As filed with the Securities and Exchange Commission on September 29, 2004.

Registration No. 333-116384

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 5
to

FORM S-1

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Theravance, Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware	**2834**	**94-3265960**
(State or Other Jurisdiction of Incorporation or Organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

901 Gateway Boulevard
South San Francisco, California 94080
(650) 808-6000
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Rick E Winningham
Chief Executive Officer
901 Gateway Boulevard
South San Francisco, California 94080
(650) 808-6000
(Name, address, including zip code, and telephone number, including area code, of agent for service)

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Approximate date of commencement of proposed sale to the public:
As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended, check the following box. / /

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. / /

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. / /

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. / /

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. / /

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Subject to Completion
Preliminary Prospectus dated September 29, 2004

PROSPECTUS

5,200,000 Shares

Theravance

Common Stock

This is our initial public offering of shares of our common stock. We are offering 5,200,000 shares. We expect the initial public offering price to be between $13.00 and $15.00 per share.

Currently, no public market exists for the shares. After pricing of the offering, we expect that the shares will be quoted on the Nasdaq National Market under the symbol "THRX."

Investing in the common stock involves risks that are described in the "Risk Factors" section beginning on page 6 of this prospectus.

	Per Share	Total
Public offering price	$	$
Underwriting discounts and commissions	$	$
Proceeds, before expenses, to us	$	$

The underwriters may also purchase up to an additional 780,000 shares of common stock from us at the public offering price, less the underwriting discounts, within 30 days from the date of this prospectus to cover overallotments.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The shares will be ready for delivery on or about , 2004.

Merrill Lynch & Co. **Lehman Brothers**

Credit Suisse First Boston **Thomas Weisel Partners LLC**

The date of this prospectus is , 2004.

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You should rely only on the information contained in this prospectus. We have not authorized anyone to provide you with information different from that contained in this prospectus. We are offering to sell, and are seeking offers to buy, shares of common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of the common stock.

For investors outside the United States: Neither we nor any of the underwriters have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. You are required to inform yourselves about and to observe any restrictions relating to this offering and the distribution of this prospectus.

PROSPECTUS SUMMARY

This summary does not contain all of the information you should consider before buying shares of our common stock. You should read the entire prospectus carefully, especially the "Risk Factors" section and our consolidated financial statements and the related notes appearing at the end of this prospectus, before deciding to invest in shares of our common stock.

Theravance, Inc.

Our Company

We are a biopharmaceutical company with a pipeline of product candidates that we discovered and expect to develop in collaboration with partners or on our own. In approximately seven years of operation, four product candidates discovered by us have advanced into clinical trials, one of which is currently in Phase 3 and one of which is currently in Phase 2. Further, we have seven additional product candidates discovered by us in preclinical studies. We are focused on the discovery, development and commercialization of small molecule medicines for unmet medical needs across a number of therapeutic areas including respiratory disease, bacterial infections, overactive bladder and gastrointestinal disorders. None of our products have been approved for marketing and sale to patients and we have not received any product revenue to date.

Our strategy focuses on the discovery, development and commercialization of medicines with superior efficacy, convenience, tolerability and/or safety. By primarily focusing on biological targets that have been either clinically validated by existing medicines or by potential medicines in late-stage clinical trials, we can leverage years of available knowledge regarding a target's activity and the animal models used to test potential medicines against such targets. We move a product candidate into development after it demonstrates superiority to such medicines or drugs in animal models that we believe correlate to human clinical experience. This strategy is designed to reduce technical risk and increase productivity. We believe that we can enhance the probability of successfully developing and commercializing medicines by identifying at least two structurally different product candidates, whenever practicable, for development in each therapeutic program.

Our Relationship with GlaxoSmithKline

2002 Collaboration. In November 2002, we entered into a long-acting beta$_2$ agonist (LABA) collaboration agreement with GlaxoSmithKline (GSK) to develop and commercialize product candidates for the treatment of asthma and chronic obstructive pulmonary disease (COPD). LABAs are medicines that work by relaxing the muscles that line the airways, allowing the airways to expand and leading to relief and/or prevention of many of the symptoms of asthma and COPD. These LABA product candidates are intended to be administered via inhalation once-daily both as a single new medicine and as part of a new combination medicine with an inhaled corticosteroid. Under the terms of the collaboration with GSK, each company contributed four LABA product candidates to the collaboration. GSK is responsible for all development and commercialization costs associated with these eight product candidates and will pay us based upon our product candidates reaching clinical, regulatory and commercial milestones. We will make regulatory and commercial milestone payments to GSK if GSK files for regulatory approval and launches a medicine containing a LABA product candidate discovered by GSK. In addition, we will receive the same royalty rate on product sales of medicines from the collaboration regardless of whether the product candidate originated with us or with GSK. The royalty structure would result in an average percentage royalty rate in the low to mid-teens at annual net sales up to approximately $4 billion, and the average royalty rate would decline to single digits at annual net sales of more than $6 billion. Sales of single agent LABA medicines and combination LABA/inhaled corticosteroid medicines would be combined for the purposes of this royalty calculation.

2004 Strategic Alliance. In March 2004, we entered into a strategic alliance with GSK whereby GSK received an option to license product candidates from all of our other current and future drug discovery and development programs initiated prior to September 1, 2007, on pre-determined terms

and on an exclusive, worldwide basis. If GSK exercises its option to license any of our programs, we will receive an upfront payment, additional payments if future milestones are achieved and royalties on any future sale of medicines developed from these programs. In addition, GSK would fund all of the development and commercialization costs for product candidates in such programs. Consistent with our strategy, we will be obligated at our sole cost to discover two structurally different product candidates for certain programs that GSK opts in to. In August 2004, GSK exercised its right to opt in to our long-acting muscarinic antagonist program for the treatment of COPD and informed us of its decision not to opt in to our bacterial infections program, in each case pursuant to the terms of the strategic alliance.

GSK currently owns all of our Class A common stock, which represents approximately 19.7% of our outstanding stock before the offering. GSK's ownership of our stock could increase to approximately 60% through the issuance by us to GSK of the number of shares of our common stock that we may be required to redeem from our stockholders as described below. In July 2007, GSK has the right to require us to redeem, and upon notice of such redemption, each stockholder (including GSK, to the extent GSK holds common stock) will automatically be deemed to have submitted for redemption, 50% of our common stock held by such stockholder at $54.25 per share. This right is referred to in this prospectus as the "call." If GSK does not exercise this right, then in August 2007, each of our stockholders (including GSK, to the extent GSK holds common stock) has the right to require us to redeem up to 50% of their common stock at $19.375 per share. This right is referred to in this prospectus as the "put." In either case, GSK is contractually obligated to pay to us the funds necessary for us to redeem the shares of common stock from our stockholders; however, GSK's maximum obligation for the shares subject to the put is capped at $525 million. We are under no obligation to effect the call or the put until we receive such funds from GSK. Alternatively, if our stockholders exercise the put, GSK may choose to purchase the shares of common stock put directly from our stockholders. If GSK's ownership of our stock increases to more than 50% as a result of the call or the put, GSK will receive an extension of its exclusive option to our programs initiated prior to September 1, 2012; otherwise, this exclusive option does not apply to programs initiated after September 1, 2007.

Our Programs

We currently have seven programs focused on discovering and developing new medicines. Three of these programs have product candidates in Phase 1, Phase 2 or Phase 3 clinical trials:

Asthma and COPD: Long-Acting Beta$_2$ Agonists (LABA). We and GSK each have contributed four product candidates to our LABA collaboration. Of the pool of eight candidates, five are in clinical trials, two completed Phase 2a clinical trials in the fourth quarter of 2003, one completed a Phase 1 clinical trial in the fourth quarter of 2003 and two are in Phase 1 clinical trials. The current lead product candidate, GSK 159797, which was discovered by us, and a product candidate discovered by GSK are undergoing further safety and efficacy studies necessary before commencing Phase 2b clinical trials. According to IMS Health, the market for inhaled products containing long-acting beta$_2$ agonists in the United States, Japan and Europe was approximately $4.5 billion in 2003.

Bacterial Infections. Our lead antibiotic product candidate, telavancin, is a rapidly bactericidal, injectable antibiotic. In January 2004, we completed a Phase 2 clinical trial in complicated skin and soft tissue infections comparing the clinical results of telavancin with current standard antibiotic therapy. In addition to continuing Phase 2 clinical trials, we initiated a Phase 3 clinical trial in complicated skin and soft tissue infections in September of 2004 and currently plan to begin a Phase 3 clinical trial in hospital acquired pneumonia by the end of 2004. The primary market that we are targeting represents, according to IMS Health and AMR, Inc., approximately 32 million patient treatment days with antibiotics effective against infections caused by drug-resistant Gram-positive bacteria. According to IMS Health, from 1998 to 2003, treatment days in this category grew at a rate of 12% annually and worldwide sales in this category totaled $730 million in 2003. Vancomycin, a generic medicine, leads this portion of the injectible antibiotic market with annual worldwide sales of approximately $370 million.

Overactive Bladder (OAB). Our lead product candidate for OAB is TD-6301. We initiated the first Phase 1 clinical trial of TD-6301 in December 2003. We plan to initiate additional Phase 1 clinical trials in 2004. According to IMS Health, the market for medicines to treat OAB in the United States, Japan and Europe was approximately $1.5 billion in 2003.

Other Programs. In addition, we have three other programs in preclinical studies in the areas of asthma and COPD (including our long-acting muscarinic antagonist program that GSK has exercised its opt-in right to under the strategic alliance), gastrointestinal disease and anesthesia. The seventh program, in the areas of asthma and COPD, is in the lead-optimization stage.

Our Strategy

Our objective is to discover, develop and commercialize new medicines with superior efficacy, convenience, tolerability and/or safety. The key elements of our strategy are to:

Apply our expertise in multivalency primarily to validated targets to efficiently discover and develop superior medicines in large markets. Our drug discovery efforts are based on our expertise in multivalency. Multivalency involves the simultaneous attachment of a single molecule to multiple binding sites on one or more biological targets. We believe that by applying our expertise in multivalency we can discover medicines that will be superior to many market-leading medicines by substantially improving potency, duration of action and/or selectivity.

Identify two structurally different product candidates in each therapeutic program whenever practicable. We believe that we can increase the likelihood of successfully bringing superior medicines to market by identifying two structurally different product candidates for development, whenever practicable.

Partner with global pharmaceutical companies to accelerate development and commercialization of our product candidates. Our strategy is to seek collaborations with leading global pharmaceutical companies, such as GSK, to accelerate development and commercialization of our product candidate pipeline at the strategically appropriate time.

Leverage the extensive experience of our people. We have an experienced senior management team with many years of experience discovering, developing and commercializing new medicines with companies such as Bristol-Myers Squibb Company, Merck & Co., Genentech, Inc., Millennium Pharmaceuticals, Inc., Pfizer Inc and GSK.

Improve, expand and protect our technical capabilities. We have created a substantial body of know-how and trade secrets in the application of our multivalency approach to drug discovery. We expect to continue to make substantial investments in multivalency and other technologies to maintain what we believe are our competitive advantages in drug discovery.

Private Share Sale to GSK

Concurrently with the closing of this offering, we expect GSK to purchase from us in a private sale 318,929 shares of our Class A common stock (or 366,768 shares if the underwriters' overallotment option is exercised in full) at a price per share equal to the initial public offering price. Assuming an initial public offering price of $14.00 per share, GSK will pay approximately $4.4 million for these shares (or approximately $5.1 million if GSK purchases 366,768 shares).

Company Information

We were incorporated on November 19, 1996 under the name Advanced Medicine, Inc. In April 2002, we changed our name to Theravance, Inc. Unless the context otherwise requires, any reference to "Theravance," "we," "our" and "us" in this prospectus refers to Theravance, Inc., a Delaware corporation, and its subsidiary. Our principal executive offices are located at 901 Gateway Boulevard, South San Francisco, California 94080, and our telephone number is (650) 808-6000. Theravance and the Theravance logo are registered trademarks of Theravance, Inc. Trademarks, tradenames or service marks of other companies appearing in this prospectus are the property of their respective owners.

THE OFFERING

Common stock we are offering	5,200,000 shares
Common stock to be outstanding after this offering	41,658,986 shares
Class A common stock to be outstanding after this offering	9,286,670 shares
Use of proceeds	We estimate that our net proceeds from this offering will be approximately $65.3 million at an assumed initial public offering price of $14.00 per share, after deducting estimated underwriting discounts and commissions and offering expenses. We expect to use the net proceeds of this offering to fund our Phase 3 clinical trials for telavancin. See "Use of Proceeds."
Proposed Nasdaq National Market symbol	THRX

The number of shares of common stock to be outstanding after the offering is based on 36,458,986 shares of common stock outstanding as of June 30, 2004. The number of shares of Class A common stock to be outstanding after the offering is based on 8,967,741 shares of Class A common stock outstanding as of June 30, 2004 and 318,929 shares of Class A common stock that we expect to issue to GSK in a concurrent private sale upon the closing of this offering. GSK owns all of our outstanding Class A common stock. Our Class A common stock has rights and obligations substantially the same as our common stock except that (i) our Class A common stock is not subject to the call and the put, and (ii) depending on GSK's ownership of our Class A common stock, the Class A common stock has the right to designate up to one-third of the members of our board of directors and up to one-half of the independent members of our board of directors. See "Description of Capital Stock—Common Stock Call and Put Arrangements with GSK—Voting Rights for the Election of Directors/Board of Directors Composition."

The number of shares of common stock and Class A common stock to be outstanding after this offering does not take into account:

- 8,692,642 shares of common stock issuable upon the exercise of stock options outstanding as of June 30, 2004 with a weighted average exercise price of $7.17 per share;
- 64,908 shares of common stock issuable upon exercise of outstanding warrants as of June 30, 2004 with a weighted average exercise price of $9.13 per share; and
- an additional 735,357 shares reserved as of June 30, 2004 for future stock option grants and purchases under our equity compensation plans. See "Management—Equity Benefit Plans" and note 12 of the notes to our consolidated financial statements.

In addition, except where we state otherwise, the information we present in this prospectus reflects:

- the adoption of our restated certificate of incorporation and restated bylaws to be effective upon the completion of this offering;
- no exercise of the underwriters' overallotment option; and
- a one for 1.55 reverse stock split of our outstanding common stock and Class A common stock, effective as of September 27, 2004.

SUMMARY CONSOLIDATED FINANCIAL DATA

The following tables present our summary consolidated statements of operations data for our fiscal years 2001 through 2003 and the six months ended June 30, 2003 and 2004, and our summary consolidated balance sheet data as of June 30, 2004. You should read this information in conjunction with our consolidated financial statements, including the related notes, and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this prospectus. The summary consolidated balance sheet data is presented on an actual basis and as adjusted to reflect the sale of 5,200,000 shares of common stock offered by us in this offering at an assumed initial public offering price of $14.00 per share and after deducting estimated underwriting discounts and commissions and offering expenses, and our expected sale of 318,929 shares of Class A common stock to GSK at a per share purchase price equal to the assumed initial public offering price.

	Years Ended December 31,			Six Months Ended June 30,	
	2001	2002	2003	2003	2004
	(in thousands, except per share amounts)				
				(unaudited)	
Consolidated Statements of Operations Data					
Revenue from related party	$ —	$ 156	$ 3,605	$ 1,332	$ 3,563
Operating expenses:					
Research and development(1)	53,773	66,481	61,704	27,573	39,284
General and administrative	10,506	11,817	12,153	6,330	12,704
Stock-based compensation(2)	10,134	4,941	2,214	892	3,867
Total operating expenses	74,413	83,239	76,071	34,795	55,855
Loss from operations	(74,413)	(83,083)	(72,466)	(33,463)	(52,292)
Interest and other income	11,530	4,990	3,373	1,799	1,520
Interest and other expense	(1,962)	(1,134)	(1,490)	(655)	(423)
Net loss	$ (64,845)	$ (79,227)	$ (70,583)	$ (32,319)	$ (51,195)
Basic and diluted net loss per share(3)	$ (11.73)	$ (12.50)	$ (10.37)	$ (4.85)	$ (2.92)
Shares used in per share calculations(3)	5,526	6,336	6,809	6,661	17,543

(1) Research and development expenses in 2001 include a charge of $650,000 for an impairment of intangible assets acquired in 1999.

(2) Stock-based compensation, consisting of amortization of deferred stock-based compensation and the value of options issued to non-employees for services rendered, is allocated as follows:

Research and development	$ 6,574	$ 3,398	$ 1,300	$ 414	$ 1,784
General and administrative	3,560	1,543	914	478	2,083
Total non-cash stock-based compensation	$ 10,134	$ 4,941	$ 2,214	$ 892	$ 3,867

(3) Share and per share amounts for all periods reflect the effect of a one for 1.55 reverse stock split effected September 27, 2004; and, for the six months ended June 30, 2004, the conversion of all of our outstanding preferred stock into common stock as of May 11, 2004.

	As of June 30, 2004	
	Actual	As Adjusted
	(unaudited)	
Consolidated Balance Sheet Data		
Cash, cash equivalents and marketable securities	$ 188,010	$ 257,779
Working capital	162,008	231,777
Total assets	219,001	288,770
Long-term liabilities	62,056	62,056
Accumulated deficit	(417,145)	(417,145)
Total stockholders' equity (deficit)	127,297	197,066

RISK FACTORS

Investing in our common stock involves a high degree of risk. You should consider carefully the risks and uncertainties described below, together with all of the other information in this prospectus, including the consolidated financial statements and the related notes appearing at the end of this prospectus, before deciding to invest in shares of our common stock. If any of the following risks actually occur, our business, financial condition, results of operations and future prospects would likely be materially and adversely affected. In that event, the market price of our common stock could decline and you could lose all or part of your investment.

Risks Related to our Business

If our product candidates are determined to be unsafe or ineffective in humans, we will not receive product revenue.

We are in the early stages of drug discovery and development and have never commercialized any of our product candidates. As a result, we are uncertain whether any of our compounds or product candidates will prove effective and safe in humans or meet applicable regulatory standards. In addition, our approach to applying our expertise in multivalency to drug discovery is unproven and may not result in the creation of successful medicines. All of our compounds and product candidates are in an early stage of development and their risk of failure is high. To date, the data supporting our drug discovery and development programs is derived solely from laboratory and preclinical studies and limited clinical trials. Our most advanced product candidate, telavancin, is currently in Phase 2 clinical trials in the United States, Europe and South Africa and a Phase 3 clinical trial in the United States. In addition, with the exception of telavancin, our product candidate TD-6301 and a number of product candidates that are part of our collaboration with GSK, all of our other compounds remain in the lead identification, lead optimization and preclinical testing stages. It is impossible to predict when or if any of our compounds and product candidates will prove effective or safe in humans or will receive regulatory approval. If we are unable to discover and develop medicines that are effective and safe in humans, we will not receive product revenue.

If the product candidates that we develop on our own or through collaborative partners are not approved by regulatory agencies, including the Food and Drug Administration, we will be unable to commercialize them.

The Food and Drug Administration (FDA) must approve any new medicine before it can be marketed and sold in the United States. We must provide the FDA and similar foreign regulatory authorities with data from preclinical studies and clinical trials that demonstrate that our product candidates are safe and effective for a defined indication before they can be approved for commercial distribution. We will not obtain this approval for a product candidate unless and until the FDA approves a New Drug Application (NDA). In order to market our medicines in the European Union and other foreign jurisdictions, we must obtain separate regulatory approvals in each country. The approval procedure varies among countries and can involve additional testing, and the time required to obtain approval may differ from that required to obtain FDA approval. Approval by the FDA does not ensure approval by regulatory authorities in other countries, and approval by one foreign regulatory authority does not ensure approval by regulatory authorities in other foreign countries or by the FDA. We have not yet filed an NDA with the FDA or made a comparable filing in any foreign country for any of our product candidates.

Clinical trials involving our product candidates may reveal that those candidates are ineffective, are unacceptably toxic or have other unacceptable side effects. In addition, the results of preclinical studies do not necessarily predict clinical success, and larger and later-stage clinical trials may not produce the same results as earlier-stage clinical trials. Frequently, product candidates that have shown promising results in early preclinical studies or clinical trials have subsequently suffered significant

setbacks or failed in later clinical trials. In addition, clinical trials of potential products often reveal that it is not possible or practical to continue development efforts for these product candidates. If our clinical trials are substantially delayed or fail to prove the safety and effectiveness of our product candidates, we may not receive regulatory approval of any of our product candidates and our business and financial condition will be materially harmed.

Any failure or delay in commencing or completing clinical trials for our product candidates could severely harm our business.

Each of our product candidates must undergo extensive preclinical studies and clinical trials as a condition to regulatory approval. Preclinical studies and clinical trials are expensive and take many years to complete. To date we have not completed the clinical trials of any product candidate. The commencement and completion of clinical trials for our product candidates may be delayed by many factors, including:

- our inability or the inability of our collaborators or licensees to manufacture or obtain from third parties materials sufficient for use in preclinical studies and clinical trials;
- delays in patient enrollment, which we have experienced in the past, and variability in the number and types of patients available for clinical trials;
- difficulty in maintaining contact with patients after treatment, resulting in incomplete data;
- poor effectiveness of product candidates during clinical trials;
- unforeseen safety issues or side effects;
- governmental or regulatory delays and changes in regulatory requirements, policy and guidelines; and
- varying interpretation of data by the FDA and similar foreign regulatory agencies.

It is possible that none of our product candidates will complete clinical trials in any of the markets in which we, our collaborators or licensees intend to sell those product candidates. Accordingly, we, our collaborators or licensees may not receive the regulatory approvals needed to market our product candidates. Any failure or delay in commencing or completing clinical trials or obtaining regulatory approvals for our product candidates would delay commercialization of our product candidates and severely harm our business and financial condition.

Even if our product candidates receive regulatory approval, commercialization of such products may be adversely affected by regulatory actions.

Even if we receive regulatory approval, this approval may include limitations on the indicated uses for which we can market our medicines. Further, if we obtain regulatory approval, a marketed medicine and its manufacturer are subject to continual review, including review and approval of the manufacturing facilities. Discovery of previously unknown problems with a medicine may result in restrictions on its permissible uses, or on the manufacturer, including withdrawal of the medicine from the market. Although we currently have no reason to believe that we will need to terminate any ongoing clinical trials because of these factors, any failure to maintain regulatory approval will limit our ability to commercialize our product candidates, which would materially and adversely affect our business and financial condition.

We have incurred operating losses in each year since our inception and expect to continue to incur substantial and increasing losses for the foreseeable future.

We have been engaged in discovering and developing compounds and product candidates since mid-1997. We have not generated any product sales revenue to date. We may never generate revenue from selling medicines or achieve profitability. As of June 30, 2004, we had an accumulated deficit of

$417 million, of which $323 million represents research and development expenses. We expect our research and development expenses to continue to increase as we continue to expand our development programs. As a result, we expect to continue to incur substantial and increasing losses for the foreseeable future. We are uncertain when or if we will be able to achieve or sustain profitability. Failure to become and remain profitable would adversely affect the price of our common stock and our ability to raise capital and continue operations.

If we fail to obtain the capital necessary to fund our operations, we may be unable to develop our products and we could be forced to share our rights to commercialize our product candidates with third parties on terms that may not be favorable to us.

We need large amounts of capital to support our research and development efforts. If we are unable to secure capital to fund our operations we will not be able to continue our discovery and development efforts and we might have to enter into strategic collaborations that could require us to share commercial rights to our medicines to a greater extent than we currently intend. Based on our current operating plans, we believe that the proceeds from this offering, together with our cash and cash equivalents and marketable securities, will be sufficient to meet our anticipated operating needs for at least the next eighteen months. We expect to require additional capital after that period.

In addition, if GSK files for regulatory approval and launches a medicine containing a LABA product candidate discovered by GSK, we would be required to pay GSK milestone payments of up to an aggregate of $220.0 million under our LABA collaboration. We may also need to raise additional funds if we choose to expand more rapidly than we presently anticipate. We may seek to sell additional equity or debt securities, or both, or incur other indebtedness. The sale of additional equity or debt securities, if convertible, could result in the issuance of additional shares of our capital stock and could result in dilution to our stockholders. The incurrence of indebtedness would result in increased fixed payment obligations and could also result in certain restrictive covenants, such as limitations on our ability to incur additional debt, limitations on our ability to acquire or license intellectual property rights and other operating restrictions that could adversely impact our ability to conduct our business. In addition, our ability to raise debt and equity financing is constrained by our alliance with GSK and we cannot guarantee that future financing will be available in sufficient amounts or on terms acceptable to us, if at all. If we are unable to raise additional capital in sufficient amounts or on terms acceptable to us, we will be prevented from pursuing research and development efforts. This could harm our business, prospects and financial condition and cause the price of our common stock to fall.

If GSK does not satisfy its obligations under our agreements with them, we will be unable to develop our partnered product candidates as planned.

We entered into a collaboration agreement with GSK in November 2002 and a strategic alliance agreement with GSK in March 2004. In connection with the these agreements, we have granted to GSK certain rights regarding the use of our patents and technology with respect to compounds in our development programs, including development and marketing rights. In connection with our strategic alliance agreement, upon exercise of its rights with respect to a particular development program, GSK will have full responsibility for development and commercialization of any product candidates in that program. Any future milestone payments or royalties to us from these programs will depend on the extent to which GSK advances the product candidate through development and commercial launch.

We cannot assure you that GSK will fulfill its obligations under these agreements. If GSK fails to fulfill its obligations under these agreements, we may be unable to assume the development of the products covered by the agreements or enter into alternative arrangements with a third party. In addition, with the exception of product candidates in our LABA collaboration, GSK is not restricted from developing its own product candidates that compete with those licensed from us. If GSK elected

to advance its own product candidates in preference to those licensed from us, future payments to us could be curtailed and our business and financial condition would be materially and adversely affected. Accordingly, our ability to receive any revenue from the product candidates covered by these agreements is dependent on the efforts of GSK. We could also become involved in disputes with GSK, which could lead to delays in or termination of our development and commercialization programs and time-consuming and expensive litigation or arbitration. If GSK terminates or breaches its agreements with us, or otherwise fails to complete its obligations in a timely manner, the chances of successfully developing or commercializing our product candidates would be materially and adversely affected.

In addition, while our alliance with GSK sets forth pre-agreed upfront payments, development obligations, milestone payments and royalty rates under which GSK may obtain exclusive rights to develop and commercialize our product candidates, GSK may in the future seek to negotiate more favorable terms on a project-by-project basis. To date, GSK has only opted into our long-acting muscarinic antagonist (LAMA) program. There can be no assurance that GSK will opt in to any other development program under the terms of the alliance agreement, or at all. GSK's failure to opt in to our development programs could adversely affect the perceived prospects of the product candidates that are the subject of these development programs, which could negatively affect our ability to enter into collaborations for these product candidates with third parties and the price of our common stock.

Our relationship with GSK may have a negative effect on our ability to enter into relationships with third parties.

GSK will own approximately 18.2% of our outstanding capital stock after the completion of this offering, assuming its concurrent purchase of 318,929 shares of Class A common stock upon the closing of this offering, and will have the right to acquire up to approximately 60% of our common stock through the exercise of its call right. Other than telavancin, which GSK has not opted in to under the strategic alliance, GSK also has the right to license exclusive development and commercialization rights to our product candidates arising from all of our current and future drug discovery and development programs initiated prior to September 1, 2007. This right will extend to our programs intiated prior to September 1, 2012 if GSK owns more than 50% of our common stock due to exercise of the call right or the put right. Pharmaceutical companies (other than GSK) that may be interested in developing products with us are likely to be less inclined to do so because of our relationship with GSK, or because of the perception that development programs that GSK does not opt in to pursuant to our alliance agreement are not promising programs. In addition, because GSK may in many cases opt in to our development programs at any time prior to successful completion of a Phase 2 proof-of-concept trial, as it has for our LAMA program, we may be unable to collaborate with other partners with respect to these programs until we have expended substantial resources to advance them through clinical trials. Given the restrictions on our ability to raise capital provided for in our agreements with GSK, we may not have sufficient funds to pursue such projects in the event GSK does not opt in at an early stage. If our ability to work with present or future strategic partners, collaborators or consultants is adversely affected as a result of our strategic alliance with GSK, our business prospects may be limited and our financial condition may be adversely affected.

If we are unable to enter into future collaboration arrangements or if any such collaborations with third parties are unsuccessful, our profitability may be delayed or reduced.

Although GSK has opted in to our LAMA program, GSK has not opted in to our bacterial infections program and may not opt in to any of our other programs. As a result, we may be required to enter into collaborations with other third parties regarding our bacterial infections program or other programs whereby we have to relinquish material rights, including revenue from commercialization of our medicines on terms that are less attractive than our current arrangements with GSK. Furthermore, our ability to raise additional capital to fund our drug discovery and development efforts is greatly limited as a result of our agreements with GSK. In addition, we may not be able to control the amount

of time and resources that our collaborative partners devote to our product candidates and our partners may choose to pursue alternative products. Moreover, these collaboration arrangements are complex and time-consuming to negotiate. If we are unable to reach agreements with third-party collaborators, we may fail to meet our business objectives. We face significant competition in seeking third-party collaborators and may be unable to find third parties to pursue strategic collaborations on a timely basis or on acceptable terms. Our inability to successfully collaborate with third parties would increase our development costs and could limit the likelihood of successful commercialization of our product candidates.

We rely on a limited number of manufacturers for our product candidates and our business will be seriously harmed if these manufacturers are not able to satisfy our demand and alternative sources are not available.

We do not have in-house manufacturing capabilities and depend entirely on a small number of third-party compound manufacturers and active pharmaceutical ingredient formulators. We do not have long-term agreements with any of these third parties and our agreements with these parties are generally terminable at will by either party at any time. If, for any reason, these third parties are unable or unwilling to perform, we may not be able to locate alternative manufacturers or formulators or enter into favorable agreements with them. Any inability to acquire sufficient quantities of our compounds in a timely manner from these third parties could delay clinical trials and prevent us from developing our product candidates in a cost-effective manner or on a timely basis. In addition, manufacturers of our compounds are subject to the FDA's current Good Manufacturing Practices regulations and similar foreign standards and we do not have control over compliance with these regulations by our manufacturers.

Our manufacturing strategy presents the following additional risks:

- because of the complex nature of our compounds, our manufacturers may not be able to successfully manufacture our compounds in a cost effective or timely manner;
- some of the manufacturing processes for our compounds have not been tested in quantities needed for continued clinical trials or commercial sales, and delays in scale-up to commercial quantities could delay clinical trials, regulatory submissions and commercialization of our compounds; and
- because some of the third-party manufacturers and formulators are located outside of the U.S., there may be difficulties in importing our compounds or their components into the U.S. as a result of, among other things, FDA import inspections, incomplete or inaccurate import documentation or defective packaging.

We presently do not have sufficient quantities to complete clinical trials of either telavancin, our lead product candidate in our bacterial infections program, or TD-6301, our lead product candidate in our overactive bladder program. In preparation for future clinical trials, we have recently shifted to a new manufacturer of telavancin. If this new manufacturer fails to produce telavancin at acceptable quantity and quality levels, our clinical trials and any commercialization of telavancin may be delayed.

If we lose our relationships with contract research organizations, our drug development efforts could be delayed.

We are substantially dependent on third-party vendors and clinical research organizations for preclinical studies and clinical trials related to our drug discovery and development efforts. If we lose our relationship with any one or more of these providers, we could experience a significant delay in both identifying another comparable provider and then contracting for its services. We may be unable to retain an alternative provider on reasonable terms, if at all. Even if we locate an alternative provider, it is likely that this provider will need additional time to respond to our needs and may not

provide the same type or level of service as the original provider. In addition, any clinical research organization that we retain will be subject to the FDA's regulatory requirements and similar foreign standards and we do not have control over compliance with these regulations by these providers. Consequently, if these practices and standards are not adhered to by these providers, the development and commercialization of our product candidates could be delayed, which could severely harm our business and financial condition.

We face substantial competition, which may result in others discovering, developing or commercializing products before or more successfully than we do.

Our ability to succeed in the future depends on our ability to demonstrate and maintain a competitive advantage with respect to our approach to the discovery and development of medicines. Our objective is to discover, develop and commercialize new medicines with superior efficacy, convenience, tolerability and/or safety. Because our strategy is to develop new product candidates for biological targets that have been validated by existing medicines or late stage development drugs, to the extent that we are able to develop medicines, they are likely to compete with existing drugs that have long histories of effective and safe use and with new therapeutic agents. We expect that any medicines that we commercialize with our collaborative partners or on our own will compete with existing, market-leading medicines.

Many of our potential competitors have substantially greater financial, technical and personnel resources than we have. In addition, many of these competitors have significantly greater commercial infrastructures than we have. Our ability to compete successfully will depend largely on our ability to leverage our experience in drug discovery and development to:

- discover and develop medicines that are superior to other products in the market;
- attract qualified scientific, product development and commercial personnel;
- obtain patent and/or other proprietary protection for our medicines and technologies;
- obtain required regulatory approvals; and
- successfully collaborate with pharmaceutical companies in the discovery, development and commercialization of new medicines.

Established pharmaceutical companies may invest heavily to quickly discover and develop novel compounds that could make our product candidates obsolete. Accordingly, our competitors may succeed in obtaining patent protection, receiving FDA approval or discovering, developing and commercializing medicines before we do. We are also aware of other companies that may currently be engaged in the discovery of medicines that will compete with the product candidates that we are developing. In addition, in the markets that we are targeting, we expect to compete against current market-leading medicines.

Any new medicine that competes with a generic market leading medicine must demonstrate compelling advantages in efficacy, convenience, tolerability and/or safety in order to overcome the severe price competition and be commercially successful. If we are not able to compete effectively against our current and future competitors, our business will not grow and our financial condition and operations will suffer.

As the principles of multivalency become more widely known, we expect to face increasing competition from companies and other organizations that pursue the same or similar approaches. Novel therapies, such as gene therapy or effective vaccines for infectious diseases, may emerge that will make both conventional and multivalent medicine discovery efforts obsolete or less competitive.

We have no experience selling or distributing products and no internal capability to do so.

Generally, our strategy is to engage pharmaceutical or other healthcare companies with an existing sales and marketing organization and distribution system to sell, market and distribute our products. We may not be able to establish these sales and distribution relationships on acceptable terms, or at all. If we receive regulatory approval to commence commercial sales of any of our product candidates, other than those subject to our current or future agreements with GSK or pursuant to other strategic partnerships that we may enter into, we will have to establish a sales and marketing organization with appropriate technical expertise and supporting distribution capability. At present, we have no sales personnel and a very limited number of marketing personnel. Factors that may inhibit our efforts to commercialize our products without strategic partners or licensees include:

- our inability to recruit and retain adequate numbers of effective sales and marketing personnel;
- the inability of sales personnel to obtain access to or persuade adequate numbers of physicians to prescribe our products;
- the lack of complementary products to be offered by sales personnel, which may put us at a competitive disadvantage relative to companies with more extensive product lines; and
- unforeseen costs and expenses associated with creating an independent sales and marketing organization.

If we are not able to partner with a third party and are not successful in recruiting sales and marketing personnel or in building a sales and marketing infrastructure, we will have difficulty commercializing our product candidates, which would adversely affect our business and financial condition.

If we lose key scientists or management personnel, or if we fail to recruit additional highly skilled personnel, it will impair our ability to discover, develop and commercialize product candidates.

We are highly dependent on principal members of our management team and scientific staff, including our Chairman of the Board of Directors, P. Roy Vagelos, our Chief Executive Officer, Rick E Winningham and our Executive Vice President of Research, Patrick P.A. Humphrey. These executives each have significant pharmaceutical industry experience and Dr. Vagelos and Dr. Humphrey are prominent scientists. The loss of Dr. Vagelos, Mr. Winningham or Dr. Humphrey could impair our ability to discover, develop and market new medicines.

Our scientific team has expertise in many different aspects of drug discovery and development. Our company is located in northern California, which is headquarters to many other pharmaceutical and biopharmaceutical companies and many academic and research institutions. There is currently a shortage of experienced scientists, which is likely to continue, and competition for skilled personnel in our market is very intense. Competition for experienced scientists may limit our ability to hire and retain highly qualified personnel on acceptable terms. In addition, none of our employees have employment commitments for any fixed period of time and could leave our employment at will. If we fail to identify, attract and retain qualified personnel, we may be unable to continue our development and commercialization activities.

Our principal facility is located near known earthquake fault zones, and the occurrence of an earthquake, extremist attack or other catastrophic disaster could cause damage to our facilities and equipment, which could require us to cease or curtail operations.

Our principal facility is located in the San Francisco Bay Area near known earthquake fault zones and therefore is vulnerable to damage from earthquakes. In October 1989, a major earthquake struck this area and caused significant property damage and a number of fatalities. We are also

vulnerable to damage from other types of disasters, including power loss, attacks from extremist organizations, fire, floods, communications failures and similar events. If any disaster were to occur, our ability to operate our business could be seriously impaired. In addition, the unique nature of our research activities and of much of our equipment could make it difficult for us to recover from this type of disaster. We currently may not have adequate insurance to cover our losses resulting from disasters or other similar significant business interruptions and we do not plan to purchase additional insurance to cover such losses due to the cost of obtaining such coverage. Any significant losses that are not recoverable under our insurance policies could seriously impair our business and financial condition.

Risks Related to GSK's Ownership of Our Stock

The risks described below are related to GSK's ownership of our stock and the call and put features of our common stock described in the section entitled "Description of Capital Stock." Please review and consider these risks carefully in connection with the descriptions of our transactions with GSK described in this prospectus.

GSK's right to become a controlling stockholder of the company and its right to membership on our board of directors may create conflicts of interest, and may inhibit our management's ability to continue to operate our business in the manner in which it is currently being operated.

GSK will own approximately 18.2% of our outstanding capital stock upon completion of this offering and assuming its concurrent purchase of 318,929 shares of Class A common stock upon the closing of this offering. In addition, GSK has certain rights to maintain its percentage ownership of our capital stock in the future, and in 2007 GSK may exercise its call right to acquire additional shares and thereby increase its ownership up to approximately 60% of our then outstanding capital stock. If GSK exercises this call right, or a sufficient number of our stockholders exercise the put right provided for in our certificate of incorporation, GSK could own a majority of our capital stock. In addition, pursuant to the agreements described in the section entitled "Description of Capital Stock," GSK currently has the right to designate one member to our 12-member board of directors and, depending on GSK's ownership percentage of our capital stock after September 2007, GSK will have the right to nominate up to one-third of the members of our board of directors and up to one-half of the independent members of our board of directors. There are currently no GSK designated directors on our board of directors. GSK's control relationship could give rise to conflicts of interest, including:

- conflicts between GSK, as our controlling stockholder, and our other stockholders, whose interests may differ with respect to our strategic direction or significant corporate transactions; and
- conflicts related to corporate opportunities that could be pursued by us, on the one hand, or by GSK, on the other hand.

Further, pursuant to our certificate of incorporation, we renounce our interest in and waive any claim that a corporate or business opportunity taken by GSK constituted a corporate opportunity of ours unless such corporate or business opportunity is expressly offered to one of our directors who is a director, officer or employee of GSK, primarily in his or her capacity as one of our directors.

The call and put rights referred to above are described more fully in the section entitled "Description of Capital Stock—Common Stock Call and Put Arrangements with GSK."

GSK's rights under the strategic alliance and governance agreements may deter or prevent efforts by other companies to acquire us, which could prevent our stockholders from realizing a control premium.

Our governance agreement with GSK requires us to exempt GSK from our stockholder rights plan, affords GSK certain rights to offer to acquire us in the event third parties seek to acquire our stock and contains other provisions that could deter or prevent another company from seeking to acquire us. For example, GSK may offer to acquire 100% of our outstanding stock from stockholders in certain circumstances, such as if we are faced with a hostile acquisition offer or if our board of directors acts in a manner to facilitate a change in control of us with a party other than GSK. In addition, pursuant to our strategic alliance agreement with GSK, GSK has the right to opt in to all of our current and future drug discovery and development programs initiated prior to September 1, 2007 or, if GSK acquires more than 50% of our stock in 2007, prior to September 1, 2012. As a result, we may not have the opportunity to be acquired in a transaction that stockholders might otherwise deem favorable, including transactions in which our stockholders might realize a substantial premium for their shares.

Our governance agreement with GSK limits our ability to raise debt and equity financing, undertake strategic acquisitions or dispositions and take certain other actions, which could significantly constrain and impair our business and operations.

Our governance agreement with GSK limits the number of shares of capital stock that we may issue and the amount of debt that we may incur. Prior to the termination of the call and put arrangements with GSK in 2007, without the prior written consent of GSK, we may not issue any equity securities if it would cause more than approximately 54.2 million shares of common stock, or securities that are vested and exercisable or convertible into shares of common stock, to be outstanding. After estimating the number of shares we will require for equity incentive plans through the termination of the call and put arrangements, we believe that we may issue up to a total of approximately 10.3 million new shares of capital stock for capital raising purposes, including shares that we issue in connection with this offering. In addition:

- If, on or immediately after the termination of the call and put arrangements with GSK in 2007, GSK directly or indirectly controls more than 35.1% of our outstanding capital stock, then without the prior written consent of GSK, we may not issue more than an aggregate of approximately 16.1 million shares of our capital stock after September 1, 2007 through August 2012; and

- Prior to the termination of the call and put arrangements with GSK in 2007, we may not borrow money or otherwise incur indebtedness of more than $100.0 million or if such indebtedness would cause our consolidated debt to exceed our cash, cash equivalents and marketable securities.

These limits on issuing equity and debt could leave us without adequate financial resources to fund our discovery and development efforts in the event that GSK does not opt in to development programs pursuant to our strategic alliance agreement. This could result in a reduction of our discovery and development efforts or could result in our having to enter into collaborations with other companies that could require us to share commercial rights to our medicines to a greater extent than we currently intend. In addition, if GSK's ownership of our capital stock exceeds 50% as a result of the call and put arrangements, we will be prohibited from engaging in certain acquisitions, the disposition of material assets or repurchase of our outstanding stock without GSK's consent. These restrictions could cause us to forego transactions that would otherwise be advantageous to us and our other stockholders. The governance agreement referred to above is described more fully in the section entitled "Description of Capital Stock—Governance Agreement."

The market price of our common stock is not guaranteed, and could be adversely affected by the put and call arrangements with GSK.

In 2007, GSK has the right to require us to redeem 50% of our outstanding common stock for $54.25 per share, and, if GSK does not exercise this right, our stockholders will have the right to cause us to redeem up to the same number of shares for $19.375 per share. The existence of the call feature on 50% of our common stock at a fixed price of $54.25 may act as a material impediment to our common stock trading above the $54.25 per share call price. If the call is exercised, our stockholders would participate in valuations above $54.25 per share only with respect to 50% of their shares. Conversely, because the put applies to only 50% of our common stock and is not exercisable prior to 2007, the put may not have an effective supporting effect on our stock price. In addition, while GSK is generally prevented from making any unsolicited tender offer for our common stock, any announcement by GSK that it does not intend to exercise the call or any offer GSK may make to our board of directors on terms less favorable than the call right described above could adversely affect our common stock price.

As a result of the call and put arrangements with GSK, there are uncertainties with respect to various tax consequences associated with owning and disposing of shares of our common stock. Therefore, there is a risk that owning and/or disposing of our common stock may result in certain adverse tax consequences to our stockholders.

Due to a lack of definitive judicial and administrative interpretation, uncertainties exist with respect to various tax consequences resulting from the ownership of our common stock. These include:

- In the event we pay or are deemed to have paid dividends prior to the exercise and/or lapse of the put and call rights, individual stockholders may be required to pay tax on such dividends at ordinary income rates rather than capital gains rates, and corporate stockholders may be prevented from obtaining a dividends received deduction with respect to such dividend income.

- In the event that our common stock were to be considered as "not participating in corporate growth to any significant extent," a holder thereof may be required, during the period beginning upon such holder's acquisition of such stock and ending during the put period, to include currently in gross income a portion of the excess of $19.375 per share over the fair market value of the stock at issuance;

- In the event that a common stockholder's put right were considered to be a property right separate from the common stock, such stockholder may be subject to limitations on recognition of losses and certain other adverse consequences with respect to the common stock and the put right (including the tolling of its capital gains holding period);

- The application of certain actual and constructive ownership rules could cause the redemption of our common stock to give rise to ordinary income and not to capital gain;

- A redemption of our common stock may be treated as a recapitalization pursuant to which a stockholder exchanges shares of common stock for cash and shares of new common stock not subject to call and put rights, in which case the stockholder whose shares were redeemed would be required to recognize gain, but not loss, in connection with this deemed recapitalization in an amount up to the entire amount of cash received (which gain may be taxed as ordinary income and not capital gain); and

- The put right could prevent a stockholder's capital gain holding period for our common stock from running and thereby prevent a stockholder from obtaining long-term capital gain on any gain recognized on the disposition of the common stock.

See section entitled "Material United States Federal Income Tax Consequences" for a description of the tax consequences to a holder of our common stock.

Risks Related to Legal and Regulatory Uncertainty

If our efforts to protect the proprietary nature of the intellectual property related to our technologies are not adequate, we may not be able to compete effectively in our market.

We rely upon a combination of patents, patent applications, trade secret protection and confidentiality agreements to protect the intellectual property related to our technologies. Any involuntary disclosure to or misappropriation by third parties of this proprietary information could enable competitors to quickly duplicate or surpass our technological achievements, thus eroding our competitive position in our market. However, the status of patents in the biotechnology and pharmaceutical field involves complex legal and scientific questions and is very uncertain. As of June 30, 2004, we had 40 issued United States patents and have received notices of allowance for 7 other United States patent applications. As of that date, we had 75 pending patent applications in the United States and 71 granted foreign patents. We also have 18 Patent Cooperation Treaty applications that permit us to pursue patents outside of the United States, and 300 foreign national patent applications. Our patent applications may be challenged or fail to result in issued patents and our existing or future patents may be too narrow to prevent third parties from developing or designing around these patents. If the sufficiency of the breadth or strength of protection provided by our patents with respect to a product candidate is threatened, it could dissuade companies from collaborating with us to develop, and threaten our ability to commercialize, the product candidate.

In addition, we rely on trade secret protection and confidentiality agreements to protect proprietary know-how that is not patentable, for processes for which patents are difficult to enforce and for any other elements of our drug discovery process that involve proprietary know-how, information and technology that is not covered by patent applications. Although we require all of our employees, consultants, advisors and any third parties who have access to our proprietary know-how, information and technology to enter into confidentiality agreements, we cannot be certain that this know-how, information and technology will not be disclosed or that competitors will not otherwise gain access to our trade secrets or independently develop substantially equivalent information and techniques. Further, the laws of some foreign countries do not protect proprietary rights to the same extent as the laws of the United States. As a result, we may encounter significant problems in protecting and defending our intellectual property both in the United States and abroad. If we are unable to prevent material disclosure of the intellectual property related to our technologies to third parties, we will not be able to establish or, if established, maintain a competitive advantage in our market which could materially adversely affect our business, financial condition and results of operations.

Litigation or third-party claims of intellectual property infringement could require us to divert resources and may prevent or delay our drug discovery and development efforts.

Our commercial success depends in part on our not infringing the patents and proprietary rights of third parties. Third parties may assert that we are employing their proprietary technology without authorization. In addition, third parties may obtain patents in the future and claim that use of our technologies infringes upon these patents. Furthermore, parties making claims against us may obtain injunctive or other equitable relief, which could effectively block our ability to further develop and commercialize one or more of our product candidates. Defense of these claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of employee resources from our business. In the event of a successful claim of infringement against us, we may have to pay substantial damages, obtain one or more licenses from third parties or pay royalties. In addition, even in the absence of litigation, we may need to obtain licenses from third parties to advance our research or allow commercialization of our product candidates, and we have done so from time to time.

We may fail to obtain any of these licenses at a reasonable cost or on reasonable terms, if at all. In that event, we would be unable to further develop and commercialize one or more of our product candidates, which could harm our business significantly.

In addition, in the future we could be required to initiate litigation to enforce our proprietary rights against infringement by third parties. Prosecution of these claims to enforce our rights against others could involve substantial litigation expenses and divert substantial employee resources from our business. If we fail to effectively enforce our proprietary rights against others, our business will be harmed.

Product liability lawsuits could divert our resources, result in substantial liabilities and reduce the commercial potential of our medicines.

The risk that we may be sued on product liability claims is inherent in the development of pharmaceutical products. These lawsuits may divert our management from pursuing our business strategy and may be costly to defend. In addition, if we are held liable in any of these lawsuits, we may incur substantial liabilities and may be forced to limit or forgo further commercialization of those products. Although we maintain general liability and product liability insurance, this insurance may not fully cover potential liabilities. In addition, inability to obtain or maintain sufficient insurance coverage at an acceptable cost or to otherwise protect against potential product liability claims could prevent or inhibit the commercial production and sale of our products which could adversely affect our business.

