiary and relating to the Assigned Interests;
- (b) Waive, amend, cancel or terminate, exercise or fail to exercise, any of its material rights constituting or relating to the Revenue Interests (including any rights under any License Agreement);
- (c) Amend, modify, restate, cancel, supplement, terminate or waive any material provision of any Material Contract, or grant any consent thereunder, or agree to do any of the foregoing, including, without limitation, entering into any agreement with any Person under the provisions of such Material Contract;
- (d) Enter into any agreement that would be reasonably expected to have a Material Adverse Effect;
- (e) Create, incur, assume or suffer any interference with the direction of payments set for in Section 5.08; or
- (f) Create, incur, assume or suffer to exist any Lien, except those Liens held by Senior Creditors under the Senior Loan Documents, or exercise any right of rescission, offset, counterclaim or defense, upon or with respect to the Assigned Interests or the Revenue Interests, or agree to do or suffer to exist any of the foregoing, except for any Lien or agreements in favor of Purchaser granted under or pursuant to this Agreement.

**Section 5.09 Insurance.**

The Company shall maintain the current insurance policies with its current insurance companies or with companies having at the least the same rating from A.M. Best Company, Inc., including product liability insurance and directors and officers insurance and insurance against litigation, liability, subject only to such exclusions and deductible items as are usual and customary in insurance policies of such type. From time to time (with reasonable frequency) the Company will revise its insurance policy so as to maintain coverage in amounts customary for companies of comparable size and condition similarly situated in the same industry as the Company.

**Section 5.10 Notice.**

The Company shall provide Purchaser with written notice as promptly as practicable (and in any event within two (2) Business Days) after becoming aware of any of the following:

- (a) any material breach or default by the Company of any covenant, agreement or other provision of this Agreement;

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(b) any representation or warranty made or deemed made by the Company in this Agreement or in any certificate delivered to Purchaser pursuant hereto shall prove to be untrue, inaccurate or incomplete in any material respect on the date as of which made or deemed made;

(c) the occurrence of a Change of Control; or

(d) the occurrence of a Put Option Event.

**Section 5.11 Use of Proceeds.**

The Company shall use proceeds received from Purchaser in support of the business plan for the Product, including sales operation and expansion and additional clinical studies. The Company shall take commercially reasonable measures to support the sales of the Product.

**Section 5.12 Taxes.**

The Company shall timely file (taking into account all extensions of due dates) all Tax Returns required by it and will pay all Taxes required to be paid with such returns.

**ARTICLE VI  
TERMINATION**

**Section 6.01 Termination Date.**

This Agreement shall terminate upon the earlier of expiration or termination of the Revenue Interest Period, in each case after full satisfaction of any amounts due under this Agreement by Company to the Purchaser (the "Term").

**Section 6.02 Effect of Termination.**

In the event of the termination of this Agreement pursuant to Section 6.01, this Agreement shall forthwith become void and have no effect without any liability on the part of any party hereto or its Affiliates, directors, officers, stockholders, partners, managers or members other than the provisions of this Section 6.02 and Sections 5.04, 7.01, 7.04 and 7.05 hereof, which shall survive any termination as set forth in Section 6.01. Nothing contained in this Section 6.02 shall relieve any party from liability for any breach of this Agreement.<sup>1</sup>

<sup>1</sup> Subject to update upon finalization of the Agreement.

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**ARTICLE VII  
MISCELLANEOUS**

**Section 7.01 Survival.**

(a) All representations and warranties made herein and in any other Transaction Document, any certificates or in any other writing delivered pursuant hereto or thereto shall survive the execution and delivery of this Agreement and shall continue to survive until the termination of this Agreement in accordance with Article VI. Notwithstanding anything in this Agreement or implied by law to the contrary, all the agreements contained in Sections 5.04, 7.01, 7.02, 7.03, 7.04, 7.05, 7.15 and 7.16 shall survive indefinitely following the execution and delivery of this Agreement and the Closing and the termination of this Agreement.<sup>2</sup>

(b) Any investigation or other examination that may have been made or may be made at any time by or on behalf of the party to whom representations and warranties are made shall not limit, diminish or in any way affect the representations and warranties in the Transaction Documents, and the parties may rely on the representations and warranties in the Transaction Documents irrespective of any information obtained by them by any investigation, examination or otherwise.

**Section 7.02 Specific Performance; Limitations on Damages.**

(a) Each of the parties hereto acknowledges that the other party will have no adequate remedy at law if it fails to perform any of its obligations under any of the Transaction Documents. In such event, each of the parties agrees that the other party shall have the right, in addition to any other rights it may have (whether at law or in equity), to specific performance of this Agreement.

(b) Notwithstanding anything to the contrary in this Agreement, in no event shall either party be liable for special, indirect, incidental, punitive or consequential damages of the other party, whether or not caused by or resulting from the actions of such party or the breach of its covenants, agreements, representations or warranties hereunder, even if such party has been advised of the possibility of such damages.

**Section 7.03 Notices.**

All notices, consents, waivers and communications hereunder given by any party to the other shall be in writing (including facsimile transmission) and delivered personally, by telegraph, teletype, telex or facsimile, by a recognized overnight courier, or by dispatching the same by certified or registered mail, return receipt requested, with postage prepaid, in each case addressed:

If to Purchaser to:

PDL BioPharma, Inc.  
932 Southwood Blvd.  
Attention: General Counsel  
Facsimile No.: (775) 832-8501

<sup>2</sup> Subject to update upon finalization of the Agreement.

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with a copy to:

Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-3197  
Attention: Dhiya El-Saden  
Facsimile No.: (213) 229-7520

If to the Company to:

AxoGen, Inc.  
AxoGen Corporation  
13859 Progress Blvd.  
Alachua, FL 32615  
Attention: Karen Zaderej  
Fax: (386) 462-6803

with a copy to:

Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, Pennsylvania 19103  
Attention: Fahd M.T. Riaz  
Fax: (215) 963-5001

or to such other address or addresses as Purchaser or the Company may from time to time designate by notice as provided herein, except that notices of changes of address shall be effective only upon receipt. All such notices, consents, waivers and communications shall: (a) when posted by certified or registered mail, postage prepaid, return receipt requested, be effective three (3) Business Days after dispatch, unless such communication is sent trans-Atlantic, in which case they shall be deemed effective five (5) Business Days after dispatch, (b) when telegraphed, telecopied, telexed or facsimiled, be effective upon receipt by the transmitting party of confirmation of complete transmission, or (c) when delivered by a recognized overnight courier or in person, be effective upon receipt when hand delivered.

**Section 7.04 Successors and Assigns.**

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign any of its obligations and rights under the Transaction Documents (other than to the Senior Creditors) without the prior written consent of Purchaser. Upon the consent of the Company (which consent may not be unreasonably withheld) and subject to any requirement that an assignee execute subordination documentation reasonably requested by the Senior Creditors, Purchaser may assign any of its obligations or rights under the Transaction Documents without restriction; provided, however that Purchaser, notwithstanding such assignment, will remain liable under Section 7.05.

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**Section 7.05 Indemnification.**

(a) The Company hereby indemnifies and holds Purchaser and its Affiliates and any of their respective partners, directors, managers, members, officers, employees and agents (each, a "Purchaser Indemnified Party") harmless from and against any and all Losses (including all Losses in connection with any product liability claims or claims of infringement or misappropriation of any Intellectual Property rights of any Third Parties) incurred or suffered by any Purchaser Indemnified Party arising out of any breach of any representation, warranty or certification made by the Company in any of the Transaction Documents or certificates given by the Company in writing pursuant hereto or thereto or any breach of or default under any covenant or agreement by the Company pursuant to any Transaction Document, including any failure by the Company to satisfy any of the Excluded Liabilities and Obligations.

(b) Purchaser hereby indemnifies and holds the Company, its Affiliates and any of their respective partners, directors, managers, officers, employees and agents (each, a "Company Indemnified Party") harmless from and against any and all Losses incurred or suffered by a Company Indemnified Party arising out of any breach of any representation, warranty or certification made by Purchaser in any of the Transaction Documents or certificates given by Purchaser in writing pursuant hereto or thereto or any breach of or default under any covenant or agreement by Purchaser pursuant to any Transaction Document.

(c) If any claim, demand, action or proceeding (including any investigation by any Governmental Authority) shall be brought or alleged against an indemnified party in respect of which indemnity is to be sought against an indemnifying party pursuant to the preceding paragraphs, the indemnified party shall, promptly after receipt of notice of the commencement of any such claim, demand, action or proceeding, notify the indemnifying party in writing of the commencement of such claim, demand, action or proceeding, enclosing a copy of all papers served, if any; provided, that the omission to so notify such indemnifying party will not relieve the indemnifying party from any liability that it may have to any indemnified party under the foregoing provisions of this Section 7.05 unless, and only to the extent that, such omission results in the forfeiture of, or has a material adverse effect on the exercise or prosecution of, substantive rights or defenses by the indemnifying party. In case any such action is brought against an indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section 7.05 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. In any such proceeding, an indemnified party shall have the right to retain its own counsel, but the reasonable fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel, (ii) the indemnifying party has assumed the defense of such proceeding and has failed within a reasonable time to retain counsel reasonably satisfactory to such indemnified party or (iii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same

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counsel would be inappropriate due to actual or potential conflicts of interests between them based on the advice of such counsel. It is agreed that the indemnifying party shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees and expenses of more than one separate law firm (in addition to local counsel where necessary) for all such indemnified parties. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(d) To the extent that any breach by the Company of this Agreement does not trigger a Put Option Event, Purchaser's sole remedy shall be to recover any monetary damages associated with such breach, subject to the other terms and provisions contained in this Agreement.