The recent Medicare prescription drug coverage legislation and future legislative or regulatory reform of the healthcare system may adversely affect our ability to sell our products profitably.

In both the United States and some foreign jurisdictions, there have been a number of legislative and regulatory proposals to change the healthcare system in ways that could adversely affect our ability to sell our products profitably. In the United States, new legislation has been proposed at the federal and state levels that would result in significant changes to the healthcare system, either nationally or at the state level. Further federal and state proposals and healthcare reforms are likely. Our results of operations could be materially and adversely affected by the Medicare prescription drug coverage legislation, by the possible effect of this legislation on amounts that private insurers will pay and by other healthcare reforms that may be enacted or adopted in the future.

If we use hazardous and biological materials in a manner that causes injury or violates applicable law, we may be liable for damages.

Our research and development activities involve the controlled use of potentially hazardous substances, including chemical, biological and radioactive materials. In addition, our operations produce hazardous waste products. Federal, state and local laws and regulations govern the use, manufacture, storage, handling and disposal of hazardous materials. Although we believe that our procedures for use, handling, storing and disposing of these materials comply with legally prescribed standards, we cannot completely eliminate the risk of contamination or injury resulting from hazardous materials and we may incur liability as a result of any such contamination or injury. In the event of an accident, we could be held liable for damages or penalized with fines, and the liability could exceed our resources. We do not have any insurance for liabilities arising from hazardous materials. We currently possess all required permits for the handling, storing and disposing of such hazardous materials. Compliance with applicable environmental laws and regulations is expensive, and current or future environmental regulations may impair our research, development and production efforts which could harm our business.

Risks Related to this Offering

Concentration of ownership will limit your ability to influence corporate matters.

Immediately following this offering and the expected concurrent sale of 318,929 shares of Class A common stock to GSK, GSK will beneficially own approximately 18.2% of our outstanding capital stock and our directors, executive officers and investors affiliated with these individuals will beneficially own approximately 25.1% of our outstanding common stock. These stockholders could substantially control the outcome of actions taken by us that require stockholder approval. In addition, pursuant to our governance agreement with GSK described in the section entitled "Description of Capital Stock—Governance Agreement," GSK currently has the right to nominate a board member and following September 2007 will have the right to nominate a certain number of board members depending on GSK's ownership percentage of our capital stock at the time. For these reasons, GSK could have substantial influence in the election of our directors, delay or prevent a transaction in which stockholders might receive a premium over the prevailing market price for their shares and have significant control over changes in our management or business.

Our stock price may be extremely volatile, an active trading market for our common stock may not develop and you may not be able to resell your shares at or above the initial public offering price.

Prior to this offering, there has been no public market for our common stock. Negotiations between the underwriters and us will determine the initial public offering price. This price may not be indicative of future market prices. Although we anticipate that our common stock will be approved for listing on the Nasdaq National Market, an active trading market for our shares may never develop or be sustained following this offering. In addition, the stock market has from time to time experienced significant price and volume fluctuations, and the market prices of the securities of technology companies, particularly life sciences companies without product revenues such as ours, have been highly volatile.

The following factors, in addition to the other risk factors described in this section, may also have a significant impact on the market price of our common stock:

- GSK's call right in 2007 for 50% of our common stock at $54.25 per share;
- announcements regarding GSK's decisions whether or not to opt in to any of our product development programs;
- the extent to which GSK advances our product candidates through development into commercialization;
- announcements regarding GSK generally;
- announcements of patent issuances or denials, technological innovations or new commercial products by us or our competitors;
- developments concerning any collaboration we may undertake with companies other than GSK;
- publicity regarding actual or potential testing or trial results or the outcome of regulatory review relating to products under development by us or our competitors;
- regulatory developments in the United States and foreign countries; and
- economic and other external factors beyond our control.

As a result of these factors, after this offering you might be unable to resell your shares at or above the initial public offering price.

A substantial number of shares of our common stock could be sold into the public market shortly after this offering, which could depress our stock price.

The market price of our common stock could decline as a result of sales by our existing stockholders of shares of common stock in the market after this offering or the perception that these sales could occur. If a trading market develops for our common stock, many of our stockholders will have an opportunity to sell their stock for the first time. These factors could also make it difficult for us to raise additional capital by selling stock. See the section entitled "Shares Eligible for Future Sale."

You will incur immediate and substantial dilution in the pro forma as adjusted net tangible book value of the stock you purchase.

We estimate that the initial public offering price of our common stock will be $14.00 per share. This amount is substantially higher than the pro forma as adjusted net tangible book value that our outstanding common stock will have immediately after this offering. Accordingly, if you purchase shares of our common stock at the assumed initial public offering price, you will incur immediate and substantial dilution of $10.12 per share. If the holders of outstanding options or warrants exercise those options or warrants, you will suffer further dilution.

Anti-takeover provisions in our charter and bylaws, in our rights agreement and in Delaware law could prevent or delay a change in control of our company.

Provisions of our certificate of incorporation and bylaws may discourage, delay or prevent a merger or acquisition that stockholders may consider favorable, including transactions in which you might otherwise receive a premium for your shares. These provisions include:

- requiring supermajority stockholder voting to effect certain amendments to our certificate of incorporation and bylaws;
- restricting the ability of stockholders to call special meetings of stockholders;
- prohibiting stockholder action by written consent; and
- establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted on by stockholders at stockholder meetings.

In addition, our board of directors has adopted a rights agreement that may prevent or delay a change in control of us. Further, some provisions of Delaware law may also discourage, delay or prevent someone from acquiring us or merging with us. See "Description of Capital Stock—Delaware Anti-Takeover Law and Our Certificate of Incorporation and Bylaw Provisions"; "—Rights Agreement."

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements that involve substantial risks and uncertainties. All statements, other than statements of historical facts, included in this prospectus regarding our strategy, future operations, future financial position, future revenues, projected costs, prospects and plans and objectives of management are forward-looking statements. The words "anticipates," "believes," "estimates," "expects," "intends," "may," "plans," "projects," "will," "would" and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements that we make. We have included important factors in the cautionary statements included in this prospectus, particularly in the section entitled "Risk Factors" that we believe could cause actual results or events to differ materially from the forward-looking statements that we make. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments we may make. We do not assume any obligation to update any forward-looking statements.

USE OF PROCEEDS

We estimate the net proceeds to us from the sale of the 5,200,000 shares of common stock in this offering to be approximately $65.3 million at an assumed initial public offering price of $14.00 per share and after deducting the underwriting discounts and commissions and estimated offering expenses. If the underwriters' overallotment option is exercised in full, we estimate the net proceeds will be approximately $75.5 million.

The principal purposes of this offering are to increase our capitalization and financial flexibility, to provide a public market for our common stock and to facilitate access to public capital markets.

We presently expect to use the net proceeds of this offering, and approximately $20 million to $30 million of our existing cash and cash equivalents, to fund Phase 3 clinical trials of telavancin. We initiated the first of these trials in September 2004.

This expected use of the net proceeds of this offering represents our current intentions based upon our present plans and business condition. The amounts and timing of our actual expenditures will depend upon numerous factors, including the ongoing status and results of the Phase 3 telavancin clinical trials and our ability to enter into a partnership with a pharmaceutical company regarding telavancin, which could result in some or all of the clinical trial costs for the telavancin program being paid by such partner.

If we enter into a partnership with a pharmaceutical company regarding telavancin that results in some or all of the Phase 3 telavancin clinical trial costs being paid by such partner, we may use a portion of the net proceeds for the acquisition of businesses, products and technologies that we believe are complementary to our own, though we have no agreements or understandings with respect to any acquisition at this time. Pending the application of the net proceeds of the offering as described above, we intend to invest the net proceeds of this offering in short-term, interest-bearing, investment-grade securities until they are used.

DIVIDEND POLICY

We have never declared or paid any dividends on our capital stock. We currently intend to retain any future earnings to finance our research and development efforts, the development of our proprietary technologies and the expansion of our business and do not intend to declare or pay cash dividends on our capital stock in the foreseeable future. Any future determination to pay dividends will be at the discretion of our board of directors and will depend upon results of operations, financial condition, contractual restrictions, restrictions imposed by applicable law and other factors our board of directors deems relevant. If a cash dividend is paid before the date our common stock is called or put, the call price or put price per share, as applicable, will be reduced by the amount of the per share cash dividend.

CAPITALIZATION

The following table sets forth our unaudited capitalization as of June 30, 2004:

- on an actual basis; and
- on an as adjusted basis to reflect the sale of the 5,200,000 shares of common stock offered in this offering at an assumed initial public offering price of $14.00 per share after deducting the estimated underwriting discounts and commissions and offering expenses and our expected sale of 318,929 shares of Class A common stock to GSK at a per share purchase price equal to the assumed initial public offering price.

You should read this information together with our consolidated financial statements and the notes to those statements appearing elsewhere in this prospectus.

	June 30, 2004	
	Actual	As Adjusted
	(unaudited) (in thousands)	
Long-term obligations, less current portion	$ 2,392	$ 2,392
Stockholders' equity:		
Preferred stock, $0.01 par value; 5,000,000 shares authorized, no shares issued and outstanding actual and 230,000 shares authorized, no shares issued and outstanding, as adjusted	—	—
Common stock, $0.01 par value; 175,000,000 shares authorized, 36,458,986 shares issued and outstanding, actual; 200,000,000 shares authorized, 41,658,986 shares issued and outstanding, as adjusted(1)	363	415
Class A common stock, $0.01 par value, 13,900,000 shares authorized, 8,967,741 shares issued and outstanding, actual; 30,000,000 shares authorized, 9,286,670 shares issued and outstanding, as adjusted	90	93
Additional paid-in capital	558,839	628,553
Notes receivable from stockholders	(763)	(763)
Deferred stock-based compensation	(13,840)	(13,840)
Accumulated other comprehensive income (loss)	(247)	(247)
Accumulated deficit	(417,145)	(417,145)
Total stockholders' equity	127,297	197,066
Total capitalization	$ 129,689	$ 199,458

(1) Actual and as adjusted shares excludes 8,692,642 shares of common stock issuable upon exercise of outstanding options with a weighted average exercise price of $7.17 per share and an additional 735,357 shares reserved for future stock option grants and purchases under our equity compensation plans and includes 188,023 shares issued upon exercise of stock options that were exercised after March 21, 2002 and unvested at June 30, 2004. As adjusted excludes 64,908 shares of common stock issuable upon exercise of outstanding warrants with a weighted average exercise price of $9.13 per share.

DILUTION

The net tangible book value of our common stock as of June 30, 2004 was $127.3 million, or approximately $2.80 per share. Net tangible book value per share represents the amount of stockholders' equity divided by 45,426,727 shares of common stock and Class A common stock outstanding at that date.

Net tangible book value dilution per share to new investors represents the difference between the amount per share paid by purchasers of common stock in this offering and the pro forma net tangible book value per share of common stock immediately after completion of this offering. After giving effect to our sale of 5,200,000 shares of common stock in this offering, after deducting estimated underwriting discounts and commissions and offering expenses, after giving effect to the sale of 318,929 shares of Class A common stock that we expect to issue to GSK in a concurrent private sale at the assumed initial public offering price, assuming an initial public offering price of $14.00 per share, our pro forma net tangible book value as of June 30, 2004 would have been $3.87 per share. This represents an immediate increase in net tangible book value of $1.07 per share to existing stockholders and an immediate dilution in net tangible book value of $10.13 per share to purchasers of common stock in this offering, as illustrated in the following table:

Assumed initial public offering price per share		$ 14.00
Net tangible book value per share as of June 30, 2004	$ 2.80	
Increase per share attributable to new investors	$ 1.07	
Pro forma net tangible book value per share at June 30, 2004 after giving effect to the offering		$ 3.87
Dilution per share to new investors		$ 10.13

Assuming the exercise in full of the underwriters' overallotment option, our pro forma net tangible book value at June 30, 2004 would have been approximately $4.02 per share, representing an immediate increase in the pro forma net tangible book value of $1.22 per share to our existing stockholders and an immediate decrease in net tangible book value of $9.98 per share to new investors.

The following table summarizes, on a pro forma basis, as of June 30, 2004, the difference between the number of shares of common stock and Class A common stock purchased from us, the total consideration paid to us, and the average price per share paid by existing stockholders, by new investors in this offering at an assumed initial public offering price of $14.00 per share and by GSK in the concurrent private placement at a per share purchase price equal to the assumed initial public offering price, before deducting underwriting discounts and estimated offering expenses.

	Shares Purchased		Total Consideration		
	Number	Percent	Amount	Percent	Average Price Per Share
Existing stockholders	45,426,727	89.2%	$ 559,875,000	87.9%	$ 12.32
New investors	5,200,000	10.2	72,800,000	11.4	14.00
New investment by GSK	318,929	0.6	4,465,006	0.7	14.00
Total	50,945,656	100.0%	$ 637,140,006	100.0%	

The discussion and the tables above include 188,023 shares issued upon exercise of stock options that were exercised after March 21, 2002 and unvested at June 30, 2004. The discussion and the tables above assume no exercise of stock options or warrants outstanding on June 30, 2004 and no

issuance of shares reserved for future issuance under our equity compensation plans. As of June 30, 2004 there were:

- 8,692,642 shares of common stock issuable upon exercise of outstanding options with a weighted average exercise price of $7.17 per share;
- 64,908 shares of common stock issuable upon exercise of outstanding warrants with a weighted average exercise price of $9.13 per share; and
- an additional 735,357 shares reserved for future stock option grants and purchases under our existing equity compensation plans.

If the underwriters' overallotment option is exercised in full, the following will occur:

- the percentage of shares of common stock held by existing stockholders (excluding the 366,768 shares of Class A common stock to be purchased by GSK concurrently with this offering) will decrease to approximately 87.7% of the total number of shares of our common stock and Class A common stock outstanding after this offering; and
- the number of shares held by new investors will be increased to 5,980,000 or approximately 11.6% of the total number of shares of our common stock and Class A common stock outstanding after this offering.

SELECTED CONSOLIDATED FINANCIAL DATA

The consolidated statements of operations data for the years ended December 31, 2001, 2002 and 2003, and the consolidated balance sheet data at December 31, 2002 and 2003 are derived from our audited consolidated financial statements included in this prospectus. The consolidated statements of operations data for the years ended December 31, 1999 and 2000, and the consolidated balance sheet data at December 31, 1999, 2000 and 2001 are derived from our audited consolidated financial statements not included in this prospectus. The consolidated statements of operations data for the six months ended June 30, 2003 and 2004 and the consolidated balance sheet data at June 30, 2004 are derived from our unaudited consolidated financial statements included in this prospectus. The unaudited consolidated financial statements include, in the opinion of management, all adjustments, consisting of only recurring adjustments, that management considers necessary for the fair presentation of the financial information set forth in those statements. The historical results are not necessarily indicative of the results to be expected in future periods.

The following data should be read together with our consolidated financial statements and accompanying notes and the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in this prospectus.

	Years Ended December 31,					Six Months Ended June 30,	
	1999	2000	2001	2002	2003	2003	2004
	(in thousands, except per share amounts)						
						(unaudited)	
Consolidated Statements of Operations Data							
Revenue from related party	$ —	$ —	$ —	$ 156	$ 3,605	$ 1,332	$ 3,563
Operating expenses:							
Research and development(1)	39,663	49,802	53,773	66,481	61,704	27,573	39,284
General and administrative	4,901	10,937	10,506	11,817	12,153	6,330	12,704
Stock-based compensation(2)	3,203	43,188	10,134	4,941	2,214	892	3,867
Total operating expenses	47,767	103,927	74,413	83,239	76,071	34,795	55,855
Loss from operations	(47,767)	(103,927)	(74,413)	(83,083)	(72,466)	(33,463)	(52,292)
Interest and other income	7,101	10,193	11,530	4,990	3,373	1,799	1,520
Interest and other expense	(465)	(1,201)	(1,962)	(1,134)	(1,490)	(655)	(423)
Net loss	$ (41,131)	$ (94,935)	$ (64,845)	$ (79,227)	$ (70,583)	$ (32,319)	$ (51,195)
Basic and diluted net loss per share(3)	$ (18.59)	$ (24.94)	$ (11.73)	$ (12.50)	$ (10.37)	$ (4.85)	$ (2.92)
Shares used in per share calculations(3)	2,213	3,806	5,526	6,336	6,809	6,661	17,543

(1) Research and development expenses include $6.9 million, $5.1 million and $650,000 for 1999, 2000 and 2001, respectively, comprised of acquired in-process research and development, impairment and other charges related to a 1999 acquisition.

(2) Stock-based compensation, consisting of amortization of deferred stock-based compensation and the value of options issued to non-employees for services rendered, is allocated as follows:

Research and development	$ 2,524	$ 24,403	$ 6,574	$ 3,398	$ 1,300	$ 414	$ 1,784
General and administrative	679	18,785	3,560	1,543	914	478	2,083
Total non-cash stock-based compensation	$ 3,203	$ 43,188	$ 10,134	$ 4,941	$ 2,214	$ 892	$ 3,867

(3) Share and per share amounts for all periods reflect the effect of a one for 1.55 reverse stock split effected September 27, 2004, and, for the six months ended June 30, 2004, the conversion of all of our outstanding preferred stock into common stock as of May 11, 2004.

	December 31,					June 30,
	1999	2000	2001	2002	2003	2004
	(in thousands)					
						(unaudited)
Consolidated Balance Sheet Data						
Cash, cash equivalents and marketable securities	$ 114,428	$ 203,995	$ 152,976	$ 148,550	$ 89,152	$ 188,010
Working capital	105,847	194,885	142,649	112,720	71,085	162,008
Total assets	147,175	246,854	188,749	192,715	125,449	219,001
Long-term liabilities	4,203	11,713	7,916	18,187	37,494	62,056
Convertible preferred stock	185,209	327,107	327,107	367,358	367,358	—
Accumulated deficit	(56,360)	(151,295)	(216,140)	(295,367)	(365,950)	(417,145)
Total stockholders' equity (deficit)	(52,937)	(102,918)	(157,752)	(231,934)	(299,566)	127,297

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis of our financial condition and results of operations together with our consolidated financial statements and related notes appearing at the end of this prospectus. Some of the information contained in this discussion and analysis or set forth elsewhere in this prospectus, including information with respect to our plans and strategy for our business and related financing, includes forward-looking statements that involve risks and uncertainties. You should review the "Risk Factors" section of this prospectus for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Overview

We are a biopharmaceutical company with a pipeline of product candidates that we discovered and expect to develop in collaboration with partners or on our own. In approximately seven years of operation, four product candidates discovered by us have advanced into clinical trials, one of which is currently in Phase 3 and one of which is currently in Phase 2. Further, we have seven additional product candidates discovered by us in preclinical studies. We are focused on the discovery, development and commercialization of small molecule medicines for unmet medical needs across a number of therapeutic areas including respiratory disease, bacterial infections, overactive bladder and gastrointestinal disorders.

We commenced operations in 1997, and as of June 30, 2004, we had an accumulated deficit of $417.1 million. None of our products have been approved for marketing and sale to patients and we have not received any product revenue to date. Most of our spending to date has been for research and development activities and general and administrative expenses. We expect to incur substantial losses for at least the next several years as we continue to invest in research and development. Depending upon the timing and structure of corporate collaborations, we anticipate that research and development expenses will increase significantly to the extent that we enter later-stage clinical trials for our product candidates currently in Phase 1 or 2, and enter clinical trials for our other product candidates. The clinical development of our product candidates may take many years and require substantial expenditures. We intend to enter into collaborative arrangements with third parties to develop certain product candidates. We have no internal manufacturing capacity or sales capabilities. We have limited marketing capabilities. As a result, our ability to achieve revenue and profitability is principally dependent on our ability to collaborate with partners in order to successfully complete the development of our product candidates, conduct clinical trials, obtain necessary regulatory approvals and manufacture and commercialize our product candidates.

We are unable to estimate the length of time or the costs that will be required to complete the development of our product candidates. Even if we obtain regulatory approval, we cannot guarantee that we or a partner will be able to successfully commercialize our medicines.

In November 2002, we entered into a collaboration agreement with GSK to develop and commercialize product candidates for the treatment of asthma and chronic obstructive pulmonary disease (COPD). Under the terms of the collaboration agreement with GSK, each company contributed four long-acting $beta_2$ agonist (LABA) product candidates to the collaboration. GSK is responsible for all development and commercialization costs associated with this program and will pay us clinical, regulatory and commercial milestones based on the performance of our product candidates. We will make regulatory and commercial milestone payments to GSK if GSK files for regulatory approval and launches a medicine containing a LABA product candidate discovered by GSK. In addition, we will receive the same royalties on product sales of medicines from the collaboration, regardless of whether the product candidate originated with us or with GSK.

In March 2004, we entered into a strategic alliance with GSK whereby GSK received an option to license product candidates from all of our other current and future drug discovery and development programs initiated prior to September 1, 2007, on pre-determined terms and on an exclusive, worldwide basis. If GSK exercises its option to license any of our programs, we will receive an upfront payment, additional payments upon satisfaction of future milestones and royalties on any future sales of medicines developed from these programs. In addition, GSK would fund all of the subsequent development and commercialization costs for product candidates in such programs. Consistent with our strategy, we will be obligated at our sole cost to discover two structurally different product candidates for certain programs that GSK opts in to. If GSK does not exercise its opt-in right, we may develop the product candidate from this program in collaboration with another party or on our own. In August 2004, GSK exercised its right to opt in to our long-acting muscarinic antagonist program for the treatment of COPD and informed us of its decision not to opt in to our bacterial infections program, in each case pursuant to the terms of the strategic alliance.

We initiated the first of our Phase 3 clinical trials for telavancin, the lead product candidate in our bacterial infections program, in September 2004. These Phase 3 clinical trials will increase our research and development expenses significantly through at least 2006.

Operating Expenses

Our Development Programs

In our bacterial infections program, we have completed seven Phase 1 human clinical trials and are currently undergoing Phase 2 clinical trials for our lead product candidate, telavancin. We initiated a Phase 3 clinical trial in complicated skin and soft tissue infections in September 2004 and currently plan to begin a Phase 3 clinical trial in hospital acquired pneumonia by the end of 2004. This will increase our research and development expenses significantly through at least 2006. However, actual expenses will be based on the timing and structure of any collaborations in which the partner may incur a portion of the expenses.

In our respiratory disease program, GSK is responsible for all development and commercialization costs associated with our LABA collaboration and LAMA program under the terms of our 2002 LABA collaboration and 2004 strategic alliance, respectively. We participate in the joint steering and project committees and are not reimbursed for our participation.

We will be responsible for all development costs associated with our product candidates in our other development programs unless GSK opts in to a development program pursuant to our strategic alliance or we enter into a collaboration agreement with a third party that provides otherwise. Development timelines and costs are difficult to estimate and may vary significantly for each product candidate from quarter to quarter. Preclinical studies and clinical trials are expensive and take many years to complete, and the process of seeking regulatory approvals and the subsequent compliance with applicable regulations require substantial expenditures.

In addition to our development programs, we also currently have an active discovery effort underway to discover and move new product candidates from existing programs to development. We are currently responsible for all of these discovery costs.

Research and Development Expenses

Research and development expenses consist of costs of our drug-discovery efforts, conducting preclinical studies and clinical trials, activities related to regulatory filings, patent prosecution related to our development programs and manufacturing development efforts. Research and development expenses consist of: external research and development expenses incurred under agreements with third-party contract research organizations, where a substantial portion of our preclinical studies and all of our clinical trials are conducted, third-party manufacturing organizations, where a substantial portion of our preclinical supplies and all of our clinical supplies are produced, and consultants; employee-related

expenses, which include salaries and benefits; and facilities, depreciation and other allocated expenses, which include direct and allocated expenses for rent and maintenance of facilities, depreciation of leasehold improvements and equipment, and laboratory and other supplies. We outsource to third parties a substantial portion of our preclinical studies and all of our clinical trials and manufacturing of raw materials, active pharmaceutical ingredient and finished product. We do not track, and have not tracked, all of our research and development expenses on a project basis.

General and Administrative Expenses

General and administrative expenses generally include salaries and benefits, professional fees and facility costs. We anticipate that general and administrative expenses will increase to support our growing development, manufacturing and commercialization efforts. We also expect to incur additional costs associated with operating as a public company.

Critical Accounting Policies

This discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements as well as the reported revenue and expenses during the reporting periods. We continually evaluate our estimates and judgments related to revenue recognition. We base our estimates on the terms of underlying agreements, the expected course of development, historical experience and other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

While our significant accounting policies are more fully described in Note 2 to our consolidated financial statements contained in this prospectus, we believe that the following accounting policies relating to revenue recognition, preclinical study and clinical trial expenses and stock-based compensation charges are most critical in fully understanding and evaluating our reported financial results.

Revenue Recognition

In connection with our agreements with GSK, we recognize revenue from non-refundable, upfront fees and development milestone payments ratably over the term of our performance under the agreements. These payments are recorded as deferred revenue pending recognition. When the period of deferral cannot be specifically identified from the agreement, management estimates the period based upon critical factors contained within the agreement and other relevant facts. We periodically review the estimated performance period, which could impact the deferral period and, therefore, the timing and the amount of revenue recognized. Significant milestones in the development process typically include initiation of clinical trials and approvals by regulatory agencies.

We have been reimbursed by GSK for certain external development costs under the GSK collaboration agreement. Such reimbursements have been reflected as a reduction in research and development expense and not as revenue.

Preclinical Study and Clinical Trial Expenses

A substantial portion of our preclinical studies and all of our clinical trials have been performed by third-party contract research organizations (CROs). Some CROs bill monthly for services performed, while others bill based upon milestones achieved. We review the activities performed under the significant contracts each quarter. For preclinical studies, the significant factors used in estimating accruals include the percentage of work completed to date and contract milestones achieved. For

clinical trial expenses, the significant factors used in estimating accruals include the number of patients enrolled and percentage of work completed to date. Vendor confirmations are obtained for contracts with longer duration when necessary to validate our estimate of expenses. Most contracts currently have a duration of less than one year. As we progress our product candidates into later-stage clinical trials, we may enter into contracts with longer terms and different payment structures. We would evaluate the appropriate accrual process under such multi-year contracts to record the expenses incurred under those circumstances. No material adjustments to preclinical study and clinical trial expenses have been recognized.

Stock-based Compensation

Deferred stock-based compensation. Deferred stock-based compensation for stock options granted to employees is recorded when the fair value of our common stock exceeds the exercise price of the stock options on the date of measurement, which is typically the date of grant. Deferred stock-based compensation is amortized using the accelerated method over the vesting periods of the related options, generally four years. The accelerated vesting method provides for vesting of portions of the overall award at interim dates and results in higher expense in earlier years than straight-line vesting.

The amount of stock-based compensation expense expected to be amortized in future periods may decrease if unvested options for which deferred stock-based compensation has been recorded are subsequently cancelled or may increase if future option grants are made with exercise prices below the deemed fair value of the common stock on the date of measurement.

A substantial portion of the Company's deferred stock-based compensation was established in 1999 and 2000 due to the Company granting options at exercise prices less than the deemed fair market value on the date of grant. In addition, the Company recorded deferred stock-based compensation of $1.5 million in 2003 and $16.6 million in the six months ended June 30, 2004, due to options granted below the deemed fair market value on the option grant dates.

Other stock-based compensation. Other stock-based compensation generally consists of the fair value of options granted to non-employees, such as consultants and advisors, calculated using the Black-Scholes method. These options are subject to periodic remeasurement over the vesting period as services are rendered based on changes in the fair value of our common stock. As a result, other stock-based compensation charges in future periods may vary significantly.

Recent Accounting Pronouncements

In January 2003, the FASB issued FIN 46, *Consolidation of Variable Interest Entities*. FIN 46 clarifies the application of Accounting Research Bulletin No. 51. This Interpretation requires variable interest entities to be consolidated if the equity investment at risk is not sufficient to permit an entity to finance its activities without support from other parties or the equity investors lack specified characteristics. The adoption of FIN 46 did not have an impact on our financial statements.

In May 2003, the FASB issued SFAS 150, *Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity*. SFAS 150 establishes standards for how a company classifies and measures certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify certain financial instruments as a liability (or as an asset in some circumstances). SFAS No. 150 is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. The adoption of SFAS No. 150 did not have an impact on our financial statements.

Agreements with GlaxoSmithKline

2002 LABA Collaboration

In November 2002, we entered into a collaboration agreement with GSK to develop and commercialize LABA product candidates for the treatment of asthma and COPD. Under the terms of the agreement, each company contributed four product candidates to the collaboration. We received an initial cash payment from GSK of $10.0 million in December 2002. In addition, we also sold $40.0 million of our Series E preferred stock to GSK. In connection with this collaboration, in 2003 we received cash payments totaling $30.0 million as development milestones were achieved, and another $15.0 million was received in the first half of 2004.

We recorded the initial cash payment and subsequent milestone payments as deferred revenue, to be amortized ratably over our estimated period of performance (the product development period), which we currently estimate to be eight years from the collaboration's inception. Collaboration revenue was $156,000 in 2002 and $3.6 million in 2003 and $3.2 million for the six months ended June 30, 2004. Subsequent development milestones will be recorded as deferred revenue when received and amortized over the remaining period of performance during the development period. Additionally, GSK reimbursed us for certain costs related to the collaboration of $1.5 million in 2002 and $2.7 million in 2003 and $478,000 for the six months ended June 30, 2004. We recorded these amounts as an offset to research and development expense.

GSK has agreed to make additional payments to us based on achievement of development milestones over the development period. In addition, payments may be received based on product sales milestones subsequent to the estimated eight-year development period. If the development and commercialization of our LABA product candidates is successful, these payments could total $450.0 million, of which $150.0 million would be attributable to the product candidates reaching certain sales thresholds. Alternatively, we may be required to make milestone payments of up to an aggregate of $220.0 million if GSK files for regulatory approval and launches a medicine containing a LABA product candidate discovered by GSK. GSK will pay us the same royalty payments from product sales containing any LABA commercialized from this collaboration regardless of the origin of the compound. The royalty structure would result in an average percentage royalty rate in the low to mid-teens at annual net sales up to approximately $4.0 billion, and the average royalty rate would decline to single digits at annual net sales of more than $6.0 billion. Sales of single agent LABA medicines and combination LABA/inhaled corticosteroid medicines would be combined for the purposes of this royalty calculation.

2004 Strategic Alliance

In March 2004, we entered into a strategic alliance with GSK for the development and commercialization of product candidates in a variety of therapeutic areas. In connection with the alliance agreement, we received a $20.0 million payment in May 2004. This payment is being amortized over the initial opt-in period of the agreement, which is currently estimated to be approximately $7\frac{1}{2}$ years. In connection with the strategic alliance, we recognized $380,000 in revenue for the six months ended June 30, 2004. In addition, in May 2004, GSK, through an affiliate, purchased approximately 6.4 million shares of our Class A common stock, which increased GSK's percentage ownership in our outstanding stock from approximately 6.6% to approximately 19.7%. GSK also has an option to increase its ownership to up to approximately 60% in 2007 and to maintain its current ownership percentage until then. The alliance provides GSK with an option to license, on an exclusive, worldwide basis, product candidates from all of our existing discovery and development programs, or discovery and development programs initiated prior to September 1, 2007. Upon opting in to a program, GSK would be responsible for all development, manufacturing and commercialization activities for such programs. Consistent with our strategy, we will be obligated at our sole cost to discover two structurally different product candidates for certain programs that GSK opts in to. We may receive clinical,

regulatory and commercial milestone payments based on performance and royalties on any future sales. If a product is successfully commercialized, in addition to any royalty revenue we receive, the total upfront and milestone payments that we could receive could range from up to $130.0 million to $162.0 million for programs with single-agent medicines and up to $252.0 million for programs with both a single-agent and a combination medicine. GSK is not obligated to opt in to any of our development programs. If GSK does not exercise its opt-in right with respect to a development program, we will need to collaborate with another third party or we will incur significant development costs and potential delays in the development of the program until funding is available. In August 2004, GSK exercised its right to opt in to our long-acting muscarinic antagonist program for the treatment of COPD and informed us of its decision not to opt in to our bacterial infections program, in each case pursuant to the terms of the strategic alliance. We received a $5.0 million payment from GSK in connection with its opt-in to our long-acting muscarinic antagonist program.

GSK may increase its ownership in our outstanding stock to up to approximately 60% through the issuance by us to GSK of the number of shares of our common stock that we may be required to redeem from our stockholders as described below. In July 2007, GSK has the right to require us to redeem ("call"), and upon notice of such redemption, each stockholder (including GSK, to the extent GSK holds common stock) will automatically be deemed to have submitted for redemption, 50% of our common stock held by such stockholder at $54.25 per share. If GSK does not exercise this right, each of our stockholders (including GSK, to the extent GSK holds common stock) has the right to require us to redeem ("put") up to 50% of their common stock at $19.375 per share in August 2007. In either case, GSK is contractually obligated to pay to us the funds necessary for us to redeem the shares of common stock from our stockholders; however, GSK's maximum obligation for the shares subject to the put is capped at $525.0 million. We are under no obligation to effect the call or the put until we receive such funds from GSK. Alternatively, if our stockholders exercise the put, GSK may elect to purchase the shares of common stock that are put directly from our stockholders. In connection with those arrangements, we have agreed not to issue new shares which would cause the potential put liability to exceed $525.0 million. If GSK's ownership increases to more than 50% in 2007 as a result of the call or put, it will receive an extension of its option to opt in to our programs initiated prior to September 1, 2012; otherwise, this exclusive option does not apply to programs initiated after September 1, 2007. See the section entitled "Description of Capital Stock—Common Stock Call and Put Arrangements with GSK."

We initiated the first of our Phase 3 clinical trials for telavancin, the lead compound in our bacterial infections program, in September 2004. These Phase 3 clinical trials will significantly increase our research and development expenses through at least 2006.

Results of Operations

Comparison of six months ended June 30, 2003 and 2004

Revenue. We recognized revenue of $1.3 million for the six months ended June 30, 2003 and $3.6 million for the six months ended June 30, 2004 from the amortization of upfront and milestone payments from GSK related to our LABA collaboration and strategic alliance agreements. Through June 30, 2004, we have received a $10.0 million payment for entering into the collaboration and $45.0 million of milestone payments under this agreement that are being amortized into revenue ratably through 2010. In May 2004, we received a $20.0 million payment from GSK representing partial consideration for the right to opt in to our discovery programs under the strategic alliance agreement. This payment is being amortized over the estimated term during which GSK can opt in to any discovery program, which is currently estimated to extend through September 2011.

Research and development. Research and development expenses increased from $27.6 million for the six months ended June 30, 2003 to $39.3 million for the six months ended June 30, 2004. External research and development expenses increased from $4.7 million for the six months ended

June 30, 2003 to $13.2 million for the six months ended June 30, 2004. This increase resulted primarily from an increase of $4.7 million in external development expenses for telavancin and TD-6301, and a $3.8 million increase in external research and development expenses for the other development and discovery programs. Employee-related expenses increased from $13.3 million for the six months ended June 30, 2003 to $16.5 million for the six months ended June 30, 2004. This increase was due to the forgiveness of an executive loan of $1.0 million and related income and employment taxes of $804,000 in June 2004, and higher salary and benefits costs in the six months ended June 30, 2004 compared with the same period in the prior year. Facilities, depreciation and other allocated expenses were unchanged at $9.5 million for the six months ended June 30, 2003 and 2004.

We anticipate that research and development expenses will continue to increase substantially in 2004 and subsequent years as we increase our research and development efforts and as our existing and future product candidates proceed through preclinical studies and more costly clinical trials. For example, we initiated the first of our Phase 3 clinical trials for telavancin, the lead product candidate in our bacterial infections program, in September 2004. These Phase 3 clinical trials will increase our research and development expenses significantly through at least 2006. However, actual expenses will be based on the timing and structure of any collaborations in which a partner may incur a portion of these expenses.

General and administrative. General and administrative expenses increased from $6.3 million for the six months ended June 30, 2003 to $12.7 million for the six months ended June 30, 2004. This increase was primarily related to the forgiveness of an executive loan in June 2004 of $3.0 million, which was net of forgiveness expense recorded in prior periods, related income and employment taxes of $3.2 million, an increase in consulting and business development expenses and expenses related to the GSK strategic alliance in 2004. We anticipate general and administrative expenses will increase in 2004 and subsequent years to support our discovery and development efforts, commercial development activities and expanded operational infrastructure, including costs associated with operating as a public company.

Stock-based compensation. Stock-based compensation expense increased from $892,000 for the six months ended June 30, 2003 to $3.9 million for the six months ended June 30, 2004. For the six months ended June 30, 2004, we recorded deferred stock-based compensation of $16.6 million for stock options granted in 2004 at prices below the deemed fair value on the option grant dates.

Interest and other income. Interest and other income includes interest income earned on cash and marketable securities, net realized gains on marketable securities and net sublease income on facilities. Interest income decreased from $1.8 million in the six months ended June 30, 2003 to $1.5 million in the six months ended June 30, 2004, due to lower cash balances for much of the 2004 period earning a lower rate of return.

Interest and other expense. Interest and other expense includes interest expense on capital lease and debt arrangements. Interest and other expense decreased from $655,000 in the 2003 period to $423,000 in the 2004 period due to declining lease and debt balances.

Comparison of years ended December 31, 2002 and 2003

Revenue. We recognized revenue of $156,000 in 2002 and $3.6 million in 2003 from the amortization of upfront and milestone payments received from GSK related to our LABA collaboration agreement. In December 2002, we received a payment of $10.0 million for entering into the LABA collaboration and during 2003 received another $30.0 million in milestone payments under this agreement, which are being amortized into revenue ratably through 2010.

Research and development. Research and development expenses decreased from $66.5 million in 2002 to $61.7 million in 2003. External research and development expenses declined from $20.2 million in 2002 to $15.7 million in 2003. This decrease was due to a decline in development costs

of $2.7 million related to our telavancin program, for which there were large preclinical safety studies conducted and more orders for clinical supplies placed in 2002 compared to 2003. In addition, LABA development costs declined by $2.6 million in 2003, which was attributable to lower costs in 2003, as GSK assumed full responsibility for development costs under the LABA collaboration agreement that we entered into in November 2002. These declines were partially offset by increases in external research and development expenses of $743,000 related to other development and discovery programs. Employee-related expenses increased from $25.6 million in 2002 to $26.2 million in 2003. This increase was principally attributable to costs associated with hiring new employees. Facilities, depreciation and other allocated expenses declined from $20.7 million in 2002 to $19.7 million in 2003. This decline was due to our subleasing a portion of our facilities.

General and administrative. General and administrative expenses increased from $11.8 million in 2002 to $12.2 million in 2003. An increase in employee-related costs was partially offset by lower financing and facilities costs.

Stock-based compensation. Stock-based compensation expense declined from $4.9 million in 2002 to $2.2 million in 2003, reflecting higher amortization of expense for deferred stock-based compensation recorded in earlier periods under the accelerated method.

Interest and other income and expense. Interest and other income decreased from $5.0 million in 2002 to $3.4 million in 2003. Lower interest rates in 2003 as well as lower cash balances contributed to this decline.

Interest and other expense. Interest expense rose from $1.1 million in 2002 to $1.5 million in 2003 due to a full year of interest expense on equipment and tenant improvement loans, both of which were effective beginning in mid-2002.

Comparison of years ended December 31, 2001 and 2002

Revenue. We recognized revenue of $156,000 in 2002 from the amortization of the $10.0 million upfront payment received from GSK after entering into the LABA collaboration agreement in November 2002.

Research and development. Research and development expenses increased from $53.8 million in 2001 to $66.5 million in 2002. External research and development expenses increased from $11.7 million in 2001 to $20.2 million in 2002. The increase was primarily due to a $5.7 million increase in development costs attributable to telavancin being advanced into Phase 1 clinical trials in December 2001. Additionally, $3.6 million was attributable to the LABA program prior to our collaboration with GSK. These increases were partially offset by a decline in external research and development expenses of $718,000 for other development and discovery programs. Employee-related expenses increased from $22.6 million in 2001 to $25.6 million in 2002, as staffing levels increased. Facilities, depreciation and other allocated expenses increased from $18.8 million in 2001 to $20.7 million in 2002, with the additional lease costs associated with our lease of an additional 60,000 square foot building. Research and development expense in 2001 includes an impairment charge of $650,000 in 2001 related to the write-off of certain intangibles acquired in 1999.

General and administrative. General and administrative expenses increased from $10.5 million in 2001 to $11.8 million in 2002. The increase was primarily attributable to increased financing costs and costs to support increased headcount in 2002.

Stock-based compensation. Stock-based compensation expense declined from $10.1 million in 2001 to $4.9 million in 2002, reflecting lower amortization expense for deferred stock-based compensation recorded in in later periods under the accelerated method and employee terminations.

Interest and other income and expense. Interest and other income decreased from $11.5 million in 2001 to $5.0 million in 2002. The decrease was due to substantially lower rates of return on our investment portfolio, which decreased from 6% to 2% and a lower average cash balance in 2002.

Interest and other expense. Interest and other expense decreased from $2.0 million in 2001 to $1.1 million in 2002, primarily as a result of a buy-out of an equipment lease in late 2001, on which we were not paying interest in 2002.

Income Taxes

At December 31, 2003, we had net operating loss carryforwards for federal income taxes of $249.0 million and federal research and development tax credit carryforwards of $4.0 million. Our utilization of the net operating loss and tax credit carryforwards may be subject to annual limitations due to the ownership change limitations provided by the Internal Revenue Code and similar state provisions. The annual limitations may result in the expiration of net operating losses and credits prior to utilization. We recorded a valuation allowance to offset in full the benefit related to the deferred tax assets because realization of this benefit was uncertain.

Liquidity and Capital Resources

Since inception through June 30, 2004, we have financed our operations primarily through the net proceeds from private placements of preferred stock and Class A common stock and from upfront and milestone payments from GSK under our strategic alliance and our LABA collaboration. We have received $483.4 million from private placements, including $40.0 million from the sale of our preferred stock to GSK in connection with the GSK collaboration and $108.9 million from the sale of our Class A common stock to GSK in connection with the strategic alliance. We have received $20.0 million in an upfront payment in connection with the GSK strategic alliance agreement and upfront and milestone payments totaling an aggregate of $55.0 million from GSK under our LABA collaboration. As of June 30, 2004, we had $188.0 million in cash, cash equivalents and marketable securities, excluding $5.3 million in restricted cash and cash equivalents that was pledged as collateral for certain of our leased facilities and equipment.

Our governance agreement with GSK limits the number of shares of capital stock that we may issue and the amount of debt that we may incur. Prior to the termination of the call and put arrangements with GSK in 2007, without the prior written consent of GSK, we may not issue any equity securities if it would cause more than approximately 54.2 million shares of common stock, or securities that are vested and exercisable or convertible into shares of common stock, to be outstanding. After estimating the number of shares we will require for equity incentive plans through the termination of the call and put arrangements, we believe that we may issue up to a total of approximately 10.3 million new shares of capital stock for capital raising purposes, including shares that we issue in connection with this offering. In addition:

- If, on or immediately after the termination of the call and put arrangements with GSK in 2007, GSK directly or indirectly controls more than 35.1% of our outstanding capital stock, then without the prior written consent of GSK, we may not issue more than an aggregate of approximately 16.1 million shares of our capital stock after September 1, 2007 through August 2012; and

- Prior to the termination of the call and put arrangements with GSK in 2007, we may not borrow money or otherwise incur indebtedness of more than $100.0 million or if such indebtedness would cause our consolidated debt to exceed our cash and cash equivalents and marketable securities.

These limits on issuing equity and debt could leave us without adequate financial resources to fund our discovery and development efforts in the event that GSK does not opt in to development programs pursuant to our alliance agreement and no other third-parties enter into collaborations with

us for these programs. This could result in a reduction of our discovery and development efforts and our ability to commercialize product candidates and generate revenues and may cause us to enter into collaborations with third-parties on less favorable terms.

We expect to incur substantial expenses as we continue our drug discovery and development efforts, particularly to the extent we advance our product candidates into clinical trials, which are very expensive. We also expect expenditures to increase as we invest in administrative infrastructure to support our expanded operations.

We believe the proceeds from this offering, together with our cash and cash equivalents and marketable securities, will be sufficient to meet our anticipated operating needs for at least the next eighteen months.

We expect to require additional capital. We may need to raise additional funds if we choose to expand more rapidly than we presently anticipate, or if our operating costs exceed our expectations. Subject to the restrictions in our agreements with GSK, we may seek to sell additional equity or debt securities, or both, or incur indebtedness under one or more credit facilities. The incurrence of indebtedness would result in increased fixed obligations and could also result in covenants that would restrict our operations. We cannot guarantee that future financing will be available in amounts or on terms acceptable to us, if at all.

Cash Flows

Six Months Ended June 30, 2003 and 2004

Net cash used in operating activities was $17.7 million and $6.7 million for the six months ended June 30, 2003 and 2004, respectively. The decrease of cash used in operations of $11.0 million was primarily due to a $20.0 million increase in cash payments from GSK related to the 2004 strategic alliance, partially offset by an increase of approximately $9.0 million in cash research and development and general and administrative expenses.

Net cash used in investing activities was $21.9 million and $28.3 million for the six months ended June 30, 2003 and 2004, respectively. The increase of cash used in investing activities of $6.4 million was primarily due to the increase in net purchases of marketable securities.

Financing activities used cash of $1.2 million and provided cash of $105.5 million for the six months ended June 30, 2003 and 2004, respectively. The increase in cash provided by financing activities of $106.7 million was primarily due to GSK's purchase of our Class A common stock in connection with the 2004 strategic alliance.

Years Ended December 31, 2002 and 2003

Net cash used in operating activities was $58.6 million and $31.7 million for the year ended December 31, 2002 and 2003, respectively. The decrease of cash used in operations of $26.9 million was primarily due to a $20.0 million increase in cash payments from GSK related to the LABA collaboration and an approximately $8.7 million decrease in cash operating expenses, partially offset by a $1.6 million decrease in interest and other income due to lower interest rates and cash balances.

Investing activities provided cash of $51.6 million and used cash of $13.6 million for the year ended December 31, 2002 and 2003, respectively. The increase of cash used in investing activities of $65.2 million was primarily due to an approximate $77.2 million decrease in net sales of marketable securities. This increase was partially offset by an approximately $6.2 million higher capital expenditures related to leasehold improvements in 2002 and approximately $5.8 million higher increase in notes receivable in 2002 for loans extended to assist relocating employees with the purchase of their primary residence.

Financing activities provided cash of $66.7 million and used cash of $27.8 million for the year ended December 31, 2002 and 2003, respectively. The decrease in cash provided by financing activities

of $94.5 million was primarily due to GSK's purchase of $40.0 million of convertible preferred stock in 2002 in connection with the LABA collaboration and the 2003 repayment of $25.0 million borrowed against our line of credit in 2002.

Years Ended December 31, 2001 and 2002

Net cash used in operating activities was $47.7 million and $58.6 million for the year ended December 31, 2001 and 2002, respectively. The increase of cash used in operations of $10.9 million was primarily due to an approximate $14.4 million increase in cash operating expenses, approximately $6.5 million decrease in interest and other income due to substantially lower rates of return on lower average cash balances, partially offset by a $10.0 million cash payments from GSK related to the LABA collaboration.

Net cash provided by investing activities was $36.2 million and $51.6 million for the year ended December 31, 2001 and 2002, respectively. The increase of cash provided by investing activities of $15.4 million was primarily due to an approximate $25.7 million increase in net sales of marketable securities, partially offset by a $5.4 million increase in capital expenditures related to leasehold improvements in 2002 and an increase of approximately $5.8 million in notes receivable in 2002 for loans extended to assist relocating employees with the purchase of their primary residence.

Financing activities used cash of $2.4 million and provided cash of $66.7 million for the year ended December 31, 2001 and 2002, respectively. The increase in cash provided by financing activities of $69.1 million was primarily due to GSK's purchase of $40.0 million of Series E convertible preferred shares in 2002 in connection with the LABA collaboration, $25.0 million borrowed against our line of credit in 2002 and a $2.9 million increase in proceeds from notes payable and capital leases.

Contractual Obligations and Commitments

Our major outstanding contractual obligations relate to our notes payable, capital leases from equipment financings, operating leases and fixed purchase commitments under contract research, development and clinical supply agreements. These contractual obligations as of June 30, 2004, are as follows (in millions):

	Less than 1 year	1-3 years	4-5 years	After 5 years	Total
Notes payable	$ 0.3	$ 0.7	$ 0.3	$ 0.4	$ 1.7
Capital lease obligations	1.6	3.7	—	—	5.3
Operating leases	3.4	19.7	12.4	14.7	50.2
Purchase obligations	4.2	0.3	0.1	—	4.6
Total	$ 9.5	$ 24.4	$ 12.8	$ 15.1	$ 61.8

As security for performance of our obligations under the operating leases for our headquarters, we have issued letters of credit totaling $3.8 million, collateralized by an equal amount of restricted cash. Additionally, we have restricted cash of $1.4 million as collateral for certain equipment leases. The terms of these facilities and equipment leases require us to maintain an unrestricted cash and marketable securities balance of at least $50.0 million on the last day of each calendar quarter.

Pursuant to our 2002 collaboration with GSK, we may be required to make milestone payments of up to an aggregate of $220.0 million if GSK files for regulatory approval and launches a medicine containing a LABA product candidate discovered by GSK. Based on available information, we do not estimate that any of these potential milestone payments are likely to be made in the next four years.

On June 4, 2004, we entered into an agreement with our chief executive officer, Mr. Winningham pursuant to which we agreed to forgive Mr. Winningham's housing loan in the amount of $3,750,000, thereby extinguishing his debt in full, in recognition of Mr. Winningham entering

into a lock-up agreement with us and GSK pursuant to which he has agreed not to sell or transfer 50% of the shares purchasable under all of his options prior to September 2007 and agreed not to put a portion of the shares purchasable under his options to purchase common stock in 2007 pursuant to the call and put arrangements with GSK. Also, Mr. Winningham agreed to deposit 129,032 shares of common stock purchasable under an option into escrow if he exercises the option prior to September 7, 2007. Should Mr. Winningham leave our employ due to voluntary resignation or a termination by us for cause, then he will forfeit any of these shares deposited into escrow. Subject to continued employment, we will release any shares from escrow over the following periods: 25% on December 31, 2005, 25% on December 31, 2006, and the balance on September 7, 2007 and will release the shares immediately should Mr. Winningham die or leave our employ due to disability. In June 2004, the net balance of the loan, $3.0 million, representing the original principal amount of $3.8 million, less a reserve of approximately $800,000 for forgiveness under the original terms of the loan that was recorded in prior periods, plus $3.2 million of related income and employment taxes was recorded as general and administrative expense. See "Certain Relationships and Related Party Transactions—Loans to Executive Officers."

On June 4, 2004, we entered into an agreement with Dr. Humphrey pursuant to which we agreed to forgive Dr. Humphrey's housing loan in the amount of $953,500, thereby extinguishing his debt in full, in recognition of Dr. Humphrey entering into a lock-up agreement with us and GSK pursuant to which he has agreed not to sell or transfer 50% of the shares purchasable under all of his options prior to September 2007 and agreed not to put a portion of the shares purchasable under his options to purchase common stock in 2007 pursuant to the call and put arrangements with GSK. Also, Dr. Humphrey agreed to deposit 62,696 shares of common stock purchasable under options into escrow if he exercises the options prior to September 7, 2007. Should Dr. Humphrey leave our employ due to voluntary resignation or a termination by us for cause, then he will forfeit any of these shares deposited into escrow. Subject to continued employment, we will release any shares from escrow over the following periods: 25% on December 31, 2005, 25% on December 31, 2006, and the balance on September 7, 2007 and will release the shares immediately should Dr. Humphrey die or leave our employ due to disability. As of June 30, 2004, the full amount of this loan, plus related income and employment taxes of $804,000, was recorded as research and development expense. See "Certain Relationships and Related Party Transactions—Loans to Executive Officers."

Disclosure About Market Risk

Our exposure to market risk is confined to our cash, cash equivalents, restricted cash and marketable securities. We invest in high-quality financial instruments, primarily money market funds, federal agency notes, asset backed securities, corporate debt securities and U.S. treasury notes, with no security having an effective duration in excess of 2 years. The securities in our investment portfolio are not leveraged, are classified as available-for-sale and, due to their very short-term nature, are subject to minimal interest rate risk. We currently do not engage in hedging activities. Because of the short-term maturities of our investments, we do not believe that an increase in market rates would have any significant negative impact on the realized value of our investment portfolio. Our outstanding capital lease obligations and notes payable are all at fixed interest rates, and therefore, have minimal exposure to changes in interest rates.

Most of our transactions are conducted in U.S. dollars, although we do conduct some clinical and safety studies, and manufacture some active pharmaceutical product with vendors located outside the United States. Some of these expenses are paid in U.S. dollars, and some are paid in the local foreign currency. If the exchange rate undergoes a change of 10%, we do not believe that it would have a material impact on our results of operations or cash flows.

BUSINESS

Overview

We are a biopharmaceutical company with a pipeline of product candidates that we discovered and expect to develop in collaboration with partners or on our own. We plan to commercialize our medicines primarily through partnerships with global pharmaceutical companies. In approximately seven years of operations, four product candidates discovered by us have advanced into clinical trials, one of which is currently in Phase 3 and one of which is currently in Phase 2. Further, we have seven additional product candidates discovered by us in preclinical studies. We are focused on the discovery, development and commercialization of small molecule medicines for unmet medical needs across a number of therapeutic areas including respiratory disease, bacterial infections, overactive bladder and gastrointestinal disorders. None of our products have been approved for marketing and sale to patients and we have not received any product revenue to date.

Our strategy focuses on the discovery, development and commercialization of medicines with superior efficacy, convenience, tolerability and/or safety. By primarily focusing on biological targets that have been either clinically validated by existing medicines or by potential medicines in late-stage clinical trials, we can leverage years of available knowledge regarding a target's activity and the animal models used to test potential medicines against such targets. We move a product candidate into development after it demonstrates superiority to such medicines or drugs in animal models that we believe correlate to human clinical experience. This strategy is designed to reduce technical risk and increase productivity. We believe that we can enhance the probability of successfully developing and commercializing medicines by identifying at least two structurally different product candidates, whenever practicable, for development in each therapeutic program.

In November 2002, we entered into a collaboration agreement with GlaxoSmithKline (GSK), a pharmaceutical company with substantial capabilities in respiratory drug development, formulation and commercialization, to develop and commercialize product candidates for the treatment of asthma and chronic obstructive pulmonary disease (COPD). These product candidates are intended to be administered via inhalation once daily both as a single new medicine and as part of a new combination medicine with an inhaled corticosteroid. Such a combination medicine could represent a "second generation" version of Advair, the current market leading medicine in this class with over $3.6 billion of sales reported by GSK in 2003. In December 2003, our lead compound, GSK 159797, and GSK's lead compound, GSK 597901, each completed a Phase 2a clinical trial. Both product candidates are undergoing further safety studies necessary before commencing Phase 2b clinical trials. GSK 159797, which was discovered by us, is currently the designated lead compound for the program.

We entered into a strategic alliance agreement with GSK in March 2004 whereby GSK received an option to license product candidates from all of our current and future drug discovery programs initiated prior to September 1, 2007, on pre-determined terms and on an exclusive, worldwide basis. If GSK exercises its option to license any of our programs, we will receive an upfront payment, additional payments upon achievement of future milestones and royalties on any future sales. In addition, GSK would fund all of the subsequent development and commercialization costs for product candidates in such programs. Consistent with our strategy, we will be obligated at our sole cost to discover two structurally different product candidates for certain programs that GSK opts in to. In August 2004, GSK exercised its right to opt in to our long-acting muscarinic antagonist program for the treatment of COPD and informed us of its decision not to opt in to our bacterial infections program, in each case pursuant to the terms of the strategic alliance.

In July 2007, GSK has the right to require us to redeem, and upon notice of such redemption, each stockholder (including GSK, to the extent GSK holds common stock) will automatically be deemed to have submitted for redemption, 50% of our common stock held by such stockholder at $54.25 per share. If GSK does not exercise this right, then in August 2007, each of our stockholders

(including GSK, to the extent GSK holds common stock) has the right to require us to redeem up to 50% of their common stock at $19.375 per share. In either case, GSK is obligated to pay to us the funds necessary for us to redeem the shares of common stock from our stockholders or, with respect to the shares of our common stock that are put, GSK may elect to purchase such shares directly from our stockholders. We are under no obligation to effect the call or the put until we receive such funds from GSK. GSK's ownership of our stock could increase to approximately 60% through the concurrent issuance to GSK of the number of shares of our common stock that we redeem. In addition, if GSK's ownership of our stock increases to more than 50% as a result of the call or put, GSK will receive an extension of its exclusive option to our programs initiated prior to September 1, 2012.

Telavancin, the lead product candidate in our bacterial infection program, is a rapidly bactericidal, injectable antibiotic. We have completed seven Phase 1 clinical trials for telavancin. In January 2004, we completed the first Phase 2 clinical trial in complicated skin and soft tissue infections comparing the safety and efficacy of telavancin with current standard antibiotic therapy. In addition to continuing Phase 2 clinical trials, we initiated a Phase 3 clinical trial in complicated skin and soft tissue infections in September 2004 and currently plan to begin a Phase 3 clinical trial in hospital acquired pneumonia by the end of 2004.

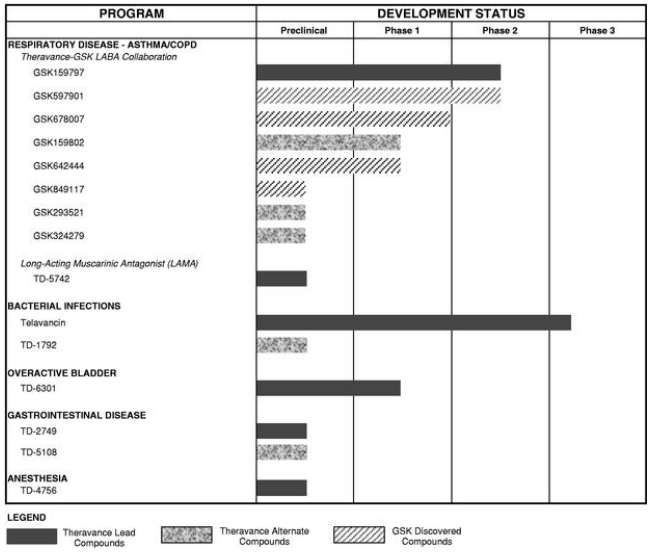
The first Phase 1 clinical trial of our lead product candidate in our overactive bladder program, TD-6301, was initiated in December 2003. We plan to initiate additional Phase 1 clinical trials in 2004.

We presently expect to use the net proceeds of this offering, and approximately $20 million to $30 million of our existing cash and cash equivalents, to fund Phase 3 clinical trials for telavancin. We believe our existing cash, cash equivalents and marketable securities will be sufficient to fund our other operating needs for at least the next eighteen months.

We believe that our expertise in multivalency will enable us to discover novel medicines with superior characteristics to existing medicines such as enhanced potency, duration of action and/or safety. Multivalency involves the simultaneous attachment of a single molecule to multiple binding sites on one or more biological targets. We have conducted extensive research in both relevant laboratory and animal models to demonstrate that by applying the design principles of multivalency, we can achieve significantly stronger and more selective attachment of our compounds to a variety of intended biological targets. We believe that medicines that attach more strongly and selectively to their targets will be superior to many medicines by substantially improving potency, duration of action and/or safety.

Our Programs

We have applied our expertise in multivalency to discover product candidates and lead compounds in a wide variety of therapeutic areas. We believe that our lead product candidates have demonstrated in clinical trials and/or in relevant animal models, potential advantages such as substantial increases in potency, duration of action and/or selectivity relative to existing medicines or potential medicines in late-stage clinical trials. The table below describes the status of programs and identifies which compounds were discovered by us and are being pursued as lead product candidates, which compounds were discovered by us and are being pursued as an alternative to a lead product candidate, and which compounds were discovered by GSK and are part of the pool of compounds being pursued under our long-acting $beta_2$ agonist (LABA) collaboration with GSK.



In the table, under the heading "Development Status," Preclinical refers to formulation development or to safety testing in animal models required prior to initiating clinical trials. Phase 1 indicates initial clinical safety testing in healthy volunteers, or studies directed toward understanding the mechanisms of action of the drug. Phase 2 indicates clinical safety testing, dosage testing and initial efficacy testing in a limited patient population. Phase 3 indicates evaluation of clinical efficacy and safety within an expanded patient population at geographically dispersed clinical trial sites. For purposes of the table, "Development Status" indicates the most advanced stage of development that has been completed or is in process.

Our Relationship with GlaxoSmithKline

2002 LABA Collaboration

In November 2002, we entered into a collaboration with GSK to develop and commercialize product candidates for the treatment of asthma and COPD. Under the terms of the collaboration, each company contributed four LABA product candidates to the collaboration. Our collaboration currently has five product candidates in clinical trials; two completed Phase 2a clinical trials in the fourth quarter of 2003, one completed a Phase 1 clinical trial in the fourth quarter of 2003 and two are in Phase 1 clinical trials. The remaining three product candidates are undergoing preclinical studies.

In connection with this collaboration, we received from GSK an upfront payment of $10 million. In addition, we sold GSK shares of our Series E preferred stock for an aggregate purchase price of $40 million. We have received $45 million in milestone payments through June 30, 2004, and may receive additional milestone payments from GSK if our LABA product candidates achieve development, regulatory or commercial milestones. If the continued development and commercialization of our LABA product candidates is successful, these payments could total up to an additional $450 million, of which $150 million would be attributable to the product candidates reaching certain sales thresholds. We will pay GSK regulatory and commercial milestone payments if a GSK

LABA product candidate reaches regulatory approval and launch. The payments to GSK in an aggregate amount not to exceed $220 million would be made if GSK files for regulatory approval and launches a medicine containing a LABA product candidate discovered by GSK. In addition, we will receive the same royalties on product sales of medicines from the LABA collaboration, regardless of whether the product candidate originated with us or with GSK. The royalty structure would result in an average percentage royalty rate in the low to mid-teens at annual net sales up to approximately $4 billion, and the average royalty rate would decline to single digits at annual net sales of more than $6 billion. Sales of single agent LABA medicines and combination LABA/inhaled corticosteroid medicines would be combined for the purposes of this royalty calculation.

2004 Strategic Alliance

In March 2004, we entered into a strategic alliance with GSK. Under the terms of this strategic alliance, GSK received an option to license potential new medicines from all of our current and future drug discovery and development programs initiated prior to September 1, 2007, on pre-determined terms and on an exclusive, worldwide basis. We are obligated to use diligent efforts to discover and deliver compounds for the alliance and have committed to initiating at least three new discovery programs from May 2004 through August 2007. We maintain sole decision-making authority with respect to our discovery programs, including without limitation, decisions relating to initiation and termination of discovery programs, and staffing and resource allocation between and among discovery programs.

GSK must exercise its "opt-in" right no later than sixty days subsequent to (i) for our inhaled respiratory discovery programs, the "development candidate" stage (generally defined as the point when the lead candidate is selected for preclinical studies and preparation for entry into a Phase 1 clinical trial), or (ii) for programs other than inhaled respiratory programs, the "proof-of-concept" stage (generally defined as the successful completion of a Phase 2a clinical trial if the biological target for the drug has been clinically validated by an existing medicine, and successful completion of a Phase 2b clinical trial if the biological target for the drug has not been clinically validated by an existing medicine). GSK will have only one opportunity to opt in to each of our programs. Upon its decision to opt in to a program, GSK will be responsible for and will fund all future development, manufacturing and commercialization activities for product candidates in that program. In addition, GSK is obligated to use diligent efforts to develop and commercialize product candidates from any program that it opts in to. Consistent with our strategy, we may be obligated at our sole cost to discover two structurally different product candidates for programs that GSK opts in to. If these programs are successfully advanced through development by GSK, we will receive clinical, regulatory and commercial milestone payments and royalties on any sales of medicines developed from these programs. If a product is successfully commercialized, in addition to any royalty revenue that we receive, the total upfront and milestone payments in any given program that GSK opts in to could range from $130 million to $162 million for programs with single-agent medicines and up to $252 million for programs with both a single-agent and a combination medicine. If GSK chooses not to opt in to a program, we retain all rights to the program and may continue the program alone or with a third party. In August 2004, GSK exercised its right to opt in to our long-acting muscarinic antagonist program for the treatment of COPD and informed us of its decision not to opt in to our bacterial infections program, in each case pursuant to the terms of the strategic alliance. We received a $5.0 million payment from GSK in connection with its opt-in to our long-acting muscarinic antagonist program in August 2004. There can be no assurance that GSK will opt in to any other programs under the terms of the alliance agreement or at all, which could have an adverse effect on our business and financial condition.

Upon entering into the strategic alliance with GSK, we received from GSK a payment of $20.0 million. At the same time, an affiliate of GSK purchased 6,387,096 shares of our Class A common stock for an aggregate purchase price of $108.9 million. The purchase of our Class A common

stock increased the ownership position of our outstanding stock by GSK and GSK affiliates from approximately 6.6% to 19.7%.

As part of the sale of our Class A common stock to an affiliate of GSK, we amended our certificate of incorporation to provide for the redemption of our common stock under certain circumstances. In July 2007, GSK has the right to require us to redeem, and upon notice, each stockholder (including GSK, to the extent GSK holds common stock) will automatically be deemed to have submitted for redemption, 50% of our common stock held by such stockholder at $54.25 per share. This right is referred to in this prospectus as the "call." If GSK does not exercise this call right, then in August 2007, each of our stockholders (including GSK, to the extent GSK holds common stock) has the right to cause us to redeem up to 50% of their common stock at $19.375 per share. This right is referred to in this prospectus as the "put." In either case, GSK is contractually obligated to pay to us the funds necessary for us to redeem the shares of common stock from our stockholders; however, GSK's maximum obligation for the shares subject to the put is capped at $525.0 million. We are under no obligation to effect the call or the put until we receive such funds from GSK. Alternatively, if our stockholders exercise the put, GSK may elect to purchase the shares of common stock that are put directly from our stockholders. GSK's ownership of our stock could increase to approximately 60% through the concurrent issuance to GSK of the number of shares of stock that we redeem. In addition, if GSK's ownership of our stock increases to more than 50% as a result of the call right or put right, GSK will receive an extension of its exclusive option to our programs initiated prior to September 1, 2012; otherwise, this exclusive option does not apply to programs initiated after September 1, 2007. For a more detailed description of the call and the put, see "Description of Capital Stock—Common Stock Call and Put Arrangements with GSK."

Concurrent with the purchase of our Class A common stock, we entered into a governance agreement with GSK, which among other matters, (i) gives GSK the right to nominate directors to our Board of Directors, (ii) provides GSK with rights regarding certain corporate governance matters, including the right to restrict our ability to take specified significant corporate actions, such as the issuance of debt and equity securities above specified limitations, the sale of significant assets, acquisitions by us and the redemption of our common stock, and (iii) governs future acquisitions or dispositions of our securities by GSK. For a more detailed description of these rights and obligations, see "Description of Capital Stock—Governance Agreement."

Development Programs

Asthma and Chronic Obstructive Pulmonary Disease (COPD)

We currently have two development programs directed toward asthma and COPD: our LABA collaboration with GSK and our Long-Acting Muscarinic Antagonist (LAMA) program.

Long-Acting Beta$_2$ Agonists for Treatment of Asthma and COPD

Our LABA collaboration with GSK is currently developing product candidates for the treatment of asthma and COPD. These product candidates are intended to be administered via inhalation once daily for the treatment of asthma and COPD both as a single new medicine and as part of a new once-daily combination medicine with an inhaled corticosteroid. The collaboration's development program involves eight LABA product candidates that have demonstrated efficacy in relevant animal models.

Beta$_2$ agonists are medicines that work by relaxing the muscles that line the airways, allowing the airways (the bronchial tubes of various sizes through which air moves in and out of the lungs) to expand (known as bronchodilation) and leading to relief and/or prevention of many of the symptoms of asthma and COPD. The beta$_2$ agonists and many other medications to treat asthma and COPD are administered by inhalation. Patients use a hand-held device to breathe in a measured amount of drug in an aerosol or dry powder spray.

GSK is also developing a once-daily inhaled corticosteroid (ICS) to use in a new combination medicine with a once-daily LABA from the collaboration. Advair, an inhaled twice-a-day combination medicine containing a long-acting $beta_2$ agonist and an ICS, is marketed by GSK.

The Unmet Medical Need

Asthma and COPD are both chronic diseases characterized by inflammation of the airways leading to limitation or obstruction of airflow and resulting in various symptoms relating to difficulty in breathing. Although many therapies are available for asthma and a growing number for COPD, reports from the National Institutes of Health indicate that these diseases remain major causes of death and disability. According to the Mattson Jack Group, a market research firm, approximately 17 million people in the United States, 15 million people in Western Europe and 5 million people in Japan have been diagnosed with asthma. In its September 2003 report, The American Lung Association estimates that 14 million people in the United States have been diagnosed with COPD. A similar number of people have been diagnosed with COPD in Western Europe and, according to the Mattson Jack Group, nearly three million people have been diagnosed with COPD in Japan. According to IMS Health data, the market for inhaled products containing long-acting $beta_2$ agonists in the United States, Japan and Europe was approximately $4.5 billion in 2003.

Advair is the current market-leading medicine in this class with over $3.6 billion of sales reported by GSK in 2003. It is an inhaled combination medicine consisting of a long-acting $beta_2$ agonist (salmeterol) and an inhaled corticosteroid (fluticasone) taken twice daily. While Advair has been approved by the FDA for the treatment of asthma and COPD, it must be administered twice a day, which reduces patient compliance.

In our LABA collaboration with GSK, we plan to develop a longer-acting $beta_2$ agonist that can be taken as an inhaled medicine once a day and can be combined with a once-a-day inhaled corticosteroid so the combination medicine would also be taken once a day. We believe once-a-day dosing would be a significant convenience and compliance-enhancing advantage leading to improved overall clinical outcomes in patients with asthma or COPD.

Status of Our Program

Four of our LABA product candidates and four GSK LABA product candidates are currently in development. Two product candidates, one from each company, have completed Phase 2a clinical trials. The two Phase 2a clinical trials completed in December 2003 involved patients with asthma. These clinical trials were designed to measure bronchodilation in asthmatic patients at various times following a single dose of the product candidates compared to both placebo and salmeterol, the current market-leading long-acting $beta_2$ agonist. These product candidates, GSK 159797 and GSK 597901, have demonstrated statistically greater bronchodilation at 24 hours compared to placebo and salmeterol. We believe these results are predictive that the beneficial effect will also be seen in patients receiving these product candidates for daily treatment. The lead product candidate in this program, GSK 159797, which was discovered by us, did not have an adverse impact on heart rate, a common side effect for $beta_2$ agonists. A multi-dose Phase 2a clinical trial in patients with asthma is underway with respect to GSK 159797, the current lead compound, and a similar trial is expected to begin during the second half of 2004 with respect to GSK 597901, which was discovered by GSK.

In addition, a third product candidate, discovered by GSK, completed a Phase 1 clinical trial in late 2003. Phase 1 clinical trials were initiated for the fourth and fifth product candidates in April 2004, one of which was a compound discovered by us.

Based on GSK 159797's and GSK 597901's Phase 2 clinical trial results, Phase 2b clinical trials are currently planned for these compounds. Prior to initiation of Phase 2b clinical trials, GSK 159797 and GSK 597901 will be formulated into their proposed final commercial formulations in a dry powder inhaler. We believe that it is important for the final medicine to be delivered in a dry powder inhaler,

as this has been the most successful method of delivering a combination of a long-acting beta$_2$ agonist and an ICS. The work completed by GSK to date suggests that GSK 159797 and GSK 597901 can be formulated for delivery through a dry powder inhaler.

GSK also has a novel once-a-day ICS in Phase 2a clinical trials. This corticosteroid may prove to be a suitable drug candidate for co-administration with the selected LABA product candidate from the collaboration in order to develop a once-a-day combination product that could represent a "second generation" version of Advair.

Inhaled Long-Acting Muscarinic Antagonists (LAMAs) for COPD

Among the most frequently used bronchodilators for COPD are the inhaled muscarinic antagonists. Inhaled muscarinic antagonists work by inhibiting muscarinic receptors on the bronchial airways which leads to muscle relaxation, bronchodilation and improved lung function. According to IMS Health data, the market for inhaled muscarinic antagonists in the United States, Japan and Europe was approximately $1.4 billion in 2003.

The Unmet Medical Need

Until recently, only one short-acting inhaled muscarinic antagonist (ipratropium) has been available in the United States, both as a single agent and in combination with the short-acting beta$_2$ agonist albuterol. This product requires dosing four or more times per day.

An inhaled LAMA (tiotropium or Spiriva) suitable for once-a-day dosing was launched in the United States in May 2004. Tiotropium has been available in Europe since 2002. Tiotropium produces prolonged blockage of muscarinic M_3 receptors. Although blocking the M_3 receptor is important for bronchodilation, there is emerging evidence that other receptor sub-types may play a role in mediating bronchodilation. In addition, after inhalation a significant amount of tiotropium reaches the systemic circulation, and, as a consequence, muscarinic M_3 receptors at other sites in the body can be blocked for an extended time. We believe this systemic activity of tiotropium is the cause of bothersome side effects such as dry mouth and constipation, which have been seen more frequently with tiotropium (especially in elderly patients) than with short-acting muscarinic antagonists (which have lower systemic adsorption) or with the long-acting beta$_2$ agonist, salmeterol.

We are developing an inhaled LAMA designed to produce prolonged blockage of the relevant receptor sub-types while also being highly lung-selective, which means that lower concentrations of drug should get into the systemic circulation. We believe this approach will result in improved tolerability over tiotropium at doses with comparable efficacy. At higher doses, a more lung-selective LAMA might offer improved efficacy versus tiotropium with comparable or improved tolerability.

Status of Our Program

We designated TD-5742 our lead LAMA compound. GSK has exercised its right to opt in to our LAMA program. Further development in this program will occur under the terms and conditions of our strategic alliance with GSK and GSK is required to fund all future development, manufacturing and commercialization activities for product candidates in this program. We are obligated to discover another structurally different product candidate for this program. We expect GSK to begin preclinical studies for TD-5742 in 2004 and if those studies are successful, to initiate a Phase 1 clinical trial for this compound in 2005.

Bacterial Infections

Despite the variety of antibiotics currently available, bacterial infections remain a significant and growing medical problem. Many of these infections are serious and require hospitalization and treatment with injectable antibiotics. The market that we are primarily targeting represents, according to IMS Health data, approximately 32 million patient treatment days with antibiotics effective against

infections caused by drug resistant Gram-positive bacteria. According to IMS Health data, from 1998 to 2003, treatment days in this category grew at a rate of 12% annually. Worldwide sales in this category totaled $730 million in 2003. Vancomycin, a generic medicine, leads this portion of the injectible antibiotic market with worldwide annual sales of approximately $370 million.

The Unmet Medical Need

Among the most common bacterial infections are those caused by Gram-positive bacteria, which include staphylococci, streptococci and enterococci. Gram-positive infections are often serious and life-threatening. The need for more effective antibiotics is particularly acute because many Gram-positive bacterial strains, particularly many staphylococci, have become resistant to currently available antibiotics. Of particular note are infections due to methicillin-resistant *Staphylococcus aureus* (commonly known as MRSA). The presence of methicillin resistance typically indicates that the bacterial strain is resistant to multiple classes of antibiotics. Only a few drugs are currently available to treat MRSA infections.

Drug resistance is especially common in hospital-acquired infections. According to the Centers for Disease Control and Prevention, an estimated 2 million patients develop hospital-acquired bacterial infections in the United States each year.

Our lead antibiotic product candidate, telavancin, is a rapidly bactericidal, injectable antibiotic. We discovered telavancin in a research program dedicated to finding new antibiotics for serious infections due to *Staphylococcus aureus* (including multi-drug resistant strains) and other Gram-positive bacteria. Telavancin is multifunctional, which means that it has more than one mechanism of action against its biological target. Like the market-leading product vancomycin, telavancin inhibits the formation of the bacterial cell wall. Unlike vancomycin, however, telavancin also disrupts bacterial cell membrane integrity. We believe the additive mechanisms of action seen with telavancin speed bacterial killing while also reducing the risks of inducing resistance to telavancin or cross-resistance with other antibiotics.

Status of Our Program

We have completed seven Phase 1 clinical trials for telavancin which were designed to test the safety, pharmacokinetics and pharmacodynamics of the drug. In January 2004, we completed our first Phase 2 clinical trial of telavancin in complicated skin and soft tissue infections (cSSTI) comparing the safety and efficacy of telavancin with current standard antibiotic therapy. This study was a randomized, double blind exploratory comparison of telavancin versus standard therapy for the treatment of cSSTI in 169 patients. Eighty-four patients were randomized to receive telavancin at a dose of 7.5 mg/kg once a day and 83 received standard therapy (vancomycin at a dose of 1g twice a day or a semi-synthetic penicillin at a dose of 2g four times a day). The results of this trial indicated similar efficacy between telavancin and standard therapy.

A Phase 2 clinical trial in cSSTI, identical to the first, recently completed enrollment of 233 patients. This study provides an opportunity to continue to build the safety database with telavancin as well as explore the safety and efficacy of a 10mg/kg dose of telavancin. A third Phase 2 clinical trial in *Staphylococcus aureus* blood stream infections (uncomplicated bacteremia) is ongoing. This trial randomizes patients to receive either telavancin 10mg/kg or standard therapy (as in the cSSTI studies). This is a trial in uncomplicated blood stream infection that includes patients with a single positive blood culture without evidence of infection in other tissues.

In addition to continuing Phase 2 clinical trials, we initiated a Phase 3 clinical trial for telavancin in complicated skin and soft tissue infections in September 2004 and currently plan to begin a Phase 3 clinical trial in hospital acquired pneumonia by the end of 2004. In parallel with the clinical development program for telavancin, we are working to finalize commercial manufacturing processes for the active pharmaceutical ingredient and formulated drug product.

GSK has informed us of its decision not to opt in to this program pursuant to the terms of the strategic alliance. We and GSK are free to negotiate an arrangement to pursue this program collaboratively under different terms than our strategic alliance, or we may seek to enter into a collaboration with another pharmaceutical company.

Overactive Bladder

Overactive bladder (OAB) describes a condition with four primary symptoms: urgency (the sudden need to urinate that is difficult to defer), incontinence (leakage of urine associated with the feeling of urgency), frequency (urinating more than seven times per day) and nocturia (awakening to urinate more than once per night).

The Unmet Medical Need

OAB is a common condition that increases in prevalence with age. According to the Mattson Jack Group, approximately 37 million people in the United States, 31 million in Western Europe and 20 million in Japan suffer from OAB. Many patients go untreated because incontinence carries a social stigma or because patients incorrectly believe it is an inevitable and untreatable consequence of aging. This condition is also associated with other important health problems. For example, frequent urination and nocturia resulting from OAB are associated with a significantly increased risk of falls and fractures in women over the age of 65. According to IMS Health data, the market for drugs to treat OAB in the United States, Japan and Europe was approximately $1.5 billion in 2003. While large, the current market for treatment of OAB may reflect only a portion of the market potential since we believe a large number of patients suffering from this disease are currently untreated.

OAB has been shown to impair quality of life even in patients who only have symptoms of urgency and frequency but not actual incontinence. Urgency leads to dramatic alterations in lifestyle, fear of embarrassment and proactive urination (increasing frequency).

Current therapies for the treatment of OAB produce side effects such as dry mouth, constipation and blurred vision that limit the tolerated dosages and ultimate effectiveness of these therapies. We believe these side effects reflect the inability of current therapies to discriminate between intended and unintended biological targets.

The results of preclinical studies in an animal model indicate that our product candidate, TD-6301, demonstrated greater inhibition of bladder contraction and less inhibition of salivation than comparable products. We believe that these results indicate that TD-6301 may be more bladder selective with respect to dry mouth than comparable products. This selectivity may result in less frequent side effects, particularly dry mouth, compared to the current market-leading medicines, but will require confirmation in human clinical trials.

Status of Our Program

We initiated the first Phase 1 clinical trial of TD-6301 in December 2003. The Phase 1 clinical trial assessed the safety, tolerability, and pharmacokinetics of single ascending doses of TD-6301 in healthy volunteers. TD-6301 was well-tolerated in these subjects at the doses studied. We plan to initiate additional Phase 1 clinical trials in 2004.

Gastrointestinal Motility Dysfunction

Gastrointestinal motility dysfunction is a major contributing factor to many disorders of the gastrointestinal (GI) tract. In this context, motility refers to the speed and coordination with which the body moves food out of the stomach and through the rest of the digestive tract. Reduced GI motility can cause symptoms of bloating, nausea, pain and constipation. Prokinetics are drugs that increase GI motility.

The Unmet Medical Need

There are few prokinetics currently available for motility disorders of the GI tract. These disorders include constipation-predominant irritable bowel syndrome (C-IBS), chronic constipation, functional dyspepsia (defined as indigestion without heartburn) and delayed gastric (stomach) emptying.

Novartis launched a new prokinetic (tegaserod or Zelnorm) in the United States in 2002 for the treatment of C-IBS and has submitted a supplemental New Drug Application (NDA) requesting approval of tegaserod for chronic constipation. According to Novartis Corporation, sales of tegaserod exceeded $165 million in 2003. Tegaserod exerts its prokinetic activity by stimulating the 5-HT_4 receptor on the nerves that control the motility of intestinal muscles involved in normal peristalsis. The 5-HT_4 receptor is one of many types of serotonin receptors found throughout the body. Tegaserod has limited selectivity for the 5-HT_4 receptor. In addition, only a modest portion of the oral dose is actually absorbed by the body. The drug must be taken twice a day on an empty stomach to partially overcome this deficiency. We believe these shortcomings result in inconvenience for patients and also limit the efficacy of tegaserod.

The goal for our program is to develop a prokinetic agent with once-a-day oral dosing and prokinetic efficacy superior to tegaserod. We have identified a series of compounds with excellent 5-HT_4 receptor potency that are also highly selective with very low activity at other serotonin receptors.

Status of Our Program

TD-2749, our lead compound in this program, and TD-5108, our alternate compound in this program, have each met our preclinical requirements, including favorable prokinetic efficacy compared to tegaserod in relevant animal models. TD-2749 and TD-5108 will each next be tested in various preclinical studies that the regulatory authorities require before initiating Phase 1 clinical trials. If TD-2749 or TD-5108 show the required safety in these studies, we plan to initiate Phase 1 clinical trials in 2005 with respect to such compound or compounds.

Anesthesia

Anesthesia is generally achieved using a combination of agents that together provide hypnosis (loss of consciousness), analgesia (pain relief) and areflexia (loss of reflex movement). Hypnosis can be provided by either using an intravenous drug initially (called induction) followed by inhaled gases to maintain anesthesia or by using intravenous drugs continuously for both induction and maintenance of anesthesia. At lower doses, the intravenous drugs used to achieve hypnosis in anesthesia can be used for sedation of patients in intensive care (for example, patients that need a ventilator to help them breathe) or during diagnostic or therapeutic procedures. As a group these drugs are known as sedative-hypnotics.

The Unmet Medical Need

The leading intravenous sedative-hypnotics, according to IMS Health data, are propofol (Diprivan) and midazolam (Versed). According to IMS Health data, the market for injectable forms of these two drugs in the United States, Japan, and Europe was approximately $936 million in 2003.

Among the primary goals for both anesthesia and sedation is a rapid return to normal consciousness. Awakening from propofol anesthesia or sedation can be delayed and unpredictable after extended infusions. The labeling for propofol recommends periodic dose reductions to maintain the lowest effective dose. This can be difficult in practice as patients are generally receiving multiple agents, which can obscure the propofol-specific effects.

Midazolam has less rapid offset of sedation than propofol with a somewhat reduced risk of respiratory depression. Moreover, the effects of midazolam can be reversed using an antagonist in the event of over-sedation leading to respiratory depression. In part because of these reasons, midazolam is used more frequently than propofol for sedation despite the longer recovery time.

The goal for our program is to develop an intravenous sedative-hypnotic with more rapid and predictable emergence from anesthesia and offset of sedation than propofol. A rapid response to dose titration may also improve management of adverse events such as respiratory depression, enhancing utility of the agent in sedation. Preclinical studies indicate that our product candidate, TD-4756, provides rapid emergence from hypnosis with no increase in the time to emergence as a result of prolonged infusions.

Status of Our Development Program

TD-4756 has met our preclinical requirements, including showing a more rapid and predictable emergence profile than propofol in relevant animal models. We are currently working to finalize development of a formulation of TD-4756 suitable for use in clinical trials. Once this formulation work is completed, TD-4756 will be tested in the various preclinical studies that regulatory authorities require before initiating Phase 1 clinical trials.

Asthma and COPD Research Programs

When inhaled into the lungs, both muscarinic antagonists and $beta_2$ agonists cause bronchodilation, but by different mechanisms of action. Moreover, both classes of drugs have non-bronchodilator effects that can be complementary and beneficial in patients with COPD and perhaps in patients with severe asthma. Currently many patients are using both inhaled muscarinic antagonists and inhaled $beta_2$ agonists (either in two separate inhalers or via the product Combivent which combines short-acting agents from the two drug classes). According to Scott-Levin (a division of Verispan), in the United States approximately 39% of patients on maintenance bronchodilator therapy are using both muscarinic antagonists and $beta_2$ agonists.

We are attempting to discover a long-acting inhaled bronchodilator that is bifunctional, meaning that one small molecule functions as *both* a muscarinic antagonist *and* a $beta_2$ receptor agonist. By combining bifunctional activity and high lung selectivity, we intend to discover and develop a medicine with greater efficacy than single mechanism bronchodilators (such as tiotropium or salmeterol) and with equal or better tolerability. This bifunctional bronchodilator could potentially then serve as a basis for convenient "triple therapy" through co-formulation with an inhaled corticosteroid into one product that would deliver three complementary therapeutic effects for patients with asthma and/or COPD.

We have identified a series of potential development candidates that we believe have the appropriate balance of muscarinic antagonist and $beta_2$ agonist activity. These compounds have been shown in animal models to be functionally lung-selective with durations of action in the lung that would allow dosing once daily.

Multivalency

Our proprietary approach combines chemistry and biology to efficiently discover new product candidates for validated targets using our expertise in multivalency. Multivalency refers to the simultaneous attachment of a single molecule to multiple binding sites on one or more biological targets. When compared to monovalency, whereby a molecule attaches to only one binding site, multivalency can significantly increase a compound's potency, duration of action and/or selectivity. Multivalent compounds generally consist of several individual small molecules, at least one of which is biologically active when bound to its target, joined by linking components.

Our approach is based on an integration of the following insights:

- Many targets have multiple binding sites and/or exist in clusters with similar or different targets;
- Biological targets with multiple binding sites and/or those that exist in clusters lend themselves to multivalent drug design;

- Molecules that simultaneously attach to multiple binding sites can exhibit considerably greater potency, duration of action and/or selectivity than molecules that attach to only one binding site; and
- Greater potency, duration of action and/or selectivity provides the basis for superior therapeutic effects, including enhanced convenience, tolerability and/or safety compared to conventional drugs.

Our Strategy

Our objective is to discover, develop and commercialize new medicines with superior efficacy, convenience, tolerability and/or safety. The key elements of our strategy are to:

Apply our expertise in multivalency primarily to validated targets to efficiently discover and develop superior medicines in large markets. We intend to continue to concentrate our efforts on discovering and developing product candidates for validated targets where:

- existing drugs have levels of efficacy, convenience, tolerability and/or safety that are insufficient to meet an important medical need; and
- we believe our expertise in multivalency can be applied to create superior product candidates that are more potent, longer acting and/or more selective than currently available medicines; and
- there are established animal models that can be used to provide us with evidence as to whether our product candidates are likely to provide superior therapeutic benefits relative to current medicines; and
- there is a relatively large commercial opportunity.

Identify two structurally different product candidates in each therapeutic program whenever practicable. We believe that we can increase the likelihood of successfully bringing superior medicines to market by identifying, whenever practicable, two product candidates for development in each program. Our second product candidates are typically in a different structural class from the first product candidate. Applying this strategy can reduce our dependence on any one product candidate and provide us with the potential opportunity to commercialize two compounds in a given area.

Partner with global pharmaceutical companies. Our strategy is to seek collaborations with leading global pharmaceutical companies to accelerate development and commercialization of our product candidates at the strategically appropriate time. Our GSK LABA collaboration and our GSK strategic alliance are examples of these types of partnerships.

Leverage the extensive experience of our people. We have an experienced senior management team with many years of experience discovering, developing and commercializing new medicines with companies such as Bristol-Myers Squibb Company, Merck & Co., Genentech, Inc., Millenium Pharmaceuticals, Inc., Pfizer Inc and GSK.

Improve, expand and protect our technical capabilities. We have created a substantial body of know-how and trade secrets in the application of our multivalency approach to drug discovery. We believe this is a significant asset that distinguishes us from competitors. We expect to continue to make substantial investments in multivalency and other technologies to maintain what we believe are our competitive advantages in drug discovery.

Manufacturing

We currently rely on a small number of third-party manufacturers and our collaborative partner, GSK, to produce our compounds for clinical purposes and expect do so for commercial production of any product candidates that are approved for marketing. Commercial manufacturing of our LABA program candidates will be handled by GSK. Additionally, GSK will be responsible for the

manufacturing of any product candidates associated with the programs in which it exercises its opt-in right under the strategic alliance agreement.

We believe that we have in-house expertise to manage a network of third-party manufacturers. We believe that we will be able to continue to negotiate third party manufacturing arrangements on commercially reasonable terms and that it will not be necessary for us to develop internal manufacturing capacity in order to successfully commercialize our products. However, if we are unable to obtain contract manufacturing, or obtain such manufacturing on commercially reasonable terms, we may not be able to commercialize our products as planned.

Government Regulation

The development and commercialization of our product candidates and our ongoing research will be subject to extensive regulation by governmental authorities in the United States and other countries. Before marketing in the United States, any medicine we develop must undergo rigorous preclinical studies and clinical trials and an extensive regulatory approval process implemented by the FDA under the Federal Food, Drug and Cosmetic Act. Outside the United States, our ability to market a product depends upon receiving a marketing authorization from the appropriate regulatory authorities. The requirements governing the conduct of clinical trials, marketing authorization, pricing and reimbursement vary widely from country to country. In any country, however, we will only be permitted to commercialize our medicines if the appropriate regulatory authority is satisfied that we have presented adequate evidence of the safety, quality and efficacy of our medicines.

Before commencing clinical trials in humans in the United States, we must submit to the FDA an Investigational New Drug application that includes, among other things, the results of preclinical studies. If the FDA approves the Investigational New Drug application, clinical trials are usually carried out in three phases and must be conducted under FDA oversight. These phases generally include the following:

Phase 1. The product candidate is introduced into humans and is tested for safety, dose tolerance and pharmacokinetics.

Phase 2. The product candidate is introduced into a limited patient population to assess the efficacy of the drug in specific, targeted indications, assess dosage tolerance and optimal dosage, and identify possible adverse effects and safety risks.

Phase 3. If a compound is found to be potentially effective and to have an acceptable safety profile in Phase 2 evaluations, the clinical trial will be expanded to further demonstrate clinical efficacy, optimal dosage and safety within an expanded patient population at geographically dispersed clinical study sites.

The results of product development, preclinical studies and clinical trials must be submitted to the FDA as part of a new drug application, or NDA. The NDA also must contain extensive manufacturing information. Once the submission has been accepted for filing, the FDA typically takes one year to review the application and respond to the applicant. The review process is often significantly extended by FDA requests for additional information or clarification. Once approved, the FDA may withdraw the product approval if compliance with pre- and post-marketing regulatory standards is not maintained or if problems occur after the product reaches the marketplace. In addition, the FDA may require post-marketing studies, referred to as Phase 4 studies, to monitor the effect of approved products, and may limit further marketing of the product based on the results of these post-marketing studies. The FDA has broad post-market regulatory and enforcement powers, including the ability to suspend or delay issuance of approvals, seize or recall products, withdraw approvals, enjoin violations, and institute criminal prosecution.

If we obtain regulatory approval for a medicine, this clearance will be limited to those diseases and conditions for which the medicine is effective, as demonstrated through clinical trials. Even if this

regulatory approval is obtained, a marketed medicine, its manufacturer and its manufacturing facilities are subject to continual review and periodic inspections by the FDA. Discovery of previously unknown problems with a medicine, manufacturer or facility may result in restrictions on the medicine or manufacturer, including costly recalls or withdrawal of the medicine from the market.

We are also subject to various laws and regulations regarding laboratory practices, the experimental use of animals and the use and disposal of hazardous or potentially hazardous substances in connection with our research. In each of these areas, as above, the FDA and other regulatory authorities have broad regulatory and enforcement powers, including the ability to suspend or delay issuance of approvals, seize or recall products, withdraw approvals, enjoin violations, and institute criminal prosecution, any one or more of which could have a material adverse effect upon our business, financial condition and results of operations.

Outside the United States our ability to market our products will also depend on receiving marketing authorizations from the appropriate regulatory authorities. The regulatory approval process in other countries includes all of the risks associated with FDA approval described above.

Patents and Proprietary Rights

We will be able to protect our technology from unauthorized use by third parties only to the extent that our technology is covered by valid and enforceable patents or is effectively maintained as trade secrets. Our success in the future will depend in part on obtaining patent protection for our product candidates. Accordingly, patents and other proprietary rights are essential elements of our business. Our policy is to seek in the United States and selected foreign countries patent protection for novel technologies and compositions of matter that are commercially important to the development of our business. For proprietary know-how that is not patentable, processes for which patents are difficult to enforce and any other elements of our drug discovery process that involve proprietary know-how and technology that is not covered by patent applications, we rely on trade secret protection and confidentiality agreements to protect our interests. We require all of our employees, consultants and advisors to enter into confidentiality agreements. Where it is necessary to share our proprietary information or data with outside parties, our policy is to make available only that information and data required to accomplish the desired purpose and only pursuant to a duty of confidentiality on the part of those parties.

As of June 30, 2004, we had 40 issued United States patents and have received notices of allowance for 7 other United States patent applications. As of that date, we had 75 pending patent applications in the United States and 71 granted foreign patents. We also have 18 Patent Cooperation Treaty applications that permit us to pursue patents outside of the United States and 300 foreign national patent applications. The claims in these various patents and patent applications are directed to compositions of matter, including claims covering product candidates, lead compounds and key intermediates, pharmaceutical compositions, methods of use, and processes for making our compounds along with methods of design, synthesis, selection and use relevant to multivalency in general and to our research and development programs in particular.

United States issued patents and foreign patents generally expire 20 years after filing. The patent rights relating to televancin owned by us currently consist of 2 issued United States patents that expire between 2019 and 2021, 3 allowed United States patent applications and 7 pending United States patent applications, and counterpart patents and patent applications in a number of jurisdictions, including Europe. The patent rights relating to GSK 159797 owned by us and licensed to GSK consist of 3 issued United States patents that expire in 2019, and 3 pending United States patent applications, and counterpart patents and patent applications in a number of jurisdictions, including Europe. Nevertheless, issued patents can be challenged, narrowed, invalidated or circumvented, which could limit our ability to stop competitors from marketing similar products and threaten our ability to commercialize our product candidates. Our patent position, similar to other companies in our industry,

is generally uncertain and involves complex legal and factual questions. To maintain our proprietary position we will need to obtain effective claims and enforce these claims once granted. It is possible that, before any of our products can be commercialized, any related patent may expire or remain in force only for a short period following commercialization, thereby reducing any advantage of the patent. Also, we do not know whether any of our patent applications will result in any issued patents or, if issued, whether the scope of the issued claims will be sufficient to protect our proprietary position.

We have entered into a License Agreement with Janssen Pharmaceutical pursuant to which we have licensed rights under certain patents owned by Janssen covering an excipient used in the formulation of telavancin. We believe that the general and financial terms of the agreement with Janssen are ordinary course terms. Pursuant to the terms of this license agreement, we are obligated to pay royalties and milestone payments to Janssen based on any commercial sales of telavancin. The license is terminable by us upon prior written notice to Janssen or upon an uncured breach or a liquidation event of one of the parties. We do not anticipate the royalty, milestone or other payments that may be made to Janssen under the terms of the License Agreement to be material to our financial results.

Competition

Our research and development efforts are at an early stage. Our objective is to discover, develop and commercialize new medicines with superior efficacy, convenience, tolerability and/or safety. To the extent that we are able to develop medicines, they are likely to compete with existing drugs that have long histories of effective and safe use and with new therapeutic agents. We expect that any medicines that we commercialize with our collaborative partners or on our own will compete with existing, market-leading medicines.

Many of our potential competitors have substantially greater financial, technical and personnel resources than we have. In addition, many of these competitors have significantly greater commercial infrastructures than we have. Our ability to compete successfully will depend largely on our ability to leverage our experience in drug discovery and development to:

- discover and develop medicines that are superior to other products in the market;
- attract qualified scientific, product development and commercial personnel;
- obtain patent and/or other proprietary protection for our medicines and technologies;
- obtain required regulatory approvals; and
- successfully collaborate with pharmaceutical companies in the discovery, development and commercialization of new medicines.