**Section 7.06 No Implied Representations and Warranties.**

Each party acknowledges and agrees that, other than the representations and warranties specifically contained in any of the Transaction Documents or certificates given in writing by a party hereto or thereto, there are no representations or warranties of either party or any other Person either expressed or implied with respect to the Assigned Interests or the transactions contemplated hereby. Without limiting the foregoing, Purchaser acknowledges and agrees that (i) Purchaser and its Affiliates, together with its and its Affiliates' representatives, have made their own investigation of the Product and the Intellectual Property and are not relying on any implied warranties or upon any representation or warranty whatsoever as to the future amount or potential amount of the Assigned Interests or as to the creditworthiness of Company and (ii) except as expressly set forth in any representation or warranty in a Transaction Document, Purchaser shall have no claim or right to indemnification pursuant to Section 7.05 (or otherwise) with respect to any information, documents or materials furnished to Purchaser, any of its Affiliates, or any of its or its Affiliates' representatives, including any information, documents or material made available to Purchaser and its Affiliates and its Affiliates' representatives in any data room, presentation, interview or any other form relating to the transactions contemplated hereby.

**Section 7.07 Independent Nature of Relationship.**

(a) The relationship between the Company and its Subsidiary, on the one hand, and Purchaser, on the other, is solely that of seller and purchaser, and neither Purchaser, on the one hand, nor the Company and its Subsidiary, on the other, has any fiduciary or other special relationship with the other or any of their respective Affiliates. Nothing contained herein or in any other Transaction Document shall be deemed to constitute the Company and its Subsidiary and Purchaser as a partnership, an association, a joint venture or other kind of entity or legal form.

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(b) No officer or employee of Purchaser will be located at the premises of the Company or any of its Affiliates, except in connection with an audit performed pursuant to Section 5.02. No officer, manager or employee of Purchaser shall engage in any commercial activity with the Company or any of its Affiliates other than as contemplated herein and in the other Transaction Documents.

(c) The Company and/or any of its Affiliates shall not at any time obligate Purchaser, or impose on Purchaser any obligation, in any manner or respect to any Person not a party hereto.

**Section 7.08 Entire Agreement.**

This Agreement, together with the Exhibits and Schedules hereto (which are incorporated herein by reference), and the other Transaction Documents constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements (including the Term Sheet), understandings and negotiations, both written and oral, between the parties with respect to the subject matter of this Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth herein (or in the Exhibits, Schedules or other Transaction Documents) has been made or relied upon by either party hereto. None of this Agreement, nor any provision hereof, is intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

**Section 7.09 Amendments; No Waivers.**

(a) This Agreement or any term or provision hereof may not be amended, changed or modified except with the written consent of the parties hereto. No waiver of any right hereunder shall be effective unless such waiver is signed in writing by the party against whom such waiver is sought to be enforced.

(b) No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

**Section 7.10 Interpretation.**

When a reference is made in this Agreement to Articles, Sections, Schedules or Exhibits, such reference shall be to an Article, Section, Schedule or Exhibit to this Agreement unless otherwise indicated. The words "include", "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation". Neither party hereto shall be or be deemed to be the drafter of this Agreement for the purposes of construing this Agreement against one party or the other.

**Section 7.11 Headings and Captions.**

The headings and captions in this Agreement are for convenience and reference purposes only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.



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**Section 7.12 Counterparts; Effectiveness.**

This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other parties hereto. Any counterpart may be executed by facsimile or pdf signature and such facsimile or pdf signature shall be deemed an original.

**Section 7.13 Severability.**

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall nevertheless be given full force and effect.

**Section 7.14 Expenses.**

The Company will pay all of its own fees and expenses in connection with entering into and consummating the transactions contemplated by this Agreement. The Company shall, promptly (and, in any event, within five (5) Business Days) upon demand, reimburse Purchaser up to \$50,000 for its reasonable legal fees and expenses incurred in connection with the transactions contemplated by the Transaction Documents.

**Section 7.15 Governing Law; Jurisdiction.**

(a) This Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the laws of the state of New York, without giving effect to the principles of conflicts of law thereof.

(b) Any legal action or proceeding with respect to this Agreement or any other Transaction Document may be brought in any state or federal court of competent jurisdiction sitting in the State of Nevada, Washoe County and city of Reno. By execution and delivery of this Agreement, each party hereto hereby irrevocably consents to and accepts, for itself and in respect of its property, generally and unconditionally the non-exclusive jurisdiction of such courts. Each party hereto hereby further irrevocably waives any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of any Transaction Document.

(c) Each party hereto hereby irrevocably consents to the service of process out of any of the courts referred to in subsection (b) of this Section 7.16 in any such suit, action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at its address set forth in this Agreement. Each party hereto hereby irrevocably waives any objection to such service of process and further irrevocably waives and agrees not to plead or claim in any suit, action or proceeding commenced hereunder or any other Transaction Document that service of process was in any way invalid or ineffective. Nothing herein shall affect the right of a party to serve process on the other party in any other manner permitted by law.

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**Section 7.16 Waiver of Jury Trial.**

Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any action, proceeding, claim or counterclaim arising out of or relating to any Transaction Document or the transactions contemplated under any Transaction Document. This waiver shall apply to any subsequent amendments, renewals, supplements or modifications to any Transaction Document.

[SIGNATURE PAGE FOLLOWS]

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

COMPANY:

**AXOGEN, INC.**

By: \_\_\_\_\_  
Name: Karen Zaderej  
Title: Chief Executive Officer

PURCHASER:

**PDL BIOPHARMA, INC.**

By: \_\_\_\_\_  
Name: John P. McLaughlin  
Title: President and Chief Executive Officer

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**Exhibit A**

Bill of Sale

*See attached.*

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**Exhibit B**

First Amendment to Loan and Security Agreement

*See attached.*

**Schedule 1**

	8/12	9/12	10/12	11/12	12/12							
Balance -												
2012	<u>\$1,750,000</u>	<u>\$1,750,000</u>	<u>\$1,750,000</u>	<u>\$1,750,000</u>	<u>\$1,750,000</u>							
	1/13	2/13	3/13	4/13	5/13	6/13	7/13	8/13	9/13	10/13	11/13	12/13
Balance -												
2013	<u>\$1,681,493</u>	<u>\$1,611,272</u>	<u>\$1,539,297</u>	<u>\$1,465,522</u>	<u>\$1,389,902</u>	<u>\$1,312,392</u>	<u>\$1,232,945</u>	<u>\$1,151,511</u>	\$1,068,041	\$982,485	\$894,789	\$804,901
	1/14	2/14	3/14	4/14	5/14	6/14	7/14	8/14				
Balance -												
2014	\$ 712,767	\$ 618,328	\$ 521,529	\$ 422,310	\$ 320,610	\$ 216,368	\$ 109,519	\$ —				

**SUBORDINATION AND INTERCREDITOR AGREEMENT**

**THIS SUBORDINATION AND INTERCREDITOR AGREEMENT** (this “**Agreement**”) is entered into as of this 14th day of August, 2012, by and among PDL BioPharma, Inc. a Delaware corporation (“**Subordinated Oblige**”), **AXOGEN, INC.** (f/k/a LecTec Corporation), a Minnesota corporation, and **AXOGEN CORPORATION**, a Delaware corporation (individually and collectively as the context may require, “**Borrower**”), and **MIDCAP FINANCIAL SBIC, LP**, a Delaware limited partnership, as administrative agent for the financial institutions or other entities from time to time parties to the Senior Loan Agreement (as hereinafter defined) (acting in such capacity, “**Agent**”), and as a Lender, or such then present holder or holders of the Senior Loan (as hereinafter defined) as may from time to time exist (the “**Lenders**,” and collectively with the Agent, the “**Senior Lenders**”).

**RECITALS**

**A.** Borrower and Senior Lenders have entered into a Loan and Security Agreement dated as of September 30, 2011 (as the same has been and may further be amended, restated, supplemented or otherwise modified from time to time, the “**Senior Loan Agreement**”) pursuant to which, among other things, Senior Lenders have agreed, subject to the terms and conditions set forth in the Senior Loan Agreement, to make certain loans and financial accommodations to Borrower and the other Loan Parties. All of Borrower’s obligations to Senior Lenders under the Senior Loan Agreement and the other Senior Loan Documents (as hereinafter defined) are secured by liens on and security interests in substantially all of the now existing and hereafter acquired personal property of Borrower (all collateral, real and personal, now or hereafter encumbered by the lien of any Senior Loan Document is herein referred to collectively as the “**Collateral**”). Borrower and any other Loan Party (as defined in the Senior Loan Agreement) may each be referred to herein as a “**Loan Party**” and collectively as “**Loan Parties**”. All other capitalized terms used but not defined herein shall have the meanings set forth in the Senior Loan Agreement.