Telavancin. We anticipate that, if approved, telavancin will compete with vancomycin, a generic drug that is manufactured by a variety of companies, as well as other drugs targeted at Gram-positive bacterial infections. These include daptomycin (marketed by Cubist Pharmaceuticals), linezolid (marketed by Pfizer Inc) and quinupristin/dalfopristin (marketed by Sanofi-Aventis and King Pharmaceutical). In addition, dalbavancin (being developed by Vicuron Pharmaceuticals) and oritavancin (being developed by Intermune, Inc.) are in late-stage clinical trials and represent potential competition for telavancin.

GSK LABA Collaboration. We anticipate that, if approved, any product from our LABA collaboration with GSK will compete with a number of approved bronchodilator drugs and drug candidates under development that are designed to treat asthma and COPD. These include salmeterol and fluticisone (marketed by GSK), formoterol (marketed by Novartis and AstraZeneca), and tiotropium (marketed by Boehringer Ingelheim and Pfizer Inc). In addition, QAB 149 (being developed

by Novartis) is in late stage clinical trials and represents potential competition for any product from our LABA collaboration.

Overactive Bladder. We anticipate that, if approved, TD-6301 would compete with tolterodine (marketed by Pfizer Inc), oxybutinin (marketed by Ortho-McNeil Pharmaceutical, Inc. and Watson Pharmaceuticals) and trospium (marketed by Indevus Pharmaceuticals, Inc.). In addition, darifenacin (being developed by Novartis) and solifenacin (being developed by Yamanouchi Pharmaceutical Co., Ltd.) are in late-stage clinical trials and represent potential competition for TD-6301.

In addition, as the principles of multivalent medicine design become more widely known and appreciated based on patent and scientific publications and regulatory filings, we expect the field to become highly competitive. Pharmaceutical companies, biotechnology companies and academic and research institutions may seek to develop product candidates based upon the principles underlying our multivalent technologies.

Employees

As of June 30, 2004, we had 232 full-time employees, over 175 of whom were primarily engaged in research and development activities. None of our employees are represented by a labor union. We consider our employee relations to be good.

Facilities

Our headquarters are located in South San Francisco, California, and consist of two buildings of approximately 110,000 and 60,000 square feet, respectively. The leases expire in March 2012 and may be extended for two additional five-year periods. The current annual rental expense under these leases is approximately $5.4 million, subject to annual increases. We currently sublease 35,000 square feet of this space to two separate tenants. These subleases expire in December 2004 and June 2005. We may require additional space as our business expands.

Legal Proceedings

Currently, we are not a party to any material legal proceedings. In the future, we may become involved in litigation from time to time in the ordinary course of our business.

MANAGEMENT

The following table sets forth our executive officers, directors and non-executive officers, their ages and the positions they held as of June 30, 2004.

Name	Age	Position
Executive Officers and Directors		
Rick E Winningham	44	Chief Executive Officer and Director
Patrick P.A. Humphrey, Ph.D., D.Sc.	58	Executive Vice President, Research
Marty Glick	55	Executive Vice President, Finance and Chief Financial Officer
David L. Brinkley	46	Senior Vice President, Commercial Development
Arthur L. Campbell, Ph.D.	53	Senior Vice President, Technical Operations
Michael M. Kitt, M.D.	54	Senior Vice President, Development
Bradford J. Shafer	44	Senior Vice President, General Counsel and Secretary
A. Gregory Sturmer	41	Vice President, Finance
P. Roy Vagelos, M.D.	74	Chairman of the Board of Directors
Julian C. Baker(1)	38	Director
Jeffrey M. Drazan(1)(2)	45	Director
Robert V. Gunderson, Jr.(3)	52	Director
Arnold J. Levine, Ph.D.(2)	64	Director
Ronn C. Loewenthal(1)	45	Director
Michael G. Mullen(2)	46	Director
William H. Waltrip(2)(3)	66	Director
George M. Whitesides, Ph.D.(1)	64	Director
William D. Young(1)(3)	59	Director
Officers		
Michael Conner, D.V.M.	50	Vice President, Safety Assessment/Toxicology
John Kent, Ph.D.	62	Vice President, Pharmaceutical Sciences
Edmund J. Moran, Ph.D.	42	Vice President, Medicinal Chemistry
G. Roger Thomas, Ph.D.	48	Vice President, Pharmacology

(1) Member of Compensation Committee.

(2) Member of Audit Committee.

(3) Member of Nominating/Corporate Governance Committee.

Executive Officers and Directors

Rick E Winningham joined Theravance as Chief Executive Officer and a member of our board of directors in October 2001. From 1997 to 2001 he served as President, Bristol-Myers Squibb Oncology/Immunology/Oncology Therapeutics Network (OTN) and also as President of Global Marketing from 2000 to 2001. In addition to operating responsibility for U.S. Oncology/Immunology/OTN at Bristol-Myers Squibb, Mr. Winningham also had full responsibility for Global Marketing in the Cardiovascular, Infectious Disease, Immunology, Oncology/Metabolics and GU/GI/Neuroscience therapeutic areas. Mr. Winningham held various management positions with Bristol-Myers Squibb and its predecessor, Bristol-Myers, since 1986. Mr. Winningham holds an M.B.A. from Texas Christian University and a B.S. degree from Southern Illinois University.

Patrick P. A. Humphrey, Ph.D., D.Sc., has been our Executive Vice President, Research since April 2002. From July 2001 to April 2002 he served as our Senior Vice President, Research. Prior to joining Theravance, he was Director of the Glaxo Institute of Applied Pharmacology and Professor of

Applied Pharmacology at the University of Cambridge from 1994 until 2001. Dr. Humphrey was founding chairman of the Serotonin Club Nomenclature Committee for 5-HT Receptor Classification from 1987 until 1993 and a member of the International Union of Pharmacology (IUPHAR) Receptor Nomenclature Committee, an international authority for the classification and naming of receptors for all hormones and neurotransmitters, from 1990 to 2002. He was also on the IUPHAR Executive Committee, the parent body for all professional societies worldwide representing the discipline of pharmacology, from 1998 to 2002. Dr. Humphrey holds a D.Sc. and Ph.D. degree in Pharmacology, and a B.Pharm.Hons. degree, all from the University of London.

Marty Glick has been our Executive Vice President, Finance since April 2000 and has served as our Chief Financial Officer since joining Theravance in 1998. Mr. Glick has announced his retirement from Theravance effective January 1, 2006 and will be working part-time starting June 30, 2005. Upon our hiring of a new Chief Financial Officer, which we plan to do by June 30, 2005, Mr. Glick will become our Executive Vice President, Strategy. From 1998 to April 2000 Mr. Glick served as our Senior Vice President, Finance. From 1987 to 1997 he was employed with Genentech, Inc., most recently as Vice President of Finance. Mr. Glick is chair of the Biotechnology Industry Organization's Tax and Finance Committee. Mr. Glick also co-founded EyeTech Pharmaceuticals, Inc., a company specializing in discovering novel drugs to treat the leading cause of blindness, and he currently serves on its board of directors. Mr. Glick earned an M.B.A. in Finance from the Kellogg School of Management at Northwestern University and a B.S.B.A. from Creighton University, where he graduated magna cum laude. Mr. Glick is also a Certified Public Accountant and a Chartered Accountant (Canada).

David L. Brinkley joined Theravance as Senior Vice President, Commercial Development in September 2000. From 1996 to 2000 he served as Worldwide Team Leader for Viagra at Pfizer Inc. Mr. Brinkley led the team that had full responsibility for the global launch and marketing of Viagra. Mr. Brinkley joined Pfizer in 1995 through its acquisition of SmithKline's Animal Health operations before serving as director of new product planning. Mr. Brinkley held various management positions with SmithKline from 1983 to 1995. Mr. Brinkley holds an M.A. with honors in International Economics from the School of Advanced International Studies of the Johns Hopkins University and a B.A. in International Relations from Kent State University, where he graduated summa cum laude.

Arthur L. Campbell, Ph.D., joined Theravance as Senior Vice President, Technical Operations in June 2003. During 2003, he was Vice President, BioPharma at Pfizer Inc. Prior to joining Pfizer, he was Vice President, BioPharma at Pharmacia Corporation from 2000 until 2003, with global responsibility for Protein API and Drug Product Development and API manufacturing. From 1980 to 2000 Dr. Campbell was employed with Monsanto/Searle, most recently as Vice President, Product Development, R&D. Dr. Campbell holds a Ph.D. in Medicinal Chemistry from the University of Kansas and a B.S. in Chemistry from St. Benedict's College, where he graduated cum laude.

Michael M. Kitt, M.D., joined Theravance as Senior Vice President, Development in April 2002. From 1993 to 2002 Dr. Kitt was employed by COR Therapeutics, Inc. (now Millenium Pharmaceuticals, Inc.), most recently as Vice President, Clinical Research. Dr. Kitt holds an M.D. from the New York University School of Medicine and a B.S. in Chemistry from Polytechnic University, New York.

Bradford J. Shafer joined Theravance as Senior Vice President, General Counsel and Secretary in August 1999. From 1996 to 1999 he served as General Counsel of Heartport, Inc., a cardiovascular medical device company. From 1993 to 1996 Mr. Shafer was a partner in the Business and Technology Group at the law firm of Brobeck, Phleger & Harrison LLP. Mr. Shafer holds a J.D. from the University of California, Hastings College of the Law, where he was Editor-in-Chief of The Hastings Constitutional Law Quarterly, and a B.A. from the University of the Pacific, where he graduated magna cum laude.

A. Gregory Sturmer joined Theravance as Vice President, Finance in 1998. He was Corporate Controller of Vivus, Inc. from 1995 to 1998, Chief Financial Officer of Sonoma Valley Hospital, a northern California hospital from 1991 to 1995 and a manager with Arthur Andersen, LLP from 1984 to 1991. Mr. Sturmer is a Certified Public Accountant and has an M.B.A. from Pepperdine University and a B.S. from California State University, Hayward, where he graduated summa cum laude.

P. Roy Vagelos, M.D., co-founded Theravance in 1996 and has served as Chairman of our board of directors since inception. Dr. Vagelos served as Chief Executive Officer of Merck & Co., Inc., from 1985 to 1994, and Chairman of the board of directors of Merck from 1986 until 1994. Dr. Vagelos is Chairman of the board of directors of Regeneron Pharmaceuticals, Inc. Dr. Vagelos holds an M.D. from Columbia University College of Physicians and Surgeons and an A.B. degree from the University of Pennsylvania.

Julian C. Baker has served as a director of Theravance since January 1999. Mr. Baker is a co-founder of a biotechnology investing partnership with the Tisch Family, which he has co-managed since 1994. Mr. Baker's firm also manages multiple additional funds, collectively known as Baker Brothers Investments, which are focused on publicly traded life sciences companies. Mr. Baker was employed from 1988 to 1993 by the private equity investment arm of The First Boston Corporation and Credit Suisse First Boston, and was a founding employee of The Clipper Group, which managed $1.6 billion for First Boston and Credit Suisse. Mr. Baker is also a director of Incyte Corporation, Neurogen Corporation, Trimeris, and Genomic Health. Mr. Baker holds an A.B. from Harvard University.

Jeffrey M. Drazan has served as a director of Theravance since December 1999. Mr. Drazan has been a General Partner with Sierra Ventures, a private venture capital firm, since 1984. Mr. Drazan currently serves as a director of several private companies. Mr. Drazan holds an M.B.A. degree from New York University's Graduate School of Business Administration and a B.S.E. degree in Engineering from Princeton University.

Robert V. Gunderson, Jr. has served as a director of Theravance since September 1999. He is a founding partner of the law firm of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, where he has practiced since 1995. Mr. Gunderson currently serves as a director of several private companies. Mr. Gunderson holds a J.D. from the University of Chicago where he was Executive Editor of The University of Chicago Law Review. Mr. Gunderson also received an M.B.A. in Finance from The Wharton School, University of Pennsylvania and an M.A. from Stanford University.

Arnold J. Levine, Ph.D., served as a director of Theravance from inception until February 2002. He rejoined our board of directors in June 2003. Dr. Levine is currently a professor at The Cancer Institute of New Jersey, Robert Wood Johnson School of Medicine, New Brunswick, NJ, and a professor at the Institute for Advanced Study, Princeton, NJ. He was President of The Rockefeller University from 1998 until his retirement in February 2002. He was the Harry C. Wiess Professor in Life Sciences and former Chairman of the Department of Molecular Biology at Princeton University from 1984 until 1996. Dr. Levine is a member of the board of directors of Applera Corporation and Infinity Pharmaceuticals, Inc. He is a member of the National Academy of Sciences. Dr. Levine was Editor-in-Chief of the Journal of Virology from 1984 to 1994 and is a member of scientific advisory boards of several cancer centers. Dr. Levine holds a Ph.D. in Microbiology from the University of Pennsylvania and a B.A. from Harpur College, State University of New York at Binghamton.

Ronn C. Loewenthal has served as a director of Theravance since April 2000. Since 1997, Mr. Loewenthal has managed the personal investment portfolio of Dr. Hasso Plattner, co-founder and Chairman of SAP AG. Prior to his role with Dr. Plattner, from 1994 to 1996, Mr. Loewenthal held positions as Director of Corporate Development of PG&E Enterprises, and from 1989 to 1994 as an Investment Officer with Technology Funding, a venture capital firm. Mr. Lowenthal received his B.A. in Economics from the University of California, Santa Cruz.

Michael G. Mullen has served as a director of Theravance since September 2002. Since 1999, Mr. Mullen has been a member of the Bellevue Group of Switzerland, which focuses on investing in public and private biotechnology companies in the United States and Europe. He currently serves as President of Bellevue Research, Inc., the United States research arm of the Bellevue Group. From 1990 to September 1999 Mr. Mullen held various positions at SG Cowen Securities, formerly Cowen & Co, including Partner, Managing Director and Senior Research Analyst in Medical Technology. Mr. Mullen currently serves as a member of the board of directors of Eyetech Pharmaceuticals, Inc., Gencell Inc. and the Indiana University Reese Fund. Mr. Mullen received his M.B.A. in Finance from the Kelley School of Business at Indiana University, Bloomington and his B.S. from Fordham University.

William H. Waltrip has served as a director of Theravance since April 2000. Mr. Waltrip served from 1993 until 2003 as Chairman of the board of directors of Technology Solutions Company, a systems integration company, and from 1993 until 1995 he was Chief Executive Officer of that company. From 1995 to 1998 he also served as Chairman of Bausch & Lomb Inc., and during 1996 was the company's Chief Executive Officer. From 1991 to 1993 he was Chairman and Chief Executive Officer of Biggers Brothers, Inc., a food service distribution company, and was a consultant to private industry from 1988 to 1991. From 1985 to 1988 he served as President and Chief Operating Officer of IU International Corporation, a transportation, environmental and distribution company. Earlier, he had been President, Chief Executive Officer and a director of Purolator Courier Corporation. He is a member of the board of directors of Bausch & Lomb Inc., Charles River Laboratories Corporation, Teachers Insurance and Annuity Association and Thomas & Betts Corporation.

George M. Whitesides, Ph.D., co-founded Theravance in 1996 and has served as a member of our board of directors since inception. He has been Mallinckrodt Professor of Chemistry at Harvard University since 1986. From 1982 until 1991 he was a member of the Department of Chemistry at Harvard University, and Chairman of the Department of Chemistry from 1986 until 1989. He was a faculty member of the Massachusetts Institute of Technology from 1964 until 1982. Dr. Whitesides was a 1998 recipient of the National Medal of Science. He is a member of the editorial boards of 14 scientific journals. He is also a member of the board of directors of Predicant Biosciences and Surface Logix, Inc. Dr. Whitesides holds a Ph.D. in Chemistry from the California Institute of Technology and a B.A. from Harvard University.

William D. Young has served as a director of Theravance since April 2001. Mr. Young has been Chairman of the Board and Chief Executive Officer of Virologic, Inc. since 1999. From 1980 to 1999 Mr. Young was employed at Genentech, Inc., most recently as Chief Operating Officer. Prior to joining Genentech, Mr. Young worked at Eli Lilly and Company for 14 years and held various positions in production and process engineering, antibiotic process development and production management. He is a member of the board of directors of Biogen Idec and Human Genome Sciences. Mr. Young received his M.B.A. from Indiana University and his B.S. in Chemical Engineering from Purdue University.

Officers

Michael Conner, D.V.M., joined Theravance in 1999 as Senior Director of Safety Assessment and Toxicology and was promoted to Vice President, Safety Assessment/Toxicology in February 2001. Prior to joining Theravance, Dr. Conner worked for ten years at Merck Research Laboratories, most recently serving as a Director of Compound Management within the Department of Safety Assessment. Dr. Conner earned a D.V.M. from the University of Georgia, a B.S. degree in Biology from the Massachusetts Institute of Technology, and completed postdoctoral fellowships at Harvard and MIT prior to serving on the faculty of Boston University School of Medicine.

John Kent, Ph.D., joined Theravance in 2004 as Vice President, Pharmaceutical Sciences. Prior to joining Theravance, he served as a consultant to the pharmaceutical industry after leaving Allergan in 2002 as Vice President for Pharmaceutical Sciences/Services. He was employed by Allergan, Inc. from 1990 to 2002. Prior to that, he was employed by Syntex Corporation from 1970 to 1990. Dr. Kent

received his Ph.D. in Pharmaceutics as well as a B.S. degree in Pharmacy from the University of Wisconsin, Madison.

Edmund J. Moran, Ph.D., joined the Medicinal Chemistry team at Theravance in February 1998 and has held the positions of Associate Director, Director and Senior Director. He was promoted to Vice President in January 2003. Prior to joining Theravance, Dr. Moran founded the medicinal chemistry department at Ontogen Corporation in 1993 and was its first employee. Prior to joining Ontogen, Dr. Moran was an NIH postdoctoral fellow in the laboratories of Professor Peter G. Schultz at U.C. Berkeley from 1992-1993. Dr. Moran obtained his Ph.D. in Organic Chemistry from UCLA, working in the laboratories of Robert Armstrong and obtained his B.S. degree in Chemistry from the University of Connecticut.

G. Roger Thomas, Ph.D., joined Theravance in 1998 as our Director of Pharmacology, was promoted to Senior Director, Pharmacology, and has served as our Vice President, Pharmacology, since February 2001. From 1989 to 1998, he served in a variety of scientific positions at Genentech, most recently serving as Senior Scientist in the Department of Cardiovascular Research. From 1986 to 1989 Dr. Thomas worked as Senior Scientist at The William Harvey Research Institute, London. Dr. Thomas earned a Ph.D. in Physiology/Pharmacology from the University of Strathclyde and a B.Sc. Honors degree in Pharmacology from Sunderland Polytechnic (University of Sunderland).

Election of Officers

Our officers are elected by our board of directors on an annual basis and serve until their successors are duly elected and qualified. There are no family relationships among any of our officers or directors.

Committees of the Board of Directors

Our board currently has three committees: the audit committee, the compensation committee and the nominating/corporate governance committee. The information set forth below assumes the completion of the proposed offering.

Audit Committee. The members of our audit committee are Messrs. Waltrip, Drazan, Levine and Mullen. Mr. Waltrip chairs the audit committee and is our audit committee financial expert (as is currently defined under the SEC rules implementing Section 407 of the Sarbanes-Oxley Act of 2002). Our audit committee, among other duties:

- appoints a firm to serve as independent auditor to audit our consolidated financial statements;
- discusses the scope and results of the audit with the independent auditor, and reviews with management and the independent accountant our interim and year-end operating results;
- considers the adequacy of our internal accounting controls and audit procedures; and
- approves (or, as permitted, pre-approves) all audit and non-audit services to be performed by the independent auditor.

The audit committee has the sole and direct responsibility for appointing, evaluating and retaining our independent auditors and for overseeing their work. All audit services and all non-audit services, other than de minimis non-audit services, to be provided to us by our independent auditors must be approved in advance by our audit committee. We believe that the composition of our audit committee meets the requirements for independence under the current Nasdaq National Market and SEC rules and regulations.

Compensation Committee. The members of our compensation committee are Messrs. Young, Whitesides, Baker, Drazan and Loewenthal. Mr. Young chairs the compensation committee. The

purpose of our compensation committee is to discharge the responsibilities of our board of directors relating to compensation of our executive officers. Specific responsibilities of our compensation committee include:

- reviewing and recommending approval of compensation of our executive officers;
- administering our stock incentive and employee stock purchase plans; and
- reviewing and making recommendations to our board with respect to incentive compensation and equity plans.

Nominating/Corporate Governance Committee. The members of our nominating/corporate governance committee are Messrs. Waltrip, Gunderson and Young. Mr. Waltrip chairs the nominating/corporate governance committee. Our nominating/corporate governance committee identifies, evaluates and recommends nominees to our board of directors and committees of our board of directors, conducts searches for appropriate directors, and evaluates the performance of our board of directors and of individual directors. The nominating/corporate governance committee is also responsible for reviewing developments in corporate governance practices, evaluating the adequacy of our corporate governance practices and reporting and making recommendations to the board concerning corporate governance matters.

Director Compensation

On April 28, 2004, the compensation committee of our board of directors adopted a compensation program for outside directors. Pursuant to this program, each member of our board of directors who is not our employee will receive a $25,000 annual retainer as well as $1,000 for each board meeting attended in person ($500 for meetings attended by video or telephone conference). The chairperson of the compensation committee and the nominating/corporate governance committee will receive $2,000 for each committee meeting attended in person ($1,000 for meetings attended by video or telephone conference), and the chairperson of the audit committee will receive $3,000 for each audit committee meeting attended in person ($1,500 for meetings attended by video or telephone conference).

Under the director compensation program adopted on April 28, 2004, members of our board of directors who are not our employees will also receive equity incentives. Each independent director who joins our board of directors after April 28, 2004 will receive a nonstatutory stock option exercisable for 25,806 shares of common stock with an exercise price equal to the then fair market value per share of our common stock. This stock option will vest in two equal annual installments of 12,903 shares on the first and second anniversaries of his or her date of election or appointment to our board of directors. On April 28, 2004, each of Messrs. Baker, Drazan, Gunderson, Levine, Lowenthal, Mullen, Waltrip, Whitesides and Young, the current non-employee members of our board of directors, was granted a fully-vested nonstatutory stock option exercisable for 25,806 shares of common stock with an exercise price of $9.69 per share. In addition, at each annual meeting beginning in 2005, each non-employee member of our board of directors will receive a fully-vested nonstatutory stock option exercisable for 12,903 shares of common stock with an exercise price equal to the then fair market value per share of our common stock. Options granted under the director compensation program will not be exercisable before September 1, 2007 and will have a term of 10 years.

Dr. Vagelos receives annual compensation of approximately $82,500 for his service as Chairman of our board of directors. In addition, Dr. Vagelos is entitled to receive option grants in each of 2003, 2004 and 2005 for a number of shares equal to 125% of the number of shares granted to Mr. Winningham in each of those years, provided that Dr. Vagelos continues to provide a high level of involvement and exceptional contributions to our business. On January 24, 2003, we granted an option to Dr. Vagelos to purchase 141,129 shares of our common stock at an exercise price of $3.10 per share. The option is exercisable for all of the shares. Provided Dr. Vagelos remains in our service, the option

shares will vest over four years. On March 29, 2004, we granted an option to Dr. Vagelos to purchase 416,129 shares of our common stock at an exercise price of $9.69 per share. Provided Dr. Vagelos remains in our service, the option will become exercisable for 40% of the shares on September 2, 2007, for 30% of the shares on March 29, 2008, and for 30% of the shares on March 29, 2009. The 2004 option will vest in full if we are acquired and Dr. Vagelos ceases service with us due to involuntary termination. A transaction by which GSK acquires less than 100% our stock or assets will not be considered an acquisition that would trigger the foregoing acceleration provision.

Compensation Committee Interlocks and Insider Participation

The current members of our compensation committee of our board of directors are Messrs. Young, Whitesides, Baker, Drazan and Loewenthal. No interlocking relationship exists between our board of directors or compensation committee and the board of directors or compensation committee of any other company, nor has any interlocking relationship existed in the past.

Executive Compensation

The following table sets forth the compensation earned by the individual who served as our chief executive officer in 2003 and the four other highest paid executive officers whose salary and bonus exceeded $100,000 for services rendered in all capacities to us during the fiscal year ended December 31, 2003. We use the term "named executive officers" to refer to these people later in this prospectus. No other executive officers who would have otherwise been includable in the following table on the basis of salary and bonus earned for the year ended December 31, 2003 have been excluded by reason of their termination of employment or change in executive status during that year.

Summary Compensation Table

	Annual Compensation			Long-Term Compensation Awards
Name and Principal Position	**Salary($)**	**Bonus($)**	**Other Annual Compensation($)**	**Securities Underlying Options(#)**
Rick E Winningham *Chief Executive Officer*	$ 622,917	$ 359,375	—	177,419
Patrick P.A. Humphrey *Executive Vice President, Research*	325,194	150,099	$ 48,413(2)	59,515
Marty Glick *Executive Vice President, Finance and Chief Financial Officer*	309,030	142,611	—	33,709
Michael Kitt *Senior Vice President, Development*	288,865	100,093	—	51,612
Bradford J. Shafer *Senior Vice President, General Counsel*	278,863	243,517(1)	—	29,032

(1) Includes $147,000 of loan principal that was forgiven by us in 2003.

(2) Includes imputed interest of $30,019, tax preparation fees of $1,847, and travel expenses and associated taxes for spouse of $16,547.

Option Grants in Last Fiscal Year

The following table lists each grant of stock options during fiscal year 2003 to the named executive officers. No stock appreciation rights have been granted to these individuals.

The shares subject to each option listed in the table vest monthly over four years from the grant date, except that the second options granted to Mr. Humphrey, Mr. Kitt and Mr. Winningham vest monthly over four years beginning 18 months after the grant date. Options may vest on an accelerated basis as described below under "Severance and Change of Control Arrangements."

In addition to the options listed in the table, we granted options to purchase the number of shares indicated to the named executive officers on March 29, 2004: Mr. Winningham: 416,129, Mr. Humphrey: 203,225, Mr. Glick: 203,225, Mr. Kitt: 96,774, and Mr. Shafer: 96,774. Each of these options has an exercise price of $9.69 per share and becomes exercisable as follows: for 40% of the shares on September 2, 2007, 30% of the shares on March 29, 2008 and 30% of the shares on March 29, 2009. In addition, we granted Mr. Glick an option to purchase 64,516 shares, with an exercise price of $9.69 per share. The option will vest in three equal annual installments on March 29, 2005, 2006 and 2007, but will not be exercisable before September 1, 2007. The options will vest in full if we are acquired and the officer ceases employment with us due to involuntary termination. A transaction by which GSK acquires less than 100% our stock or assets will not be considered an acquisition that would trigger the foregoing acceleration provision.

	Individual Grants				Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term(3)	
Name	Number of Securities Underlying Options Granted	Percent of Total Options Granted To Employees In Fiscal Year(1)	Exercise Price(2)	Expiration Date	5%	10%
Rick E Winningham	112,903	5.74%	$ 3.10	1/24/2013	$ 2,224,700	$ 3,749,779
	64,516	3.28%	$ 3.10	1/24/2013	$ 1,271,257	$ 2,142,731
Patrick P.A. Humphrey	33,709	1.71%	$ 3.10	1/24/2013	$ 664,220	$ 1,119,557
	25,806	1.31%	$ 3.10	1/24/2013	$ 508,495	$ 857,079
Marty Glick	33,709	1.71%	$ 3.10	1/24/2013	$ 664,220	$ 1,119,557
Michael Kitt	25,806	1.31%	$ 3.10	1/24/2013	$ 508,495	$ 857,079
	25,806	1.31%	$ 3.10	1/24/2013	$ 508,495	$ 857,079
Bradford J. Shafer	29,032	1.48%	$ 3.10	1/24/2013	$ 572,062	$ 964,222

(1) The figures representing percentages of total options granted to employees in the last fiscal year are based on a total of 1,965,896 shares underlying options granted to our employees during fiscal year 2003.

(2) The exercise price of each option granted was equal to the fair market value of our common stock as valued by our board of directors on the date of grant. The exercise price may be paid in cash, in shares of our common stock valued at fair market value on the exercise date or through a cashless exercise procedure involving a same-day sale of the purchased shares.

(3) The amounts shown in the table above as potential realizable value represent hypothetical gains that could be achieved for the respective options if exercised at the end of the option term. These amounts represent assumed rates of appreciation in the value of our common stock from the fair market value on the date of grant. Potential realizable values in the table above are calculated by:

- Multiplying the number of shares of our common stock subject to the option by the assumed initial public offering price per share of $14.00.
- Assuming that the aggregate stock value derived from that calculation compounds at the annual 5% or 10% rates shown in the table for the balance of the term of the option.
- Subtracting from that result the total option exercise price.

The 5% and 10% assumed rates of appreciation are suggested by the rules of the SEC and do not represent our estimate or projection of the future common stock price. Actual gains, if any, on stock option exercises will be dependent on the future performance of our common stock.

Option exercises and fiscal year-end values

The following table sets forth the number of vested and unvested shares covered by options as of December 31, 2003 and the year-end value of options as of December 31, 2003 for the named executive officers. No options were exercised by our named executive officers in 2003.

	Number of Securities Underlying Unexercised Options at December 31, 2003		Value of Unexercised in-the-Money Options at December 31, 2003(1)	
Name	Vested	Unvested	Vested	Unvested
Rick E Winningham	445,228	506,384	$ 2,577,979	$ 3,594,568
Patrick P.A. Humphrey	217,402	229,210	1,232,168	1,535,864
Marty Glick	103,692	25,984	620,543	283,215
Michael Kitt	104,703	172,715	605,332	1,193,510
Bradford J. Shafer	25,873	45,094	177,742	368,279

(1) Amounts presented under the caption "Value of Unexercised in-the-Money Options at December 31, 2003" are based on the assumed initial public offering price of $14.00 per share minus the exercise price, multiplied by the number of shares subject to the stock option, without taking into account any taxes that might be payable in connection with the transaction.

Employment Agreements

On August 23, 2001, we extended an offer to Mr. Winningham to become our Chief Executive Officer. The agreement provides for an annual salary of $600,000 and that Mr. Winningham is eligible to receive a bonus of up to 50% of his salary and additional bonuses based on extraordinary accomplishments at the discretion of our board of directors. The agreement provides that if Mr. Winningham's service is terminated without cause, he will receive a lump-sum severance payment of 24 months salary plus two times his current target bonus. The agreement also provides that Mr. Winningham may borrow up to $3,750,000 from us pursuant to an interest-free loan to purchase a residence. Mr. Winningham elected to borrow such funds in July 2002. Under the agreement, we agreed to share with Mr. Winningham any loss or profit realized on the sale of his principal residence if he remained employed by us through 2006. The loan was secured by a second deed of trust on the residence and a pledge of any shares acquired pursuant to the exercise of certain of his stock options. This loan was forgiven and the home equity sharing arrangement was terminated on June 4, 2004 in recognition of Mr. Winningham entering into a lock-up agreement with us and GSK pursuant to which he has agreed not to sell or transfer 50% of the shares purchasable under all of his options and agreed not to put a portion of the shares purchasable under his options. Also, Mr. Winningham agreed to deposit 129,032 shares of common stock purchasable under an option into escrow if he exercises the option prior to September 7, 2007. Should Mr. Winningham leave our employ due to voluntary resignation or a termination by us for cause, then he will forfeit any of these shares deposited into escrow. Subject to continued employment, we will release any shares from escrow over the following periods: 25% on December 31, 2005, 25% on December 31, 2006, and the balance on September 7, 2007 and will release the shares immediately should Mr. Winningham die or leave our employ due to disability. We also agreed to pay Mr. Winningham a bonus equal to the amount of additional income and employment taxes that he will incur upon the loan being forgiven. See the section entitled "Certain Relationships and Related Party Transactions."

On April 6, 2001, we extended an offer to Dr. Humphrey to become our Senior Vice President of Research. The agreement provides that Dr. Humphrey is eligible to receive a bonus of up to 30% of his salary. The agreement provides that we will pay 50% of Dr. Humphrey's housing rental costs or that Dr. Humphrey may borrow up to $1,000,000 from us pursuant to an interest-free loan to purchase a residence. Dr. Humphrey elected to borrow such funds in February 2002. The loan was secured by a deed of trust on the residence and a pledge of any shares acquired pursuant to the exercise of certain of his stock options. This loan was forgiven on June 4, 2004 in recognition of Dr. Humphrey entering into a lock-up agreement with us and GSK pursuant to which he has agreed not to sell or transfer 50% of the shares purchasable under all of his options and agreed not to put a portion of the shares purchasable under his options. Also, Dr. Humphrey agreed to deposit 62,696 shares of common stock purchasable under options into escrow if he exercises the options prior to September 7, 2007. Should Dr. Humphrey leave our employ due to voluntary resignation or a termination by us for cause, then he will forfeit any of these shares deposited into escrow. Subject to continued employment, we will release any shares from escrow over the following periods: 25% on December 31, 2005, 25% on December 31, 2006, and the balance on September 7, 2007 and will release the shares immediately should Dr. Humphrey die or leave our employ due to disability. We also agreed to pay Dr. Humphrey a bonus equal to the amount of additional income and employment taxes that he will incur upon the loan being forgiven. See the section entitled "Certain Relationships and Related Party Transactions."

We agreed with Mr. Glick, our Executive Vice President of Finance and Chief Financial Officer, that if Mr. Glick remained employed by us until April 1, 2003, which he did, then all of the options granted to him through April 29, 2000 will remain exercisable for the full 10-year term.

We have entered into an agreement dated September 10, 2004 with Mr. Glick, our Executive Vice President of Finance and Chief Financial Officer, in contemplation of his retirement on January 1, 2006 and in order to facilitate the orderly transition of the leadership of our finance and administration function to a new Chief Financial Officer during 2005. The agreement provides that if Mr. Glick remains employed by us on a full-time basis through June 30, 2005 and on a part-time basis through December 31, 2005, and provides consulting services through December 31, 2006, Mr. Glick will fully vest in 33,709 shares underlying options granted on January 24, 2003 and will vest in 105,160 shares underlying options granted on March 29, 2004. In addition, we will extend the time he has to exercise certain options following his cessation of service. The Company would recognize compensation expense if Mr. Glick remains employed through December 31, 2005 and the time for Mr. Glick to exercise his options is extended. Furthermore, the Company would recognize additional compensation expense if Mr. Glick remains as a consultant through December 31, 2006. We have agreed that we will not terminate Mr. Glick's employment except for cause. In exchange, Mr. Glick has agreed to provide a release of potential claims and to refrain from serving as an officer or employee to competing businesses during the period he is employed by or providing services to us. Under the agreement, we will continue to pay Mr. Glick his current salary of $27,127 per month through June 30, 2005 and then a salary of $3,750 per month thereafter. Mr. Glick will also remain eligible to receive his bonus for 2004 and 50% of his target bonus for 2005.

On June 30, 2000, David Brinkley became our Senior Vice President of Commercial Development. Mr. Brinkley's offer letter provides that he is eligible to receive a bonus of up to 30% of his salary. Pursuant to the agreement, Mr. Brinkley borrowed $230,000 from us pursuant to an interest-free loan to purchase a residence.

Severance and Change of Control Arrangements

The compensation committee of the board of directors, as plan administrator of the 2004 Equity Incentive Plan, has the authority to provide for accelerated vesting of the shares of common stock subject to outstanding options held by the officers named in the Summary Compensation Table and any other person in connection with certain changes in control of Theravance. In connection with

our adoption of the 2004 Equity Incentive Plan, we have provided that upon a change in control of Theravance, each outstanding option and all shares of restricted stock will generally not accelerate vesting unless the surviving corporation does not assume the option or award or replace it with a comparable award. If options or awards are assumed or replaced by the surviving corporation, they will become fully exercisable and fully vested if the holder's employment or service is terminated without cause within three months before or twenty-four months following a change in control. Options granted before 2004 will vest as if the optionee had completed an additional 12 months of service if we are acquired and the officer ceases employment with us due to involuntary termination.

Our board of directors has entered into a change in control severance plan for the benefit of our officers. Under the change in control severance plan, an officer is entitled to a lump sum cash payment equal to 100% of his highest rate of base salary and target bonus plus a pro-rated portion of the year's target bonus if he is involuntarily terminated other than for misconduct within three months prior to or twenty-four months following a change in control. The severance benefit for each of our senior vice presidents will be equal to 150% of the highest rate of base salary and target bonus plus a pro-rated portion of the year's target bonus. The severance benefit for our chief executive officer and each of the executive vice presidents will be equal to 200% of their highest rate of base salary and target bonus plus a pro-rated portion of the year's target bonus. All officers are also entitled to continuation of all health and other welfare benefits for twelve to twenty-four months, as applicable, or such time as the individual is re-employed with comparable insurance benefits. All payments will include additional amounts covering any applicable parachute excise taxes incurred on a change in control as a result of payments under the severance agreement, due to acceleration of vesting of options, or otherwise. A change in control includes (other than any transaction by which GSK acquires less than all of our shares or our assets):

- a merger of Theravance after which our stockholders own 50% or less of the surviving corporation or its parent company;
- a sale of all or substantially all of our assets;
- a proxy contest that results in the replacement of more than one-half of our directors over a 24-month period; or
- an acquisition of 35% or more of our outstanding stock by any person or group, other than a person related to Theravance, such as a holding company owned by our stockholders.

Equity Benefit Plans

2004 Equity Incentive Plan

Our 2004 Equity Incentive Plan was adopted by our board of directors on May 27, 2004 and has been approved by our stockholders. The 2004 Equity Incentive Plan will become effective on the effective date of the registration statement of which this prospectus is a part.

No further option grants will be made under our 1997 Stock Plan or the Long-Term Stock Option Plan after this offering. The options outstanding after this offering under the 1997 Stock Plan and the Long-Term Stock Option Plan will continue to be governed by their existing terms, except that our board of directors has elected to extend the change in control acceleration feature of the 2004 Equity Incentive Plan, described below, to awards outstanding under these two plans.

Share Reserve. We have reserved 3,700,000 shares of our common stock for issuance under the 2004 Equity Incentive Plan, plus the number of shares remaining available for issuance under our 1997 Stock Plan and Long-Term Stock Option Plan, of which no more than 2,000,000 shares may be issued as direct stock awards. In general, if options or shares awarded under the 1997 Stock Plan, the Long Term Stock Option Plan, or the 2004 Equity Incentive Plan are forfeited or repurchased, then those options or shares will again become available for awards under the 2004 Equity Incentive Plan.

Administration. The compensation committee of our board of directors administers the 2004 Equity Incentive Plan. The committee has the complete discretion to make all decisions relating to our 2004 Equity Incentive Plan. The compensation committee may also reprice outstanding options and modify outstanding awards in other ways.

Eligibility. Employees, members of our board of directors and consultants are eligible to participate in our 2004 Equity Incentive Plan.

Types of Award. Our 2004 Equity Incentive Plan provides for the following types of awards:

- incentive and nonstatutory stock options to purchase shares of our common stock;
- restricted shares of our common stock; and
- stock appreciation rights and stock units.

Options and Stock Appreciation Rights. The exercise price for options granted under the 2004 Equity Incentive Plan may not be less than 100% of the fair market value of our common stock on the option grant date. Optionees may pay the exercise price by using cash or, if permitted by the committee:

- shares of common stock that the optionee already owns;
- a full-recourse promissory note;
- an immediate sale of the option shares through a broker approved by us; or
- a loan from a broker approved by us, secured by the option shares.

A participant who exercises a stock appreciation right receives the increase in value of our common stock over the base price. The base price for stock appreciation rights granted under the 2004 Equity Incentive Plan shall be determined by the compensation committee. The settlement value of the stock appreciation right may be paid in cash or shares of common stock. Options and stock appreciation rights vest at the times determined by the compensation committee. In most cases, our options and stock appreciation rights will vest over a four-year period following the date of grant. Options and stock appreciation rights generally expire 10 years after they are granted. The compensation committee may provide for a longer term except that options and stock appreciation rights generally expire earlier if the participant's service terminates earlier. No participant may receive options or stock appreciation rights under the 2004 Equity Incentive Plan covering more than 1,500,000 shares in one calendar year, except that a newly hired employee may receive options or stock appreciation rights covering up to 2,000,000 shares in the first year of employment.

Restricted Shares and Stock Units. Restricted shares may be awarded under the 2004 Equity Incentive Plan in return for, as determined by the committee:

- cash;
- a full-recourse promissory note;
- services already provided to us; and
- in the case of treasury shares only, services to be provided to us in the future.

Restricted shares vest at the times determined by the compensation committee. Stock units may be awarded under the 2004 Equity Incentive Plan. No cash consideration shall be required of the award recipients. Stock units may be granted in consideration of a reduction in the recipient's other compensation or in consideration of services rendered. Each award of stock units may or may not be subject to vesting and vesting, if any, shall occur upon satisfaction of the conditions specified by the compensation committee. Settlement of vested stock units may be made in the form of cash, shares of common stock or a combination of both.

Change in Control. If a change in control of Theravance occurs, an option or award under the 2004 Equity Incentive Plan will generally not accelerate vesting unless the surviving corporation does not assume the option or award or replace it with a comparable award. Generally, an option or award that is assumed or replaced on a change in control will become fully exercisable and fully vested if the holder's employment or service is involuntarily terminated without cause within three months before or twenty-four months following the change in control. A change in control includes:

- a merger of Theravance after which our own stockholders own 50% or less of the surviving corporation or its parent company;
- a sale of all or substantially all of our assets;
- a proxy contest that results in the replacement of more than one-half of our directors over a 24-month period; or
- an acquisition of 35% or more of our outstanding stock by any person or group, other than a person related to Theravance, such as a holding company owned by our stockholders.

A transaction by which GSK acquires less than 100% of our stock or assets will not be considered a change in control. We will pay any applicable excise parachute taxes resulting from the acceleration of our officers' options or awards.

Automatic Option Grant Program. On April 28, 2004, our board of directors approved a program of automatic option grants for non-employee directors under the 2004 Equity Incentive Plan on the terms specified below:

- Each non-employee director who first joins our board of directors after the effective date of the 2004 Equity Incentive Plan will receive an initial option for 25,806 shares. The initial grant of this option will occur when the director takes office. The option will vest in two equal annual installments.
- At the time of each of our annual stockholders' meetings, beginning in 2005, each non-employee director who will continue to be a director after that meeting will automatically be granted an option for 12,903 shares of our common stock. However, a new non-employee director who is receiving the initial option will not receive this option in the same calendar year. The options will be fully vested at grant.
- A non-employee director's option granted under this program will become fully vested upon a change in control of Theravance.
- The exercise price of each non-employee director's option will be equal to the fair market value of our common stock on the option grant date. A director may pay the exercise price by using cash, shares of common stock that the director already owns, or an immediate sale of the option shares through a broker designated by us. The non-employee director's options have a 10-year term, except that they expire one year after the director leaves the board of directors (three years if the departure from the board of directors occurred before September 1, 2007) or three years after the director leaves the board of directors due to retirement, if the ten-year term has not expired.

Amendments or Termination. Our board of directors may amend or terminate the 2004 Equity Incentive Plan at any time. If our board of directors amends the plan, it does not need to ask for stockholder approval of the amendment unless applicable laws, regulations or rules require it. The 2004 Equity Incentive Plan will continue in effect indefinitely, unless the board of directors decides to terminate the plan.

Employee Stock Purchase Plan

Our Employee Stock Purchase Plan was adopted by our board of directors on May 27, 2004 and has been approved by our stockholders. The Employee Stock Purchase Plan will become effective on such date on or after the effective date of the registration statement of which this prospectus is a part as is determined by our board of directors. Our Employee Stock Purchase Plan is intended to qualify under Section 423 of the Internal Revenue Code.

Share Reserve. We have reserved 325,000 shares of our common stock for issuance under the plan.

Administration. The compensation committee of our board of directors will administer the plan.

Eligibility. All of our employees are eligible to participate if we employ them for more than 20 hours per week and for more than five months per year. However, at the current time, officers are excluded from participation in this plan. Eligible employees may begin participating in the Employee Stock Purchase Plan at the start of any offering period.

Offering Periods. Each offering period lasts a maximum of 27 months, and a new offering period begins every three or six months, as determined by our board of directors. Overlapping offering periods generally start on February 1, May 1, August 1, and November 1 of each year. If elected by our board of directors, the first offering period may start on or following the effective date of this offering and end no more than 27 months later.

Amount of Contributions. Our Employee Stock Purchase Plan permits each eligible employee to purchase common stock through payroll deductions. Each employee's payroll deductions may not exceed 15% of the employee's cash compensation. Purchases of our common stock will generally occur on January 31, April 30, July 31 and October 31 of each year, except that the first purchase will occur approximately 6 months after the date of this prospectus. Each participant may purchase up to the number of shares determined by our board of directors on any purchase date, not to exceed 2,500 shares. The value of the shares purchased in any calendar year may not exceed $25,000.

Purchase Price. The price of each share of common stock purchased under our Employee Stock Purchase Plan will not be less than 85% of the lower of:

- the fair market value per share of common stock on the date immediately before the first day of the applicable offering period, or
- the fair market value per share of common stock on the purchase date.

Other Provisions. Employees may end their participation in the Employee Stock Purchase Plan at any time. Participation ends automatically upon termination of employment with Theravance. If a change in control of Theravance occurs, our Employee Stock Purchase Plan will end and shares will be purchased with the payroll deductions accumulated to date by participating employees. Our board of directors may amend or terminate the Employee Stock Purchase Plan at any time. Our chief executive officer may also amend non-material provisions of the plan. If our board of directors increases the number of shares of common stock reserved for issuance under the plan, except for the automatic increases described above, it must seek the approval of our stockholders.

Limitation of Liability and Indemnification of Officers and Directors

Upon the closing of this offering, we will adopt and file a new amended and restated certificate of incorporation and will amend and restate our bylaws. Our new amended and restated certificate of incorporation and amended and restated bylaws provide that we will indemnify our directors and officers to the fullest extent permitted by Delaware law, as it now exists or may in the future be

amended, against all expenses and liabilities reasonably incurred in connection with their service for or on behalf of us. In addition, the new amended and restated certificate of incorporation provides that our directors will not be personally liable for monetary damages to us for breaches of their fiduciary duty as directors, unless they violated their duty of loyalty to us or our stockholders, acted in bad faith, knowingly or intentionally violated the law, authorized illegal dividends or redemptions or derived an improper personal benefit from their action as directors. We maintain liability insurance which insures our directors and officers against certain losses and which insures us against our obligations to indemnify our directors and officers.

In addition, we have entered into indemnification agreements with each of our directors and officers. These agreements, among other things, require us to indemnify each director and officer to the fullest extent permitted by Delaware law, including indemnification of expenses such as attorneys' fees, judgments, fines and settlement amounts incurred by the director or officer in any action or proceeding, including any action or proceeding by or in right of us, arising out of the person's services as a director or officer. At present, we are not aware of any pending or threatened litigation or proceeding involving any of our directors, officers, employees or agents in which indemnification would be required or permitted. We believe provisions in our new amended and restated certificate of incorporation and indemnification agreements are necessary to attract and retain qualified persons as directors and officers.

PRINCIPAL STOCKHOLDERS

The following table sets forth certain information known to us regarding beneficial ownership of our common stock as of June 30, 2004 and as adjusted to reflect the sale of the shares of common stock in this offering by:

- each person known by us to be the beneficial owner of more than 5% of our common stock;
- our named executive officers;
- each of our directors; and
- all executive officers and directors as a group.

Unless otherwise indicated, to our knowledge, each stockholder possesses sole voting and investment power over the shares listed, except for shares owned jointly with that person's spouse.

Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission and generally includes voting or investment power with respect to securities. Except as noted by footnote, and subject to community property laws where applicable, the persons named in the table below have sole voting and investment power with respect to all shares of common stock shown as beneficially owned by them. Affiliates of Merrill Lynch, Pierce, Fenner & Smith Incorporated and affiliates of Lehman Brothers Inc. own 1,475,856 and 1,383,084 shares of our common stock, respectively, which each acquired in private transactions prior to September 2000.

This table lists applicable percentage ownership based on 45,426,727 shares of common stock (including 8,967,741 shares of Class A common stock beneficially owned by GlaxoSmithKline plc) outstanding as of June 30, 2004, and also lists applicable percentage ownership based on 50,945,656 shares of common stock outstanding after the closing of the offering. The number of shares of common stock to be outstanding after the offering is based on shares of common stock outstanding as of June 30, 2004 plus 5,200,000 shares of common stock sold in this offering and 9,286,670 shares of Class A common stock beneficially owned by GlaxoSmithKline plc (including the 318,929 shares we expect GSK to purchase concurrently with this offering). Options and warrants to purchase shares of our common stock that are exercisable within 60 days of June 30, 2004, are deemed to be beneficially owned by the persons holding these options for the purpose of computing percentage ownership of that person, but are not treated as outstanding for the purpose of computing any other person's ownership percentage.