**B.** Subordinated Oblige is non-affiliated with Borrower, and Borrower and Subordinated Oblige have entered into that certain Interim Revenue Interests Purchase Agreement, dated as of August 14, 2012 (the “**IRA**”), pursuant to which Borrower has agreed to sell, and Subordinated Oblige has agreed to purchase a certain percentage of revenues referred to as Assigned Interests (as defined in the IRA on the date hereof; and as used herein, the “**Assigned Interests**”) as set forth therein, and Borrower is obligated to pay to the Subordinated Oblige the Assigned Interests pursuant to the terms and conditions thereof.

**C.** As an inducement to and as one of the conditions precedent to the agreement of Agent and Senior Lenders to consent to the consummation of the transactions contemplated by the Subordinated IRA Documents (as hereinafter defined), Agent and Senior Lenders have required the execution and delivery of this Agreement by Subordinated Oblige and Borrower in order to set forth the relative rights and priorities of Senior Lenders and Subordinated Oblige under the Senior Loan Documents and the Subordinated IRA Documents (as hereinafter defined).

**AGREEMENT**

**NOW, THEREFORE**, in order to induce Senior Lenders to consent to the consummation of the transactions contemplated by the Subordinated IRA Documents, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto hereby covenant and agree as follows:

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**1. Definitions.** In addition to the terms defined elsewhere in this Agreement or in the recitals hereto, the following terms shall have the following meanings in this Agreement:

**“Bankruptcy Code”** shall mean Chapter 11 of Title 11 of the United States Code, as amended from time to time, and any successor statute and all rules and regulations promulgated thereunder.

**“Distribution”** means, with respect to any indebtedness or obligation, (a) any payment or distribution by any Person of cash, securities or other property, by set-off or otherwise, on account of such indebtedness or obligation, including, without limitation, at maturity of such indebtedness or obligation, (b) any redemption, purchase or other acquisition of such indebtedness or obligation by any Person, or (c) the granting of any lien or security interest to or for the benefit of the holders of such indebtedness or obligation in or upon any property of any Person. Without limiting the foregoing and for the avoidance of doubt **“Distribution”** shall include any and all payments under the Subordinated IRA Documents.

**“Enforcement Action”** shall mean (a) to take from or for the account of any Loan Party or any guarantor of the Subordinated Obligations, by set-off or in any other manner, the whole or any part of any moneys which may now or hereafter be owing by any Loan Party or any such guarantor with respect to the Subordinated Obligations (provided, that, in no event shall the acceptance of any Permitted Subordinated Obligation Payments made in accordance with and expressly permitted by this Agreement in and of itself constitute an Enforcement Action); (b) to sue for payment of, or to initiate or participate with others in any suit, action or proceeding against any Loan Party or any such guarantor to (i) enforce payment of or to collect the whole or any part of the Subordinated Obligations (which shall include, for the avoidance of doubt, any demand or collection of payment at maturity), or (ii) commence judicial enforcement of any of the rights and remedies under the Subordinated IRA Documents or applicable law with respect to the Subordinated Obligations; (c) to accelerate the Subordinated Obligations; (d) to exercise any put option or to cause any Loan Party or any such guarantor to honor any redemption, repurchase or mandatory prepayment obligation under any Subordinated IRA Document; (e) to notify account debtors or directly collect accounts receivable or other payment rights (including the payment of the Assigned Interests) of any Loan Party or any such guarantor; or (f) take any action under the provisions of any state or federal law, including, without limitation, the Uniform Commercial Code, or under any contract or agreement, to enforce, foreclose upon, take possession of or sell any property or assets of any Loan Party or any such guarantor including the Collateral.

**“Paid in Full”** or **“Payment in Full”** shall mean, with respect to the Senior Loans, the full and indefeasible payment in cash and satisfaction in full of all of the obligations under the Senior Loan Documents (other than inchoate indemnity obligations for which a claim has not yet been made in writing and any other obligations which, by their terms, are to survive the termination of the Senior Loan Documents), and the termination of all obligations of Agent and Senior Lenders under the Senior Loan Documents (including, without limitation, any commitment to lend), and the termination of the Senior Loan Documents.

**“Permitted Subordinated Obligation Payments”** means (a) regularly scheduled payments of the Assigned Interests due and payable on a non-accelerated basis and without giving effect to any default interest or penalties (including Delinquent Assigned Interests Payments (as defined in the IRA)) in accordance with the terms of Subordinated IRA Documents as in effect as of the date hereof and (b) payments of Subordinated IRA Costs and Expenses.



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**“Person”** means any natural person, corporation, general or limited partnership, limited liability company, firm, trust, association, government, governmental agency or other entity, whether acting in an individual, fiduciary or other capacity.

**“Proceeding”** shall mean any voluntary or involuntary insolvency, bankruptcy, receivership, custodianship, liquidation, dissolution, reorganization, assignment for the benefit of creditors, appointment of a custodian, receiver, trustee or other officer with similar powers or any other proceeding for the liquidation, dissolution or other winding up of a Person.

**“Senior Covenant Default”** shall mean any “Event of Default” under the Senior Loans Documents (other than a Senior Payment Default), or any condition or event that, after notice or lapse of time or both, would constitute such an Event of Default (other than a Senior Payment Default) if that condition or event were not cured or removed within any applicable grace or cure period set forth therein.

**“Senior Default”** shall mean any Senior Covenant Default or any Senior Payment Default.

**“Senior Default Notice”** shall mean a written notice from Agent to Subordinated Obligee pursuant to which Subordinated Obligee is notified of the occurrence of a Senior Default, which notice incorporates a reasonably detailed description of such Senior Default.

**“Senior Loan(s)”** shall mean all obligations, liabilities and indebtedness of every nature of any Loan Party from time to time owed to Senior Lenders under the Senior Loan Documents or otherwise, whether now existing or hereafter created, including, without limitation, the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable, whether before or after the filing of a Proceeding under the Bankruptcy Code, together with (a) any amendments, modifications, renewals or extensions thereof, and (b) any interest accruing thereon after the commencement of a Proceeding, without regard to whether or not such interest is an allowed claim; provided, however, that in no event shall the aggregate principal amount of the Senior Loans exceed \$6,000,000 (exclusive of any protective advances or costs and expenses that are capitalized to the principal balance of the Senior Loans) minus the amount of any principal repayments under the Senior Loan Documents.

**“Senior Loan Documents”** shall mean the promissory note or other instruments evidencing the Senior Loan or the obligation to pay the Senior Loan, any guaranty with respect to the Senior Loan, any security agreement or other collateral document securing the Senior Loan (including, without limitation, the Senior Loan Agreement) and all other documents, agreements and instruments now existing or hereafter entered into evidencing or pertaining to all or any portion of the Senior Loan.

**“Senior Payment Default”** shall mean any “Event of Default” under the Senior Loans Documents resulting from the failure of the Company to pay, on a timely basis, any principal, interest, fees or other obligations under the Senior Loan Documents including, without limitation, any default in payment of the Senior Loans after acceleration thereof, or any condition or event that, after notice or lapse of time or both, would constitute such an Event of Default if that condition or event were not cured or removed within any applicable grace or cure period set forth therein.

**“Subordinated IRA Costs and Expenses”** shall mean reasonable out-of-pocket costs and expenses payable by the Borrower to Subordinated Obligee pursuant to the terms of the Subordinated IRA Documents as in effect on the date of this Agreement in an aggregate amount not to exceed \$50,000.

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**“Subordinated IRA Documents”** shall mean any agreement, promissory note or other instrument evidencing the Subordinated Obligation or the obligation to pay the Subordinated Obligation, any guaranty with respect to the Subordinated Obligation and all other documents, agreements and instruments now existing or hereafter entered into evidencing or pertaining to all or any portion of the Subordinated Obligations, including, without limitation, the IRA.

**“Subordinated Obligation(s)”** shall mean the obligation to pay the Assigned Interests and any and all other obligations, liabilities and indebtedness of every nature of any Loan Party from time to time owed to Subordinated Obligees, whether now existing or hereafter created, including, without limitation, the principal amount of all debts, claims (including, without limitation, indemnification rights arising in Subordinated Obligees’ capacity as a shareholder, officer, director, member and/or partner of any Loan Party and any right of Subordinated Obligees to a return of any capital contributed to any Loan Party) and indebtedness, payment obligations, accrued and unpaid interest and all fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable, whether before or after the filing of a Proceeding under the Bankruptcy Code together with any amendments, modifications, renewals or extensions thereof.