Name and Address of Beneficial Owner(1)	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned	
		Before Offering	After Offering(2)
5% Stockholders			
GlaxoSmithKline plc(3) 980 Great West Road Brentford Middlesex TW8 9GS United Kingdom	8,967,741	19.7%	18.2%
Sierra Ventures VI, L.P.(4) 2884 Sand Hill Road, Suite 100 Menlo Park, CA 94025	2,943,028	6.5	5.8
P. Roy Vagelos, M.D.(5)	2,361,384	5.2	4.6

Biotech Growth S.A. Swiss Bank Tower Obarie Street, Panama 1 Republic of Panama	2,007,168	4.4	3.9
Executive Officers and Directors			
Rick E Winningham(6)	1,367,739	3.0	2.7
Marty Glick(7)	663,220	1.5	1.3
Patrick P.A. Humphrey(8)	649,835	1.4	1.3
Bradford J. Shafer(9)	402,415	*	*
Michael M. Kitt, M.D.(10)	374,188	*	*
P. Roy Vagelos, M.D.	2,361,384	5.2	4.6
Julian C. Baker(11)	125,742	*	*
Jeffrey M. Drazan(12)	2,984,963	6.6	5.9
Robert V. Gunderson, Jr.(13)	138,099	*	*
Arnold J. Levine, Ph.D.(14)	96,773	*	*
Ronn C. Loewenthal(15)	656,840	1.4	1.3
Michael G. Mullen(16)	2,032,974	4.5	4.0
William H. Waltrip(17)	58,064	*	*
George M. Whitesides, Ph.D.(18)	808,382	1.8	1.6
William D. Young(19)	58,064	*	*
All executive officers and directors as a group (15 persons)(20)	12,778,682	28.1	25.1

* Represents beneficial ownership of less than one percent of our outstanding common stock.

(1) Unless otherwise indicated, the address for each beneficial owner is c/o Theravance, Inc., 901 Gateway Boulevard, South San Francisco, California 94080.

(2) Percentage ownership after the offering assumes that none of the principal stockholders will purchase shares in this offering, with the exception of GSK's expected purchase of 318,929 shares of Class A common stock concurrently with the closing of the offering.

(3) Includes 2,580,645 shares of Class A common stock held of record by Glaxo Group Limited plc. Also includes 6,387,096 shares of Class A common stock held of record by SmithKline Beecham Corporation. Glaxo Group Limited plc and SmithKline Beecham Corporation each are wholly-owned subsidiaries of GlaxoSmithKline plc. Percentage of shares beneficially owned by GlaxoSmithKline plc after the offering is based on its beneficial ownership of 9,286,670 shares of Class A common stock, which includes the 318,929 shares of Class A common stock that we expect GSK to acquire concurrently with the closing of the offering. If the underwriters' overallotment option is exercised in full, we expect GSK to purchase from us 366,768 shares of

our Class A common stock and its percentage ownership of us after the offering would equal approximately 18.3%.

(4) Includes 2,685,468 shares held of record by Sierra Ventures VI, L.P. and 257,560 shares held of record by SV Associates VI, L.P. in nominee name. SV Associates VI, L.P. is the general partner of Sierra Ventures VI, L.P. Management of the business affairs of SV Associates VI, L.P., including the decisions respecting disposition and voting of investments, is by majority decision of its general partners, Jeffrey M. Drazan, David C. Schwab and Peter C. Wendell.

(5) Includes 770,967 shares issuable upon exercise of stock options of which 322,500 are not exercisable until September 2, 2007. Also includes 96,774 shares held of record by the Marianthi Foundation, of which Dr. Vagelos is a founder and current director. Also includes 258,064 shares held of record by the Vagelos 2004 Grantor Retained Annuity Trust, 38,709 shares held of record by the Cara Diana Roberts Trust, 38,709 shares held of record by the Olivia Sophia Vagelos Trust, 38,709 shares held of record by the Lydia Joan Roberts Trust, 38,709 shares held of record by the Alexa E. Masseur Irrevocable Trust, 38,709 shares held of record by the 2004 Vagelos Grandchild Irrevocable Trust and 38,709 shares held of record by the Emma B. Vagelos Irrevocable Trust, each of which Dr. Vagelos is the trustee. Also includes 126,988 shares subject to repurchase by us if Dr. Vagelos ceases to serve as a director.

(6) Includes 1,367,739 shares issuable upon exercise of stock options, 322,500 of which are not exercisable until September 2, 2007.

(7) Includes 365,157 shares issuable upon exercise of stock options, 267,741 of which are not exercisable until September 2, 2007. Also includes 20,833 shares subject to repurchase by us if Mr. Glick is no longer employed by us.

(8) Includes 649,835 shares issuable upon exercise of stock options, 203,225 of which are not exercisable until September 2, 2007.

(9) Includes 167,739 shares issuable upon exercise of stock options, 96,744 of which are not exercisable until September 2, 2007. Also includes 228,224 shares held of record by the Bradford J. Shafer Revocable Living Trust Dated 10/30/97. Also includes 15,680 shares subject to repurchase by us if Mr. Shafer is no longer employed by us. Also includes 6,451 shares held in trust for the benefit of Mr. Shafer's children.

(10) Includes 354,834 shares issuable upon exercise of stock options, 96,744 of which are not exercisable until September 2, 2007. Also includes 10,214 shares subject to repurchase by us if Dr. Kitt is no longer employed by us.

(11) Includes 58,064 shares issuable upon exercise of stock options, 25,806 of which are not exercisable until September 2, 2007. Also includes 67,678 shares held of record by FBB Associates, a partnership in which Mr. Baker has shared voting and investment power.

(12) Includes 25,806 shares issuable upon exercise of stock options, 25,806 of which are not exercisable until September 2, 2007. Also includes 2,685,468 shares held of record by Sierra Ventures VI, L.P. and 257,560 shares held of record by SV Associates VI, L.P. in nominee name. SV Associates VI, L.P. is the general partner of Sierra Ventures VI, L.P. Mr. Drazan is one of the general partners, in addition to David C. Schwab and Peter C. Wendell, of SV Associates VI, L.P. and exercises shared voting and investment power over the shares held by the Sierra entities. Mr. Drazan disclaims beneficial ownership of the shares held by Sierra Ventures VI, L.P. and Sierra Ventures Associates VI, L.P. except to the extent of his pecuniary interest therein.

(13) Includes 25,806 shares issuable upon exercise of stock options, 25,806 of which are not exercisable until September 2, 2007. Also includes 62,346 shares held of record by G&H Partners and 17,689 shares held by Marshall & Ilsley for the benefit of G&H Partners. Mr. Gunderson is one of the

general partners, in addition to Scott C. Dettmer and Brooks Stough, of G&H Partners and exercises shared voting and investment power over the shares held by G&H Partners. Mr. Gunderson disclaims beneficial ownership of such shares except to the extent of his pecuniary interest in G&H Partners.

(14) Includes 25,806 shares issuable upon exercise of stock options, 25,806 of which are not exercisable until September 2, 2007.

(15) Includes 58,064 shares issuable upon exercise of stock options, 25,806 of which are not exercisable until September 2, 2007. Also includes 598,776 shares held of record by Dr. Hasso Plattner, for whom Mr. Loewenthal has power of attorney and voting and investment power. Mr. Loewenthal disclaims beneficial ownership of the shares held by Dr. Plattner.

(16) Includes 25,806 shares issuable upon exercise of stock options, 25,806 of which are not exercisable until September 2, 2007. Also includes 2,007,168 shares held of record by Biotech Growth, S.A, a subsidiary of BB Biotech AG. Mr. Mullen is President of Bellevue Research, Inc., which provides research and consulting services to Bellevue Asset Management, which has the legal mandate to assist in the management of the assets of BB Biotech AG and may be deemed to hold voting and dispositive power for these shares. Mr. Mullen disclaims beneficial ownership of such shares.

(17) Includes 58,064 shares issuable upon exercise of stock options, 25,806 of which are not exercisable until September 2, 2007.

(18) Includes 25,806 shares issuable upon exercise of a stock option that is not exercisable until September 2, 2007. Also includes 96,935 shares subject to repurchase by us if Dr. Whitesides ceases to serve as a director. Also includes 193,548 shares held of record by the Whitesides Family Trust, of which Dr. Whitesides is the trustee.

(19) Includes 58,064 shares issuable upon exercise of stock options, 25,806 of which are not exercisable until September 2, 2007.

(20) Includes an aggregate of 4,037,558 shares issuable upon exercise of stock options and an aggregate of 270,650 outstanding shares subject to repurchase by us upon termination of service to us by the holders thereof. Also includes an aggregate of 1,729,030 shares subject to options that are not exercisable until September 2, 2007.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

GSK Transactions

In December 2002, we entered into a collaboration agreement with GSK. In connection with this agreement, we received a payment of $10.0 million and sold $40.0 million of our Series E preferred stock to Glaxo Group Limited, an affiliate of GSK and one of our greater than 5% beneficial stockholders. These shares were converted to common stock in connection with our May 2004 sale of Class A common stock to SmithKline Beecham Corporation, an affiliate of Glaxo Group Limited and GSK. We have also received $45.0 million in milestone payments through June 30, 2004 pursuant to the collaboration agreement, and may receive clinical, regulatory and commercial milestone payments from GSK pursuant to this collaboration based on the performance of our product candidates. For a more detailed description of the collaboration agreement, see the section entitled "Business—Our Relationship with GSK."

In May 2004, we sold $108.9 million of Class A common stock to SmithKline Beecham Corporation, an affiliate of GSK and Glaxo Group Limited, one of our greater than 5% beneficial stockholders, and issued to Glaxo Group Limited 2,580,645 shares of Class A common stock in exchange for 2,580,645 shares of common stock held by Glaxo Group Limited upon conversion of its shares of Series E Preferred Stock. We also entered into a strategic alliance agreement with GSK pursuant to which GSK received an option to license product candidates from all of our current and future discovery and development programs initiated prior to September 1, 2007 on an exclusive, worldwide basis, and we received from GSK an upfront payment of $20.0 million. We received an additional $5.0 million in connection with GSK's opt-in to our long-acting muscarinic antagonist program in August 2004. For a more detailed description of the alliance agreement, see the section entitled "Business—Our Relationship with GSK." In addition, we have entered into a governance agreement with GSK, which governs future acquisitions or dispositions of our securities by GSK and GSK's right to elect directors to our board of directors. The governance agreement is further described in the section entitled "Description of Capital Stock—Governance Agreement."

Concurrently with the closing of this offering, we expect GSK to purchase from us in a private sale 318,929 shares of our Class A common stock (or 366,768 shares if the underwriters' overallotment option is exercised in full) at a price per share equal to the initial public offering price. Assuming an initial public offering price of $14.00 per share, GSK will pay approximately $4.4 million for these shares (or approximately $5.1 million if GSK purchases 366,768 shares).

Amended and Restated Investors' Rights Agreement

We have granted registration rights to certain of our common stockholders pursuant to an investors' rights agreement. See "Description of Capital Stock—Registration Rights."

Employment Agreements

We have entered into offer letters or employment agreements with each of Messrs. Winningham, Humphrey, and Glick. See "Management—Employment Agreements."

Indemnification Agreements

We have entered into indemnification agreements with each of our directors and officers. These agreements, among other things, require us to indemnify each director and officer to the fullest extent permitted by Delaware law, including indemnification of expenses such as attorneys' fees, judgments, fines and settlement amounts incurred by the director or officer in any action or proceeding, including any action or proceeding by or in right of us, arising out of the person's services as a director or officer.

Stock Option Grants

We have granted options to purchase shares of our common stock to our executive officers and directors. See "Management—Director Compensation," "Management—Executive Compensation" and "Management—Option Grants in Last Fiscal Year."

Loans to Executive Officers

We have provided loans to the officers and directors identified below for the exercise of options to purchase shares of Theravance common stock. In general, the loans are interest-free and the full amount of an officer's loan will be forgiven if the officer remains employed by us at the time the shares subject to his option vest in full. Mr. Shafer's loan dated March 16, 2000 bears interest at the rate of 7% per year compounded annually and does not provide for automatic forgiveness when the options vest in full. As of June 30, 2004, no payments had been made on any of the loans listed in the table, except as set forth below.

Name & Title	Principal Amount	Number of Shares Acquired	Indebtedness as of June 30, 2004	Date of Loan	Full Vesting Date	Maturity Date
P. Roy Vagelos *Chairman of the Board of Directors*	$ 392,000	516,129	$ 392,000	12/14/98	12/31/04	12/31/04
Bradford J. Shafer	$ 229,250	28,225	$ 307,061	3/16/00	2/1/04	3/16/05
Senior Vice President, General Counsel	$ 105,000	80,645	$ 105,000	2/11/00	8/2/05	2/11/06
A. Gregory Sturmer *Vice President, Finance*	$ 36,750	75,000	$ 36,750	12/21/98	12/28/04	12/21/04
George Whitesides	$ 12,250	16,129	$ 12,250	12/14/98	9/3/05	9/29/05
Director	$ 9,800	12,903	$ 9,800	12/14/98	9/1/06	8/31/06
	$ 39,200	51,612	$ 39,200	12/14/98	5/20/07	5/20/07
	$ 12,250	16,129	$ 12,250	12/14/98	5/20/07	5/20/07
	$ 14,700	19,354	$ 14,700	12/14/98	5/20/07	5/20/07
Arnold Levine	$ 12,250	16,129	$ 12,250	12/17/98	2/24/02	4/14/06
Director	$ 9,800	12,903	$ 9,800	12/17/98	2/24/02	8/31/06

On October 2, 1998, Mr. Glick, our Executive Vice President, Finance and Chief Financial Officer, borrowed $98,000 to exercise a stock option on October 2, 1998. All principal under the loan was satisfied when the loan was forgiven by its terms on June 30, 2002. In connection with the forgiveness of the loan, Mr. Glick incurred taxable income equal to the amount of debt forgiven. We loaned Mr. Glick $33,761 on June 30, 2002 to permit him to satisfy tax obligations arising from the forgiveness of the loan. This loan bears interest at the rate of 4.75% and is due on June 30, 2007. Mr. Glick borrowed $98,000 to exercise a second stock option on October 2, 1998. All principal under the loan was forgiven by its terms on June 30, 2004.

On February 11, 2000 Mr. Shafer borrowed $147,000 to exercise a stock option. The largest aggregate amount of indebtedness outstanding under this loan during 2003 was $147,000. All principal under the loan was satisfied when the loan was forgiven by its terms on August 2, 2003. In connection with the forgiveness of the loan, Mr. Shafer incurred taxable income equal to the amount of debt forgiven. We loaned Mr. Shafer $47,701.50 on August 2, 2003 to permit him to satisfy his tax obligations. This loan bore interest at the rate of 4% and on May 27, 2004 Mr. Shafer paid us $49,294.02, an amount equal to the principal and unpaid interest accrued on the loan as of that date.

On December 21, 1998, Mr. Sturmer borrowed $34,300 to exercise a stock option. All principal under the loan was satisfied when the loan was forgiven by its terms on December 27, 2002. In connection with the forgiveness of the loan, Mr. Sturmer incurred taxable income equal to the amount of debt forgiven. We loaned Mr. Sturmer $11,816.35 on December 27, 2002 to permit him to satisfy his tax obligations. This loan bore interest at the rate of 4.25% and on May 26, 2004 Mr. Sturmer paid us $12,536.76, an amount equal to the principal and unpaid interest accrued on the loan as of that date.

On July 1, 2002 we extended a loan to Mr. Winningham, our Chief Executive Officer, in the principal amount of $3,750,000 pursuant to the terms of his employment offer letter. The proceeds from the loan were used by Mr. Winningham to purchase his principal residence. The note was interest free, with principal due on July 1, 2012, subject to acceleration upon borrower's cessation of employment under certain circumstances and certain other events. The loan provided that 50% of the principal of such loan was to be forgiven on his fifth anniversary of employment with us and an additional 16% of the original principal was to be forgiven on his seventh anniversary with us. The loan was secured by a second deed of trust on the residence and a pledge of 774,193 shares of stock issuable upon exercise of his options. The largest aggregate amount of indebtedness outstanding under this loan during 2004 was $3,750,000.

On June 4, 2004 we entered into an agreement with Mr. Winningham pursuant to which we terminated the home equity sharing arrangement and agreed to forgive Mr. Winningham's housing loan in the amount of $3,750,000, thereby extinguishing his debt in full, in recognition of Mr. Winningham entering into a lock-up agreement with us and GSK pursuant to which he has agreed not to sell or transfer 50% of the shares purchasable under all of his options and agreed not to put a portion of the shares purchasable under his options. We also agreed to pay Mr. Winningham a bonus equal to the amount of additional income and employment taxes that he will incur upon the loan being forgiven. We granted Mr. Winningham an option on December 28, 2001 to purchase 762,463 shares of our common stock at an exercise price of $8.53 per share and he is vested as of May 31, 2004 in 505,131 of the shares purchasable under the option. Under the June 2, 2004 agreement, Mr. Winningham agreed to deposit 129,032 of the shares purchasable under this initial option into escrow if he exercises the option prior to September 7, 2007. Should Mr. Winningham leave our employ due to voluntary resignation or a termination by us for cause, then he will forfeit any shares deposited into escrow. We will release these 129,032 shares from escrow over the following periods: 25% on December 31, 2005, 25% on December 31, 2006, and the balance on September 7, 2007 and will release the shares immediately should Mr. Winningham die or leave our employ due to disability.

On February 27, 2002 we extended a loan to Dr. Humphrey, our Executive Vice President, Research, in the principal amount of $1,000,000 pursuant to the terms of his employment offer letter. The proceeds from the loan were used by Dr. Humphrey to purchase his principal residence. The note was interest free, with principal due on February 27, 2012, subject to acceleration upon borrower's cessation of employment under certain circumstances and certain other events. The loan was secured by a deed of trust on the residence and a pledge of 387,096 shares of stock issuable upon exercise of his options. The largest aggregate amount of indebtedness outstanding under this loan during 2004 was $953,500.

On June 4, 2004 we entered into an agreement with Dr. Humphrey pursuant to which we agreed to forgive Dr. Humphrey's housing loan in the amount of $953,500, thereby extinguishing his debt in full, in recognition of Dr. Humphrey entering into a lock-up agreement with us and GSK pursuant to which he has agreed not to sell or transfer 50% of the shares purchasable under all of his options and agreed not to put a portion of the shares purchasable under his options. We also agreed to pay Dr. Humphrey a bonus equal to the amount of additional income and employment taxes that he will incur upon the loan being forgiven. We granted Dr. Humphrey an option on June 30, 2001 to purchase 193,548 shares of our common stock at an exercise price of $8.53 per share and he is vested as of May 1, 2004 in 141,129 of the shares purchasable under the option. On February 24, 2002 we

granted Dr. Humphrey additional options to purchase 193,548 shares of our common stock at an exercise price of $8.53 per share; he is vested as of May 1, 2004 in 104,838 of the shares purchasable under these additional options. Under the June 2, 2004 agreement, Dr. Humphrey agreed to deposit 62,696 of the shares purchasable under his initial options into escrow if he exercises the options prior to September 7, 2007. Should Dr. Humphrey leave our employ due to voluntary resignation or a termination by us for cause, then he will forfeit any shares deposited into escrow. We will release these 62,696 shares from escrow over the following periods: 25% on December 31, 2005, 25% on December 31, 2006, and the balance on September 7, 2007 and will release the shares immediately should Dr. Humphrey die or leave our employ due to disability.

On September 8, 2000 we extended a loan to Mr. Brinkley, our Senior Vice President, Commercial Development, in the principal amount of $230,000 pursuant to the terms of his employment offer letter. The proceeds from the loan were used by Mr. Brinkley to purchase his principal residence. The note is interest free, with principal due on September 1, 2005, subject to acceleration upon borrower's cessation of employment and certain other events. The loan is secured by a second deed of trust on the residence. The largest aggregate amount of indebtedness outstanding during 2004 was $230,000.

On July 31, 2003 we extended a loan to Mr. Campbell, our Senior Vice President, Technical Operations, in the principal amount of $500,000 pursuant to the terms of his employment offer letter. The proceeds from the loan were used by Mr. Campbell to purchase his principal residence. The note is interest free with principal due on July 30, 2013, subject to acceleration upon borrower's cessation of employment and certain other events. The loan is secured by a second deed of trust on the residence and a pledge of his option shares. The largest aggregate amount of indebtedness outstanding in 2004 was $500,000. On June 10, 2004, Mr. Campbell repaid the loan in full.

In May 2004 P. Roy Vagelos, Rick E Winningham, Patrick P.A. Humphrey and Marty Glick, our Chairman of the board of directors, Chief Executive Officer, Executive Vice President, Research and Executive Vice President, Finance and Chief Financial Officer, respectively, agreed with GSK not to sell more than one-half of their shares of common stock prior to the date of redemption of our common stock pursuant to GSK's call right, or, in the alternative, on the close of business on the last day that our stockholders can exercise their put right. In addition, these individuals have agreed that they will not exercise their put right with respect to one-quarter of their shares of common stock or options to purchase common stock held on May 11, 2004 and otherwise eligible to be put.

During the fiscal years ended December 31, 2001, 2002, 2003 and 2004, we retained the services of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, a law firm of which Robert V. Gunderson, Jr., one of our directors, is a founding partner. We expect to continue to retain the services of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP in the future.

DESCRIPTION OF CAPITAL STOCK

General

The following is a summary of the rights of our common stock and preferred stock and related provisions of our certificate of incorporation, bylaws and governance agreement with GSK upon the completion of this offering. For more detailed information, please see our certificate of incorporation, bylaws, governance agreement and amended and restated investors' rights agreement, which are filed as exhibits to the registration statement of which this prospectus is a part.

Immediately following the closing of this offering, our authorized capital stock will consist of 230,230,000 shares, each with a par value of $0.01 per share, of which:

- 200,000,000 shares are designated as common stock,
- 30,000,000 shares are designated as Class A common stock, and
- 230,000 shares are designated as preferred stock.

At June 30, 2004, we had outstanding 36,458,986 shares of common stock, 8,967,741 shares of Class A common stock and no shares of preferred stock. All of our outstanding Class A common stock is held by GSK and its affiliates. In addition, as of June 30, 2004, 8,692,642 shares of our common stock were subject to outstanding options, and 64,908 shares of our capital stock were subject to outstanding warrants. At June 30, 2004, 367,830 shares of our outstanding common stock held by our employees, consultants and directors were subject to a lapsing right of repurchase in our favor, under which we may repurchase these shares upon the termination of the holder's employment or consulting relationship.

Common Stock

Voting Rights

Generally

Unless otherwise provided for in our certificate of incorporation or required by applicable law, on all matters submitted to our stockholders for vote, our common stockholders and Class A common stockholders will be entitled to one vote per share, voting together as a single class.

Class A common stock

The Class A common stock, all of which is held by GSK, will have the right to elect a certain number of directors to our board of directors depending on the percentage of our outstanding voting stock owned by GSK at varying points in time. See "—Voting Rights For the Election of Directors/Board of Directors Composition" and "—Governance Agreement" for a description of the rights of GSK as the holder of our Class A common stock with respect to board of directors composition.

Dividends

Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of common stock and Class A common stock shall be entitled to share equally in any dividends that our board of directors may determine to issue from time to time. In the event a dividend is paid in the form of shares of common stock or rights to acquire shares of common stock, the holders of common stock shall receive common stock, or rights to acquire common stock, as the case may be, and the holders of Class A common stock shall receive Class A common stock, or rights to acquire Class A common stock, as the case may be.

Liquidation

Upon our liquidation, dissolution or winding-up, the holders of common stock and Class A common stock shall be entitled to share equally all assets remaining after the payment of any liabilities and the liquidation preferences on any outstanding preferred stock.

Common Stock Call and Put Arrangements with GSK

Pursuant to our certificate of incorporation and our governance agreement with GSK:

- In 2007, GSK has the right to call, by requiring us to redeem, 50% of our then outstanding shares of common stock at a price of $54.25 per share; and
- If:
    - in 2007, GSK declines to exercise its call right, or
    - prior to 2007, we experience an insolvency event, as described below,

  holders of our common stock will have the right to put to GSK, by requiring us to redeem 50% of their shares of common stock at a price of $19.375 per share.

The call and put prices are subject to adjustment in the case of stock splits, stock combinations, cash dividends, and other similar events. Generally, the call and put, if exercised, will be effected by our redemption of common stock from the holders thereof for cash, to be funded in full by GSK, and the concurrent issuance of the same number of newly issued shares of Class A common stock to GSK.

Set forth below is a brief summary of the provisions that will apply in the event the call or put arrangements described above are exercised. The actual provisions are set forth in our certificate of incorporation and governance agreement with GSK, which are included as exhibits to the registration statement of which this prospectus is a part.

Call Rights

If GSK elects to exercise its call rights, it must provide written notice to us between June 1 and July 1, 2007, and must provide to us adequate funds in cash to pay the aggregate redemption price of the shares of our common stock to be called. GSK must specify the date that the call will occur, which must be no later than July 31, 2007.

Our Obligations

Upon receipt of notice from GSK to effect the call, we will be required to:

- designate a depositary for the redemption of our common stock and deposit the aggregate call price with the depositary;
- notify GSK of the designation of the depositary; and
- give notice of the exercise of the call to the holders of our common stock. We must provide notice by mail of any proposed call to holders of record of our common stock, between 10 and 30 days prior to the call date specified by GSK.

Payment and Procedure

After we give our stockholders notice of the call and deposit the funds necessary to redeem the shares of common stock subject to the call, then:

- all of our common stock called by us and for which the deposit has been made under exercise of the call will be deemed not to be outstanding for any purpose, regardless of

whether or not payment for such shares has occurred or the stock certificates for such common stock have been surrendered for cancellation; and

- all rights with respect to our common stock called by us will cease and terminate, except the right to receive the call price per share to which the stockholders are entitled, without interest.

Each holder of shares of common stock will be paid the call price for their shares of common stock within three business days following the surrender of the certificate or certificates representing their shares to the depositary, together with a properly executed letter of transmittal covering the shares.

Our written instructions to the depositary may provide that any of such deposit remaining unclaimed, at the expiration of two years after the call date, by the holder of any shares of common stock subject to the call be, subject to applicable law, returned to us and revert to our general funds. After this two year period, a holder shall have no claim against the depositary but shall have a claim against us as an unsecured creditor for the call price together with any accrued and unpaid dividends to the call date, without interest.

Put Rights

If GSK does not exercise the call described above, each holder of our common stock may exercise the put right described above during the period beginning on August 1, 2007 and ending on the 30th business day thereafter or as may be required under the Securities Exchange Act of 1934, as amended or the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

Our Obligations

At least ten and not more than thirty days prior to August 1, 2007, we will mail to each holder of common stock a put notification describing:

- the rights of such holder to cause us to redeem up to 50% of our common stock held by the holder;
- the date of the commencement and termination of the period in which the put can be exercised;
- the price per share to be paid to a holder upon exercise of the put;
- the identity and address of the depositary; and
- instructions as to how to exercise the put.

We will also publish notification of the put in the *Wall Street Journal* within the same time frame as the put notification must be provided. Our board of directors may fix a record date for determination of holders of common stock entitled to be given the put notification, but the record date may not be more than five days prior to the date that the put notification is given.

Obligations of GSK

To the extent the put is exercised, GSK must either (i) provide us with an amount of cash sufficient to legally redeem our common stock with respect to which the put has been properly exercised prior to the last day of the period in which the put can be exercised, or (ii) elect and arrange to purchase at the put price directly from the holders of our common stock at the expiration of the period in which the put can be exercised, in compliance with applicable law, the shares of our common stock for which the put has been properly exercised.

Payment and Procedure

If GSK provides to us the funds necessary to redeem the shares of common stock that have been properly put, promptly following the end of the period in which the put can be exercised, we shall deposit with a depositary that we select the funds sufficient to pay the put price for all shares of common stock with respect to which the put has been properly exercised. Each holder of shares of common stock who has properly exercised the put, and who has surrendered the shares of common stock to the depositary, shall be paid the put price promptly following the end of the period in which the put can be exercised. We may delay the dates to take the actions described above to later dates to the extent necessary to comply with the United States federal securities laws.

Acceleration of Put upon An Insolvency Event

If we have an insolvency event, which is described below, the right of our stockholders to exercise the put shall accelerate and commence immediately and continue for the 65 business days after such event or until a later date as required under the Securities Exchange Act of 1934, as amended, or the Hart-Scott-Rodino Antitrust Improvements Act of 1976. We are obligated to provide the put notification to stockholders as soon as practicable following the date of the insolvency event. In the event the put notification is accelerated due to an insolvency event, GSK remains obligated to provide us the funds necessary to effect the redemption of all shares of common stock that are properly put or elect and arrange to purchase at the expiration of the period in which the put can be exercised, in compliance with applicable law, all shares of common stock that are properly put directly from our stockholders.

An insolvency event means the occurrence of any of the following events:

- a filing by us of a voluntary petition in bankruptcy, or seeking a reorganization, in order to effect a plan or other arrangement with creditors or any other relief under the United States Bankruptcy Code, or under any United States federal or state law granting relief to debtors;
- the filing or commencement of any involuntary petition or proceeding under the United States Bankruptcy Code or any other applicable United States federal or state law relating to bankruptcy, reorganization or other relief for debtors against us that is not dismissed within 30 days;
- a filing by us of an answer admitting the jurisdiction of the court and the material allegations of any involuntary petition; or
- the adjudication of us as bankrupt, or the entry of an order for relief against us by any court of competent jurisdiction under the United States Bankruptcy Code or any other applicable United States federal or state law relating to bankruptcy, reorganization or other relief for debtors.

Redeemed Shares

All shares of common stock that we redeem pursuant to the call or the put will be retired and certificates representing the shares of common stock will be canceled promptly after the redemption and may not be reissued.

Legend

Each certificate representing shares of common stock will bear the following legend:

"One-half of the shares of common stock represented hereby are subject to (i) redemption at the option of the corporation during the period, at the price and on the terms and conditions

specified in the corporation's certificate of incorporation and (ii) an option on the part of the holder, under certain circumstances, to require the corporation to redeem such shares of common stock, at the price and on the terms and conditions specified in the corporation's certificate of incorporation. After redemption, the redeemed shares represented by this certificate shall cease to be outstanding for all purposes and the holder hereof shall be entitled to receive only the redemption price for such shares, without interest."

Optional Conversion of Class A Common Stock

All shares of our Class A common stock are held by GSK. GSK may convert each share of Class A common stock into one share of common stock on or after the call/put termination date. All shares of Class A common stock so converted will be retired and cancelled. The call/put termination date is referred to in "Description of Capital Stock" as the date following the date of redemption of our common stock pursuant to the call or, in the alternative, on the close of business on the last day in which the put can be exercised.

Voting Rights for the Election of Directors/Board of Directors Composition

Authorized Number of Directors

Our certificate of incorporation and bylaws provide that our board of directors may consist of any number of directors, greater than or equal to one, provided that at any time that GSK's percentage ownership of our voting stock is 50.1% or greater, the authorized number of directors on our board of directors will be no less than nine, or any greater number that is divisible by three. We will increase or decrease the size of our board of directors and fill any newly created directorships as appropriate to achieve our board of directors composition required by our governance agreement with GSK. We will have the right to decrease the size of our board of directors without GSK's consent (and, if desired, to increase it again without GSK's consent to no more than 13 seats), so long as GSK does not lose its right to designate the directors or independent directors pursuant to the governance agreement.

Our certificate of incorporation provides that holders of a majority of the shares of Class A common stock voting as a separate class, shall be entitled to elect members of our board of directors as follows:

- For so long as GSK continues to own at least 15% of our outstanding stock (or, if GSK sells any of our stock, at least 19% after any such sale), one director;
- For so long as GSK holds 35.1-50.0% of our outstanding stock, one director plus that percentage of our independent directors most closely approximating the percentage of stock GSK owns; and
- For so long as GSK holds 50.1% or more of our outstanding stock, one third of our board of directors, plus one half of our independent directors.

For these purposes, "independent directors" include all of our directors that qualify as independent under applicable exchange listing rules.

All other directors are elected by a plurality of holders of our common stock and Class A common stock, voting together as a single class.

Vacancies on Our Board of Directors

GSK has the right to nominate any replacement for a director nominated by GSK at the end of that director's term or upon removal from office, subject to the approval of a majority of the directors (other than any director nominated by GSK) with respect to nominations pursuant to the

governance agreement. The directors that were not nominated by GSK have the right to nominate any replacement for a director that was not nominated by GSK.

Preferred Stock

Our certificate of incorporation in effect upon the closing of this offering will authorize 230,000 shares of Series A junior participating preferred stock that are purchasable upon exercise of the rights under our rights agreement. See "—Rights Agreement" These shares are:

- not redeemable;
- entitled, when, as and if declared, to a minimum preferential quarterly dividend payment of the greater of (a) $1.00 per share, and (b) an amount equal to 1,000 times the dividend declared per share of our common stock;
- in the event of a liquidation, dissolution or winding up, a minimum preferential payment of the greater of (a) $10.00 per share (plus any declared but unpaid dividends), and (b) an amount equal to 1,000 times the payment made per share of common stock;
- entitled to 1,000 votes, voting together with our common stock;
- in the event of a merger, consolidation or other transaction in which outstanding shares of our common stock are converted or exchanged, entitled to receive 1,000 times the amount received per share of our common stock; and
- entitled to anti-dilution protections.

Corporate Opportunities

Our certificate of incorporation acknowledges that we and GSK may generally pursue any business opportunities available to us, and have no obligation to offer any business opportunities to the other party. In addition, pursuant to our certificate of incorporation, as between us and GSK and its affiliates, we renounce our interest in and waive any claim that a corporate or business opportunity constituted a corporate opportunity for us so long as the policy regarding treatment of corporate opportunities set forth in our certificate of incorporation is followed. Pursuant to the policy set forth in our certificate of incorporation, a corporate or business opportunity offered to any person who is our director and who is also a director, officer or employee of GSK, will belong to us only if the opportunity is expressly offered to such person primarily in his or her capacity as our director. Otherwise the opportunity will belong to GSK. Our certificate of incorporation provides that these provisions may only be amended by the affirmative vote of at least 85% of the voting power of all shares of our voting stock then outstanding.

Governance Agreement

The following summary describes the material provisions of our governance agreement with GSK, which is included as an exhibit to the registration statement of which this prospectus is a part. The governance agreement contains agreements with GSK relating to our corporate governance, future acquisitions or dispositions of our securities by GSK and the put and call features of our common stock. As described above, the call may be exercised in July 2007. If the call is not exercised, our stockholders may exercise their put right in August 2007. Certain rights and obligations contained in the governance agreement differ following the call/put termination date as compared to prior to the call/put termination date. The rights and obligations following the call/put termination date may further vary based on the level of GSK's ownership of our voting stock. The following description describes the rights and obligations of us and GSK prior to the call/put termination date and then following the call/put termination date, depending on GSK's ownership of our voting stock at that time.

Rights of GSK Prior to the Call/Put Termination Date

Agreements Related to Our Board of Directors

Composition of Our Board of Directors

GSK shall have the right to either:

- nominate an individual to serve as a member of our board of directors (in which case the size of our board of directors will be increased by one); or
- designate an individual to serve as an observer at our board of directors meetings.

GSK shall have this right until such time as GSK's percentage ownership of our outstanding securities having the right to vote generally in any election of our directors, referred to as our "voting stock," (a) has fallen below 15%, or (b) directly as a result of any sale or other disposition by GSK of voting stock, has fallen below 19%.

Limitations on Our Actions

GSK Approval of Certain Issuances of Our Equity Securities

Without the prior written consent of GSK, we may not issue any equity securities other than shares of common stock, options to acquire common stock and permitted indebtedness. We may only issue these equity securities if, as a consequence of such issuance, the aggregate number of shares of our common stock would not exceed 54.2 million (as adjusted for stock splits, stock dividends, combinations and other recapitalizations). Shares of common stock subject to executive lock-up agreements as described in "Certain Relationships and Related Party Transactions" are not included in the aggregate number of common stock for purposes of this restriction.

The term "equity securities" is referred to as (i) any of our voting stock, (ii) our securities convertible into or exchangeable for voting stock, and (iii) options, rights and warrants issued by us to acquire voting stock.

The term "permitted indebtedness" is referred to as any indebtedness that we issue prior to the call/put termination date and in an amount equal to or less than $100.0 million and, if the indebtedness may be converted or exchanged into our voting stock, then the terms of the indebtedness must provide that it may not be converted or exchanged prior to the call/put termination date.

Limitations on Our Indebtedness

We may not borrow money or otherwise incur indebtedness that would cause us, on a consolidated basis, to have financial indebtedness that exceeds our cash and cash equivalents, except that we may incur permitted indebtedness.

Limitations and Exceptions to GSK's Rights to Acquire Our Securities

Limitation on Acquisition of our Equity Securities by GSK

Except as agreed to by us in writing following approval by a majority of our independent directors, GSK may not, directly or indirectly:

- acquire any of our equity securities;
- make or participate in any solicitation of proxies to vote from any holders of our equity securities;
- form or participate in a "group" within the meaning of Section 13(d)(3) of the Securities and Exchange Act of 1934, as amended, with any person not bound by the terms of the governance agreement with respect to any voting stock;

- acquire any of our assets or rights to purchase any of our assets except for assets offered for sale by us or the acquisition or purchase of our assets pursuant to the existing agreements that we have in place with GSK;

- enter into any arrangement or understanding with others to do any of the actions listed immediately above;

- act together with others to offer to us or any of our stockholders any business combination, restructuring, recapitalization or similar transaction involving us or otherwise seek together with others to control, change or influence the management, board of directors or our policies or nominate any person as a director who is not nominated by the then incumbent directors, or propose any matter to be voted upon by our stockholders; and

- prior to August 31, 2007, request that we or our board of directors amend or waive the restrictions set forth immediately above.

Permitted GSK Purchases of Our Equity Securities from Us

GSK may acquire our equity securities from us in the following circumstances:

- if we issue equity securities to a third party (other than pursuant to exercise of options issued as compensation to our directors, officers, employees or consultants), the purchase of all of or a portion of a number of equity securities that would bring GSK's percentage ownership of our voting stock to the same level that it was at immediately prior to the issuance of equity securities to the third party at the same price at which the equity securities were sold to the third party. We expect GSK to purchase Class A common stock concurrently with the closing of this offering pursuant to this provision. After this offering and prior to the call/put termination date, if GSK's rights to acquire our stock arise from our issuance of common stock or another security convertible into common stock prior to the call/put termination date, then GSK's purchase from us will consist of one-half common stock and one-half Class A common stock. With respect to other GSK purchase rights arising from issuances by us of other types of securities or following the call/put termination date, GSK will have the right to purchase the same securities that we are issuing;

- the purchase, on a quarterly basis, of equity securities comparable to those that are issued as compensation to our directors, officers, employees or consultants during the preceding quarter pursuant to option exercises or vesting of restricted stock, at the fair market value at the time of GSK's notification to us of its intention to purchase such equity securities that would bring GSK's percentage ownership of our voting stock to the same level that it was at immediately prior to such issuances;

- the acquisition of additional equity securities issued in connection with a stock split or recapitalization; and

- following our initial public offering, the purchase of equity securities for a pension plan or benefit plan for the benefit of GSK's employees.

Permitted GSK Purchases of Equity Securities from Our Stockholders

GSK may acquire our equity securities from our stockholders in the following circumstances:

- the purchase of common stock from holders of common stock pursuant to the put;

- the acquisition of securities of another biotechnology or pharmaceutical company that owns our equity securities (provided that those shares will be subject to the provisions of the governance agreement on the same basis as GSK's shares of Class A common stock); or

- the making of an offer to acquire equity securities if (a) a person or group (other than GSK) acquires 20% or more of our voting stock or (b) our board of directors formally acts to facilitate a change in control of us (other than with GSK), subject to the following conditions:

    - that the offer be an offer for 100% of our voting stock;
    - that the offer include no condition as to financing; and
    - that the offer includes a condition that the holders of a majority of the shares of the voting stock not owned by GSK accept the offer by tendering their shares or voting their shares in favor of the offer.

The term "change in control" is referred to as (i) an acquisition of us by a third party (ii) any transaction or series of related transactions (including mergers, consolidations and other forms of business consolidations) after which our continuing stockholders hold less than 50% of the outstanding voting securities of either us or the entity that survives the transaction (or the parent of the surviving entity), or (iii) the sale, lease, license, transfer or other disposal of all or substantially all of our business or assets (except that the sale, license or transfer to another party of any of our assets in the ordinary course of business will not be considered a change in control of us if GSK has no contractual rights under our existing agreements with GSK over our asset sold, licensed or transferred).

Limitations on Dispositions of Our Equity Securities by GSK

GSK may not sell or transfer any of our voting stock without the prior approval of a majority of our board of directors (not including any director nominated by GSK) except for transfers:

- to any other affiliate of GSK; or
- in connection with a change in control of us approved by a majority of our board of directors (not including any director nominated by GSK) and completed prior to August 1, 2007.

Voting Arrangements

Agreement to Vote

GSK shall vote the voting stock held by it (at GSK's election) either (i) in accordance with the recommendation of our independent directors or (ii) in proportion to the votes cast by the other holders of our voting stock.

Exceptions to Agreement to Vote

GSK can vote as it chooses on any proposal to:

- amend our restated certificate of incorporation to amend the provisions related to the put and call;
- issue equity securities to one or more parties (other than in a public offering) that would result in that party or parties holding 20% or more of our voting stock; or
- effect a change in control of us.

If a person or group acting in concert acquires 20% or more of the voting stock, GSK may vote its voting stock without any restrictions.

Grant of Proxy

GSK grants an irrevocable proxy coupled with an interest in all voting stock owned by GSK to our board of directors. This proxy will enable the proxyholder to vote or otherwise act with respect to all of GSK's voting stock in the manner required by the governance agreement.

Rights of GSK Following the Call/Put Termination Date

If GSK's Ownership of Our Voting Stock is Greater than 50.1%

Agreements Related to Our Board of Directors

Composition of Our Board of Directors

Our board of directors will include:

- a number of nominees designated by GSK equal to one-third of the aggregate number of directors comprising our board of directors at that time;
- two of our officers nominated by the nominating committee of our board of directors; and
- the remaining members of our board of directors will be independent directors.

An independent director is a director that complies with the independence requirements for directors with respect to us for companies listed on the Nasdaq National Market and has business or technical experience, stature and character as is commensurate with service on our board of directors of a publicly traded enterprise. In addition, so long as GSK's percentage ownership of our voting stock is 50.1% or greater, upon its request, GSK may designate nominees for half of the total number of independent directors. These nominees to be independent directors must be reasonably acceptable to the directors not nominated by GSK. Each GSK nominee to be an independent director must meet the qualifications of an independent director both with respect to us and with respect to GSK. An equal number of independent directors will be nominated by the directors of our board of directors (excluding the directors nominated by GSK). If GSK's percentage ownership of our voting stock falls below 50.1% (subject to certain limitations), then the term of each director nominated by GSK pursuant to this provision will automatically cease.

Any committee of our board of directors must contain at least one director nominated by GSK except for:

- a committee representing the interests of the holders of common stock;
- a committee of independent directors constituted for the purposes of making any determination that is to be made under the terms of the governance agreement or our certificate of incorporation; or
- a committee in which membership of a director nominated by GSK would be prohibited by applicable law, regulation or stock exchange or trading system listing requirement.

Approval by a Majority of GSK Nominated Directors of Certain Actions

The approval of a majority of the directors nominated by GSK will be required to approve any of the following:

- our acquisition of any business or assets that would constitute a substantial portion of our business or assets;
- the sale, lease, license, transfer or other disposal of a substantial portion of our business or assets, tangible or intangible, other than dispositions of assets over which GSK has no contractual rights pursuant to agreements with us or in the ordinary course of business; or

- the repurchase or redemption of any of our equity securities other than (A) redemptions required by the terms of our voting stock, (B) purchases made at fair market value in connection with any deferred compensation plan that we maintain and (C) repurchases of unvested or restricted stock at or below cost pursuant to a compensation plan.

Limitations on Our Actions

GSK Approval of Certain Issuances of Our Equity Securities

If GSK's percentage ownership of our voting stock is 50.1% or greater on the call/put termination date or if GSK's percentage ownership of our voting stock is less than 50.1% on the call/put termination date, but exceeds 50.1% at any time on or prior to December 31, 2008, we may not issue any equity security other than:

- equity securities issued pursuant to any employee, officer, director or consultant compensation plan that has been approved by the majority of our board of directors; and

- equity securities issued by us to third parties, provided that the aggregate number of shares of any such equity securities issued to such third parties during the period described above may not exceed the equivalent of approximately 16.1 million shares of common stock (on an as converted to common stock basis and as adjusted for stock splits, stock dividends, combinations and other recapitalizations).

Limitations and Exceptions to GSK's Rights to Acquire Our Securities

Limitation on Acquisition of our Equity Securities by GSK

Except as agreed to by us in writing following approval by a majority of our independent directors, GSK will have the same limitations on the acquisition of our equity securities as GSK did prior to the call/put termination date. These limitations are described above in "—Governance Agreement; *Rights of GSK Prior to the Call/Put Termination Date*; *Limitations and Exceptions to GSK's Rights to Acquire Our Securities*."

Permitted GSK Purchases of Our Equity Securities From Us

GSK may acquire our equity securities from us under the same circumstances that it is allowed to acquire our equity securities prior to the call/put termination date. These circumstances are described above in "—Governance Agreement; *Rights of GSK Prior to the Put/Call Termination Date; Limitations and Exceptions to GSK's Rights to Acquire Our Securities*." In addition, GSK may acquire our equity securities from us under the following circumstances:

- If we issue permitted indebtedness that is convertible into an equity security, we will provide written notice to GSK of the conversion of any permitted indebtedness within ten days following any such conversion. After receipt of this notice, GSK will promptly notify us if it intends to purchase that number of equity securities from us required to maintain GSK's percentage ownership of our voting stock as measured immediately prior to the date of such conversion. The equity securities that we issue to GSK will have at a price per share equal to the greater of (x) the conversion price of the permitted indebtedness or (y) the fair market value per share on the date GSK notifies us of its intention to purchase such equity securities.

- GSK may purchase additional equity securities if we have determined to sell equity securities to pay all or any portion of the milestones that we may owe GSK pursuant to our existing agreements with GSK. In this event, GSK has the first right to purchase the additional equity securities on the terms that we intend to sell the equity securities;

provided that, the voting stock held by GSK at such time was acquired in accordance with the terms of the governance agreement and our certificate of incorporation.

If GSK's percentage ownership of our voting stock is 50.1% or greater on the call/put termination date solely as a result of the exercise of the put:

- if we issue equity securities (other than pursuant to exercise of options or vesting of restricted stock issued as compensation to our directors, officers, employees or consultants) between the call/put termination date and September 1, 2012 and GSK declines to purchase additional equity securities in such offering, then for a period of six months following the date that we issue such equity securities, GSK will have the right to cause us to issue that number of equity securities to GSK as is required to maintain GSK's percentage ownership of our voting stock at the same level as it was on the call/put termination date. The purchase price of the equity securities issued to GSK will be the greater of the fair market value on the date of notification by GSK of its intention to purchase such equity securities and the price at which the equity securities were sold by us to the third party.

If GSK's percentage ownership of our voting stock is 50.1% or greater on the call/put termination date solely as a result of the exercise of the call:

- if we issue equity securities (other than pursuant to exercise of options or vesting of restricted stock issued as compensation to our directors, officers, employees or consultants) between the call/put termination date and September 1, 2012, then GSK, for so long as GSK's percentage ownership of our voting stock is 50.1% or greater, will have the right to purchase the same equity securities at the same price and in such amount as is required to maintain GSK's percentage ownership of our voting stock at the same level as it was on the call/put termination date.

Permitted GSK Purchases of Equity Securities from Our Stockholders

GSK may acquire our equity securities from our stockholders under the same circumstances that it is allowed to acquire our equity securities from our stockholders prior to the call/put termination date. These circumstances are described above in "—Governance Agreement; *Rights of GSK Prior to the Put/Call Termination Date; Limitations and Exceptions to GSK's Rights to Acquire Our Securities*." In addition, GSK may acquire our equity securities from our stockholders under the following circumstances:

GSK can make an offer to our stockholders to merge with us or otherwise acquire outstanding voting stock that would bring GSK's percentage ownership of our voting stock to 100%, subject to the following conditions:

- that the offer occurs on or after September 1, 2012;
- that the offer includes no conditions to financing;
- that the offer is approved by a majority of our independent directors; and
- that the offer includes a condition that the holders of a majority of the shares of our voting stock not owned by GSK accept the offer by tendering their shares in the offer.