**“Subordinated Payment Default”** shall mean a default in the payment of the Assigned Interests under the Subordinated IRA Documents.

**“Subordinated Payment Default Notice”** shall mean a written notice from Subordinated Obligees to Agent pursuant to which Agent is notified of the occurrence of a Subordinated Payment Default, which notice incorporates a reasonably detailed description of such Subordinated Payment Default.

## **2. Subordination.**

**2.1. Subordination of Subordinated Obligations to Senior Loans.** Each Loan Party covenants and agrees, and Subordinated Obligees likewise covenants and agrees, notwithstanding anything to the contrary contained in any of the Subordinated IRA Documents, that the payment of any and all of the Subordinated Obligations shall be subordinate and subject in right and time of payment, to the extent and in the manner hereinafter set forth, to the Payment in Full of all Senior Loans. Each holder of the Senior Loans, whether now outstanding or hereafter created, incurred, assumed or guaranteed, shall be deemed to have acquired the Senior Loans in reliance upon the provisions contained in this Agreement. Except as otherwise permitted under subsection 2.2 below, until the Senior Loans have been Paid in Full, Borrower shall not make and Subordinated Obligees shall not accept any Distribution, whether in cash, securities or other property, on account of any Subordinated Obligation.

### **2.2. Permitted Subordinated Obligation Payments Restrictions.**

(a) Notwithstanding the provisions of subsection 2.1 hereinabove and subject to subsection 2.9, the Borrower shall be permitted to make, and the Subordinated Obligees shall be permitted to accept, Permitted Subordinated Obligation Payments; provided, that no such Permitted Subordinated Obligation Payment shall be made if, at the time of such payment:

- (i) a Senior Payment Default exists and such Senior Payment Default shall not have been cured or waived; or

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(ii) (A) the Borrower and Subordinated Oblige shall have received a Senior Default Notice from Agent stating that a Senior Covenant Default exists or would be created by the making of such payment under the Senior Loan Documents, (B) each such Senior Covenant Default shall not have been cured or waived and (C) 180 days shall not have elapsed since the date such Senior Default Notice was received by either the Borrower or the Subordinated Oblige, which 180 day period shall be tolled (x) in the event the Senior Lenders have commenced an Enforcement Action for so loan as the Senior Lenders are actively pursuing such Enforcement Action in good faith and (y) in the event of the occurrence of a Proceeding.

(b) The Company may resume Permitted Subordinated Obligation Payments (and may make any Permitted Subordinated Obligation Payments missed due to the application of paragraph (a) of this subsection 2.2) in respect of the Subordinated Obligations or any judgment with respect thereto:

(i) in the case of a Senior Payment Default referred to in clause (i) of paragraph (a) this subsection 2.2, upon a cure or waiver thereof; or

(ii) in the case of a Senior Covenant Default referred to in clause (ii) of paragraph (a) of this subsection 2.2, upon the earliest to occur of (A) the cure or waiver of all such Senior Covenant Defaults, (B) the expiration of such period of 180 days (which 180 day period shall be tolled (x) in the event the Senior Lenders have commenced an Enforcement Action for so loan as the Senior Lenders are actively pursuing such Enforcement Action in good faith and (y) in the event of the occurrence of a Proceeding) or (C) Payment in Full of all Senior Loans.

(c) No Senior Default shall be deemed to have been waived for purposes of this subsection 2.2 unless and until the Borrower shall have received a written waiver from Agent or the "Required Lenders" under the Senior Loan Agreement (or, to the extent such Required Lenders cannot waive such Senior Default in accordance with the Senior Loan Agreement, all "Lenders" under the Senior Loan Agreement).

**2.3. Subordinated Obligation Standstill.** Until the Senior Loans are Paid in Full, Subordinated Oblige shall not, without the prior written consent of Agent, take any Enforcement Action with respect to the Subordinated Obligations; provided, that, Subordinated Oblige may take Enforcement Action upon the passage of 180 days (which 180 day period shall be tolled (a) in the event the Senior Lenders have commenced an Enforcement Action for so loan as the Senior Lenders are actively pursuing such Enforcement Action in good faith and (b) in the event of the occurrence of a Proceeding) from the delivery of a Subordinated Payment Default Notice to Agent if any Subordinated Payment Default described therein shall not have been cured or waived within such period, but in any event no earlier than ten (10) days after Agent's receipt of separate written notice of such Subordinated Creditor's intention to take any such Enforcement Action. Notwithstanding the foregoing, subject to Section 2.9, the Subordinated Creditor may file proofs of claims with respect to the Subordinated Obligations against the Borrower in any Proceeding involving Borrower, and so long as in each case any such action is not adverse to the Senior Lenders in any respect, may vote its claims in respect of the Subordination Obligations and otherwise act in any Proceeding as a holder of the Subordinated Obligations (including the right to accept or reject any plan of reorganization).

**2.4. Incorrect Payments.** If any Distribution on account of the Subordinated Obligation not permitted to be made by Borrower or any Loan Party or accepted by Subordinated Oblige under this Agreement is made and received by Subordinated Oblige, such Distribution shall not be

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commingled with any of the assets of Subordinated Obligor, shall be held in trust by Subordinated Obligor for the benefit of Senior Lenders and shall be promptly paid over to Agent for the benefit of Senior Lenders for application in accordance with the Senior Loan Documents to the payment of the Senior Loans then remaining unpaid, until all of the Senior Loans are Paid in Full.

**2.5. Subordination of Liens and Security Interests; Agreement Not to Contest; Agreement to Release any Liens.**

Subordinated Obligor hereby acknowledges, agrees, represents and warrants that none of the Subordinated Obligations nor any portion thereof is as of the date hereof, or at any time in the future until Payment in Full of the Senior Loans shall be, secured by any lien or security interest in any of the Collateral, the equity interests in any Loan Party or any other asset of a Loan Party, or guaranteed by any Loan Party. Without limiting the foregoing, until the Senior Loans have been Paid in Full, all liens and security interests of Subordinated Obligor in the Collateral, if any, shall be and hereby are subordinated for all purposes and in all respects to the liens and security interests of Senior Lenders in the Collateral, regardless of the time, manner or order of perfection of any such liens and security interests and regardless of any failure, whether intervening or continuing, of Senior Lenders' liens and security interests to be perfected; *provided, however*, that each of the parties hereto acknowledges and agrees that the existence of any lien or security interest of Subordinated Obligor in any of the Collateral prior to the Payment in Full of the Senior Loans would constitute an automatic and immediate Event of Default under the Senior Loan Agreement and a breach of this Agreement. Subordinated Obligor agrees that it will not at any time contest the validity, perfection, priority or enforceability of the Senior Loans, the Senior Loan Documents, or the liens and security interests of Senior Lenders in the Collateral securing the Senior Loans. In the event that any lien or security interest in any of the Collateral arises in favor of Subordinated Obligor, immediately upon Agent's request, Subordinated Obligor shall (or shall cause its agent to) promptly execute and deliver to Agent such termination statements and releases as Agent shall reasonably request to effect the release of the liens and security interests of Subordinated Obligor in any such Collateral. In furtherance of the foregoing, Subordinated Obligor hereby irrevocably appoints Agent its attorney-in-fact, with full authority in the place and stead of Subordinated Obligor and in the name of Subordinated Obligor or otherwise, to execute and deliver any document or instrument which Subordinated Obligor may be required to deliver pursuant to this subsection 2.5.

**2.6. Application of Proceeds from Sale or other Disposition of the Collateral; Agreement to Release Liens.**

(a) In the event of any sale, transfer or other disposition (including a casualty loss or taking through eminent domain) of the Collateral, the proceeds resulting therefrom (including insurance proceeds) shall be applied in accordance with the terms of the Senior Loan Documents or as otherwise consented to by Agent until the Senior Loans are Paid in Full.

(b) Without affecting the rights of Agent or Senior Lenders under this Agreement, Subordinated Obligor agrees and consents that any Collateral securing the Subordinated Obligations, in whole or in part, may be exchanged, sold or surrendered by Agent for other Collateral as it may deem advisable, and that any balance or balances of funds with Agent at any time outstanding to the credit of Borrower may, from time to time, in whole or in part, be surrendered or released by Agent as it may deem advisable, subject, however, to the terms of the Senior Loan Documents. In the event that Agent has determined to enforce its rights against any Collateral, then promptly upon Agent's request, Subordinated Obligor shall promptly execute and deliver to Agent such termination statements and releases as Agent shall reasonably request to effect the release of the liens and security interests of Subordinated Obligor in any such Collateral. In furtherance of the foregoing, Subordinated Obligor hereby irrevocably appoints Agent its attorney-in-fact, with full authority in the place and stead of Subordinated Obligor and in the name of Subordinated Obligor or otherwise, to execute and deliver any document or instrument which Subordinated Obligor may be required to deliver pursuant to this subsection 2.6.

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**2.7. Sale, Transfer or other Disposition of Subordinated Obligation.** Subordinated Obligees shall not sell, assign, pledge, dispose of or otherwise transfer all or any portion of the Subordinated Obligation or any Subordinated IRA Document without the prior written consent of Agent, which consent may be withheld in its sole and absolute discretion.

**2.8. Legends.** Until the termination of this Agreement in accordance with Section 8 hereof, Subordinated Obligees will cause to be clearly, conspicuously and prominently inserted on the face of each Subordinated IRA Document, the following legend:

“This instrument or other agreement and the indebtedness, rights and obligations evidenced hereby and any liens or other security interests securing such rights and obligations are subordinate in the manner and to the extent set forth in that certain Subordination and Intercreditor Agreement (as amended, restated, supplemented or modified from time to time, the “**Subordination Agreement**”), dated as of August 14, 2012 by and among the Subordinated Obligees identified therein and MidCap Financial SBIC, LP, in its capacity as agent for certain lenders (together with its successors and assigns, “**Agent**”), to certain indebtedness, rights and obligations of AxoGen, Inc. and AxoGen Corporation, to Agent and Lenders (as defined therein) and all liens and security interests of Agent securing the same all as described in the Subordination Agreement, and each holder and transferee of this instrument, by its acceptance hereof, irrevocably agrees to be bound by the provisions of the Subordination Agreement.”

**2.9. Liquidation, Dissolution, Bankruptcy.** In the event of any Proceeding involving Borrower:

(a) Any Distribution, whether in cash, securities or other property which would otherwise, but for the terms hereof, be payable or deliverable in respect of the Subordinated Obligation shall be paid or delivered directly to Agent (to be held and/or applied by Senior Lenders in accordance with the terms of the Senior Loan Documents) until the Senior Loans are Paid in Full. Subordinated Obligees irrevocably authorizes, empowers and directs any debtor, debtor in possession, receiver, trustee, liquidator, custodian, conservator or other Person having authority, to pay or otherwise deliver all such Distributions to Agent. Subordinated Obligees also irrevocably authorizes and empowers Agent, in the name of Subordinated Obligees, to demand, sue for, collect and receive any and all such Distributions.

(b) Subordinated Obligees agree that Agent may consent to the use of cash collateral or provide financing to any Loan Party on such terms and conditions and in such amounts as Agent, in its sole discretion, may decide and, in connection therewith, any Loan Party may grant to Agent for the benefit of Senior Lenders liens and security interests upon all of the property of any Loan Party, which liens and security interests (i) shall secure payment of the Senior Loans (whether such Senior Loans arose prior to the commencement of any Proceeding or at any time thereafter) and all other financing provided by Senior Lenders during the Proceeding, and (ii) shall be superior in priority to the liens and security interests, if any, in favor of Subordinated Obligees on the property of any Loan Party. Subordinated Obligees agree that it will not object to or oppose a sale or other disposition of any property securing all of any part of the Senior Loans free and clear of security interests, liens or other claims of Subordinated Obligees under Section 363 of the Bankruptcy Code or any other provision of the Bankruptcy Code if Agent has consented to such sale or disposition. Subordinated Obligees agree not to assert any right it may have to “adequate protection” of Subordinated Obligees’ interest in any Collateral

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in any Proceeding and agrees that it will not seek to have the automatic stay lifted with respect to any Collateral without the prior written consent of Agent. Subordinated Obligor waives any claim it may now or hereafter have arising out of Agent's election, in any Proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code, and/or any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code by Borrower, as debtor in possession. Subordinated Obligor further agrees that it will not seek to participate or participate on any creditor's committee without Agent's prior written consent.

(c) Notwithstanding anything contained herein to the contrary, Subordinated Obligor may file proofs of claim with respect to the Subordinated Obligations against the Borrower in any Proceeding involving the Borrower. Subordinated Obligor agrees to execute, verify, deliver and file any proofs of claim in respect of the Subordinated Obligations requested by Agent in connection with any such Proceeding and hereby irrevocably authorizes, empowers and appoints Agent its agent and attorney-in-fact to (i) execute, verify, deliver and file such proofs of claim upon the failure of Subordinated Obligor promptly to do so prior to thirty (30) days before the expiration of the time to file any such proof of claim, and (ii) vote such claim in any such Proceeding upon the failure of Subordinated Obligor to do so prior to fifteen (15) days before the expiration of the time to vote any such claim; *provided, however*, that Agent shall have no obligation to execute, verify, deliver, file and/or vote any such proof of claim. In the event that Agent votes any claim in accordance with the authority granted hereby, Subordinated Obligor shall not be entitled to change or withdraw such vote. Subordinated Obligor hereby assigns to Agent or its nominee (and will, upon request of Agent, reconfirm in writing the assignment to Agent or its nominee of) all rights of Subordinated Obligor under such claims.

(d) The Senior Loans shall continue to be treated as the Senior Loans and the provisions of this Agreement shall continue to govern the relative rights and priorities of Senior Lenders and Subordinated Obligor even if all or part of the Senior Loans or the security interests securing the Senior Loans are subordinated, set aside, avoided, invalidated or disallowed in connection with any such Proceeding, and this Agreement shall be reinstated if at any time any payment of any of the Senior Loans is rescinded or must otherwise be returned by any holder of the Senior Loans or any representative of such holder.

**2.10 Characterization of Subordinated Obligations; Assigned Interests.** Subordinated Obligor and Borrower each acknowledges and agrees that, notwithstanding anything in the Subordinated IRA Documents to the contrary, (a) the Subordinated Obligations shall constitute indebtedness of the Borrower and the Assigned Interests shall not be deemed assigned or otherwise transferred to the Subordinated Obligor, and shall remain assets of the Borrower and Collateral (as defined in the Senior Loan Agreement) of the Senior Lenders securing payment of the Senior Loans, until such time as such Assigned Interests are paid to Subordinated Obligor as Permitted Subordinated Obligor Payments in accordance with the terms of this Agreement or the Senior Loans are Paid in Full, (b) Agent and Senior Lenders shall be entitled to take all such actions or exercise such remedies with respect to the Assigned Interests as they are permitted to take with respect to any other Collateral (as defined in the Senior Loan Agreement) under the Senior Loan Documents and (d) neither Subordinated Obligor, nor the Borrower shall challenge the nature of the Assigned Interests and Subordinated Obligations as indebtedness of the Borrower in any Proceeding of the Borrower or otherwise.

### **3. Modifications.**

**3.1. Modifications to Senior Loan Documents.** Senior Lenders may at any time and from time to time without the consent of or notice to Subordinated Obligor, without incurring liability to Subordinated Obligor and without impairing or releasing the obligations of Subordinated Obligor under

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this Agreement, change the manner or place of payment or extend the time of payment of or renew or alter any of the terms of the Senior Loans, or amend in any manner any agreement, note, guaranty or other instrument evidencing or securing or otherwise relating to the Senior Loans; provided, that, without the written consent of the Subordinated Creditor, Senior Lenders shall not agree to amend or modify the Senior Loan Documents to (i) increase the principal amount of the Senior Loans (except as permitted by the definition of Senior Loans herein), (ii) extend the final maturity of the Senior Loans (as set forth in the Senior Loan Agreement in effect on the date hereof) by more than one year past such maturity date or (iii) add any express prohibitions on the payment of the Subordinated Obligations that are more restrictive than those set forth in this Agreement.

**3.2. Modifications to Subordinated IRA Documents.** Until the Senior Loans have been Paid in Full, and notwithstanding anything to the contrary contained in the Subordinated IRA Documents, Subordinated Obligor shall not, without the prior written consent of Agent, agree to any amendment, modification or supplement to the Subordinated IRA Documents. Nothing herein, including the provisions of this Agreement pertaining to subordination of liens on the Collateral, shall be construed to imply Agent's or Senior Lenders' consent to any Subordinated IRA Document which grants a lien upon any of the Collateral or the making of any other loans or other advances by the Subordinated Obligor (other than the Subordinated Obligations made pursuant to the IRA as of the date of this Agreement).

**4. Waiver of Certain Rights by Subordinated Obligor.**

**4.1. Marshaling.** Subordinated Obligor hereby waives any rights it may have under applicable law to assert the doctrine of marshaling or to otherwise require Agent or Senior Lenders to marshal any property of any Loan Party or any guarantor of the Senior Loans for the benefit of Subordinated Obligor.

**4.2. Rights Relating to Agent's Actions with respect to the Collateral.** Subordinated Obligor hereby waives, to the extent permitted by applicable law, any rights which it may have to enjoin or otherwise obtain a judicial or administrative order preventing Agent from taking, or refraining from taking, any action with respect to all or any part of the Collateral. Without limitation of the foregoing, Subordinated Obligor hereby agrees (a) that it has no right to direct or object to the manner in which Agent enforces its rights and remedies with respect to, or applies the proceeds of, the Collateral resulting from the exercise by Agent of rights and remedies under the Senior Loan Documents to the Senior Loans, and (b) that Agent has not assumed any obligation to act as the agent for Subordinated Obligor with respect to the Collateral.