GSK can make an offer to our stockholders to acquire outstanding voting stock that would bring GSK's percentage ownership of our voting stock to 100%, subject to the following conditions:

- that the offer occurs before September 1, 2012;
- that the offer includes no condition as to financing;

- that the offer is approved by a majority of our independent directors;
- that the offer includes a condition that the holders of a majority of the shares of the voting stock not owned by GSK accept the offer by tendering their shares in the offer; and
- that the offer is for the greater of (a) the fair market value per share on the date immediately preceding the date of the first public announcement of the offer or (b) $162.75 per share (as adjusted to take into account stock dividends, stock splits, recapitalizations and the like).

Limitations on Disposition of Our Equity Securities by GSK

GSK may not sell or transfer any of our voting stock held by it without the prior approval of a majority our independent directors until September 1, 2012 if GSK's percentage ownership of our voting stock is 50.1% or greater on the call/put termination date. If GSK's percentage ownership of our voting stock becomes 50.1% or greater after the call/put termination date and before September 1, 2012, then GSK may not sell or transfer any voting stock held by it until September 1, 2012. GSK is permitted to sell or transfer its voting stock in connection with a change in control of us that is approved by a majority of our independent directors. In the event that the prohibition on the disposition of voting stock by GSK expires on September 1, 2012, if GSK disposes of any of our voting stock, GSK shall not be able to purchase any of our voting stock for one year after such disposition without the prior approval of a majority of our independent directors.

Voting Arrangements

Agreement to Vote

GSK shall vote the voting stock held by it (at GSK's election) either (i) in accordance with the recommendation of our independent directors or (ii) in proportion to the votes cast by the other holders of our voting stock.

Exceptions to Agreement to Vote

GSK can vote as it chooses on any proposal to:

- effect a change in control of us;
- effect the acquisition by us of any business or assets that would constitute a substantial portion of our business or assets;
- effect the sale, license or transfer of all or a substantial portion of our business or assets unless GSK has no contractual rights over the business or assets in question pursuant to our strategic alliance agreement with GSK, and such sale, license or transfer occurs in the ordinary course of business; or
- issue equity securities to one or more parties (other than in an public offering) that would result in that party or parties holding 20% or more of the voting stock.

If a person or group acting in concert acquires 20% or more of the voting stock, GSK may vote its voting stock without any restrictions.

Grant of Proxy

GSK grants an irrevocable proxy coupled with an interest in all voting stock owned by GSK to our board of directors. This proxy will enable the proxyholder to vote or otherwise act with respect to all of GSK's voting stock in the manner required by the governance agreement.

Rights of GSK during the Interim Period

If GSK's Ownership of Our Voting Stock is Between 35.1% and 50.1% during the Interim Period

Agreements Related to Our Board of Directors

Composition of Our Board of Directors

GSK shall have the right to:

- nominate a director; and
- upon its request, GSK may during this time period designate a number of nominees to be independent directors equal to GSK's percentage ownership of our voting stock multiplied by the total number of independent directors.

GSK's nominees to be independent directors must be reasonably acceptable to the directors not nominated by GSK. GSK's right to nominate a director and independent directors pursuant to this provision and the term of any director and independent director nominated by GSK pursuant to these provisions will automatically cease upon the expiration of the time period described above.

The "interim period" is referred to as the time period between the call/put termination date and September 1, 2008, or, if on or after September 1, 2008 GSK offers to purchase additional shares of our voting stock that would result in GSK's percentage ownership of us to equal 60%, then the expiration date of that offer (which may be no later than October 15, 2008).

Approval by a Majority of Our Independent Directors of Certain Actions

The approval of a majority of our independent directors will be required to approve any of the following:

- our acquisition of any business or assets that would constitute a substantial portion of our business or assets;
- the sale, lease, license, transfer or other disposal of a substantial portion of our business or assets, tangible or intangible, other than dispositions of assets over which GSK has no contractual rights pursuant to agreements with us or in the ordinary course of business; or
- the repurchase or redemption of any of our equity securities other than (A) redemptions required by the terms of our voting stock, (B) purchases made at fair market value in connection with any deferred compensation plan that we maintain and (C) repurchases of unvested or restricted stock at or below cost pursuant to a compensation plan.

Limitations on Our Actions

GSK Approval of Certain Issuances of Equity Securities

We may not issue any equity security at any time on or prior to December 31, 2008 other than:

- equity securities issued pursuant to any employee, officer, director or consultant compensation plan that has been approved by the majority of our board of directors; and
- equity securities issued by us to third parties provided that the aggregate number of shares of any such equity securities issued to such third parties during the period described above may not exceed the equivalent of 16.1 million shares of common stock (on an as converted to common stock basis and as adjusted for stock splits, stock dividends, combinations and other recapitalizations).

Limitations and Exceptions to GSK's Rights to Acquire Our Securities

Limitation on Acquisition of our Equity Securities by GSK

Except as agreed to by us in writing following approval by a majority of our independent directors, GSK will have the same limitations on the acquisition of our equity securities as GSK did prior to the call/put termination date. These limitations are described above in "—Governance Agreement; *Rights of GSK Prior to the Call/Put Termination Date; Limitations and Exceptions to GSK's Rights to Acquire Our Securities*."

Permitted GSK Purchases of Our Equity Securities From Us

GSK may acquire our equity securities from us under the same circumstances that it is allowed to acquire our equity securities prior to the call/put termination date. These circumstances are described above in "—Governance Agreement; *Rights of GSK Prior to the Put/Call Termination Date; Limitations and Exceptions to GSK's Rights to Acquire Our Securities*." In addition, GSK may acquire our equity securities from us under the following circumstance:

- If we issue permitted indebtedness that is convertible into an equity security, we will provide written notice to GSK of the conversion of any permitted indebtedness within ten days following any such conversion. After receipt of this notice, GSK will promptly notify us if it intends to purchase that number of equity securities from us required to maintain GSK's percentage ownership of our voting stock as measured immediately prior to the date of such conversion. The equity securities that we issue to GSK will have a price per share equal to the greater of (x) the conversion price of the permitted indebtedness or (y) the fair market value per share on the date of notification by GSK of its intention to purchase such equity securities.

Permitted GSK Purchases of Equity Securities from Our Stockholders

GSK may acquire our equity securities from our stockholders under the same circumstances that it is allowed to acquire our equity securities from our stockholders prior to the call/put termination date. These circumstances are described above in "—Governance Agreement; *Rights of GSK Prior to the Put/Call Termination Date; Limitations and Exceptions to GSK's Rights to Acquire Our Securities*." In addition, GSK can make an offer to our stockholders to acquire outstanding voting stock that would bring GSK's percentage ownership of our voting stock to no greater than 60%, subject to the following conditions:

- that the offer occurs on or after September 1, 2008;
- that the offer includes no condition as to financing;
- that the offer is approved by a majority of our independent directors;
- that the offer includes a condition that the holders of a majority of the shares of the voting stock not owned by GSK accept the offer by tendering their shares in the offer; and
- that the shares purchased will be subject to the provisions of the governance agreement on the same basis as the shares of GSK's Class A common stock.

Limitation on Disposition of Our Equity Securities by GSK

GSK may not sell or transfer any of our voting stock held by it without the prior approval of a majority our independent directors until September 1, 2008. GSK is permitted to sell or transfer its voting stock in connection with a change in control of us that is approved by a majority of our independent directors. In the event that the prohibition on the disposition of voting stock by GSK

expires on September 1, 2008 as set forth above, GSK shall only be able to dispose of voting stock after such date and prior to September 1, 2012 through either a public offering or pursuant to Rule 144 under the Securities Act of 1933, as amended.

Voting Arrangements

Agreement to Vote

GSK shall vote the voting stock held by it (at GSK's election) either (i) in accordance with the recommendation of our independent directors or (ii) in proportion to the votes cast by the other holders of our voting stock.

Exceptions to Agreement to Vote

GSK can vote as it chooses on any proposal to:

- effect a change in control of us;
- effect the acquisition by us of any business or assets that would constitute a substantial portion of our business or assets;
- effect the sale, license or transfer of all or a substantial portion of our business or assets unless GSK has no contractual rights over the business or assets in question pursuant to our strategic alliance agreement with GSK, and such sale, license or transfer occurs in the ordinary course of business; or
- issue equity securities to one or more parties (other than in an public offering) that would result in that party or parties holding 20% or more of the voting stock.

If a person or group acting in concert acquires 20% or more of the voting stock, GSK may vote its voting stock without any restrictions.

Grant of Proxy

GSK grants an irrevocable proxy coupled with an interest in all voting stock owned by GSK to our board of directors. This proxy will enable the proxyholder to vote or otherwise act with respect to all of GSK's voting stock in the manner required by the governance agreement.

Rights of GSK Following the Call/Put Termination Date

If GSK's Ownership of Our Voting Stock is Less Than 50.1%

Agreements Related to Our Board of Directors

Composition of Our Board of Directors

GSK shall have the right to either:

- nominate an individual to serve as a member of our board of directors (in which case the size of our board of directors will be increased by one); or
- designate an individual to serve as an observer at our board of directors meetings.

GSK shall have this right until such time as GSK's percentage ownership of our outstanding securities having the right to vote generally in any election of our directors, referred to in this section "Description of Capital Stock—Governance Agreement" as our "voting stock," (a) has fallen below 15%, or (b) directly as a result of any sale or other disposition by GSK of voting stock, has fallen below 19%.

Limitations and Exceptions to GSK's Rights to Acquire Our Securities

Limitation on Acquisition of our Equity Securities by GSK

Except as agreed to by us in writing following approval by a majority of our independent directors, GSK will have the same limitations on the acquisition of our equity securities as GSK did prior to the call/put termination date. These limitations are described above in "Description of Capital Stock—Governance Agreement; *Rights of GSK Prior to the Call/Put Termination Date; Limitations and Exceptions to GSK's Rights to Acquire Our Securities*."

Permitted GSK Purchases of Our Equity Securities From Us

GSK may acquire our equity securities from us under the same circumstances that it is allowed to acquire our equity securities prior to the call/put termination date. These circumstances are described above in "Description of Capital Stock—Governance Agreement; *Rights of GSK Prior to the Put/Call Termination Date; Limitations and Exceptions to GSK's Rights to Acquire Our Securities*." In addition, GSK may acquire our equity securities from us under the following circumstance:

- If we issue permitted indebtedness that is convertible into an equity security, we will provide written notice to GSK of the conversion of any permitted indebtedness within ten days following any such conversion. After receipt of this notice, GSK will promptly notify us if it intends to purchase that number of equity securities from us required to maintain GSK's percentage ownership of our voting stock as measured immediately prior to the date of such conversion. The equity securities that we issue to GSK will have a price per share equal to the greater of (x) the conversion price of the permitted indebtedness or (y) the fair market value per share on the date of notification by GSK of its intention to purchase such equity securities.

Permitted GSK Purchases of Equity Securities from Our Stockholders

GSK may acquire our equity securities from our stockholders under the same circumstances that it is allowed to acquire our equity securities from our stockholders prior to the call/put termination date. These circumstances are described above in "—Governance Agreement; *Rights of GSK Prior to the Put/Call Termination Date; Limitations and Exceptions to GSK's Rights to Acquire Our Securities*." In addition, GSK can make an offer to our stockholders to acquire outstanding voting stock that would bring GSK's percentage ownership of our voting stock to no greater than 60%, subject to the following conditions:

- that the offer occurs on or after September 1, 2008;
- that the offer includes no condition as to financing;
- that the offer is approved by a majority of our independent directors;
- that the offer includes a condition that the holders of a majority of the shares of the voting stock not owned by GSK accept the offer by tendering their shares in the offer; and
- that the shares purchased will be subject to the provisions of the governance agreement on the same basis as the shares of GSK's Class A common stock.

Limitation on Disposition of Our Equity Securities by GSK

GSK may not sell or transfer any of our voting stock held by them without the prior approval of a majority our independent directors until September 1, 2008. GSK is permitted to sell or transfer its voting stock in connection with a change in control of us that is approved by a majority of our independent directors. In the event that the prohibition on the disposition of voting stock by GSK

expires on September 1, 2008 as set forth above, GSK shall only be able to dispose of voting stock after such date and prior to September 1, 2012 through either a public offering or pursuant to Rule 144 under the Securities Act of 1933, as amended.

Voting Arrangements

Agreement to Vote

GSK shall vote the voting stock held by it (at GSK's election) either (i) in accordance with the recommendation of our independent directors or (ii) in proportion to the votes cast by the other holders of our voting stock.

Exceptions to Agreement to Vote

GSK can vote as it chooses on any proposal to:

- amend our certificate of incorporation to amend the provisions related to the put and call;
- issue equity securities to one or more parties (other than in a public offering) that would result in that party or parties holding 20% or more of our voting stock; or
- effect a change in control of us.

If a person or group acting in concert acquires 20% or more of the voting stock, GSK may vote its voting stock without any restrictions.

Grant of Proxy

GSK grants an irrevocable proxy coupled with an interest in all voting stock owned by GSK to our board of directors. This proxy will enable the proxyholder to vote or otherwise act with respect to all of GSK's voting stock in the manner required by the governance agreement.

Redemption of Our Common Stock

The governance agreement contains certain mechanics relating to the call and the put features of our common stock. See "—Common Stock Call and Put Arrangements with GSK."

Covenants

Severance Arrangements

We agree not to enter into or amend any existing contract with any of our directors, officers or employees that would provide for any payment, vesting of common stock, acceleration or other benefit or right contingent upon (i) GSK's purchase of shares of Class A common stock, (ii) the exercise by GSK of any of its rights under the governance agreement to representation on our board of directors or (iii) GSK's purchase of any equity securities not prohibited by the governance agreement.

Indemnification by GSK

Under the governance agreement, GSK agrees to indemnify us and our directors, officers, employees and agents against all losses, claims, damages, liabilities and expenses (including attorneys' fees) arising out of the redemption (pursuant to the call or the put) of our common stock in accordance with the provisions of the governance agreement, other than losses, claims, damages, liabilities and expenses that result primarily from actions taken or omitted in bad faith by the indemnified person or from the indemnified person's gross negligence or willful misconduct.

Amendments; Termination

The governance agreement provides that its provisions may be amended only if the amendment is in writing and signed by GSK and us, and that no amendment will be effective without the approval of a majority of our independent directors.

The provisions of the governance agreement will terminate at the earliest of (i) when GSK beneficially owns 100% of our outstanding voting stock, (ii) the effective time of a change in control of us and (iii) September 1, 2015. However, GSK's and our agreements under the governance agreement with respect to the following provisions will survive the agreement's termination:

- the treatment of our vested (as of the call/put termination date) stock options, warrants or other securities exercisable or exchangeable for or convertible into shares of common stock following any redemption; and
- provisions related to GSK's indemnification of us.

Anti-Takeover Effects of Delaware Law, Our Certificate of Incorporation and Bylaw Provisions and our Governance Agreement with GSK

Provisions of Delaware law and our certificate of incorporation and bylaws could make our acquisition by a third party and the removal of our incumbent officers and directors more difficult. These provisions, summarized below, may discourage coercive takeover practices and inadequate takeover bids and are intended to encourage persons seeking to acquire control of us to first negotiate with us. We believe that the benefits of increased protection of our ability to negotiate with the proponent of an unfriendly or unsolicited acquisition proposal outweigh the disadvantages of discouraging such proposals because, among other things, negotiation could result in an improvement of their terms.

We are subject to Section 203 of the Delaware General Corporation Law, which regulates corporate acquisitions. In general, Section 203 prohibits a Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years following the date the person became an interested stockholder, unless:

- our board of directors approved the transaction in which such stockholder became an interested stockholder prior to the date the interested stockholder attained such status;
- upon consummation of the transaction that resulted in the stockholder's becoming an interested stockholder, he or she owned at least 85% of our voting stock outstanding at the time the transaction commenced, excluding shares owned by persons who are directors and also officers; or
- on or subsequent to such date the business combination is approved by our board of directors and authorized at an annual or special meeting of stockholders.

A "business combination" generally includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. In general, an "interested stockholder" is a person who, together with affiliates and associates, owns, or within three years prior to the determination of interested stockholder status, did own, 15% or more of a corporation's voting stock.

Pursuant to the terms of our governance agreement with GSK, we have agreed that we will exempt GSK from the application of Section 203 of the Delaware General Corporation Law. Under the governance agreement, GSK is subject to certain limitations in its ability to acquire our shares of capital stock. See "—Governance Agreement."

Our certificate of incorporation and bylaws do not provide for the right of stockholders to act by written consent without a meeting or for cumulative voting in the election of directors. In addition,

our bylaws provide that special meetings of the stockholders can only be called by the Chairman of our board of directors, the chief executive officer, our board of directors or the request of stockholders holding at least 66^{2}/3% of the outstanding common stock. These provisions, which require the vote of stockholders holding at least 66^{2}/3% of the outstanding common stock to amend, may have the effect of deterring hostile takeovers or delaying changes in our management.

Rights Agreement

Under our rights agreement, each share of our common stock and Class A common stock has associated with it one preferred stock purchase right. Each of these rights entitles its holder to purchase, at a price of $209.25 for each, one one-thousandth of a share of Series A junior participating preferred stock, (each subject to adjustment) under circumstances provided for in the rights agreement. The purpose of our rights agreement is to:

- give our board of directors the opportunity to negotiate with any persons seeking to obtain control of us;
- deter acquisitions of voting control of us without assurance of fair and equal treatment of all of our stockholders; and
- prevent a person from acquiring in the market a sufficient amount of voting power over us to be in a position to block an action sought to be taken by our stockholders.

The exercise of the rights under our rights agreement would cause substantial dilution to a person attempting to acquire us on terms not approved by our board of directors, and therefore would significantly increase the price that such person would have to pay to complete the acquisition. Our rights agreement may deter a potential acquisition or tender offer. Until a "distribution date" occurs, the rights will:

- not be exercisable;
- be represented by the same certificate that represents the shares with which the rights are associated; and
- trade together with those shares.

The rights will expire at the close of business on , unless earlier redeemed or exchanged by us. Following a "distribution date," the rights would become exercisable and we would issue separate certificates representing the rights, which would trade separately from the shares of our common stock. A "distribution date" would occur upon the earlier of:

- ten business days after a public announcement that the person has become an "acquiring person;" or
- ten business days after a person commences or announces its intention to commence a tender or exchange offer that, if successful, would result in the person becoming an "acquiring person."

A holder of rights will not, as such, have any rights as a stockholder, including the right to vote or receive dividends.

Under our rights agreement, a person becomes an "acquiring person" if the person, alone or together with a group, acquires beneficial ownership of 15% or more of the outstanding shares of our common stock. GSK is not an "acquiring person" because we have, pursuant to our governance agreement with GSK, exempted GSK from the application of our rights agreement. In addition, an "acquiring person" shall not include us, any of our subsidiaries, or any of our employee benefit plans or any person or entity acting pursuant to such employee benefit plans. Our rights agreement also

contains provisions designed to prevent the inadvertent triggering of the rights by institutional or certain other stockholders.

If any person becomes an acquiring person, each holder of a right, other than the acquiring person, will be entitled to purchase, at the purchase price, a number of our shares of common stock having a market value of two times the purchase price. If, following a public announcement that a person has become an acquiring person:

- we merge or enter into any similar business combination transaction and we are not the surviving corporation; or
- 50% or more of our assets, cash flow or earning power is sold or transferred,

each holder of a right, other than the acquiring person, will be entitled to purchase a number of shares of common stock of the surviving entity having a market value of two times the purchase price.

After a person becomes an acquiring person, but prior to such person acquiring 50% of our outstanding common stock, our board of directors may exchange each right, other than rights owned by the acquiring person, for

- one share of common stock;
- one one-thousandth of a share of our Series A junior preferred stock; or
- a fractional share of another series of preferred stock having equivalent value.

At any time until a person has become an acquiring person, our board of directors may redeem all of the rights at a redemption price of $0.01 per right. On the redemption date, the rights will expire and the only entitlement of the holders of rights will be to receive the redemption price.

For so long as the rights are redeemable, our board of directors may amend any provisions in the rights agreement without stockholder consent. After the rights are no longer redeemable, our board of directors may only amend the rights agreement without stockholder consent if such amendment would not change the amendment provisions, adversely affect the interests of the holders of rights, or cause the rights to again become redeemable. Despite the foregoing, at no time may the redemption price of the rights be amended or changed.

The adoption of the rights agreement and the distribution of the rights should not be taxable to our stockholders or us. Our stockholders may recognize taxable income when the rights become exercisable in accordance with the rights agreement.

Warrants

As of June 30, 2004 there were warrants outstanding to purchase a total of 18,064 shares of common stock at a price of $1.94 per share, 15,483 shares of common stock at a price of $7.75 per share and 31,361 shares of common stock at a price of $13.95 per share.

Registration Rights

The holders of 32,087,632 shares of our common stock and the holders of 8,967,741 shares of our Class A common stock are entitled to rights with respect to the registration of their shares under the Securities Act. These registration rights are contained in our amended and restated investors' rights agreement and are described below. The registration rights under the investors' rights agreement with respect to holders of our common stock will expire five years following the completion of this offering, or, with respect to an individual holder holding two percent or less of our outstanding capital stock, when such holder is able to sell all of its shares in a single transaction pursuant to Rule 144 under the Securities Act. The registration rights under the investors' rights agreement with respect to holders of

our Class A common stock will expire seven years following the date of redemption of our common stock pursuant to the call or, in the alternative, on the close of business on the last day that the put can be exercised, or, with respect to an individual holder of Class A common stock holding two percent or less of our outstanding capital stock, when such holder is able to sell all of its shares in a single transaction pursuant to Rule 144 under the Securities Act.

Demand Registration Rights

At any time following six months after the closing of this offering, the holders of shares of common stock having demand registration rights under the investors' rights agreement have the right to require that we register their common stock, provided such registration relates to not less than 50% in aggregate of our then outstanding shares of common stock having demand registration rights. We are only obligated to effect two registrations in response to these demand registration rights. We may postpone the filing of a registration statement for up to 90 days once in any 12-month period if our board of directors determines in good faith that the filing would be seriously detrimental to our stockholders or us. The underwriters of any underwritten offering have the right to limit the number of shares to be included in a registration statement filed in response to the exercise of these demand registration rights. We must pay all expenses, except for underwriters' discounts and commissions, incurred in connection with these demand registration rights.

Piggyback Registration Rights

If we register any securities for public sale, the stockholders with piggyback registration rights under the investors' rights agreement have the right to include their shares in the registration, subject to specified exceptions. The underwriters of any underwritten offering have the right to limit the number of shares registered by these stockholders due to marketing reasons. We must pay all expenses, except for underwriters' discounts and commissions, incurred in connection with these piggyback registration rights.

S-3 Registration Rights

If we are eligible to file a registration statement on Form S-3, the stockholders with S-3 registration rights under the investors' rights agreement can request that we register their shares, provided that such registration relates to not less than 10% in aggregate of our then outstanding shares of common stock having S-3 registration rights and the total price of the shares of common stock offered to the public is at least $1,000,000. The holders of S-3 registration rights may only require us to file two Form S-3 registration statements in any 12-month period. We may postpone the filing of a Form S-3 registration statement for up to 90 days once in any 12-month period if our board of directors determines in good faith that the filing would be seriously detrimental to our stockholders or us. We must pay all expenses, except for underwriters' discounts and commissions, incurred in connection with these S-3 registration rights.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock and the rights is American Stock Transfer & Trust Company.

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no market for our common stock and we cannot assure you that a significant public market for our common stock will develop or be sustained after this offering. Future sales of substantial amounts of our common stock in the public market could adversely affect prevailing market prices from time to time. Furthermore, since only a limited number of shares will be available for sale shortly after this offering because of certain contractual and legal restrictions on resale described below, sales of substantial amounts of our common stock in the public market after the restrictions lapse could adversely affect the prevailing market price and our ability to raise equity capital in the future.

Sales of Restricted Shares

Upon completion of this offering, we will have outstanding an aggregate of 41,658,986 shares of common stock, assuming no exercise of the underwriters' overallotment option and no exercise of outstanding options or warrants that were outstanding as of June 30, 2004, and 9,286,670 shares of Class A common stock, assuming the expected sale of 318,929 shares of Class A common stock to GSK concurrently with the closing of this offering. Of these shares, the shares sold in this offering will be freely tradable without restrictions or further registration under the Securities Act, unless one of our existing affiliates as that term is defined in Rule 144 under the Securities Act purchases such shares.

The remaining 36,458,986 shares of our common stock held by existing stockholders are restricted shares or are restricted by the contractual provisions described below. Restricted shares may be sold in the public market only if registered or if they qualify for an exemption from registration under Rules 144, 144(k) or 701 of the Securities Act, which are summarized below. Of these restricted shares, 27,472,413 shares will be available for resale in the public market in reliance on Rule 144(k), 27,114,569 of which shares are restricted by the terms of the lock-up agreements described below. The remaining 8,986,573 shares become eligible for resale in the public market at various dates thereafter, all of which shares are restricted by the terms of the lock-up agreements. The table below sets forth the approximate number of shares eligible for future sale:

Days after Date of this Prospectus	Approximate Additional Number of Shares Becoming Eligible for Future Sale	Comment
On Effectiveness	322,060	Freely tradable shares sold in offering; shares salable under Rule 144(k) that are not locked up
90 Days	—	Shares subject to vested options salable under Rule 144 and Rule 701 that are not locked up
180 Days	38,457,626	Lock-up released; shares subject to vested options salable under Rule 701 and oustanding shares salable under Rule 144
Thereafter	4,423,502	Restricted securities held for 1 year or less

Under Rule 144 as currently in effect, beginning 90 days after the date of this prospectus, a person who has beneficially owned restricted shares for at least one year and has complied with the requirements described below would be entitled to sell some of its shares within any three-month period. That number of shares cannot exceed the greater of one percent of the number of shares of our common stock then outstanding, which will equal approximately 416,590 shares immediately after this offering, or the average weekly trading volume of our common stock on the Nasdaq National Market during the four calendar weeks preceding the filing of a notice on Form 144 reporting the sale.

Sales under Rule 144 are also restricted by manner of sale provisions, notice requirements and the availability of current public information about our company. Rule 144 also provides that our affiliates who are selling shares of our common stock that are not restricted shares must nonetheless comply with the same restrictions applicable to restricted shares with the exception of the holding period requirement.

Under Rule 144(k), a person who is not deemed to have been one of our affiliates at any time during the 90 days preceding a sale and who has beneficially owned the shares proposed to be sold for at least two years is entitled to sell those shares without complying with the manner of sale, public information, volume limitation or notice provisions of Rule 144. Accordingly, unless otherwise restricted or subject to lock-up agreements, these shares may be sold immediately upon the completion of this offering.

Options

Rule 701 provides that the shares of common stock acquired upon the exercise of currently outstanding options or other rights granted under our equity plans may be resold, to the extent not restricted by the terms of the lock-up agreements, by persons, other than affiliates, beginning 90 days after the date of this prospectus, restricted only by the manner of sale provisions of Rule 144, and by affiliates in accordance with Rule 144, without compliance with its one-year minimum holding period. All outstanding shares available for resale in the public market in reliance on Rule 701 are restricted by the terms of the lock-up agreements.

As of June 30, 2004, our board of directors had authorized an aggregate of up to 13,487,996 shares of common stock for issuance under our existing equity plans. As of June 30, 2004 options to purchase a total of 8,692,642 shares of common stock were outstanding, 6,539,185 of which options are exercisable and all shares issuable upon exercise of these options are restricted by the terms of the lock-up agreements and by our right to repurchase unvested shares upon the termination of an optionee's business relationship with us. Of these currently exercisable options, 2,295,272 shares no longer will be restricted by our right of repurchase and will be eligible for sale in the public market in accordance with Rule 701 under the Securities Act beginning 180 days after the date of this prospectus.

We intend to file one or more registration statements on Form S-8 under the Securities Act following this offering to register all shares of our common stock which have been issued or are issuable upon exercise of outstanding stock options or other rights granted under our equity plans. These registration statements are expected to become effective upon filing. Shares covered by these registration statements will thereupon be eligible for sale in the public market, upon the expiration or release from the terms of the lock-up agreements, to the extent applicable, or subject in certain cases to vesting of such shares.

Warrants

As of June 30, 2004 there were warrants outstanding to purchase a total of 18,064 shares of common stock at a price of $1.94 per share, 15,483 shares of common stock at a price of $7.75 per share and 31,361 shares of common stock at a price of $13.95 per share.

Lock-up Agreements

Except for sales of common stock to the underwriters in accordance with the terms of the purchase agreement, we, each of our directors and officers, and holders of a substantial majority of our outstanding stock and options to acquire our stock have agreed not to sell or otherwise dispose of, directly or indirectly, any shares of our common stock (or any security convertible into or exchangeable or exercisable for common stock) without the prior written consent of Merrill Lynch for a period of 180 days from the date of this prospectus. In addition, for a period of 180 days from the date of this

prospectus, except as required by law, we have agreed that our board of directors will not consent to any offer for sale, sale or other disposition, or any transaction which is designed or could be expected to result in the disposition by any person, directly or indirectly, of any shares of our common stock without the prior written consent of Merrill Lynch. Merrill Lynch, in its sole discretion, at any time or from time to time and without notice, may release for sale in the public market all or any portion of the shares restricted by the terms of the lock-up agreements. The lock-up agreement will not apply to transactions relating to shares of common stock acquired as part of this offering or in open market transactions after the closing of this offering. Merrill Lynch has indicated that it will allow sales of common stock acquired pursuant to our Employee Stock Purchase Plan.

In addition to the lock-up agreement with Merrill Lynch, P. Roy Vagelos, Rick E Winningham, Patrick P.A. Humphrey and Marty Glick, our Chairman of the Board of Directors, Chief Executive Officer, Executive Vice President, Research and our Executive Vice President, Finance and Chief Financial Officer, respectively, have agreed with GSK not to sell more than one half of their shares of common stock prior to the date of redemption of our common stock pursuant to GSK's call right or, in the alternative, on the close of business on the last day that our stockholders can exercise their put right. In addition, these individuals have agreed that they will not exercise their put right with respect to one-quarter of their shares of common stock or options to purchase common stock held on May 11, 2004 and otherwise eligible to be put.

Registration Rights

The holders of 32,087,632 shares of common stock and the holders of 9,286,670 shares of Class A common stock (assuming the expected sale of 318,929 shares of Class A common stock to GSK concurrently with the closing of this offering), or the registrable securities, are entitled to have their shares registered by us under the Securities Act under the terms of an agreement between us and the holders of these registrable securities. Subject to limitations specified in the agreement, these registration rights include the following:

- The holders of at least 50% of the then outstanding registrable securities may require, on two occasions beginning six months after the date of this prospectus, that we use our best efforts to register the registrable securities for public resale.

- If we register any common stock, either for our own account or for the account of other security holders, the holders of registrable securities (including an additional 7,363,796 shares held by stockholders that do not have the right to initiate a request for registration) are entitled to include their shares of common stock in the registration, subject to the ability of the underwriters to limit the number of shares included in the offering in view of market conditions.

- The holders of at least 10% of the then outstanding registrable securities may require us on three occasions to register all or a portion of their registrable securities on Form S-3 when use of that form becomes available to us, provided that the proposed aggregate selling price is at least $1,000,000.

We will bear all registration expenses other than underwriting discounts and commissions. All registration rights pertaining to Class A common stock terminate on the date seven years following the expiration of the call/put termination date. All registration rights pertaining to common stock (other than Class A common stock) terminate on the date five years following the closing of this offering, or, with respect to each holder of registrable securities (including Class A common stock) holding two percent (2%) or less of the outstanding capital stock of the company, such earlier time at which all registrable securities held by such holder (and any affiliate of the holder with whom such holder must aggregate its sales under Rule 144) can be sold in a single transaction without registration in compliance with Rule 144.

MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES

Overview

The following is a general discussion of the material United States federal income tax consequences of the ownership and disposition of our common stock. This discussion is based on the Internal Revenue Code of 1986, as amended (which we refer to as the "Code"), final, temporary and proposed Treasury regulations (which we refer to as the "Treasury regulations") promulgated thereunder by the Internal Revenue Service (which we refer to as the "IRS"), and administrative and judicial interpretations thereof, each as in effect and available on the date hereof, all of which are subject to change. Any such change, which may or may not be retroactive, could alter the tax consequences to our stockholders. You should note that, due to a lack of definitive judicial or administrative interpretation, uncertainties exist with respect to many of the tax consequences described below.

You should also be aware that unless expressly indicated otherwise, this discussion is addressed only to those of our stockholders who are individuals and who are United States citizens and residents. This discussion does not address all of the United States federal income tax consequences that may be relevant to particular stockholders in light of their individual circumstances, such as stockholders who are subject to the alternative minimum tax provisions of the Code, who are dealers in securities or foreign currency, who are financial institutions or insurance companies, who are investors in pass-through entities, who are tax-exempt organizations, who hold their shares as "qualified small business stock" pursuant to Section 1202 of the Code, who do not hold their shares of Company stock as capital assets, who acquired their shares in connection with stock option or stock purchase plans or in other compensatory transactions, who hold shares of our stock as part of an integrated investment (including a hedge or a straddle) comprised of shares of our stock and one or more other positions, or who have previously entered into a conversion transaction or constructive sale of shares of our stock under the constructive sale provisions of the Code.

We have not requested a ruling from the IRS in connection with the tax consequences described herein. Accordingly, the discussion below neither binds the IRS nor precludes it from adopting a contrary position.

IN VIEW OF THE FOREGOING AND BECAUSE THE FOLLOWING DISCUSSION IS INTENDED AS A GENERAL SUMMARY ONLY, YOU ARE URGED TO CONSULT YOUR OWN TAX ADVISORS AS TO THE SPECIFIC TAX CONSEQUENCES OF THE OWNERSHIP OR DISPOSITION OF OUR STOCK, INCLUDING THE APPLICABLE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES, IN LIGHT OF YOUR OWN PARTICULAR TAX SITUATIONS.

General Consequences of Owning Common Stock

Distributions, if any, paid with respect to our common stock will be taxable dividends to the extent of our current or accumulated earnings and profits. To the extent that distributions on our common stock exceed our current or accumulated earnings and profits, the amount distributed will be applied to reduce the tax basis in such common stock, and, to the extent that the amount distributed exceeds the tax basis, will constitute long- or short-term capital gain, depending on the holding period for such common stock.

As described above in the section entitled "Description of the Common Stock," our common stock is subject to our call right and to a put right of the holder of such stock. While we currently do not expect to pay dividends during the period of time that our call right or the stockholders' put rights are outstanding, each stockholder should note that there are certain minimum holding period requirements which must be met in order for a recipient of dividends to qualify for preferential

taxation at capital gains rates on such dividends and, in the case of corporate recipients, for the dividends received deduction with respect to such dividends. In some cases, the existence of a put or call right with respect to a share of stock will toll such holding periods, although it is clear that traditional equity rights to demand payments from a corporate issuer, such as the rights traditionally provided by mandatorily redeemable preferred stock, will not toll such holding periods. Additionally, in general a put option that is significantly out of the money (i.e., the put price is significantly lower than the fair market value of the stock that is subject to such put right) on or about the time that the stock trades ex-dividend with respect to a particular dividend will not toll such holding periods. In the event that our call right or the stockholder's put right is not viewed for these purposes as equivalent to a "traditional equity right to demand payment from a corporate issuer" or, with respect to the put right, if such put right is not significantly out of the money on or about the time that the stock trades ex-dividend with respect to a particular dividend, then a stockholder's holding period with respect to 50% of its common stock could be tolled during the period such rights remain in existence. In such case, in the event a stockholder receives or is deemed to receive dividend distributions prior to the exercise or lapse of our call right and/or such stockholder's put right with respect to such shares of common stock, such dividends may not qualify for taxation at preferential capital gains rates (in which case any such dividend income would be taxed at higher ordinary income rates), and any corporate stockholders may not qualify for the dividends received deduction with respect to such dividends.

In addition, there is an issue as to whether the call right and put right to which a stockholder's shares of common stock are subject could cause such common stock (or 50% of such common stock) to be characterized, for United States federal income tax purposes, as not "participating in corporate growth to any significant extent." If so characterized, such common stock (or 50% of such common stock) would be treated as preferred stock for purposes of Section 305 of the Code. In such event, the holder thereof would be required, during the period beginning upon the stockholder's purchase of the common stock and ending during the put period, to include currently in gross income (to the extent of our current or accumulated earnings and profits) a portion (determined by analogy to the original issue discount rules for debt instruments) of the excess, if any, of $19.375 per share (the put price) over the fair market value of the share at issuance, unless any such excess does not exceed a de minimis amount. No portion of the common stock is expected to be treated as preferred stock under Section 305 of the Code, and we therefore do not intend to treat all or any portion of the common stock as preferred stock. However, due to a lack of definitive judicial or administrative interpretation, this conclusion is not free from doubt.

In addition, there is an issue as to whether the put right to which our common stock is subject is a property right which is separate and distinct from our shares of common stock. In the event the put right were considered a separate property right, it is possible that a stockholder's common stock (or at least 50% of such common stock) and the associated put right may be treated as a straddle under Section 1092 of the Code, in which case such stockholder may be subject to limitations on recognition of losses and certain other adverse consequences with respect to such stockholder's common stock and the put right under Section 1092 of the Code (including the tolling of such stockholder's holding period pursuant to Treasury Regulations Section 1.1092(b)-2T). The put right is not expected to be treated as a separate property right since it is an integral and incidental part of our common stock. However, due to a lack of definitive judicial or administrative interpretation, this conclusion is not free from doubt.

General Consequences of Disposing of Common Stock

A stockholder will recognize gain or loss upon the sale of its common stock equal to the difference between its adjusted basis in its sold shares and the sum of the amount of cash and the fair market value of any property the stockholder receives in exchange therefor. Except with respect to the various issues described herein, any such gain or loss will be long- or short-term capital gain or loss depending on the stockholder's holding period for the common stock.

Our redemption of up to 50% of a stockholder's common stock pursuant to such stockholder's exercise of its put right is expected to be subject to the stock redemption rules of Section 302 of the Code. In addition, our redemption of 50% of a stockholder's common stock pursuant to the call right is expected to be subject to the stock redemption rules of Section 302 of the Code. Under the rules of Section 302 of the Code, the entire cash proceeds from the redemption received will be treated as a distribution taxable as a dividend (to the extent of our current or accumulated earnings and profits), unless the redemption is "substantially disproportionate" with respect to the stockholder or is "not essentially equivalent to a dividend" with respect to the stockholder. In the event the redemption is "substantially disproportionate" or "not essentially equivalent to a dividend" with respect to the stockholder, the redemption should qualify for sale treatment (*i.e.*, the stockholder will recognize long- or short-term (depending upon its holding period for the redeemed shares) capital gain or loss upon the redemption equal to the difference between the stockholder's adjusted tax basis in the redeemed shares and the amount of cash received in exchange for such shares in the redemption).

In determining whether a redemption is "substantially disproportionate" or "not essentially equivalent to a dividend" with respect to a stockholder, the stockholder must take into account its shares of stock actually owned as well as its shares of stock constructively owned by reason of certain constructive ownership rules set forth in the Code. Under these constructive ownership rules, a stockholder will be deemed to own any shares of stock that are either actually or constructively owned by certain related individuals or entities and any shares of stock that the stockholder has a right to acquire by exercise of an option or by conversion or exchange of a security. In addition, in applying the "substantially disproportionate" and "not essentially equivalent to a dividend" tests, a stockholder must also take into account acquisitions or dispositions of stock that are treated for United States federal income tax purposes as integrated with the redemption.

The redemption of the shares of our common stock held by a stockholder will be "substantially disproportionate" with respect to such stockholder if, among other things, the percentage of shares of our stock actually and constructively owned by such stockholder immediately following the redemption is less than 80% of the percentage of shares of our stock actually and constructively owned by such stockholder immediately prior to the redemption. The redemption of shares of our common stock held by a stockholder will be treated as "not essentially equivalent to a dividend" with respect to such stockholder if it experiences a "meaningful reduction" in its percentage interest as a result of the redemption. For this purpose, the stockholder would compare its percentage interest in us represented by its shares actually and constructively owned immediately prior to the redemption with its percentage interest in us represented by shares actually and constructively owned immediately after the redemption. Depending on a particular stockholder's facts and circumstances, even a small reduction in the stockholder's proportionate equity interest may satisfy the meaningful reduction test. For example, the IRS has held that any reduction in the percentage interest of a stockholder whose relative stock interest in a publicly held corporation is minimal (e.g., an interest of less than 1%) and who exercises no control over corporate affairs constitutes a "meaningful reduction."

There is a risk that a redemption of a stockholder's common stock pursuant to the call right or pursuant to the exercise of a put right could be treated as a recapitalization under Section 368(a)(1)(E) of the Code in which the stockholder is deemed to exchange its shares of common stock which are subject to the put and the call right for shares of common stock which are not subject to a put or a call right and cash. It is not expected that a redemption of a stockholder's common shares should be treated in such a manner, although, due to a lack of definitive judicial or administrative interpretation, this conclusion is not free from doubt. In the event that a redemption of a stockholder's common stock does result in such recapitalization treatment, such stockholder would recognize gain but not loss in the exchange equal to the lesser of:

- the amount of cash received in the redemption; and

- the excess of:

    (1) the amount of cash and the fair market value of the common stock retained by such stockholder, over

    (2) the stockholder's adjusted tax basis in all of the common stock it held immediately prior to the redemption.

In general any such gain or loss would be treated as dividend income or capital gain under rules similar to those described above with respect to redemptions (i.e., such gain will generally be treated as capital gain if the redemption was "substantially disproportionate" with respect to the stockholder or otherwise "not essentially equivalent to a dividend" as described above).

Under Section 1258 of the Code, gain from the sale or other disposition of stock that is recognized on the disposition or other termination of a position that was held as part of a "conversion transaction" will be treated as ordinary income. A "conversion transaction" includes certain transactions from which substantially all of a taxpayer's expected return is attributable to the time value of the taxpayer's investment in the transaction. A holder of our shares of common stock is not expected to be considered to have engaged in a "conversion transaction" within the meaning of Section 1258(c) of the Code. Consequently, the provisions of Section 1258 of the Code is not expected to be applicable to the common stock, although due to a lack of definitive judicial or administrative interpretation, this issue is not free from doubt.

Under certain circumstances, where a taxpayer has an option to sell stock (such as through the exercise of a right similar to the put right), Section 1233 of the Code prevents the taxpayer's holding period from increasing (for purposes of obtaining long-term capital gain). The terms of our common stock are not expected to cause Section 1233 of the Code to apply to our common stock. Section 1233 since the put right would be acquired on the same day as the common stock, provided the identification requirements contained in Section 1233(c) of the Code are met. Due to a lack of definitive judicial or administrative interpretation, this issue is not free from doubt, however. A stockholder is urged to consult its tax advisors concerning the "identification" requirement contained in Code Section 1233(c) of the Code.

Information Reporting and Backup Withholding

Certain of our non-corporate stockholders may be subject to information reporting and backup withholding at a 28% rate on certain of the payments due to such stockholders. In order to avoid backup withholding, a stockholder must complete Form W-8IMY or Form W-8BEN (if it is a nonresident alien individual or foreign entity) or Form W-9 (if it is a United States resident or domestic entity). Forms W-8IMY, W-8BEN and W-9 are available on the Internal Revenue Service's web site, www.irs.gov.

IN LIGHT OF THE UNCERTAINTY ASSOCIATED WITH THE TAX CONSEQUENCES OF THE OWNERSHIP AND DISPOSITION OF OUR COMMON STOCK AND BECAUSE THE TAX CONSEQUENCES TO YOU MAY DIFFER BASED ON YOUR PARTICULAR CIRCUMSTANCES, YOU SHOULD CONSULT YOUR OWN TAX ADVISOR REGARDING SUCH TAX CONSEQUENCES.

UNDERWRITING

Under the terms and subject to the conditions contained in a purchase agreement dated the date of this prospectus, the underwriters named below, for whom Merrill Lynch, Pierce, Fenner & Smith Incorporated, Lehman Brothers Inc., Credit Suisse First Boston LLC and Thomas Weisel Partners LLC are acting as representatives, have severally agreed to purchase, and we have agreed to sell to them, severally, the number of shares indicated below:

Underwriter	Number of Shares
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
Lehman Brothers Inc.	
Credit Suisse First Boston LLC	
Thomas Weisel Partners LLC	
Total	5,200,000

The underwriters are offering the shares of common stock subject to their acceptance of the shares from us and subject to prior sale. The purchase agreement provides that the obligations of the several underwriters to pay for and accept delivery of the shares of common stock offered by this prospectus are subject to the approval of specified legal matters by their counsel and to other conditions. The underwriters are obligated to take and pay for all of the shares of common stock offered by this prospectus if any such shares are taken. However, the underwriters are not required to take or pay for the shares covered by the underwriters' overallotment option described below.

The underwriters initially propose to offer part of the shares of common stock directly to the public at the public offering price listed on the cover page of this prospectus and part to certain dealers at a price that represents a concession not in excess of $ per share under the public offering price. Any underwriter may allow, and such dealers may reallow, a concession not in excess of $ per share to other underwriters or to certain dealers. After the initial offering of the shares of common stock, the offering price and other selling terms may from time to time be varied by the representatives.

Overallotment Option

We have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus, to purchase up to an aggregate of 780,000 additional shares of common stock at the public offering price listed on the cover page of this prospectus, less underwriting discounts and commissions. The underwriters may exercise this option solely for the purpose of covering overallotments, if any, made in connection with the offering of the shares of common stock offered by this prospectus. To the extent the option is exercised, each underwriter will become obligated, subject to certain conditions, to purchase about the same percentage of the additional shares of common stock as the number listed next to the underwriter's name in the preceding table bears to the total number of shares of common stock listed next to the names of all underwriters in the preceding table. If the underwriters option is exercised in full, the total price to the public would be approximately $ million and the total proceeds to us would be approximately $ million after deducting estimated underwriting discounts and commissions and offering expenses.

On behalf of the underwriting syndicate, Merrill Lynch, Pierce, Fenner & Smith Incorporated will be responsible for recording a list of potential investors that have expressed an interest in purchasing shares of common stock as part of this offering.

The underwriters have informed us that they do not intend sales to discretionary accounts to exceed five percent of the total number of shares of common stock offered by them.

No Sales of Similar Securities

We, each of our directors and officers and holders of a substantial majority of our outstanding stock and options to acquire our stock have agreed that, without the prior written consent of Merrill Lynch, Pierce, Fenner and Smith Incorporated on behalf of the underwriters, we and they will not, during the period ending 180 days after the date of this prospectus:

- offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of or otherwise transfer or dispose of directly or indirectly, any shares of common stock or any securities convertible into or exercisable or exchangeable for common stock; or
- enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the common stock,

whether any transaction described above is to be settled by delivery of common stock or such other securities, in cash or otherwise. These restrictions do not apply to:

- the sale of shares to the underwriters;
- the issuance by us of shares of common stock upon the exercise of an option or a warrant or the conversion of a security outstanding on the date of this prospectus that is described in this prospectus;
- the issuance by us of shares or options to purchase shares of common stock pursuant to our stock incentive and employee stock purchase plans, provided that the recipient of the shares agrees to be subject to the restrictions described in this paragraph; or
- transactions by any person other than us relating to shares of common stock or other securities acquired in open market transactions after the completion of the offering of the shares.

See the section entitled "Shares Eligible for Future Sale" for further discussion of certain transfer restrictions.

Commissions and Discounts

The following table shows the underwriting discounts and commissions that we are to pay to the underwriters in connection with this offering. These amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase additional shares of our common stock.

	Paid by Us	
	No Exercise	Full Exercise
Per share	$	$
Total	$	$

In addition, we estimate that the total expenses of this offering payable by us, not including the underwriting discounts and commissions, will be approximately $2.4 million.

Price Stabilization and Short Positions

In order to facilitate the offering of the common stock, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the common stock. Specifically, the underwriters may sell more shares than they are obligated to purchase under the purchase agreement,

creating a short position. A short sale is covered if the short position is no greater than the number of shares available for purchase by the underwriters under the overallotment option. The underwriters can close out a covered short sale by exercising the overallotment option or purchasing shares in the open market. In determining the source of shares to close out a covered short sale, the underwriters will consider, among other things, the open market price of shares compared to the price available under the overallotment option. The underwriters may also sell shares in excess of the overallotment option, creating a naked short position. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market after pricing that could adversely affect investors who purchase in this offering. In addition, to stabilize the price of the common stock, the underwriters may bid for, and purchase, shares of common stock in the open market. Finally, the underwriting syndicate may reclaim selling concessions allowed to an underwriter or a dealer for distributing the common stock in this offering, if the syndicate repurchases previously distributed common stock in transactions to cover syndicate short positions or to stabilize the price of the common stock. Any of these activities may stabilize or maintain the market price of the common stock above independent market levels. The underwriters are not required to engage in these activities, and may end any of these activities at any time.