**4.3. Rights Relating to Disclosures.** Subordinated Obligor hereby agrees that Senior Lenders has not assumed any obligation or duty to disclose information regarding any Loan Party or the Senior Loans to Subordinated Obligor, and Senior Lenders shall have no special or fiduciary relationship to Subordinated Obligor. Subordinated Obligor hereby fully waives and releases Senior Lenders from any affirmative disclosures which may be required of Senior Lenders under applicable law.

**5. Construction.** The terms of this Agreement were negotiated among business persons sophisticated in the area of business finance, and accordingly, in construing the terms of this Agreement, no rule or law which would require that this instrument be construed against the party who drafted this instrument shall be given any force or effect.

**6. Modification of this Agreement.** Any modification or waiver of any provision of this Agreement, or any consent to any departure by any party from the terms hereof, shall not be effective in

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any event unless the same is in writing and signed by Agent and Subordinated Oblige to be bound thereby, and then such modification, waiver or consent shall be effective only in the specific instance and for the specific purpose given. Any notice to or demand on any party hereto in any event not specifically required hereunder shall not entitle the party receiving such notice or demand to any other or further notice or demand in the same, similar or other circumstances unless specifically required hereunder. For the avoidance of doubt, Borrower's signature shall not be required to amend or otherwise modify this Agreement.

**7. Further Assurances.** Each party to this Agreement promptly will execute and deliver such further instruments and agreements and do such further acts and things as may be reasonably requested in writing by any other party hereto that may be necessary or desirable in order to effect fully the purposes of this Agreement.

**8. Continuing Agreement.** This is a continuing agreement and will remain in full force and effect until all of the obligations under the Senior Loan Documents have been Paid in Full. This Agreement will continue to be effective or will be reinstated retroactively as if it had never been terminated, as the case may be, if at any time payment of all or any part of the Senior Loan Documents or the obligations thereunder is rescinded or must otherwise be returned by Agent and/or Senior Lenders upon insolvency, bankruptcy, or reorganization of any Loan Party or otherwise, all as though such payment had not been made. Upon the foregoing, any and all Distributions that may have been made to Subordinated Oblige which would have otherwise been prohibited shall be paid to Agent for the benefit of the Senior Lenders in accordance with Section 2.4.

**9. Notices.** Any notice or other communication required or permitted under this Agreement shall be in writing and personally delivered, mailed by registered or certified mail (return receipt requested and postage prepaid), sent by facsimile (with a confirming copy sent by regular mail), or sent by prepaid overnight courier service, and addressed to the relevant party at its address set forth below, or at such other address as such party may, by written notice, designate as its address for purposes of notice under this Agreement:

**If to Senior Lenders, to Agent at:**

MidCap Financial SBIC, LP  
7255 Woodmont Avenue, Suite 200  
Bethesda, Maryland 20814  
Attention: Portfolio Management- Life Sciences  
Fax: (301) 941-1450

with a copy to:

Midcap Financial, LLC  
7255 Woodmont Avenue, Suite 200  
Bethesda, Maryland 20814  
Attention: General Counsel  
Fax: (301) 941-1450



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**If to Borrower or any other Loan Party, at:**

AxoGen, Inc.  
AxoGen Corporation  
13859 Progress Blvd.  
Alachua, FL 32615  
Attention: Karen Zaderej  
Fax: (386) 462-6803

with a copy to:

Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, Pennsylvania 19103  
Attention: Fahd M.T. Riaz, Esq.  
Fax: (215) 963-5001

**If to Subordinated Obligee:**

PDL BioPharma, Inc.  
932 Southwood Blvd.  
Incline Village, NV 89451  
Attention: General Counsel  
Fax: (775) 832-8501

with a copy to:

Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-3197  
Attention: Dhiya El-Saden  
Fax: (213) 229-7520

If mailed, notice shall be deemed to be given five (5) days after being sent, and if sent by personal delivery, facsimile or prepaid courier, notice shall be deemed to be given when delivered.

**10. Successors and Assigns.** This Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of Senior Lenders, Subordinated Obligee and the Loan Parties; *provided, however*, that neither Subordinated Obligee nor any Loan Party may assign this Agreement or the Subordinated IRA Documents in whole or in part without the prior written consent of Agent. Senior Lenders may, from time to time, without notice to Subordinated Obligee, assign or transfer any or all of the Senior Loans or any interest therein to any Person and, notwithstanding any such assignment or transfer, or any subsequent assignment or transfer, the Senior Loans shall, subject to the terms hereof, be and remain the Senior Loans for purposes of this Agreement, and every permitted assignee or transferee of any of the Senior Loans or of any interest therein shall, to the extent of the interest of such permitted assignee or transferee in the Senior Loans, be entitled to rely upon the subordination provided under this Agreement and shall be entitled to enforce the terms and provisions hereof to the same extent as if such assignee or transferee were initially a party hereto.

**11. No Waiver or Novation.** No waiver shall be deemed to have been made by any party to this Agreement of any of its rights under this Agreement unless the same shall be in writing and duly signed by its duly authorized officers, and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of any party to this Agreement in any other respect at any time. No executory agreement shall be effective to change, modify or to discharge, in whole or in part, this Agreement, unless such executory agreement is in writing and duly signed by the duly authorized officers of each party to this Agreement.

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**12. CONSENT TO JURISDICTION.** SUBORDINATED OBLIGEE AND EACH OF THE LOAN PARTIES HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE STATE OF MARYLAND AND IRREVOCABLY AGREES THAT, SUBJECT TO SENIOR LENDERS' ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LITIGATED IN SUCH COURTS. SUBORDINATED OBLIGEE AND EACH OF THE LOAN PARTIES EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. SUBORDINATED OBLIGEE AND EACH OF THE LOAN PARTIES HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON IT BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUBORDINATED OBLIGEE AND EACH OF THE LOAN PARTIES AT THEIR RESPECTIVE ADDRESSES SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED. IN ANY LITIGATION, TRIAL, ARBITRATION OR OTHER DISPUTE RESOLUTION PROCEEDING RELATING TO THIS AGREEMENT, ALL DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS OF SUBORDINATED OBLIGEE, EACH LOAN PARTY OR ANY OF THEIR RESPECTIVE AFFILIATES SHALL BE DEEMED TO BE EMPLOYEES OR MANAGING AGENTS OF SUBORDINATED OBLIGEE OR EACH LOAN PARTY, AS APPLICABLE, FOR PURPOSES OF ALL APPLICABLE LAW OR COURT RULES REGARDING THE PRODUCTION OF WITNESSES BY NOTICE FOR TESTIMONY (WHETHER IN A DEPOSITION, AT TRIAL OR OTHERWISE). SUBORDINATED OBLIGEE AND EACH OF THE LOAN PARTIES AGREES THAT SENIOR LENDERS' COUNSEL IN ANY SUCH DISPUTE RESOLUTION PROCEEDING MAY EXAMINE ANY OF THESE INDIVIDUALS AS IF UNDER CROSS-EXAMINATION AND THAT ANY DISCOVERY DEPOSITION OF ANY OF THEM MAY BE USED IN THAT PROCEEDING AS IF IT WERE AN EVIDENCE DEPOSITION. SUBORDINATED OBLIGEE AND EACH OF THE LOAN PARTIES IN ANY EVENT WILL USE ALL COMMERCIALY REASONABLE EFFORTS TO PRODUCE IN ANY SUCH DISPUTE RESOLUTION PROCEEDING, AT THE TIME AND IN THE MANNER REQUESTED BY SENIOR LENDERS, ALL PERSONS, DOCUMENTS (WHETHER IN TANGIBLE, ELECTRONIC OR OTHER FORM) OR OTHER THINGS UNDER ITS CONTROL AND RELATING TO THE DISPUTE.

**13. WAIVER OF JURY TRIAL.** SUBORDINATED OBLIGEE, EACH OF THE LOAN PARTIES AND SENIOR LENDERS HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, ANY OF THE SUBORDINATED IRA DOCUMENTS OR ANY OF THE SENIOR LOAN DOCUMENTS. SUBORDINATED OBLIGEE, EACH OF THE LOAN PARTIES AND SENIOR LENDERS ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE SENIOR LOAN DOCUMENTS AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. SUBORDINATED OBLIGEE, EACH OF THE LOAN PARTIES AND SENIOR LENDERS WARRANTS AND REPRESENTS THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

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#### **14. Miscellaneous.**

**14.1. Conflict.** In the event of any conflict between any term, covenant or condition of this Agreement and any term, covenant or condition of any of the Subordinated IRA Documents, the provisions of this Agreement shall control and govern.

**14.2. Headings.** The paragraph headings used in this Agreement are for convenience only and shall not affect the interpretation of any of the provisions hereof.

**14.3. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument, but in making proof hereof, it shall only be necessary to produce one such counterpart containing signatures pages signed by each party.

**14.4. Severability.** In the event that any provision of this Agreement is deemed to be invalid, illegal or unenforceable by reason of the operation of any law or by reason of the interpretation placed thereon by any court or governmental authority, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby, and the affected provision shall be modified to the minimum extent permitted by law so as most fully to achieve the intention of this Agreement.

**14.5. Governing Law.** This Agreement shall be governed by and shall be construed and enforced in accordance with the internal laws of the State of Maryland, without regard to conflicts of law principles.

**14.6. Relative Rights.** This Agreement shall define the relative rights of Senior Lenders and Subordinated Oblige. Nothing in this Agreement shall (a) impair, as between the Loan Parties and Senior Lenders, the obligation of the Loan Parties with respect to the payment of the Senior Loans and the Subordinated Obligations in accordance with their respective terms, or (b) affect the relative rights of Senior Lenders or Subordinated Oblige with respect to any other creditors of the Loan Parties

**14.7 Subrogation.** Until Payment in Full of all Senior Loans, Subordinated Oblige shall not be subrogated to the rights of Agent and Senior Lenders to receive Distributions with respect to the Senior Loans. Upon and subject to Payment in Full of all Senior Loans, Subordinated Oblige shall be subrogated to the rights of Agent and Senior Lenders to receive Distributions with respect to the Senior Loans until the Subordinated Obligations are paid in full. Subordinated Oblige agrees that in the event that all or any part of a payment made with respect to the Senior Loans is recovered from the holders of the Senior Loans in a Proceeding or otherwise, any Distribution received by Subordinated Oblige with respect to the Subordinated Obligations at any time after the date on which Subordinated Oblige is notified by Agent that such payment has been recovered, whether pursuant to the right of subrogation provided for in this Agreement or otherwise, shall be deemed to have been received by Subordinated Oblige in trust as property of Agent and the Senior Loans and Subordinated Oblige shall promptly upon receipt of such notice by Subordinated Oblige deliver the same to the Agent for the benefit of the Senior Lenders for application to the Senior Loans until the Senior Loans is Paid in Full. A Distribution made pursuant to this Agreement to Agent or Senior Lenders which otherwise would have been made to Subordinated Oblige is not, as between the Borrower and Subordinated Oblige, a payment by the Borrower to or on account of the Senior Loans. Notwithstanding anything to the contrary in any Senior Loan Document or any Subordinated IRA Document, this Section 14.7 shall survive the termination of any Senior Loan Document and the Payment in Full of the Senior Loans.

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**14.8. Entire Agreement.** This Agreement (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

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**IN WITNESS WHEREOF**, intending to be legally bound, and intending that this Agreement constitute an instrument executed and delivered under seal, the parties have caused this Agreement to be executed under seal as of the date first written above.

**AGENT AND SENIOR LENDERS:**

**MIDCAP FINANCIAL SBIC, LP,**

as Agent for Senior Lenders and as a Senior Lender

By: Midcap Financial SBIC GP, LLC

By: /s/ Luis Viera

Name: Luis Viera

Title: Managing Director

**SILICON VALLEY BANK,**

as a Senior Lender

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SUBORDINATION AND INTERCREDITOR AGREEMENT  
SIGNATURE PAGE

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**IN WITNESS WHEREOF**, intending to be legally bound, and intending that this Agreement constitute an instrument executed and delivered under seal, the parties have caused this Agreement to be executed under seal as of the date first written above.

**AGENT AND SENIOR LENDERS:**

**MIDCAP FINANCIAL SBIC, LP,**

as Agent for Senior Lenders and as a Senior Lender

By: MidCap Financial SBIC GP, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SILICON VALLEY BANK,**

as a Senior Lender

By: /s/ Scott McCarty  
Name: Scott McCarty  
Title: Vice President

SUBORDINATION AND INTERCREDITOR AGREEMENT  
SIGNATURE PAGE

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**SUBORDINATED OBLIGEE:**

**PDL BIOPHARMA, INC.**

By: /s/ John P. McLaughlin

Name: John P. McLaughlin

Title: President and Chief Executive Officer

SUBORDINATION AND INTERCREDITOR AGREEMENT  
SIGNATURE PAGE

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**BORROWER:**

**AXOGEN, INC. (f/k/a LecTec Corporation)**

By: /s/ Karen Zaderej

Name: Karen Zaderej

Title: CEO

**AXOGEN CORPORATION**

By: /s/ Karen Zaderej

Name: Karen Zaderej

Title: CEO

SUBORDINATION AND INTERCREDITOR AGREEMENT  
SIGNATURE PAGE



**FIRST AMENDMENT TO  
LOAN AND SECURITY AGREEMENT**

**THIS FIRST AMENDMENT TO LOAN AND SECURITY AGREEMENT** (this “**Amendment**”) is dated as of August 14, 2012, by and among **AXOGEN, INC.** (f/k/a LecTec Corporation), a Minnesota corporation (“**AxoGen Inc**”), **AXOGEN CORPORATION**, a Delaware corporation (“**AxoGen Corp**”; together with AxoGen Inc, either individually or collectively as the context may require, as “**Borrower**”), **MIDCAP FINANCIAL SBIC, LP**, a Delaware limited partnership in its capacity as agent (“**Agent**”) for the lenders under the Loan Agreement (as defined below) (“**Lenders**”), and the Lenders signatory hereto.

**W I T N E S S E T H:**

**WHEREAS**, Borrower, Lenders and Agent are parties to that certain Loan and Security Agreement, dated as of September 30, 2011 (as amended, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”; capitalized terms used herein have the meanings given to them in the Loan Agreement except as otherwise expressly defined herein), pursuant to which Lenders have agreed to provide to Borrower certain loans and other extensions of credit in accordance with the terms and conditions thereof; and

**WHEREAS**, Borrower, Agent and Lenders desire to amend certain provisions of the Loan Agreement in accordance with, and subject to, the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises, the covenants and agreements contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Borrower, Lenders and Agent hereby agree as follows:

**1. Acknowledgment of Obligations.** Borrower hereby acknowledges, confirms and agrees that all Term Loans made prior to the date hereof, together with interest accrued and accruing thereon, and fees, costs, expenses and other charges owing by Borrower to Agent and Lenders under the Loan Agreement and the other Loan Documents, as amended hereby, are unconditionally owing by Borrower to Agent and Lenders, without offset, defense or counterclaim of any kind, nature or description whatsoever except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditor’s rights generally.

**2. Amendment to Loan Agreement.** Subject to the terms and conditions of this Amendment, including, without limitation, the conditions to effectiveness set forth in Section 6 below, the Loan Agreement is hereby amended as follows:

(a) Section 6.2(a) of the Loan Agreement is hereby amended by deleting the word “and” immediately preceding clause (vii) thereof, replacing it with a comma (“;”) and adding the following new clause (viii) after the end of clause (vii):

“and (viii) copies of all statements, reports and notices to the Subordinated Creditor concurrently with delivery to Subordinated Creditor.”

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(b) Section 7.9 of the Loan Agreement is hereby amended by deleting the reference to such section being “[Reserved]” and replacing such reference with the following new Section 7.9:

“7.9 Subordinated Debt. (a) make or permit any payment on or with respect to the Subordinated Debt other than as expressly permitted pursuant to the Subordination Agreement or (b) amend any provision of the Subordinated IRA or any agreement, instrument or other document evidencing the Subordinated Debt.”

(c) Section 8.9 of the Loan Agreement is hereby amended by deleting the reference to such section being “[Reserved]” and replacing such reference with the following new Section 8.9:

“8.9 Subordinated Debt. (a) a default or breach by Borrower or Subordinated Creditor occurs under the Subordinated IRA or any agreement, instrument or other document executed and/or delivered in connection with the Subordinated Debt, including without limitation the Subordination Agreement or (b) any payment is made by Borrower or accepted by Subordinated Creditor in violation of the Subordination Agreement.”

(d) Section 14 of the Loan Agreement is hereby amended by amending the definition of “Change of Control” by deleting the word “or” immediately preceding clause (c) thereof, replacing the period (“.”) at the end of clause (c) with a semicolon (“;”), and adding and “or” and the following new clause (d) after the new semicolon at the end of clause (c):

“or (d) constitutes a Change of Control under and as defined in the Subordinated IRA.”

(e) Section 14 of the Loan Agreement is hereby further amended by amending the definition of “Permitted Indebtedness” by deleting the reference to clause (c) of such definition being “[Reserved]” and replacing such reference with the following new clause (c):

“(c) Subordinated Debt; provided, that Agent’s and Senior Lenders’ Liens with respect to any assets transferred or purported to be transferred in connection with the Subordinated Debt shall remain in full force and effect and first priority Liens until such time as the assets are permitted to be paid to the Subordinated Creditor pursuant to and subject to the terms of the Subordination Agreement;”

(f) Section 14 of the Loan Agreement is hereby further amended by inserting the following new defined terms in the appropriate alphabetical order:

““Subordinated Creditor” means PDL BioPharma, Inc. and any successor or assign of PDL BioPharma, Inc. as Purchaser under and as defined in the Subordinated IRA, subject to the terms of the Subordination Agreement.

“Subordinated Debt” means the “Subordinated Obligations” under and as defined in the Subordination Agreement.