We have applied to have our common stock approved for quotation on the Nasdaq National Market under the trading symbol "THRX."

We and the underwriters have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act of 1933, as amended.

Certain of the underwriters or their affiliates have provided from time to time, and may provide in the future, investment and commercial banking and financial advisory services to Theravance and its affiliates in the ordinary course of business, for which they have received and may continue to receive customary fees and commissions.

Affiliates of Merrill Lynch, Pierce, Fenner & Smith Incorporated and affiliates of Lehman Brothers Inc. own 1,475,856 and 1,383,084 shares of our common stock, respectively, which each acquired in private transactions prior to September 2000.

Reserved Shares

At our request, the underwriters have reserved for sale, at the initial public offering price, up to 104,000 shares of common stock offered in this offering for individuals designated by Theravance who have expressed an interest in purchasing the shares of common stock in the offering. The number of shares available for sale to the general public will be reduced to the extent these persons purchase the reserved shares. Any reserved shares that are not purchased by these persons will be offered by the underwriters to the general public on the same terms as the other shares offered hereby.

A prospectus in electronic format will be made available on the websites maintained by one or more of the lead managers of this offering and may also be made available on websites maintained by other underwriters. The underwriters may agree to allocate a number of shares to underwriters for sale to their online brokerage account holders. Internet distributions will be allocated by the lead managers to underwriters that may make Internet distributions on the same basis as other allocations.

Prior to this offering, there has been no public market for our common stock. The initial public offering price will be determined by negotiations between us and the representatives. Among the factors to be considered in determining the initial public offering price will be our future prospects and those of our industry in general, our revenues, earnings and other financial operating information in recent periods, and the price-earnings ratios, price-sales ratios, market prices of securities, our arrangements with GSK and financial and operating information of companies engaged in activities

similar to ours. The estimated initial public offering price range set forth on the cover page of this preliminary prospectus is subject to change as a result of market conditions and other factors.

LEGAL MATTERS

Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, Menlo Park, California, will pass upon the validity of the common stock offered by this prospectus. Members of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP are the beneficial owners of 138,099 shares of our common stock and Robert V. Gunderson, Jr., a partner of the firm, is a member of our board of directors. Davis Polk & Wardwell, Menlo Park, California, will pass upon certain legal matters for the underwriters.

EXPERTS

Ernst & Young LLP, independent registered public accounting firm, have audited our consolidated financial statements at December 31, 2002 and 2003, and for each of the three years in the period ended December 31, 2003, as set forth in their report. We have included our consolidated financial statements in this prospectus and elsewhere in the registration statement in reliance on Ernst & Young LLP's report, given on their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the Securities and Exchange Commission (SEC), Washington, D.C. 20549, a registration statement on Form S-1 under the Securities Act of 1933, with respect to our common stock offered hereby. This prospectus, which forms part of the registration statement, does not contain all of the information set forth in the registration statement and the exhibits and schedules to the registration statement. Some items are omitted in accordance with the rules and regulations of the SEC. For further information about us and our common stock, we refer you to the registration statement and the exhibits and schedules to the registration statement filed as part of the registration statement. Statements contained in this prospectus as to the contents of any contract or other document filed as an exhibit are qualified in all respects by reference to the actual text of the exhibit. You may read and copy the registration statement, including the exhibits and schedules to the registration statement, at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. You can obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains an Internet site at *www.sec.gov*, from which you can electronically access the registration statement, including the exhibits and schedules to the registration statement.

As a result of the offering, we will become subject to the full informational requirements of the Securities Exchange Act of 1934, as amended. We will fulfill our obligations with respect to such requirements by filing periodic reports and other information with the SEC. We intend to furnish our stockholders with annual reports containing consolidated financial statements certified by an independent registered public accounting firm. We also maintain an Internet site at *www.theravance.com*. Our internet site is not a part of this prospectus.

Theravance, Inc.

Index to Consolidated Financial Statements

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Theravance, Inc.

We have audited the accompanying consolidated balance sheets of Theravance, Inc. as of December 31, 2002 and 2003, and the related consolidated statements of operations, convertible preferred stock and stockholders' equity (deficit), and cash flows for each of the three years in the period ended December 31, 2003. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Theravance, Inc. at December 31, 2002 and 2003, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2003, in conformity with U.S. generally accepted accounting principles.

/s/ ERNST & YOUNG LLP

Palo Alto, California
May 21, 2004,
except for Note 14 and paragraph 39 of Note 2, as to which the dates are
May 27, 2004 and September 27, 2004, respectively

Theravance, Inc.

Consolidated Balance Sheets

(In thousands, except per share data)

	December 31,		June 30, 2004
	2002	2003	(unaudited)
Assets			
Current assets:			
Cash and cash equivalents	$ 108,796	$ 35,748	$ 106,288
Marketable securities	39,754	53,404	81,722
Receivable from related party	1,509	408	108
Prepaid and other current assets	1,765	1,688	3,538
Total current assets	151,824	91,248	191,656
Property and equipment, net	20,267	15,815	14,001
Restricted cash and cash equivalents	7,753	6,124	5,311
Deferred sublease costs	1,327	921	703
Notes receivable	6,007	5,803	6,139
Notes receivable from related parties	4,596	4,562	79
Other assets	941	976	1,112
Total assets	$ 192,715	$ 125,449	$ 219,001
Liabilities, convertible preferred stock and stockholders' equity (deficit)			
Current liabilities:			
Line of credit	$ 25,000	$ —	$ —
Accounts payable	1,579	3,199	2,562
Accrued personnel-related expenses	3,976	4,441	4,531
Accrued clinical and development expenses	2,491	1,849	3,335
Other accrued liabilities	1,624	1,929	5,139
Current portion of notes payable	377	420	444
Current portion of capital lease obligations	2,807	3,052	3,358
Current portion of deferred revenue	1,250	5,273	10,279
Total current liabilities	39,104	20,163	29,648
Deferred rent	1,726	2,131	2,267
Notes payable	1,384	967	739
Capital lease obligations	6,483	3,431	1,653
Deferred revenue	8,594	30,965	57,397
Commitments			
Convertible preferred stock, $0.01 par value; 50,000 shares authorized; 47,644 shares issued and outstanding at December 31, 2002 and 2003, aggregate liquidation preference of $374,468 at December 31, 2002 and 2003; no shares outstanding at June 30, 2004 (unaudited)	367,358	367,358	—
Stockholders' equity (deficit):			
Preferred stock, $0.01 par value, 5,000 shares authorized, no shares issued and outstanding (unaudited)	—	—	—
Common stock, $0.01 par value; 175,000 shares authorized, issuable in series; 7,201, 7,230 and 36,271 shares issued and outstanding at December 31, 2002 and 2003, and June 30, 2004 (unaudited), respectively	72	72	363
Class A Common Stock, $0.01 par value, no shares authorized, issued or outstanding, at December 31, 2002 and 2003; 13,900 shares authorized, 8,968 issued and outstanding at June 30, 2004 (unaudited)	—	—	90
Additional paid-in capital	67,702	68,737	558,839
Notes receivable from stockholders	(1,765)	(928)	(763)
Deferred stock-based compensation	(2,797)	(1,518)	(13,840)
Accumulated other comprehensive income (loss)	221	21	(247)
Accumulated deficit	(295,367)	(365,950)	(417,145)
Total stockholders' equity (deficit)	(231,934)	(299,566)	127,297
Total liabilities, convertible preferred stock, and stockholders' equity (deficit)	$ 192,715	$ 125,449	$ 219,001

See accompanying notes.

Theravance, Inc.

Consolidated Statements of Operations

(In thousands, except per share data)

	Years Ended December 31,			Six Months Ended June 30,	
	2001	2002	2003	2003	2004
				(unaudited)	
Revenue from related party	$ —	$ 156	$ 3,605	$ 1,332	$ 3,563
Operating expenses:					
Research and development	53,773	66,481	61,704	27,573	39,284
General and administrative	10,506	11,817	12,153	6,330	12,704
Stock-based compensation*	10,134	4,941	2,214	892	3,867
Total operating expenses	74,413	83,239	76,071	34,795	55,855
Loss from operations	(74,413)	(83,083)	(72,466)	(33,463)	(52,292)
Interest and other income	11,530	4,990	3,373	1,799	1,520
Interest and other expense	(1,962)	(1,134)	(1,490)	(655)	(423)
Net loss	$ (64,845)	$ (79,227)	$ (70,583)	$ (32,319)	$ (51,195)
Net loss per share	$ (11.73)	$ (12.50)	$ (10.37)	$ (4.85)	$ (2.92)
Shares used in computing net loss per share	5,526	6,336	6,809	6,661	17,543

* Stock-based compensation, consisting of amortization of deferred stock-based compensation and the value of options issued to non-employees for services rendered, is allocated as follows:

	Years Ended December 31,			Six Months Ended June 30,	
	2001	2002	2003	2003	2004
				(unaudited)	
Research and development	$ 6,574	$ 3,398	$ 1,300	$ 414	$ 1,784
General and administrative	3,560	1,543	914	478	2,083
Total non-cash stock-based compensation	$ 10,134	$ 4,941	$ 2,214	$ 892	$ 3,867

See accompanying notes.

Theravance, Inc.
Consolidated Statements of Convertible Preferred Stock and Stockholders' Equity (Deficit)
(In thousands, except per share amounts)

	Convertible Preferred Stock		Common Stock		Class A Common Stock		Additional Paid-In Capital	Notes Receivable from Stockholders
	Shares	Amount	Shares	Amount	Shares	Amount		
Balance at January 1, 2001	43,644	$ 327,107	7,503	$ 75	—	$ —	$ 69,835	$
Repurchases of common stock, net of stock option exercises at prices ranging from $0.78 to $8.53 per share	—	—	(329)	(3)	—	—	(1,317)	
Stock-based compensation related to grants of stock options to nonemployees	—	—	—	—	—	—	486	
Stock-based compensation related to an officer's stock option	—	—	—	—	—	—	3,000	
Reversal of deferred stock-based compensation related to employee terminations	—	—	—	—	—	—	(3,061)	
Amortization of deferred stock-based compensation	—	—	—	—	—	—	—	
Forgiveness and repayments of notes receivable	—	—	—	—	—	—	—	
Comprehensive loss:								
Net loss	—	—	—	—	—	—	—	
Net unrealized gain on marketable securities	—	—	—	—	—	—	—	
Total comprehensive loss								
Balance at December 31, 2001	43,644	327,107	7,174	72	—	—	68,943	
Issuance of Series E convertible preferred stock to a collaborative partner for cash at $10.00 per share in December 2002, net of issuance costs of $64	4,000	39,937	—	—	—	—	—	
Stock option exercises at prices ranging from $1.32 to $8.53, net of repurchases	—	—	27	—	—	—	71	
Forgiveness of notes receivable	—	—	—	—	—	—	—	
Stock-based compensation related to grants of stock options to nonemployees	—	—	—	—	—	—	511	
Reversal of deferred stock-based compensation related to employee terminations	—	—	—	—	—	—	(1,823)	
Amortization of deferred stock-based compensation	—	—	—	—	—	—	—	
Issuance of warrants to purchase Series D-1 convertible preferred stock	—	314	—	—	—	—	—	
Comprehensive loss:								
Net loss	—	—	—	—	—	—	—	
Net unrealized loss on marketable securities	—	—	—	—	—	—	—	
Total comprehensive loss								
Balance at December 31, 2002	47,644	367,358	7,201	72	—	—	67,702	
Stock option exercises at prices ranging from $1.32 to $8.53, net of repurchases and net of unvested stock options exercised early	—	—	29	—	—	—	100	
Forgiveness and repayments of notes receivable	—	—	—	—	—	—	—	
Stock-based compensation related to grants of stock options to nonemployees	—	—	—	—	—	—	262	
Reversal of deferred stock-based compensation related to employee terminations	—	—	—	—	—	—	(862)	
Deferred stock-based compensation	—	—	—	—	—	—	1,535	
Amortization of deferred stock-based compensation	—	—	—	—	—	—	—	
Comprehensive loss:								
Net loss	—	—	—	—	—	—	—	
Net unrealized loss on marketable securities	—	—	—	—	—	—	—	
Total comprehensive loss								
Balance at December 31, 2003	47,644	367,358	7,230	72	—	—	68,737	
Stock option exercises at prices ranging from $1.32 to $8.53, net of repurchases and net of unvested stock options exercised early (unaudited)	—	—	151	2	—	—	798	
Exercise of warrants to purchase 20,000 shares of Series C preferred stock (unaudited)	20	170	—	—	—	—	—	
Exercise of warrants to purchase 4,000 shares of Series A preferred stock (unaudited)	4	5	—	—	—	—	—	
Conversion of Series A through D-1 convertible preferred stock into common stock (unaudited)	(43,668)	(327,596)	28,890	289	—	—	327,307	
Conversion of Series E preferred stock into common stock (unaudited)	(4,000)	(39,937)	2,580	26	—	—	39,911	
Exchange of common stock for Class A common stock (unaudited)	—	—	(2,580)	(26)	2,580	26	—	
Issuance of Class A common stock, net of issuance costs of $2,940 (unaudited)	—	—	—	—	6,388	64	105,896	
Forgiveness and repayments of notes receivable (unaudited)	—	—	—	—	—	—	—	
Stock-based compensation related to grants of stock options to nonemployees (unaudited)	—	—	—	—	—	—	304	
Reversal of deferred stock-based compensation related to employee terminations (unaudited)	—	—	—	—	—	—	(685)	
Deferred stock-based compensation (unaudited)	—	—	—	—	—	—	16,571	
Amortization of deferred stock-based compensation (unaudited)	—	—	—	—	—	—	—	
Comprehensive loss:								
Net loss (unaudited)	—	—	—	—	—	—	—	
Net unrealized loss on marketable securities (unaudited)	—	—	—	—	—	—	—	
Total comprehensive loss (unaudited)								
Balance at June 30, 2004 (unaudited)	—	$ —	36,271	$ 363	8,968	$ 90	$ 558,839	$

See accompanying notes.

Theravance, Inc.

Consolidated Statements of Cash Flows

(In thousands)

	Years Ended December 31,			Six Months Ended June 30,	
	2001	2002	2003	2003	2004
				(Unaudited)	
Cash flows used in operating activities					
Net loss	$ (64,845)	$ (79,227)	$ (70,583)	$ (32,319)	$ (51,195)
Adjustments to reconcile net loss to net cash used in operating activities:					
Depreciation	4,933	5,124	5,209	2,345	2,431
Impairment charges	650	—	—	—	—
Stock-based and other non-cash compensation	10,134	4,941	2,214	892	3,867
Forgiveness of notes receivable	380	1,430	1,342	859	4,180
Other non-cash operating activities	—	119	503	16	15
Changes in operating assets and liabilities:					
Receivables, prepaid and other current assets	41	(2,147)	1,092	(120)	(195)
Accounts payable and accrued liabilities	(188)	1,086	1,283	(2,065)	2,535
Accrued personnel-related expenses	795	(147)	465	(1,155)	90
Deferred rent	408	532	405	202	136
Deferred revenue	—	9,688	26,394	13,668	31,438
Net cash used in operating activities	(47,692)	(58,601)	(31,676)	(17,677)	(6,698)
Cash flows (used in) provided by investing activities					
Purchases of property and equipment	(1,542)	(6,986)	(763)	(302)	(617)
Purchases of marketable securities	(196,358)	(69,721)	(65,114)	(29,713)	(56,027)
Sales and maturities of marketable securities	233,951	133,037	51,264	7,461	27,441
Restricted cash and cash equivalents	670	1,820	1,629	860	813
Deferred sublease costs	—	(216)	(38)	(38)	—
Increase in notes receivable	(611)	(6,380)	(784)	(159)	(567)
Decrease in notes receivable	60	22	197	2	668
Net cash provided by (used in) investing activities	36,170	51,576	(13,609)	(21,889)	(28,289)
Cash flows (used in) provided by financing activities					
Proceeds from notes payables and capital leases	1,773	4,695	—	—	—
Proceeds from line of credit	—	25,000	75,000	50,000	
Payments on notes payables and capital leases	(3,345)	(3,104)	(3,181)	(1,554)	(1,676)
Payments on line of credit	—	—	(100,000)	(50,000)	—
Net issuances of convertible preferred stock	—	39,937	—	—	175
Net (repurchases) issuances of common stock	(851)	179	418	330	107,028
Net cash (used in) provided by financing activities	(2,423)	66,707	(27,763)	(1,224)	105,527
Net (decrease) increase in cash and cash equivalents	(13,945)	59,682	(73,048)	(40,790)	70,540
Cash and cash equivalents at beginning of period	63,059	49,114	108,796	108,796	35,748
Cash and cash equivalents at end of period	$ 49,114	$ 108,796	$ 35,748	$ 68,006	$ 106,288
Supplemental Disclosures of Cash Flow Information					
Cash paid for interest	$ 852	$ 938	$ 920	$ 507	$ 327
Non-cash investing and financing activities:					
Conversion of convertible preferred stock to common stock	$ —	$ —	$ —	$ —	$ 367,533
Repurchases/issuances of common stock for notes receivable	$ 469	$ 108	$ 26	$ 26	$ 9
Conversion of note payable to leasehold improvement allowance	$ 2,714	$ —	$ —	$ —	$ —
Deferred financing costs	$ —	$ 300	$ —	$ —	$ —
Deferred stock-based compensation	$ —	$ —	$ 1,535	$ 892	$ 16,571

See accompanying notes.

1. Organization and Description of Business

The Company is a biopharmaceutical company with a pipeline of product candidates that it discovered and expects to develop in collaboration with partners or on its own. In approximately seven years of operation, four product candidates discovered by the Company have advanced into clinical trials, one of which is currently in Phase 3 and one of which is currently in Phase 2. Further, the Company has seven additional product candidates discovered by it in preclinical studies. The Company is focused on the discovery, development and commercialization of small molecule medicines for unmet medical needs across a number of therapeutic areas including respiratory disease, bacterial infections, overactive bladder and gastrointestinal disorders. None of the Company's products have been approved for marketing and sale to patients and the Company has not received any product revenue to date.

The Company was incorporated in November 1996 in Delaware under the name Advanced Medicine, Inc. and began operations in May 1997. The Company changed its name to Theravance, Inc. in April 2002.

2. Basis of Presentation and Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiary, AMI East, Inc. All intercompany balances and transactions have been eliminated in consolidation.

Unaudited Interim Financial Information

The accompanying consolidated balance sheet as of June 30, 2004, consolidated statements of operations and cash flows for the six months ended June 30, 2003 and 2004 and consolidated statement of convertible preferred stock and stockholders' equity (deficit) for the six months ended June 30, 2004, and related information contained in the notes to consolidated financial statements are unaudited. These unaudited interim consolidated financial statements and notes have been prepared in accordance with accounting principles generally accepted in the United States. In the opinion of the Company's management, the unaudited interim consolidated financial statements have been prepared on the same basis as the audited consolidated financial statements and include all adjustments, consisting of only normal recurring adjustments, necessary for the fair presentation of the Company's financial position, results of operations and cash flows for the six months ended June 30, 2003 and 2004. The results for the six months ended June 30, 2004 are not necessarily indicative of the results of operations to be expected for the year ending December 31, 2004.

Use of Estimates

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ materially from those estimates.

Cash and Cash Equivalents

The Company considers all highly liquid investments purchased with a maturity of three months or less on the date of purchase to be cash equivalents. Cash equivalents are carried at cost, which approximates fair value.

Under certain lease agreements and letters of credit, the Company has used cash and cash equivalents as collateral. There was $7.8 million, $6.1 million and $5.3 million of restricted cash and cash equivalents related to such agreements at December 31, 2002 and 2003 and June 30, 2004, respectively.

Marketable Securities

The Company classifies its marketable securities as available-for-sale. Available-for-sale securities are carried at estimated fair value, with the unrealized gains and losses, if any, reported in stockholders' equity (deficit) and included in accumulated other comprehensive income. The cost of securities in this category is adjusted for amortization of premiums and accretion of discounts from the date of purchase to maturity. Such amortization is included in interest and other income. Realized gains and losses and declines in value judged to be other than temporary on available-for-sale securities are also included in interest and other income. The cost of securities sold is based on the specific-identification method.

Revenue Recognition

The Company recognizes revenue in accordance with the criteria outlined in Staff Accounting Bulletin No. 101 (SAB 101,) "Revenue Recognition in Financial Statements", as amended by SAB 104 and Emerging Issues Task Force (EITF) Issue 00-21 "Revenue Arrangements with Multiple Deliverables" (EITF 00-21). In connection with the Company's agreements with GlaxoSmithKline (GSK), the Company recognizes revenue from non-refundable, upfront fees and development milestone payments ratably over the term of its performance under the agreements. When the period of deferral cannot be specifically identified from the agreement, management estimates the period based upon the terms of the agreement and other relevant facts. The Company periodically reviews the estimated performance period.

The Company was reimbursed by GSK for certain external development costs under the GSK collaboration agreement. Such reimbursements have been reflected as a reduction in research and development expense and not as revenue, and were $1.5 million in 2002 and $2.7 million in 2003, and were $2.2 million and $478,000 for the six months ending June 30, 2003 and 2004, respectively.

Concentration of Credit Risks and Other Uncertainties

The Company invests in a variety of financial instruments and, by its policy, limits the amount of credit exposure with any one issuer, industry or geographic area.

The Company is dependent on third-party vendors and clinical research organizations for selected manufacturing and service functions related to its drug discovery and development efforts.

The Company is substantially dependent on third-party vendors for clinical trials related to its drug discovery and development efforts. In addition, the Company may be unable to retain alternative providers on reasonable terms, if at all. If the Company loses its relationship with any one or more of these providers, it could experience a significant delay in both identifying another comparable provider and then contracting for its services. Even if the Company locates an alternative provider, it is likely that this provider will need additional time to respond to the Company's needs and may not provide the same type or level of service as the original provider. The occurrence of any of these events may delay the development or commercialization of the Company's product candidates and have a material adverse effect on the consolidated results of operations.

Future financing may not be available in amounts or on terms acceptable to the Company, if at all. The Company will require significant additional capital to fully implement its business plan.

Property and Equipment

Property and equipment is stated at cost and depreciated using the straight-line method over the estimated useful lives of the assets, ranging from three to seven years. Leasehold improvements and assets under capital leases are amortized over the shorter of their estimated useful lives or the related lease term ranging from 3 to 12 years.

Capitalized Software

The Company capitalizes certain costs related to direct material and service costs for software obtained for internal use in accordance with Statement of Position 98-1 *Accounting for the Costs of Computer Software Developed or Obtained for Internal Use*. Capitalized software costs are depreciated over 3 years.

Deferred Sublease Costs

Deferred sublease costs consist of recoverable leasehold improvements and commissions paid to obtain tenants for leased facilities no longer occupied by the Company. These costs are being amortized over the respective sublease terms.

Long-Lived Assets

Long-lived assets include property, equipment, and deferred sublease costs. The carrying value of long-lived assets is reviewed for impairment whenever events or changes in circumstances indicate that the asset may not be recoverable. An impairment loss is recognized when the total of estimated future cash flows expected to result from the use of the asset and its eventual disposition are less than its carrying amount or appraised value, as appropriate.

Related Parties

The Company's related parties are its directors, executive officers and GSK. Transactions with executive officers and directors include notes receivable, described below. Transactions with GSK are described in Note 4.

Robert V. Gunderson, Jr. is a director of the Company. The Company has engaged Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, of which Mr. Gunderson is a partner, as its primary legal counsel. Fees are incurred and paid in the ordinary course of business, and were $45,000, $632,000 and $143,000 for the years ended December 31, 2001, 2002 and 2003, respectively, and $37,000 and $1.3 million for the six months ended June 30, 2003 and 2004, respectively.

Notes Receivable

The Company has provided loans to its officers and employees primarily to assist them with the purchase of a primary residence, which collateralizes the resulting loans. As of June 30, 2004, the total outstanding balance of these notes receivable was $6.2 million, $394,000 of which is subject to forgiveness provisions, which are dependent on the officer's or employee's continued employment with the Company. Included in the notes receivable balance are related party loans totaling $79,000, net of cumulative forgiveness expense, at June 30, 2004. The Company expects to recognize forgiveness expense ratably over the required terms of the agreement as follows: $117,000 in 2004, $135,000 in 2005, $42,000 in 2006, $39,000 in 2007 and the balance thereafter. The balance of these notes receivable is included in noncurrent assets on the Consolidated Balance Sheet.

The Company has also allowed certain option holders to exercise their options by executing stock purchase agreements and full recourse notes payable to the Company. As of June 30, 2004, the outstanding balance of these notes receivable was $763,000, of which $96,000 is subject to forgiveness provisions, which are dependent on the officer's or employee's continued employment with the Company. The Company expects to recognize forgiveness expense ratably over the required terms of the agreement as follows: $49,000 in 2004, $35,000 in 2005, $10,000 in 2006, and $2,000 in 2007. The balance of these notes receivable is included in Stockholders' Equity (Deficit) on the Consolidated Balance Sheet. The loans issued for the exercise of stock options are dated prior to November 2001 and thus are not subject to variable accounting as required under EITF 00-23 "Issues Related to the Accounting for Stock Compensation Under APB No. 25 and FASB Interpretation 44."

Interest receivable related to the notes was $599,000, $1.0 million and $1.1 million at December 31, 2002, 2003 and June 30, 2004, respectively, and is included in other assets. The Company accrues interest on the notes at rates ranging up to 8%.

The outstanding loans have maturity dates ranging from July 2004 through 2013.

On June 4, 2004, the Company entered into an agreement with its chief executive officer, Mr. Winningham pursuant to which the Company agreed to forgive Mr. Winningham's housing loan in the amount of $3,750,000, thereby extinguishing his debt in full, in recognition of Mr. Winningham entering into a lock-up agreement with the Company and GSK pursuant to which he has agreed not to sell or transfer 50% of the shares purchasable under all of his options prior to September 2007 and not to put a portion of the shares purchasable under his options to purchase common stock in 2007 pursuant to the call and put arrangements with GSK. Also, Mr. Winningham agreed to deposit 129,032 shares of common stock purchasable under an option into escrow if he exercises the option prior to September 7, 2007. Should Mr. Winningham leave the Company's employ due to voluntary resignation or a termination by the Company for cause, then he will forfeit any of these shares deposited into escrow. Subject to continued employment, the Company will release any shares from escrow over the

following periods: 25% on December 31, 2005, 25% on December 31, 2006, and the balance on September 7, 2007, and will release the shares immediately should Mr. Winningham die or leave the Company's employ due to disability. In June 2004, the net balance of the loan, $3.0 million, representing the original principal amount of $3.8 million less a reserve of approximately $800,000 for forgiveness under the original terms of the loan that was recorded in prior periods, plus $3.2 million of related income and employment taxes was recorded as general and administrative expense.

On June 4, 2004, the Company entered into an agreement with Dr. Humphrey pursuant to which it agreed to forgive Dr. Humphrey's housing loan in the amount of $953,500, thereby extinguishing his debt in full, in recognition of Dr. Humphrey entering into a lock-up agreement with the Company and GSK pursuant to which he has agreed not to sell or transfer 50% of the shares purchasable under all of his options prior to September 2007 and agreed not to put a portion of the shares purchasable under his options to purchase common stock in 2007 pursuant to the call and put arrangements with GSK. Also, Dr. Humphrey agreed to deposit 62,696 shares of common stock purchasable under options into escrow if he exercises the options prior to September 7, 2007. Should Dr. Humphrey leave the Company's employ due to voluntary resignation or a termination by the Company for cause, then he will forfeit any of these shares deposited into escrow. Subject to continued employment, the Company will release any shares from escrow over the following periods: 25% on December 31, 2005, 25% on December 31, 2006, and the balance on September 7, 2007 and will release the shares immediately should Dr. Humphrey die or leave the Company's employ due to disability. As of June 30, 2004, the full amount of this loan, plus $804,000 of related income and employment taxes was recorded as research and development expense.

Bonus Program

The Company has bonus programs covering substantially all employees. Bonuses are determined based on the achievement of corporate goals and other performance measures approved by the Board of Directors. Bonus accruals are estimated based on various factors, including target bonus percentages per level of employee and probability of achieving the goals upon which bonuses are based. The Company periodically reviews the progress made towards the goals under the bonus programs. Bonus expense was $3.0 million, $2.6 million and $3.2 million for the years ended December 31, 2001, 2002 and 2003, respectively, and $1.5 million and $1.8 million for the six months ended June 30, 2003 and 2004, respectively.

Deferred Rent

Because the Company's operating leases provide for rent increases over the terms of the leases, average annual rent of the term exceeds the Company's actual cash rent payments of the first 5.5 years of the leases. Deferred rent consists of the difference between cash payments and the recognition of rent expense on a straight-line basis for the buildings the Company occupies. Rent expense is being recognized ratably over the life of the leases.

Research and Development Costs

Research and development costs are expensed as incurred. Research and development costs consist of salaries and benefits, laboratory supplies and facility costs, as well as fees paid to third parties that conduct certain research and development activities on behalf of the Company, net of certain external development costs reimbursed by GSK.

Preclinical Study and Clinical Trial Expenses

Most of the Company's preclinical studies and all of its clinical trials have been performed by third-party contract research organizations (CROs). Some CROs bill monthly for services performed, while others bill based upon milestones achieved. The Company reviews the activities performed under the significant contracts each quarter. For preclinical studies, the significant factors used in estimating accruals include the percentage of work completed to date and contract milestones achieved. For clinical trial expenses, the significant factors used in estimating accruals include the number of patients enrolled and percentage of work completed to date. Vendor confirmations are obtained for contracts with longer duration when necessary to validate the Company's estimate of expenses. Most contracts currently have a duration of less than one year. As the Company progresses its product candidates into later-stage clinical trials, it may enter into contracts with longer terms and different payment structures. The Company would evaluate the appropriate accrual process under such multi-year contracts to record the expenses incurred under those circumstances. No material adjustments to preclinical study and clinical trial expenses have been recognized.

Stock-based Compensation

Deferred stock-based compensation

The Company accounts for employee stock options using the intrinsic-value method in accordance with Accounting Principles Board ("APB") Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB Opinion No. 25"), Financial Accounting Standards Board Interpretation ("FIN") No. 44, "Accounting for Certain Transactions Involving Stock Compensation, an interpretation of APB No. 25," and related to interpretations and has adopted the disclosure-only provisions of SFAS No. 123, "Accounting for Stock-Based Compensation" ("SFAS No. 123").

The option valuation models used to value the options under SFAS No. 123 were developed for use in estimating the fair value of traded options that have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions, including the expected price volatility. Because the employee stock options have characteristics significantly different from those of traded options and because changes in the subjective input can materially affect the fair value estimate, in the Company's opinion, the existing models do not necessarily provide a reliable single measure of the fair value of the Company's employee stock options.

The information regarding pro forma net loss as required by SFAS No. 123 has been determined as if the Company had accounted for its employee stock options under the fair value method of that Statement. The resulting effect on net loss pursuant to SFAS No. 123 is not likely to be

representative of the effects on net loss pursuant to SFAS No. 123 in future years, since future years are likely to include additional grants and the irregular effect of future years' vesting.

Deferred stock-based compensation for stock options granted to employees is recorded when the deemed fair value of the Company's common stock exceeds the exercise price of the stock options on the date of measurement, which is typically the date of grant. Deferred stock-based compensation is amortized using the accelerated method over the vesting periods of the related options, generally four years. The accelerated vesting method provides for vesting of portions of the overall award at interim dates and results in higher expense in earlier years than straight-line vesting.

The amount of non-cash stock-based compensation expense expected to be amortized in future periods may decrease if unvested options for which deferred stock-based compensation expense has been recorded are subsequently cancelled or may increase if future option grants are made with exercise prices below the deemed fair value of the common stock on the date of measurement, which is typically the date of grant.

Other stock-based compensation

Other stock-based compensation generally consists of the fair value of options granted to non-employees, such as consultants and advisors, calculated using the Black-Scholes method. The Company accounts for options granted to non-employees in accordance with EITF No. 96-18, "Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services." These options are subject to periodic remeasurement over the period services are rendered based on changes in the value of the Company's common stock. As a result, other stock-based compensation charges in future periods may vary significantly.

Fair value of employee stock options

For purposes of disclosures pursuant to Statement of Financial Accounting Standards No. 123 (SFAS No. 123), as amended by SFAS No. 148, the estimated fair value of options is amortized to expense over the vesting period of the options. The following table shows the pro forma effect on net

loss and net loss per common share if the fair value recognition provisions of SFAS No. 123 had been applied to stock based employee compensation (in thousands, except per share amounts):

	Years Ended December 31,			Six Months Ended June 30,	
	2001	2002	2003	2003	2004
				(unaudited)	
Net loss, as reported	$ (64,845)	$ (79,227)	$ (70,583)	$ (32,319)	$ (51,195)
Add: Employee stock-based compensation calculated using the intrinsic value method	9,648	4,430	1,952	793	3,563
Less: Total employee stock compensation calculated using the fair value method	(10,544)	(10,233)	(7,291)	(3,720)	(6,450)
Pro forma net loss	$ (65,741)	$ (85,030)	$ (75,922)	$ (35,246)	$ (54,082)
Net loss per share, as reported	$ (11.73)	$ (12.50)	$ (10.37)	$ (4.85)	$ (2.92)
Pro forma net loss per share	$ (11.90)	$ (13.42)	$ (11.15)	$ (5.29)	$ (3.08)

The foregoing pro forma information regarding net loss and net loss per common share has been determined as if the Company had accounted for its employee stock options under the Black-Scholes method. The weighted-average assumptions used to value these options were as follows:

	Years Ended December 31,			Six Months Ended June 30,	
	2001	2002	2003	2003	2004
				(unaudited)	
Risk-free interest rate	6.00%	3.30%	2.08%	2.08%	2.53%-3.17%
Expected life (in years)	4-5	4-5	4-5	4-5	4-5.5
Volatility	0.7	0.7	0.7	0.7	0.7
Weighted average estimated fair value of stock options granted	$4.87	$4.42	$2.33	$2.05	$9.80

The Company does not currently pay dividends.

Comprehensive Loss

Comprehensive income (loss) is comprised of net loss and other comprehensive income (loss). Other comprehensive loss consists of unrealized gains and losses on the Company's available-for-sale securities in accordance with SFAS No. 130, "Reporting Comprehensive Income."

Income Taxes

The Company utilizes the asset and liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and tax basis of assets and liabilities and are measured using enacted tax rates and laws that will be in effect when the differences are expected to reverse. A valuation allowance is provided when it is more likely than not that some portion or all of a deferred tax asset will not be realized.

Reverse Stock Split

On June 24, 2004, the Board of Directors approved a one for 1.55 reverse stock split of the Company's Common Stock and Class A Common Stock. Stockholder approval for the split was obtained in July, and the split will be effected immediately prior to this offering. All historical common share and per common share information has been changed to reflect this reverse stock split. Convertible preferred shares in these financial statements do not reflect the reverse split.

Recent Accounting Pronouncements

In January 2003, the FASB issued FIN 46, *Consolidation of Variable Interest Entities*. FIN 46 clarifies the application of Accounting Research Bulletin No. 51. This Interpretation requires variable interest entities to be consolidated if the equity investment at risk is not sufficient to permit an entity to finance its activities without support from other parties or the equity investors lack specified characteristics. The adoption of FIN 46 did not have a material effect on the Company's financial statements.

In May 2003, the FASB issued SFAS 150, *Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity*. SFAS 150 establishes standards for how a company classifies and measures certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify certain financial instruments as a liability (or as an asset in some circumstances). SFAS No. 150 is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. The adoption of SFAS No. 150 did not have an impact on the Company's financial statements.

Reclassification of Prior Year Amounts

Certain prior year amounts have been reclassified to conform to the current period's presentation.

3. Net Loss Per Share

Basic net loss per share (Basic EPS) is computed by dividing net loss by the weighted-average number of common shares outstanding, less shares subject to repurchase. Diluted net loss per share (Diluted EPS) is computed by dividing net loss by the weighted-average number of common shares outstanding, plus dilutive potential common shares. At June 30, 2004, potential common shares consist of shares subject to repurchase, 8,881,226 shares issuable upon the exercise of stock options and 64,908

shares issuable upon the exercise of warrants. Diluted EPS is identical to Basic EPS since potential common shares are excluded from the calculation as their effect is anti-dilutive.

	Years Ended December 31,			Six Months Ended June 30,	
	2001	2002	2003	2003	2004
				(unaudited)	
Basic and diluted: *(In thousands, except for per share amounts)*					
Net loss	$ (64,845)	$ (79,227)	$ (70,583)	$ (32,319)	$ (51,195)
Weighted average shares of common stock outstanding	7,287	7,209	7,327	7,271	17,930
Less: weighted average shares subject to repurchase	(1,761)	(873)	(518)	(610)	(387)
Weighted average shares used in computing basic and diluted net loss per share	5,526	6,336	6,809	6,661	17,543
Basic and diluted net loss per share	$ (11.73)	$ (12.50)	$ (10.37)	$ (4.85)	$ (2.92)

For the six months ended June 30, 2004, shares and per share amounts reflect the conversion of all of the Company's outstanding preferred stock into common stock or Class A common stock as of May 11, 2004.

4. Agreements with GlaxoSmithKline

2002 LABA Collaboration

In November 2002, the Company entered into a collaboration agreement with GSK to develop and commercialize long acting beta$_2$ agonist (LABA) product candidates for the treatment of asthma and chronic obstructive pulmonary disease (COPD). Under the terms of the agreement, each company contributed four product candidates to the collaboration. The Company received an initial cash payment from GSK of $10.0 million in December 2002. In addition, the Company also sold shares of its Series E convertible preferred stock to GSK for aggregate proceeds of $40.0 million. In connection with this collaboration, in 2003 the Company received cash payments totaling $30.0 million as development milestones were achieved, and another $15.0 million was received in the first half of 2004.

The Company recorded the initial cash payment and subsequent milestone payments as deferred revenue, to be amortized ratably over the Company's estimated period of performance (the product development period), which it currently estimates to be eight years from the collaboration's inception. Collaboration revenue was $1.3 million for the six months ended June 30, 2003 and $3.2 million for the six months ended June 30, 2004, and $156,000 in 2002 and $3.6 million in 2003. Subsequent development milestones will be recorded as deferred revenue when received and amortized over the remaining period of performance during the development period. Additionally, GSK reimbursed the Company for certain costs related to the collaboration of $1.5 million in 2002 and $2.7 million in 2003 and $2.2 million for the six months ended June 30, 2003 and $478,000 for the six

months ended June 30, 2004. The Company recorded these amounts as an offset to research and development expense.

GSK has agreed to make additional payments to the Company based on achievement of development and commercialization milestones over the development period. In addition, payments may be received based on product sales milestones subsequent to the estimated eight-year development period. If the development and commercialization of the Company's LABA product candidates is successful, these payments could total $450.0 million, of which $150.0 million would be attributable to the product candidates reaching certain sales thresholds. Alternatively, the Company may be required to make milestone payments of up to an aggregate of $220.0 million if GSK files for regulatory approval and launches a medicine containing a LABA product candidate discovered by GSK. GSK will pay the Company the same royalty payments from product sales containing any LABA commercialized from this collaboration regardless of the origin of the compound.

2004 Strategic Alliance

In March 2004, the Company and GSK entered into a strategic alliance for the development and commercialization of product candidates in a variety of therapeutic areas. In May 2004, the Company's stockholders approved the strategic alliance agreement. In connection with the alliance agreement, the Company received a $20.0 million payment in May 2004. This payment is being amortized over the opt-in period of the agreement, which is currently estimated to be approximately $7\frac{1}{2}$ years. The Company recognized $380,000 in revenue for the six months ended June 30, 2004. In addition, in May 2004 GSK, through an affiliate, purchased approximately 6.4 million shares of the Company's Class A common stock for $108.9 million. The alliance provides GSK with an option to license, on an exclusive, worldwide basis, product candidates from all of the Company's existing discovery and development programs, or programs initiated prior to September 1, 2007. Upon opting in to a new program, GSK would be responsible for all development, manufacturing and commercialization activities for such programs. Consistent with the Company's strategy, the Company will be obligated at its sole cost to discover two structurally different product candidates for certain programs that GSK opts in to. The Company may receive clinical, regulatory and commercial milestone payments and royalties on any future sales. If a product is successfully commercialized, in addition to any royalty revenue the Company may receive, the total upfront and milestone payments that the Company could receive could range from up to $130.0 million to $162.0 million for programs with single-agent medicines and up to $252.0 million for programs with both a single-agent and a combination medicine. GSK is not obligated to opt in to any of the Company's development programs. GSK has not exercised its right to opt in to any of the Company's programs under the strategic alliance. If GSK does not exercise its opt-in right with respect to a development program, the Company will need to collaborate with another third party or it will incur significant development costs and potential delays in the development of the program until funding is available.

GSK may increase its ownership in the Company's outstanding stock to up approximately 60% through the issuance by the Company to GSK of the number of shares of the Company's common stock that the Company may be required to redeem from its stockholders as described below. In July 2007, GSK has the right to require the Company to redeem ("call"), and upon notice of such redemption, each stockholder (including GSK, to the extent GSK holds common stock) will

automatically be deemed to have submitted for redemption, 50% of the Company's common stock held by such stockholder at $54.25 per share. If GSK does not exercise this right, in August 2007 each of the Company's stockholders (including GSK, to the extent GSK holds common stock) has the right to require it to redeem ("put") up to 50% of their common stock at $19.375 per share. In either case, GSK is contractually obligated to pay to the Company the funds necessary for the Company to redeem the shares of common stock from the Company's stockholders; however, GSK's maximum obligation for the shares subject to the put is capped at $525.0 million. The Company is under no obligation to effect the call or the put until the Company receives such funds from GSK. In connection with those arrangements, the Company has agreed not to issue new shares which would cause the potential put liability to exceed $525.0 million. If GSK's ownership increases to more than 50% in 2007 as a result of the call or put, it will receive an extension of its option to opt in to exclusive licenses to the Company's programs initiated prior to September 1, 2012; otherwise, this exclusive option does not apply to programs initiated after September 1, 2007.

5. Marketable Securities

The Company invests in a variety of highly liquid investment-grade securities. The following is a summary of the Company's available-for-sale securities at December 31, 2002 and December 31, 2003 (in thousands):

	December 31, 2002				December 31, 2003			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
U.S. government agencies	$ 15,765	$ 5	$ —	$ 15,770	$ 52,987	$ 24	$ (7)	$ 53,004
U.S. corporate notes	14,318	31	(3)	14,346	11,662	17	(2)	11,677
U.S. commercial paper	44,950	23	—	44,973	—	—	—	—
Asset-backed securities	18,353	165	—	18,518	16,739	28	(38)	16,729
Certificates of deposit	190	—	—	190	2,372	—	(1)	2,371
Money market funds	62,506	—	—	62,506	11,495	—		11,495
Total	156,082	224	(3)	156,303	95,255	69	(48)	95,276
Less amounts classified as cash and cash equivalents	(108,796)	—	—	(108,796)	(35,748)	—	—	(35,748)
Less amounts classified as restricted cash	(7,753)	—	—	(7,753)	(6,124)	—		(6,124)
Amounts classified as marketable securities	$ 39,533	$ 224	$ (3)	$ 39,754	$ 53,383	$ 69	$ (48)	$ 53,404

5. Marketable Securities (Continued)

The following is a summary of the Company's available-for-sale securities at June 30, 2004 (in thousands):

	June 30, 2004 (unaudited)			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
U.S. government agencies	$ 57,041	$ 7	$ (127)	$ 56,921
U.S. corporate notes	13,552	3	(27)	13,528
U.S. commercial paper	79,574	—	(10)	79,564
Asset-backed securities	33,771	5	(98)	33,678
Certificates of deposit	190	—	—	190
Money market funds	9,440	—	—	9,440
Total	193,568	15	(262)	193,321
Less amounts classified as cash and cash equivalents	(106,288)	—	—	(106,288)
Less amounts classified as restricted cash	(5,311)	—	—	(5,311)
Amounts classified as marketable securities	$ 81,969	$ 15	$ (262)	$ 81,722

The estimated fair value amounts have been determined by the Company using available market information. At June 30, 2004, approximately 23% of marketable securities (excluding asset-backed securities) mature within twelve months, and 36% of marketable securities mature within twenty-four months. The remaining 41% are asset-backed securities with effective maturities within 24 months. Average duration of available-for-sale securities was approximately four months at June 30, 2004.

Gross realized gains (losses) on available-for-sale securities were $500,000, $(23,000), and $47,000 for the years ended December 31, 2002 and 2003 and for the six months ended June 30, 2004, respectively.

6. Property and Equipment

Property and equipment consists of the following (in thousands):

	December 31,		June 30, 2004
	2002	2003	(unaudited)
Computer equipment	$ 2,562	$ 2,685	$ 2,840
Software	1,482	1,531	1,531
Furniture and fixtures	3,644	3,690	3,671
Laboratory equipment	14,445	14,943	15,424
Leasehold improvements	12,443	12,453	12,453
	34,576	35,302	35,919
Less accumulated depreciation and amortization	(14,309)	(19,487)	(21,918)
Property and equipment, net	$ 20,267	$ 15,815	$ 14,001

There was $5.0 million, $5.2 million and $2.4 million of depreciation expense recorded for the years ended December 31, 2002 and 2003 and for the six months ended June 30, 2004, respectively.

7. Line of Credit

In November 2002, the Company entered into a one-year agreement for a revolving line of credit of $25.0 million, renewable for a second year at the Company's option. In November 2003, the Company did not renew the line of credit. In connection with the agreement, the Company issued warrants to the lender for the purchase of up to 48,611 shares of Series D-1 convertible preferred stock at an exercise price of $9.00 per share. As of June 30, 2004, the warrants converted into warrants to purchase 31,361 shares of common stock at $13.95 per share. The warrants are exercisable through November 2007, subject to certain conditions. The fair value of these warrants was determined at the issuance date, and was recorded as a deferred cost and amortized ratably over the one-year term of the agreement. The warrants remained outstanding as of June 30, 2004.

8. Long-Term Obligations

Capital Lease Arrangements

At December 31, 2003, the Company's aggregate commitments under capital lease agreements are as follows (in thousands):

Year ending December 31:	
2004	$ 3,475
2005	2,525
2006	1,130
Total minimum lease payments	7,130
Less amount representing interest	(647)
Present value of future payments	6,483
Less current portion	(3,052)
Long-term portion	$ 3,431

Laboratory and computer equipment, furniture and fixtures and leasehold improvements financed under capital lease arrangements are included in property and equipment and the related depreciation is included in depreciation expense in the consolidated statement of cash flows. The cost of assets financed under capital leases was $15.0 million at December 31, 2002 and 2003 and June 30, 2004. The related accumulated depreciation was $6.9 million, $9.8 million and $11.3 million at December 31, 2002 and 2003 and June 30, 2004, respectively. The Company has the option to purchase the assets at the end of the term at the then fair value. The underlying assets secure the capital lease obligations.

In June 2002, the Company completed substantially all lease draws available under its lease arrangements. The lease specifies that the Company is required to maintain an unrestricted cash and marketable securities balance of at least $50.0 million on the last day of each calendar quarter and to

set aside specified amounts of cash as collateral. At December 31, 2002 and 2003 and June 30, 2004, the Company had restricted cash and cash equivalents as collateral of $3.8 million, $2.2 million and $1.4 million (see Note 9).

Notes Payable

Notes payable are as follows (in thousands):

	December 31,		June 30, 2004
	2002	2003	
			(unaudited)
Note payable to G.E. Capital	$ 889	$ 561	$ 383
Note payable to lessor	872	826	800
	$ 1,761	$ 1,387	$ 1,183

In June 2002, the Company received approximately $1.1 million under a tenant improvement loan from G.E. Capital, which is payable in monthly installments through June 2005 and bears interest at 10.4%. Additionally, in connection with the Company's lease agreement for its 60,000 square foot facility in South San Francisco, California (see Note 9), the Company received approximately $897,000 in July 2002 under a Tenant Improvement Loan from the lessor, which is payable in monthly installments through 2012 and bears interest at 14.5%. Both notes are secured by the underlying leasehold improvements.

The aggregate maturities of notes payable for each of the five years and thereafter are as follows: $420,000 in 2004; $262,000 in 2005; $75,000 in 2006, $87,000 in 2007, $100,000 in 2008 and $444,000 thereafter.