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“Subordinated IRA” means that certain Interim Revenue Interests Purchase Agreement, dated as of August 14, 2012, by and among Borrower and the Subordinated Creditor, as the same may be amended, restated, supplemented or otherwise modified from time to time (subject to the restrictions in this Agreement and the Subordination Agreement).

“Subordination Agreement” means that certain Subordination and Intercreditor Agreement, dated as of August 14, 2012, by and among Agent, the Lenders, Subordinated Creditor and Borrower, as the same may be amended, restated, supplemented or otherwise modified from time to time.”

**3. No Other Amendments.** Except for the amendment and agreement set forth and referred to in Section 2 above, the Loan Agreement and the other Loan Documents shall remain unchanged and in full force and effect and Borrower hereby ratifies and reaffirms all of its obligations under the Loan Agreement and the other Loan Documents as amended by this Amendment. Nothing in this Amendment is intended, or shall be construed, to constitute a novation or an accord and satisfaction of any of Borrower’s Obligations or to modify, affect or impair the perfection or continuity of Agent’s security interests in, security titles to or other liens, for the benefit of itself and the Lenders, on any Collateral for the Obligations.

**4. Representations and Warranties.** To induce Agent and Lenders to enter into this Amendment, Borrower does hereby warrant, represent and covenant to Agent and Lenders that (i) each representation or warranty of Borrower set forth in the Loan Agreement is hereby restated and reaffirmed as true, correct and complete in all material respects on and as of the date hereof as if such representation or warranty were made on and as of the date hereof; provided, however, that (A) such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof and (B) those representations and warranties expressly referring to a specific date shall be true, correct and complete in all material respects as of such date, (ii) no Default or Event of Default has occurred and is continuing as of the date hereof and (iii) Borrower has the power and is duly authorized to enter into, deliver and perform this Amendment and this Amendment is the legal, valid and binding obligation of Borrower enforceable against Borrower in accordance with its terms.

**5. Amendment Fee.** Borrower hereby agrees to pay to the Lenders, to be allocated to each Lender in accordance with its Pro Rata Share, and amendment fee equal to \$100,000, of which (a) \$25,000 shall be due and payable on the Amendment Effective Date in immediately available funds (the “**Amendment Effective Date Fee**”) and (b) \$75,000 shall be due and payable in immediately available funds upon the earlier of (i) the completion of a cash investment in the form of either or a combination of both stock of Axogen, Inc. or Indebtedness (which, for the avoidance of doubt, may include a revenue purchase transaction similar to the transaction contemplated by the Subordinated IRA (as defined in the Loan Agreement after giving effect to this Amendment)) by investors reasonably acceptable to Agent and Lenders which yields net cash proceeds in an aggregate amount of not less than \$2,500,000 (a “**Future Capital Transaction**”) and (ii) the date on which all Obligations are due and payable whether by prepayment, maturity, acceleration or otherwise (the “**Deferred Amendment Fee**”); together with the Amendment Effective Date Fee, collectively, the “**Amendment Fee**”). Borrower acknowledges and agrees that (x) if any portion of the Amendment Fee is not paid when due,

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such failure shall constitute an immediate Event of Default and (y) reference to the Future Capital Transaction above shall not constitute a consent by the Agent or the Lenders to any such transaction and any such Future Capital Transaction shall continue to require the consent of the Lenders prior to the consummation thereof.

**6. Condition Precedent to Effectiveness of this Amendment.** This Amendment shall become effective as of the date (the “**Amendment Effective Date**”) upon which Agent shall notify Borrower in writing that each of the following conditions have been satisfied in a manner, and in form and substance, satisfactory to Agent:

(a) Agent shall have received one or more counterparts of this Amendment duly executed and delivered by Borrower, Agent and Lenders;

(b) Agent shall have received one or more counterparts of the Subordination Agreement duly executed and delivered by Borrower, Agent and Lenders;

(c) Lenders shall have received the Amendment Effective Date Fee, in accordance with their respective Pro Rata Shares, which Amendment Effective Date Fee shall be fully earned and nonrefundable when paid;

(d) Agent shall have received an officer’s certificate certifying as to certain conditions and attaching true, correct and complete copies of the Subordinated IRA and related transaction documents; and

(e) Agent shall have received such other agreements, assurances, certificates, documents, consents or opinions as Agent may require.

**7. Release.**

(a) In consideration of the agreements of Agent and Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower, on behalf of itself and each of its Affiliates and Subsidiaries and each of their respective successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges Agent and each Lender and their respective successors and assigns, and their respective present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents and other representatives (Agent, Lenders and all such other persons being hereinafter referred to collectively as the “**Releasees**” and individually as a “**Releasee**”), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a “**Claim**” and collectively, “**Claims**”) of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, which Borrower or any of its successors, assigns, or other legal representatives may now or hereafter own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the Amendment Effective Date, including, without limitation, for or on account of, or in relation to, or in any way in connection with the Loan Agreement or any of the other Loan Documents or transactions thereunder or related thereto.

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(b) Borrower understands, acknowledges and agrees that its release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

(c) Borrower agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered shall affect in any manner the final, absolute and unconditional nature of the release set forth above.

**8. Covenant Not To Sue.** Borrower, on behalf of itself and its successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably, covenants and agrees with and in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released, remised and discharged by Borrower pursuant to Section 7 above. If Borrower or any of its successors, assigns or other legal representatives violates the foregoing covenant, Borrower, for itself and its successors, assigns and legal representatives, agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs incurred by any Releasee as a result of such violation.

**9. Advice of Counsel.** Each of the parties represents to each other party hereto that it has discussed this Amendment with its counsel.

**10. Severability of Provisions.** In case any provision of or obligation under this Amendment shall be invalid, illegal or unenforceable in any applicable jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

**11. Counterparts.** This Amendment may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Amendment by facsimile transmission or electronic transmission shall be as effective as delivery of a manually executed counterpart hereof.

**12. GOVERNING LAW.** THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF MARYLAND APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICTS OF LAWS.

**13. Entire Agreement.** The Loan Agreement as and when amended through this Amendment embodies the entire agreement between the parties hereto relating to the subject matter thereof and supersedes all prior agreements, representations and understandings, if any, relating to the subject matter thereof.

**14. No Strict Construction, Etc.** The parties hereto have participated jointly in the negotiation and drafting of this Amendment. In the event an ambiguity or question of intent or interpretation arises, this Amendment shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Amendment. Time is of the essence for this Amendment.

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**15. Costs and Expenses.** Borrower absolutely and unconditionally agrees to pay or reimburse upon demand for all reasonable fees, costs and expenses incurred by Agent and the Lenders in connection with the preparation, negotiation, execution and delivery of this Amendment and any other Loan Documents or other agreements prepared, negotiated, executed or delivered in connection with this Amendment or transactions contemplated hereby.

*[Remainder of page intentionally blank; signature pages follow.]*

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**IN WITNESS WHEREOF**, the parties hereto have caused this First Amendment to Loan and Security Agreement to be duly executed and delivered as of the day and year specified at the beginning hereof.

**BORROWER:**

**AXOGEN, INC.** (f/k/a LecTec Corporation)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**AXOGEN CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AXOGEN CORPORATION  
AXOGEN, INC.  
FIRST AMENDMENT TO LOAN AND SECURITY AGREEMENT  
SIGNATURE PAGE

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**AGENT AND LENDERS:**

**MIDCAP FINANCIAL SBIC, LP**, as Agent and a Lender

By: **MIDCAP FINANCIAL SBIC GP, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SILICON VALLEY BANK**, as a Lender

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

AXOGEN CORPORATION  
AXOGEN, INC.  
FIRST AMENDMENT TO LOAN AND SECURITY AGREEMENT  
SIGNATURE PAGE



**EXHIBIT 31.1**

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002**

I, Karen Zaderej, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of AxoGen, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

- a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
- b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
- c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
- d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

- a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2012

/s/ Karen Zaderej

Karen Zaderej  
Chief Executive Officer

**EXHIBIT 31.2**

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002**

I, Gregory G. Freitag, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of AxoGen, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

- a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
- b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
- c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
- d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

- a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2012

/s/ Gregory G. Freitag

Gregory G. Freitag  
Chief Financial Officer

**EXHIBIT 32**

**CERTIFICATION PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF  
2002 (SUBSECTIONS (A) AND (B) OF SECTION 1350, CHAPTER 63 OF TITLE 18,  
UNITED STATES CODE)**

In connection with the Quarterly Report on Form 10-Q (the "Report") of AxoGen, Inc. (the "Company"), Karen Zaderej, Chief Executive Officer of the Company and Gregory G. Freitag, Chief Financial Officer of the Company, each certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of her/his knowledge that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 7, 2012

/s/ Karen Zaderej

Karen Zaderej  
Chief Executive Officer  
(Principal Executive Officer)

/s/ Gregory G. Freitag

Gregory G. Freitag  
Chief Financial Officer  
(Principal Financial Officer)