9. Operating Leases and Subleases

The Company leases a 110,000 square foot facility and an adjacent 60,000 square foot facility in South San Francisco, California. Both of the leases expire in 2012 and have two renewal options of five years each. As security for performance of its future obligations under these leases, the Company has letters of credit for an aggregate $3.8 million, collateralized by an equal amount of restricted cash. If the Company's unrestricted cash and marketable securities balance is less than $50.0 million during the terms of the leases, then the letters of credit must be increased by an aggregate of $1.0 million. The current annual rental expense under the combined leases for the Company's headquarters is approximately $5.4 million, subject to annual increases.

As of June 30, 2004, approximately 35,000 square feet of the 60,000 square foot facility is subleased to two corporate tenants not affiliated with the Company. In addition, the Company has subleased its previously occupied facilities in South San Francisco, California and in Cranbury, New Jersey for periods approximating the Company's remaining lease terms.

At December 31, 2003, the Company's future minimum commitments under noncancelable operating leases, net of sublease income, are as follows (in thousands):

	Minimum Lease Commitments	Sublease Income	Net Lease Commitments
Year ending December 31:			
2004	$ 6,805	$ (3,157)	$ 3,648
2005	6,643	(1,859)	4,784
2006	6,692	(1,184)	5,508
2007	6,340	(305)	6,035
2008	6,133	—	6,133
Thereafter	20,991	—	20,991
	$ 53,604	$ (6,505)	$ 47,099

Expenses and income associated with operating leases were as follows (in millions):

	Years Ended December 31,			Six Months Ended June 30,	
	2001	2002	2003	2003	2004
				(unaudited)	
Rent expense	$ 4.5	$ 6.2	$ 6.7	$ 3.4	$ 3.4
Sublease income, net	(0.9)	(1.0)	(0.7)	(0.4)	(0.3)

10. Commitments

Guarantees and Indemnifications

In November 2002, the FASB issued interpretation No. 45, Guarantor's Accounting and Disclosure Requirements for Guarantees of Indebtedness of Others (FIN No. 45). FIN No. 45 requires that upon issuances of a guarantee, the guarantor must recognize a liability for the fair value of the obligations it assumes under the guarantee.

The Company indemnifies its officers and directors for certain events or occurrences, subject to certain limits. The Company believes the fair value of these indemnification agreements is minimal. Accordingly, the Company has not recognized any liabilities relating to these agreements as of June 30, 2004.

Purchase Obligations

At June 30, 2004, the Company had outstanding purchase obligations, primarily for services from contract research organizations, totaling $4.6 million.

11. Convertible Preferred Stock

The Company has classified the convertible preferred stock prior to May 11, 2004 outside of stockholders' equity (deficit). An acquisition of the Company whereby 50% or more of the outstanding

voting power of the Company would have triggered a liquidation event that entitled the preferred stockholders to their liquidation preference. This provision applied to all series of the Company's convertible preferred stock. Since a majority of the outstanding stock of the Company is controlled by outside investors, a hostile takeover or other sale could have occurred outside the control of the Company and thereby triggered a change in control, which would have been a liquidation event.

In connection with the closing of the GSK alliance agreement on May 11, 2004, all shares of the Company's convertible preferred stock converted to common stock on a one-for-one basis, except for Series D convertible preferred stock, which converted on a basis of $1^{2}/_{3}$ shares of common stock for each share of Series D convertible preferred stock.

12. Stockholders' Equity (Deficit)

Common Stock

In connection with the strategic alliance agreement with GSK, the Company restated its Certificate of Incorporation to authorize additional common stock, Class A common stock and undesignated preferred stock. The common stockholders and Class A common stockholders are entitled to one vote per share and are entitled to share equally in any dividends as declared by the Company's board of directors. Upon the liquidation, the Company's assets shall be distributed among the holders of the common stock and Class A common stock on a pro rata basis, subject to the prior rights of holders of any classes of stock. The Class A common stock has certain rights to nominate members of the Company's board of directors, and is not subject to the call and put described in Note 4.

Stock Option Plans

In June 1997, the Board of Directors adopted the 1997 Stock Option Plan (the 1997 Plan). In June 1998, the Board of Directors adopted the Long-Term Option Plan (the Long-Term Plan). These plans provide for the granting of incentive and nonstatutory stock options to employees, officers, directors and consultants of the Company. Incentive stock options may be granted with exercise prices not less than the estimated fair value, and nonstatutory stock options may be granted with an exercise price not less than 85% of the estimated fair value, of the common stock on the date of grant. Stock options granted to a stockholder owning more than 10% of voting stock of the Company must have an exercise price of not less than 110% of the estimated fair value of the common stock on the date of grant. The Board of Directors determines the estimated fair value of common stock. Stock options are generally granted with terms of up to ten years and vest over a period of four to six years.

The Company has allowed certain stock option holders to exercise their options by executing stock purchase agreements and full-recourse notes payable to the Company. The stock purchase agreements provide the Company with the right to repurchase unvested shares. Certain full-recourse notes payable include forgiveness provisions whereby the Company forgives the unpaid principal of the note on its maturity date if the optionee remains in continuous service until the maturity date on the notes. At June 30, 2004, 170,457 shares were subject to repurchase under these outstanding note agreements.

Through June 30, 2004, in connection with the grant of certain stock options to employees, the Company recorded aggregate deferred stock-based compensation of $57.2 million and amortized $37.2 million as non-cash stock-based compensation expense, of which $16.6 million of deferred stock-based compensation and $3.8 million in stock-based compensation expense was recorded in the six months ended June 30, 2004. Deferred stock-based compensation represents the difference between the exercise price and the estimated fair value of the Company's common stock on the date these stock options were granted. The Company recognizes compensation expense for fixed awards in accordance with the accelerated expense attribution method under FIN No. 28, "Accounting for Stock Appreciation Rights and Other Variable Stock Option Award Plans".

The Company has granted options to purchase shares of common stock to nonemployees with exercise prices ranging from $0.78 to $8.53 per share. As of December 31, 2003, options to acquire 163,959 shares are periodically subject to remeasurement of fair value using a Black-Scholes model over their remaining vesting terms. The following assumptions were used for 2003 and 2002 and for the six months ended June 30, 2004: a volatility of 0.7, a risk-free interest rate of 2.0%, 3.3% and a range of 1.19%-2.27%, respectively, no dividend yield, and a life of the option equal to the full term, generally ten years from the date of grant. In connection with these transactions, the Company recognized expense of $486,000, $511,000, $262,000, and $304,000 for the years ended December 31, 2001, 2002 and 2003 and for the six months ended June 30, 2004, respectively.

Director Compensation Program

On April 28, 2004, the Compensation Committee of the Board of Directors approved a director compensation program for the Company's outside directors. Pursuant to this program, each outside director will receive an annual retainer plus a fee for attending each board and committee meeting. In addition, each outside director was granted an option to purchase 25,806 shares of common stock with an exercise price equal to the then fair market value of the Company's common stock.

The following table summarizes option activity under the 1997 Plan and the Long-Term Plan, and related information:

	Number of Shares Available for Grant	Number of Shares Subject to Outstanding Options	Weighted-Average Exercise Price Per Share
		(In thousands, except per share amounts)	
Balance at January 1, 2001	2,783	1,326	$ 5.29
Options granted	(2,021)	2,021	$ 8.53
Options exercised	—	(20)	$ 2.11
Options forfeited	193	(193)	$ 5.64
Shares repurchased	233	—	$ 1.04
Balance at December 31, 2001	1,188	3,134	$ 7.36
Additional shares authorized	2,645	—	—
Options granted	(2,005)	2,005	$ 8.08
Options exercised	—	(99)	$ 1.64
Options forfeited	265	(265)	$ 6.53
Shares repurchased	72	—	$ 1.32
Balance at December 31, 2002	2,165	4,775	$ 7.83
Options granted	(1,965)	1,965	$ 3.10
Options exercised	—	(55)	$ 2.87
Options forfeited	290	(290)	$ 7.84
Shares repurchased	25	—	$ 2.82
Balance at December 31, 2003	515	6,395	$ 6.46
Additional shares authorized (unaudited)	2,869	—	—
Options granted (unaudited)	(2,887)	2,887	$ 8.22
Options exercised (unaudited)	—	(163)	$ 4.72
Options forfeited (unaudited)	238	(238)	$ 5.36
Balance at June 30, 2004 (unaudited)	735	8,881	$ 7.08

The weighted-average fair value of options granted with exercise prices less than the estimated fair value of common stock on the date of grant during the year ended December 31, 2003 and the six month period ended June 30, 2004 was $4.93 and $9.80, respectively. No options were granted with exercise prices less than the estimated fair value of common stock on the date of grant during the years ended December 31, 2001 and 2002.

The weighted-average fair value of options granted with exercise prices equal to the estimated fair value of common stock on the date of grant during the year ended December 31, 2001, 2002 and 2003 was $4.87, $4.42 and $1.66, respectively.

At December 31, 2003 and June 30, 2004, all outstanding options to purchase common stock of the Company were exercisable. These options are summarized in the following table:

Exercise Price Per Share	December 31, 2003			June 30, 2004		
	Number of Shares Subject to Outstanding Options	Number of Shares Subject to Options Vested	Weighted-Average Remaining Contractual Life	Number of Shares Subject to Outstanding Options	(unaudited) Number of Shares Subject to Options Vested	Weighted-Average Remaining Contractual Life
	(in thousands)			(in thousands)		
$0.20	19	—	3.7	19	—	3.2
$0.78	8	—	6.2	—	—	—
$1.32	282	31	6.1	267	14	5.5
$3.10	2,065	1,712	9.1	2,534	2,150	8.9
$8.14	104	5	6.2	48	—	5.7
$8.53	3,917	1,726	7.7	3,784	1,204	7.2
$9.69	—	—	—	2,203	1,969	8.9
$12.40	—	—	—	26	26	9.9
	6,395	3,474	8.1	8,881	5,363	8.1

Stock Subject to Repurchase

At December 31, 2003, and June 30, 2004, there were 394,338 shares and 367,830 shares of the Company's common stock, respectively, subject to the Company's right to repurchase at the original purchase price. These shares were issued upon the exercise of unvested stock options and the execution of certain stock purchase agreements. The Company's repurchase rights lapse generally over a four-year period.

Reserved Shares

The Company has reserved shares of common stock for future issuance as follows (shares in thousands):

	December 31, 2003	June 30, 2004
		(unaudited)
Subject to outstanding warrants	66	65
Stock option plans:		
Subject to outstanding options	6,395	8,881
Available for future grants	517	735
Conversion of preferred stock	31,454	—
Total	38,432	9,681

Stock Options Exercised Early

The Company generally allows employees to exercise options prior to vesting. In accordance with EITF 00-23, "Issues Related to Accounting for Stock Compensation under APB Opinion No. 25 and FASB Interpretation No. 44, stock options granted or modified after March 21, 2002," that are subsequently exercised for cash prior to vesting are treated differently from prior grants and related exercises. The consideration received for an exercise of an option granted after the effective date of this guidance is considered to be a deposit of the exercise price and the related dollar amount is recorded as a liability. The liability is only reclassified into equity on a ratable basis as the option vests. The Company has applied the guidance and recorded a liability in the consolidated balance sheets relating to 111,888 and 188,023 options granted that were exercised and unvested at December 31, 2003 and June 30, 2004, respectively. Furthermore, these shares are not presented as outstanding on the accompanying consolidated statements of convertible preferred stock and stockholders' equity (deficit) and consolidated balance sheets. Instead, these shares are disclosed as outstanding options.

Warrants

At June 30, 2004, there were outstanding warrants to purchase totaling 64,908 shares of the Company's common stock at $9.13 per share.

13. Income Taxes

Due to operating losses and the inability to recognize an income tax benefit, there is no provision for income taxes.

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets are as follows (in thousands):

	December 31,	
	2002	2003
Deferred tax assets:		
Net operating loss carryforwards	$ 70,200	$ 85,400
Deferred revenues	3,940	14,500
Capitalized research and development expenditures	11,050	13,500
Research and development tax credit carryforwards	5,390	6,720
Depreciation	4,830	3,730
Reserves and accruals	1,910	1,610
Deferred compensation	2,360	1,510
Valuation allowance	(99,680)	(126,970)
Net deferred tax assets	$ —	$ —

Realization of deferred tax assets is dependent on future taxable income, if any, the timing and the amount of which are uncertain. Accordingly, the deferred tax assets have been fully offset by a

valuation allowance. The valuation allowance increased by $24.8 million, $29.4 million and $27.3 million for the years ended December 31, 2001, 2002 and 2003, respectively.

As of December 31, 2003, the Company had federal net operating loss carryforwards of approximately $249.0 million and federal research and development tax credit carryforwards of approximately $4.0 million, which will expire from 2011 through 2023. The Company also had state net operating loss carryforwards of approximately $14.0 million expiring in the years 2006 through 2013 and state research tax credits of approximately $2.8 million, which carry forward indefinitely.

Utilization of net operating loss and tax credit carryforwards may be subject to a substantial annual limitation due to the ownership change limitations provided by the Internal Revenue Code and similar state provisions. The annual limitation may result in expiration of net operating loss and tax credit carryforwards before some or all of such amounts have been utilized.

14. Subsequent Events

On May 27, 2004, the Board of Directors authorized the filing of a registration statement with the Securities and Exchange Commission to register shares of the Company's common stock in connection with a proposed initial public offering.

On May 27, 2004, the Board of Directors approved the forgiveness, on a basis grossed-up for income taxes, home loans for two executives (the Company's Chief Executive Officer and Executive Vice President, Research). The total principal of the loans to be forgiven is $4.7 million.

On May 27, 2004, the Company's Board of Directors adopted the 2004 Equity Incentive Plan and 2004 Employee Stock Purchase Plan. Both of these equity plans are to be effective as of the date of the Company's initial public offering.

Through and including , 2004 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

5,200,000 Shares

Theravance

Common Stock

PROSPECTUS

Merrill Lynch & Co.
Lehman Brothers
Credit Suisse First Boston
Thomas Weisel Partners LLC

, 2004

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

Estimated expenses payable in connection with the sale of the common stock in this offering are as follows:

SEC registration fee	$	12,163
NASD filing fee		10,100
Nasdaq National Market listing fee		125,000
Printing and engraving expenses		265,000
Legal fees and expenses		1,200,000
Accounting fees and expenses		550,000
Transfer agent and registrar fees and expenses		10,000
Miscellaneous		227,737
Total	$	2,400,000

The registrant will bear all of the expenses shown above.

Item 14. Indemnification of Directors and Officers.

The Delaware General Corporation Law and the registrant's certificate of incorporation and bylaws provide for indemnification of the registrant's directors and officers for liabilities and expenses that they may incur in such capacities. In general, directors and officers are indemnified with respect to actions taken in good faith in a manner reasonably believed to be in, or not opposed to, the best interests of the registrant, and with respect to any criminal action or proceeding, actions that the indemnitee had no reasonable cause to believe were unlawful. Reference is made to the registrant's certificate of incorporation filed as Exhibit 3.2 hereto and the registrant's bylaws filed as Exhibit 3.5 hereto.

The registrant has entered into indemnification agreements with its officers and directors, a form of which is attached as Exhibit 10.11 hereto and incorporated herein by reference. The Indemnification Agreements provide the registrant's officers and directors with further indemnification to the maximum extent permitted by the Delaware General Corporation Law. The purchase agreement provides that the underwriters are obligated, under certain circumstances, to indemnify directors, officers and controlling persons of the registrant against certain liabilities, including liabilities under the Securities Act. Reference is made to the form of purchase agreement filed as Exhibit 1.1 hereto.

The registrant currently maintains a directors' and officers' liability insurance policy.

Item 15. Recent Sales of Unregistered Securities.

In the three years preceding the filing of this registration statement, the registrant has sold the following securities that were not registered under the Securities Act:

Common Stock

In June 2001, the registrant issued an aggregate of 13,602 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $20,051.10 pursuant to exercises of options granted under its 1997 Stock Plan.

In July 2001, the registrant issued an aggregate of 517 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $681.70 pursuant to exercises of options granted under its 1997 Stock Plan.

In August 2001, the registrant issued an aggregate of 80 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $106.25 pursuant to exercises of options granted under its 1997 Stock Plan.

In September 2001, the registrant issued an aggregate of 386 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $3,294.50 pursuant to exercises of options granted under its 1997 Stock Plan.

In October 2001, the registrant issued an aggregate of 423 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $557.60 pursuant to exercises of options granted under its 1997 Stock Plan.

In November 2001, the registrant issued an aggregate of 360 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $2,218.05 pursuant to exercises of options granted under its 1997 Stock Plan.

In December 2001, the registrant issued an aggregate of 1,714 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $11,131.50 pursuant to exercises of options granted under its 1997 Stock Plan.

In February 2002, the registrant issued an aggregate of 80,645 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $106,250 pursuant to exercises of options granted under its 1997 Stock Plan.

In April 2002, the registrant issued an aggregate of 10,406 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $8,165 pursuant to exercises of options granted under its 1997 Stock Plan.

In May 2002, the registrant issued an aggregate of 2,127 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $7,034.80 pursuant to exercises of options granted under its 1997 Stock Plan.

In June 2002, the registrant issued an aggregate of 2,150 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $5,874.15 pursuant to exercises of options granted under its 1997 Stock Plan.

In July 2002, the registrant issued an aggregate of 1,174 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $10,010 pursuant to exercises of options granted under its 1997 Stock Plan.

In August 2002, the registrant issued an aggregate of 27 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $231.00 pursuant to exercises of options granted under its 1997 Stock Plan.

In November 2002, the registrant issued an aggregate of 3,003 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $25,608.00 pursuant to exercises of options granted under its 1997 Stock Plan.

In March 2003, the registrant issued an aggregate of 141,129 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $437,500.00 pursuant to exercises of options granted under its 1997 Stock Plan.

In April 2003, the registrant issued an aggregate of 4,585 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $12,399.90 pursuant to exercises of options granted under its 1997 Stock Plan.

In May 2003, the registrant issued an aggregate of 1,517 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $1,999.20 pursuant to exercises of options granted under its 1997 Stock Plan.

In July 2003, the registrant issued an aggregate of 1,461 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $12,167.00 pursuant to exercises of options granted under its 1997 Stock Plan.

In August 2003, the registrant issued an aggregate of 2,692 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $5,143 pursuant to exercises of options granted under its 1997 Stock Plan.

In September 2003, the registrant issued an aggregate of 1,935 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $6,000.00 pursuant to exercises of options granted under its 1997 Stock Plan.

In October 2003, the registrant issued an aggregate of 490 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $4,180.00 pursuant to exercises of options granted under its 1997 Stock Plan.

In December 2003, the registrant issued an aggregate of 13,445 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $26,913.00 pursuant to exercises of options granted under its 1997 Stock Plan and its Long-Term Stock Option Plan.

In January 2004, the registrant issued an aggregate of 1,714 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $13,378.00 pursuant to exercises of options granted under its 1997 Stock Plan.

In February 2004, the registrant issued an aggregate of 16,741 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $21,886.00 pursuant to exercises of options granted under its 1997 Stock Plan and its Long-Term Stock Option Plan.

In March 2004, the registrant issued an aggregate of 3,813 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $25,972.50 pursuant to exercises of options granted under its 1997 Stock Plan.

In April 2004, the registrant issued an aggregate of 88,569 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $478,413.00 pursuant to exercises of options granted under its 1997 Stock Plan.

In May 2004, the registrant issued an aggregate of 81,769 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $280,535.50 pursuant to exercises of options granted under its 1997 Stock Plan.

In June 2004, the registrant issued an aggregate of 47,989 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $193,158.05 pursuant to exercises of options granted under its 1997 Stock Plan.

In July 2004, the registrant issued an aggregate of 23,914 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $296,544 pursuant to exercises of options granted under its 1997 Stock Plan.

In August 2004, the registrant issued an aggregate of 7,865 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $97,536 pursuant to exercises of stock options granted under its 1997 Stock Plan.

In September 2004, the registrant issued an aggregate of 360 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $3,596 pursuant to exercises of options granted under its 1997 Stock Plan.

No underwriters were involved in the foregoing sales of securities. Such sales were made in reliance upon the exemption provided by Section 4(2) of the Securities Act for transactions not involving a public offering.

Class A Common Stock

In May 2004, the company sold an aggregate of 6,387,096 shares of its Class A common stock to one accredited investor at an aggregate purchase price of $108,900,000.

In May 2004, one accredited investor exchanged 2,580,645 shares of our common stock for shares of our Class A common stock.

Series E Preferred Stock

In December 2002, the company sold an aggregate of 2,580,645 shares of its Series E convertible preferred stock to one accredited investor at an aggregate purchase price of $40,000,000.00.

Options

In June 2001, the registrant granted options to purchase an aggregate of 246,451 shares of common stock at an exercise price of $8.52 per share.

In December 2001, the registrant granted options to purchase an aggregate of 978,354 shares of common stock at an exercise price of $8.52 per share.

In February 2002, the registrant granted options to purchase an aggregate of 1,087,522 shares of common stock at an exercise price of $8.52 per share.

In April 2002, the registrant granted options to purchase an aggregate of 280,709 shares of common stock at an exercise price of $8.52 per share.

In June 2002, the registrant granted options to purchase an aggregate of 470,000 shares of common stock at an exercise price of $8.52 per share.

In December 2002, the registrant granted options to purchase an aggregate of 167,935 shares of common stock at an exercise price of $3.10 per share.

In January 2003, the registrant granted options to purchase an aggregate of 1,556,541 shares of common stock at an exercise price of $3.10 per share.

In April 2003, the registrant granted options to purchase an aggregate of 221,612 shares of common stock at an exercise price of $3.10 per share.

In June 2003, the registrant granted options to purchase an aggregate of 97,419 shares of common stock at an exercise price of $3.10 per share.

In September 2003, the registrant granted options to purchase an aggregate of 54,838 shares of common stock at an exercise price of $3.10 per share.

In December 2003, the registrant granted options to purchase an aggregate of 35,483 shares of common stock at an exercise price of $3.10 per share.

In February 2004, the registrant granted options to purchase an aggregate of 657,810 shares of common stock at an exercise price of $3.10 per share.

In March 2004, the registrant granted options to purchase an aggregate of 1,932,258 shares of common stock at an exercise price of $9.68 per share.

In April 2004, the registrant granted options to purchase an aggregate of 271,612 shares of common stock at an exercise price of $9.68 per share.

In May 2004, the registrant granted options to purchase an aggregate of 12,903 shares of common stock at an exercise price of $12.40 per share.

In June 2004, the registrant granted options to purchase an aggregate of 12,580 shares of common stock at an exercise price of $12.40 per share.

In September 2004, the registrant granted options to purchase an aggregate of 232,580 shares of common stock at an exercise price of $12.40 per share.

The foregoing options were granted to employees, directors and consultants in accordance with the terms of the registrant's equity compensation plans. Such issuances were made in reliance upon the exemption provided by Rule 701 promulgated under the Securities Act or Section 4(2) of the Securities Act.

Warrants

In November 2002, the registrant issued a warrant to a financial institution for an aggregate of 31,361 shares of Series D-1 preferred stock with an exercise price per share of $13.95.

No underwriters were involved in the foregoing sales of securities. Such sales were made in reliance upon the exemption provided by Section 4(2) of the Securities Act for transactions not involving a public offering.

Item 16. Exhibits and Financial Statement Schedules.

(a) *Exhibits*:

Exhibit No.	Exhibit Index
1.1**	Form of Purchase Agreement
3.1**	Restated Certificate of Incorporation of the registrant (in effect until September 27, 2004)
3.2	Amended and Restated Certificate of Incorporation of the registrant effecting a reverse stock split (currently in effect)
3.3**	Form of Amended and Restated Certificate of Incorporation of the registrant to take effect upon the closing of the offering
3.4**	Bylaws of the registrant (currently in effect)
3.5**	Form of Amended and Restated Bylaws to take effect as of the closing of the offering
4.1**	Specimen certificate representing the common stock of the registrant
4.2**	Form of Rights Agreement
5.1**	Opinion of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP
10.1**	1997 Stock Plan
10.2**	Long-Term Stock Option Plan

10.3**	2004 Equity Incentive Plan
10.4**	Employee Stock Purchase Plan
10.5**	Change in Control Severance Plan
10.6**	Warrant issued to Comdisco, dated as of April 27, 1998
10.7**	Warrant issued to Silicon Valley Bank, dated as of November 26, 2002
10.8**	Amended and Restated Lease Agreement, 951 Gateway Boulevard, between the registrant and HMS Gateway Office L.P., dated January 1, 2001
10.9**	Lease Agreement, 901 Gateway Boulevard, between the registrant and HMS Gateway Office L.P., dated January 1, 2001
10.10#	Collaboration Agreement between the registrant and Glaxo Group Limited, dated as of November 14, 2002
10.11**	Form of Indemnification Agreement for directors and officers of the registrant
10.12**	Class A Common Stock Purchase Agreement between the registrant and SmithKline Beecham Corporation, dated as of March 30, 2004
10.13**	Amended and Restated Investors' Rights Agreement by and among the registrant and the parties listed therein, dated as of May 11, 2004
10.14**	Amended and Restated Governance Agreement by and among the registrant, SmithKline Beecham Corporation and GlaxoSmithKline dated as of June 4, 2004
10.15#	Strategic Alliance Agreement between the registrant and Glaxo Group Limited, dated as of March 30, 2004
10.16#	License Agreement between the registrant and Janssen Pharmaceutica, dated as of May 14, 2002
10.17**	Offer Letter with Rick E Winningham dated August 23, 2001
10.18**	Full Recourse Note Secured by Deed of Trust and Stock Pledge issued by Rick E Winningham to the registrant, dated as of July 1, 2002
10.19**	Stock Pledge Agreement between the registrant and Rick E Winningham, dated as of July 1, 2002
10.20**	Letter Agreement between the registrant and Rick E Winningham, dated as of June 4, 2004
10.21**	Offer Letter with Patrick P.A. Humphrey dated April 6, 2001
10.22**	Full Recourse Note Secured by Deed of Trust and Stock Pledge issued by Patrick P.A. Humphrey to the registrant, dated as of February 27, 2002
10.23**	Stock Pledge Agreement between the registrant and Patrick P.A. Humphrey, dated as of February 27, 2002
10.24**	Letter Agreement between the registrant and Patrick P.A. Humphrey dated June 4, 2004
10.25**	Offer Letter with David L. Brinkley dated June 30, 2000

10.26**	Warrant issued to Comdisco, dated as of May 7, 1997
10.27**	Letter Agreement between the registrant and Marty Glick, dated as of September 10, 2004
10.28	Class A Common Stock Purchase Agreement between the registrant and GSK
21.1**	List of Subsidiaries
23.1**	Consent of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP (included in Exhibit 5.1)
23.2	Consent of Independent Registered Public Accounting Firm
24.1**	Power of Attorney

** Previously filed

Application has been made to the Securities and Exchange Commission to seek confidential treatment of certain provisions. Omitted material for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.

(b) *Consolidated Financial Statements Schedules*:

All schedules for which provision is made in the applicable accounting regulations of the Securities and Exchange Commission are not required under the related instructions, the required information is disclosed in the notes to the consolidated financial statements or the schedules are inapplicable, and therefore have been omitted.

Item 17. Undertakings.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to provisions described in Item 14 above, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The registrant hereby undertakes (1) to provide to the underwriters at the closing specified in the purchase agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser; (2) that for purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective; and (3) that for the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in South San Francisco, California on September 29, 2004.

THERAVANCE, INC.

By: *

Rick E Winningham
Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

Name	Title	Date
*	Chief Executive Officer and Director (principal executive officer)	September 29, 2004
Rick E Winningham		
*	Chief Financial Officer (principal financial and accounting officer)	September 29, 2004
Marty Glick		
*	Director	September 29, 2004
P. Roy Vagelos		
*	Director	September 29, 2004
Julian C. Baker		
*	Director	September 29, 2004
Jeffrey M. Drazan		
*	Director	September 29, 2004
Robert V. Gunderson, Jr.		
*	Director	September 29, 2004
Arnold J. Levine		
*	Director	September 29, 2004
Ronn C. Loewenthal		
*	Director	September 29, 2004
Michael Mullen		
*	Director	September 29, 2004
William H. Waltrip		
*	Director	September 29, 2004
George M. Whitesides		
*	Director	September 29, 2004
William D. Young		

*By: /s/ BRADFORD J. SHAFER

Bradford J. Shafer
Attorney-in-fact

EXHIBIT INDEX

Exhibit No.	Exhibit Index
1.1**	Form of Purchase Agreement
3.1**	Restated Certificate of Incorporation of the registrant (in effect until September 27, 2004)
3.2	Amended and Restated Certificate of Incorporation of the registrant effecting a reverse stock split (currently in effect)
3.3**	Form of Amended and Restated Certificate of Incorporation of the registrant to take effect upon the closing of the offering
3.4**	Bylaws of the registrant (currently in effect)
3.5**	Form of Amended and Restated Bylaws to take effect as of the closing of the offering
4.1**	Specimen certificate representing the common stock of the registrant
4.2**	Form of Rights Agreement
5.1**	Opinion of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP
10.1**	1997 Stock Plan
10.2**	Long-Term Stock Option Plan
10.3**	2004 Equity Incentive Plan
10.4**	Employee Stock Purchase Plan
10.5**	Change in Control Severance Plan
10.6**	Warrant issued to Comdisco, dated as of April 27, 1998
10.7**	Warrant issued to Silicon Valley Bank, dated as of November 26, 2002
10.8**	Amended and Restated Lease Agreement, 951 Gateway Boulevard, between the registrant and HMS Gateway Office L.P., dated January 1, 2001
10.9**	Lease Agreement, 901 Gateway Boulevard, between the registrant and HMS Gateway Office L.P., dated January 1, 2001
10.10#	Collaboration Agreement between the registrant and Glaxo Group Limited, dated as of November 14, 2002
10.11**	Form of Indemnification Agreement for directors and officers of the registrant
10.12**	Class A Common Stock Purchase Agreement between the registrant and SmithKline Beecham Corporation, dated as of March 30, 2004
10.13**	Amended and Restated Investors' Rights Agreement by and among the registrant and the parties listed therein, dated as of May 11, 2004
10.14**	Amended and Restated Governance Agreement by and among the registrant, SmithKline Beecham Corporation and GlaxoSmithKline dated as of June 4, 2004
10.15#	Strategic Alliance Agreement between the registrant and Glaxo Group Limited, dated as of March 30, 2004
10.16#	License Agreement between the registrant and Janssen Pharmaceutica, dated as of May 14, 2002
10.17**	Offer Letter with Rick E Winningham dated August 23, 2001
10.18**	Full Recourse Note Secured by Deed of Trust and Stock Pledge issued by Rick E Winningham to the registrant, dated as of July 1, 2002

10.19**	Stock Pledge Agreement between the registrant and Rick E Winningham, dated as of July 1, 2002
10.20**	Letter Agreement between the registrant and Rick E Winningham, dated as of June 4, 2004
10.21**	Offer Letter with Patrick P.A. Humphrey dated April 6, 2001
10.22**	Full Recourse Note Secured by Deed of Trust and Stock Pledge issued by Patrick P.A. Humphrey to the registrant, dated as of February 27, 2002
10.23**	Stock Pledge Agreement between the registrant and Patrick P.A. Humphrey, dated as of February 27, 2002
10.24**	Letter Agreement between the registrant and Patrick P.A. Humphrey dated June 4, 2004
10.25**	Offer Letter with David L. Brinkley dated June 30, 2000
10.26**	Warrant issued to Comdisco, dated as of May 7, 1997
10.27**	Letter Agreement between the registrant and Marty Glick, dated as of September 10, 2004
10.28	Class A Common Stock Purchase Agreement between the registrant and GSK
21.1**	List of Subsidiaries
23.1**	Consent of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP (included in Exhibit 5.1)
23.2	Consent of Independent Registered Public Accounting Firm
24.1**	Power of Attorney

** Previously filed

Application has been made to the Securities and Exchange Commission to seek confidential treatment of certain provisions. Omitted material for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.

QuickLinks

Exhibit 3.2

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
THERAVANCE, INC.

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

Theravance, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"),

DOES HEREBY CERTIFY:

FIRST: That the name of this corporation is Theravance, Inc. and that this corporation was originally incorporated pursuant to the General Corporation Law on November 19, 1996 under the name Advanced Medicine, Inc.

SECOND: That the Board of Directors duly adopted resolutions proposing to further amend and restate the Restated Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Restated Certificate of Incorporation of this corporation be further amended and restated in its entirety as follows:

ARTICLE I

The name of this corporation is Theravance, Inc.

ARTICLE II

The address of the registered office of this corporation in the State of Delaware is 15 East North Street, in the City of Dover, County of Kent. The name of its registered agent at such address is Incorporating Services, Ltd.

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

A. *Classes of Stock*. This corporation is authorized to issue three classes of stock to be designated, respectively, "Common Stock," "Class A Common Stock", and "Preferred Stock." The total number of shares that this corporation is authorized to issue is 132,193,547 shares. 120,000,000 shares shall be Common Stock, 8,967,741 shares shall be Class A Common Stock, and 3,225,806 shares shall be Preferred Stock, each with a par value of $0.01 per share.

B. *Rights, Preferences and Restrictions of Preferred Stock*. The Preferred Stock authorized by this Restated Certificate of Incorporation may be issued from time to time in one or more series. The Board of Directors is hereby authorized, in the resolution or resolutions adopted by the Board of Directors providing for the issue of any wholly unissued series of Preferred Stock, within the limitations and restrictions stated in this Restated Certificate of Incorporation, to fix or alter the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), the redemption price or prices, and the liquidation preferences of any wholly unissued series of Preferred Stock, and the number of shares constituting any such series and the designation

thereof, or any of them, and to increase or decrease the number of shares of any series subsequent to the issue of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

Upon the filing of this Restated Certificate of Incorporation, each one (1) share of this corporation's Common Stock and Class A Common Stock outstanding immediately prior to the filing of this Restated Certificate of Incorporation shall be automatically combined (via reverse stock split) into (1/1.55) of one share of this corporation's Common Stock or Class A Common Stock, respectively, without any action by the holder thereof (the "Reverse Stock Split"). No fractional shares shall be issued in connection with the Reverse Stock Split, and the number of outstanding shares of Common Stock and/or Class A Common Stock held by each holder immediately after the Reverse Stock Split shall be rounded down to the nearest whole share determined on the basis of the total number of shares of Common Stock and/or Class A Common Stock then held by such holder. In lieu of issuing fractional shares upon the Reverse Stock Split, this corporation shall pay holders the fair market value, as of the time of filing of this Amended and Restated Certificate of Incorporation and as determined in good faith by this corporation's Board of Directors, of the fractional shares that would have been issued upon the Reverse Stock Split but for the preceding sentence.

Every share number, dollar amount and other provision contained in this Amended and Restated Certificate of Incorporation has been adjusted for the Reverse Stock Split.

C. *Common Stock and Class A Common Stock*. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock and Class A Common Stock are as set forth below in this Section C of this Article IV(C).

1. *Dividend Rights*. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, if any, the holders of the Common Stock and Class A Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of this corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors and shall share equally on a per share basis in all such dividends and other distributions. In the case of dividends or other distributions payable in stock of the corporation including, distributions pursuant to stock splits or divisions of the stock of the corporation which occur after the initial issuance of Class A Common Stock, only shares of Common Stock shall be paid or distributed with respect to Common Stock and only shares of Class A Common Stock shall be paid or distributed with respect to Class A Common Stock. In the case of any combination or reclassification of the Common Stock or the Class A Common Stock, the shares of the Common Stock or the Class A Common Stock, as the case may be, shall also be combined or reclassified so that the number of shares of Common Stock outstanding immediately following such combination or reclassification shall bear the same relationship to the number of shares of Common Stock outstanding immediately prior to such combination or reclassification as the number of shares of Class A Common Stock outstanding immediately following such combination or reclassification bears to the number of shares of Class A Common Stock outstanding immediately prior to such combination or reclassification.

2. *Liquidation Rights*. Upon the liquidation, dissolution or winding up of this corporation, subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights, if any, the assets of this corporation shall be distributed among the holders of Common Stock and Class A Common Stock pro rata based on the number of shares of Common Stock and Class A Common Stock held by each.

3. *Voting Rights*. Except as set forth in Section C.10 of this Article IV, the Common Stock and Class A Common Stock shall vote together on matters as a single class and the holder of each share of Common Stock and the holder of each share of Class A Common Stock shall each have the right to

one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of this corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. The number of authorized shares of Common Stock and Class A Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of this corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

4. *Redemption*. Subject to the provisions of the Governance Agreement, dated as of May 11, 2004, among this corporation, SmithKline Beecham Corporation, a Pennsylvania corporation ("GSK"), GlaxoSmithKline plc, an English public limited company ("GlaxoSmithKline") and Glaxo Group Limited, a limited liability company organized under the laws of England and Wales, as such agreement may be amended from time to time (such agreement, as amended from time to time, the "Governance Agreement"), fifty percent (50%) of the then Callable/Puttable Shares (as defined below in Section C.11 of this Article IV) may be redeemed (the "Call"), out of funds legally available therefor, at the price and upon the terms and conditions set forth below. Pursuant to the Governance Agreement, GSK is required to inform the Company, in the period between June 1, 2007 and no later than the close of business on July 1, 2007, in writing whether or not it desires to exercise the Call pursuant to this Section C.4. If GSK does request the Call, it shall provide the desired date of redemption pursuant to the Call (the "Call Date") in such notice, which date of redemption shall not be later than July 31, 2007. Upon the occurrence of the Call pursuant to this Section 4, each holder of Callable/Puttable Shares shall receive the Call Price (as defined below) for fifty percent (50%) of the Callable/Puttable Shares held by such holder in accordance with the provisions of this Section C.4 and the Governance Agreement. The Class A Common Stock shall not be callable or redeemable.

(a) *Call Price*. The call price shall be $54.25 per share of Common Stock that constitutes a Callable/Puttable Share (the "Call Price"), subject to adjustments pursuant to paragraph (c) of this Section 4.

(b) *Call Notice*. Notice of the Call shall be given through the mailing by the corporation of a notice that the Call will occur (the "Call Notification"), postage prepaid, to the holders of record of the shares of Common Stock that constitute Callable/Puttable Shares at their respective addresses then appearing on the books of the corporation, not more than thirty nor less than ten calendar days prior to Call Date, but neither failure to mail such notice nor any defect therein or in the mailing thereof shall affect the validity of the Call.

(c) *Adjustments*. If the corporation shall at any time after the initial issuance of any Common Stock pay any dividend on Common Stock payable in Common Stock or effect a subdivision or combination of the Common Stock (by reclassification or otherwise) into a greater or lesser number of shares of Common Stock, then in each such case the Call Price shall be adjusted by multiplying the Call Price by the ratio of the number of shares of Common Stock outstanding immediately prior to such event to the number of shares of Common Stock outstanding immediately after such event. If the corporation shall at any time declare or pay any dividend on Common Stock in cash, securities or other property other than Common Stock, the Call Price shall be reduced by the per share value of such cash, securities or other property. The Independent Directors (as defined in the Governance Agreement) shall determine in good faith the value of any non-cash dividend for purposes of the Call or the Call Price set forth in the immediately preceding sentence.

(d) *Condition to the Corporation's Obligations*. Notwithstanding any other provision of this Article IV, the corporation's obligation to pay the Call Price in respect of shares of Common Stock with respect to which the Call Notification has been given (and to deposit with the Depositary (as defined below) funds pursuant to Section C.6(a) of this Article IV) shall be conditioned upon the corporation's having received from GSK or GlaxoSmithKline, or any other affiliate of GSK, the

sum of (i) funds in an amount equal to the product of 50% of the Callable/Puttable Shares existing on the Call Date multiplied by the Call Price, and (ii) such additional funds, if any, sufficient to permit the corporation to redeem the shares of Common Stock with respect to which the Call Notification has been given without violating Section 160 of the Delaware General Corporation Law, any bankruptcy or insolvency law or any other law or regulation for the protection of creditors (collectively, the sum of (i) and (ii) is referred to as the "Call Amount"). The corporation shall only use the funds received from GSK, GlaxoSmithKline or their Affiliates to fund the Depositary for the purposes of effecting the Call pursuant to this Section C.4.

(e) *Enforcement of GSK Obligations*. The corporation shall be mandatorily obligated to take (and shall have no corporate power or capacity not to take) such action as may be necessary to enforce the obligations of GSK and GlaxoSmithKline and their affiliates to pay the Call Amount upon receipt of notice from GSK that it intends to exercise the Call, including, without limitation, all actions required to cause GSK and GlaxoSmithKline and their Affiliates to perform their respective obligations under Section 3.1 of the Governance Agreement.

5. *Put by Holders*. Unless the Call has been previously exercised, during the Put Period (as defined below in Section C.11(h) of this Article IV), each holder shares of Common Stock that constitute Callable/Puttable Shares shall have the option (the "Put") to require the corporation to redeem up to fifty percent (50%) of the shares of Common Stock that constitute Callable/Puttable Shares held by such holder.

(a) *Put Price*. In connection with the exercise of the Put by any holder of Common Stock that constitutes Callable/Puttable Shares, the corporation shall redeem each share of Common Stock subject to the Put Notice at a put price per share equal to $19.375 (the "Put Price"), subject to adjustment pursuant to Section C.5(c) of this Article IV. Each holder of shares of Common Stock that constitute Callable/Puttable Shares shall have the right to require the corporation to redeem up to fifty percent (50%) of such holder's shares of Common Stock that constitute Callable/Puttable Shares by delivery of the Put Notice (as defined below) during the Put Period to the corporation or the Depositary (as defined below) electing to have up to fifty percent (50%) of the shares of Common Stock that constitute Callable/Puttable Shares held by such holder redeemed by the corporation, accompanied by a certificate or certificates representing such shares.

(b) *Put Notice*. At least ten and not more than thirty days prior to the beginning of the Put Period or, in the event of an acceleration of the Put in accordance with the terms of Section C.7 of this Article IV, as soon as practicable following the date of the occurrence of the Insolvency Event (as defined below in Section C.7 of this Article IV) giving rise to such acceleration (but in no event later than the tenth day following such date), the corporation shall mail the Put Notification (as defined below in Section C.11(g) of this Article IV) to each holder of shares of Common Stock that constitute Callable/Puttable Shares at such holder's address as it appears on the transfer books of the corporation at the address for such holder set forth in the records of the corporation, with a form of Put Notice to be used by such holder in exercising the Put. The Put Notification shall comply in all respects with applicable provisions of the Securities Exchange Act as in effect at the time the Put Notification is given. A notice similar to the Put Notification shall be given by the corporation by publication in the *Wall Street Journal* at least ten and no more than thirty days prior to the beginning of the Put Period or, in the event of an acceleration of the Put, in accordance with the terms of Section C.7 of this Article IV, as soon as practicable following the date of the occurrence of the Insolvency Event giving rise to such acceleration (but in no event later than the tenth day following such date). If the corporation shall fail to give the Put Notification to the holders of Common Stock at least ten days prior to the beginning of the Put Period or, in the event of an acceleration of the Put in accordance with the terms of Section C.7 of this Article IV, as soon as practicable following the date of the occurrence of the Insolvency Event giving rise to such acceleration (but in no event later than the tenth day following such date), as provided

herein, the rights of the holders of Common Stock shall not be prejudiced thereby and the Put shall nevertheless become exercisable at the beginning of the Put Period as herein provided but the expiration of the Put Period shall be extended to that date which is thirty-five Business Days (as defined below in Section C.11(b) of this Article IV), or, in the event of such acceleration, sixty-five Business Days, from the date the Put Notification is given to holders of Common Stock. To facilitate the giving of the Put Notification to the holders of Common Stock, the Board of Directors may fix a record date for determination of holders of Common Stock entitled to be given the Put Notification, which record date may not be more than five days prior to the date the Put Notification is given pursuant to this paragraph (b).

(c) *Adjustments*. If the corporation shall effect a subdivision or combination of the Common Stock (by reclassification or otherwise) into a greater or lesser number of shares of Common Stock, then in each such case the Put Price shall be adjusted by multiplying the Put Price in effect immediately prior to such event by the ratio of the number of shares of Common Stock outstanding immediately prior to such event to the number of shares of Common Stock outstanding immediately after such event. If the corporation shall at any time declare or pay any dividend on Common Stock in cash, securities or other property other than Common Stock, the Put Price shall be reduced by the per share value of such dividend. The Independent Directors shall determine in good faith the value of any non-cash dividend for purposes of the Put or the Put Price set forth in the immediately preceding sentence.

(d) *Condition to the Corporation's Obligations*. Notwithstanding any other provision of this Article IV, the corporation's obligation to pay the Put Price in respect of shares of Common Stock with respect to which the Put has been properly exercised (and to deposit with the Depositary funds pursuant to Section C.6(a) of this Article IV) shall be conditioned upon the corporation's having received from GSK, GlaxoSmithKline, or any of their Affiliates, the sum of (i) funds in an amount equal to the product of the number of shares of Common Stock that constitute Callable/Puttable Shares with respect to which the Put has been properly exercised multiplied by the Put Price, and (ii) such additional funds, if any, sufficient to permit the corporation to redeem the shares of Common Stock with respect to which the Put has been properly exercised without violating Section 160 of the Delaware General Corporation Law, any bankruptcy or insolvency law or any other law or regulation for the protection of creditors (collectively, the sum of (i) and (ii) is referred to as the "Put Amount"). In addition, the corporation shall be relieved of any obligation to pay the Put Amount in the event that GSK shall offer to purchase 50% of the outstanding shares of Common Stock that constitute Callable/Puttable Shares from each holder of such shares at a price per share equal to the Put Price. The corporation shall only use the funds received from GSK, GlaxoSmithKline or their Affiliates to fund the Depositary for the purposes of effecting the Put pursuant to this Section C.5. Notwithstanding anything to the contrary in this Restated Certificate of Incorporation, in no event shall the amount required to be paid by GSK or GlaxoSmithKline to the corporation and/or to holders of Common Stock in connection with the Put exceed $525,000,000.

(e) *Enforcement of GSK Obligations*. The corporation shall be mandatorily obligated to take (and shall have no corporate power or capacity not to take) such action as may be necessary to enforce the obligations of GSK, GlaxoSmithKline and their affiliates to pay the Put Amount (and any other amounts payable pursuant to Section 3.4 of the Governance Agreement), including, without limitation, all actions required to cause GSK, GlaxoSmithKline and their affiliates to perform their respective obligations under Section 3.4 of the Governance Agreement.

6. *Procedures*.

(a) *Payment*. (i) In the event the Call is exercised by GSK, the corporation shall deposit or cause to be deposited the aggregate Call Price (in each case, together with accrued and unpaid dividends to such date) with the Depositary, in trust for payment and issuance to the holders of

the Common Stock, and deliver irrevocable written instructions authorizing the Depositary to apply such deposit solely to the payment of the Call Price. The corporation shall deposit the aggregate Call Price and any declared and unpaid dividends: (x) on or prior to the second Business Day prior to the Call Date, if GSK has short-term credit ratings of not less than A-1 from Standard & Poor's Rating Services ("S&P") and not less than P-1 from Moody's Investors Service, Inc. ("Moody's") at the time GSK gives notice of its intention to exercise the Call pursuant to Section C.4 of this Article IV, or (y) on or prior to the date any Call Notification is first sent or given, if GSK's short credit ratings are less than A-1 from S&P or less than P-1 from Moody's at the time that GSK gives its notice of its intention to exercise the Call pursuant to Section C.4 of this Article IV (the date in (x) or (y), as applicable, being the "Call Price Deposit Date"), provided that the corporation shall have received the aggregate Call Price from GSK or GlaxoSmithKline at least one Business Day prior to the Call Price Deposit Date. Each holder of shares of Common Stock on the Call Date will be paid the Call Price for their shares of Common Stock subject to the Call within three Business Days following the surrender of the certificate or certificates representing such shares to the Depositary together with a properly executed letter of transmittal covering such shares; provided, however, the consideration payable to a holder an option, warrant, right or other security described in Section 3.3 of the Governance Agreement shall be paid upon the date of conversion, exercise or exchange of such option, warrant, right or security. The corporation's written instructions to the Depositary may provide that any of such deposit remaining unclaimed, at the expiration of two years after the date fixed for the Call, by the holder of any shares of Common Stock subject to the Call be, subject to applicable law, returned to the corporation and revert to the general funds of the corporation, after which return such holder shall have no claim against the Depositary but shall have a claim as an unsecured creditor against the corporation for the Call Price together with accrued and unpaid dividends to the Call Date, without interest; provided, however, such two year period shall be extended with respect to any holder of options, warrants, rights or securities described in Section 3.3 of the Governance Agreement until such time as the time period to convert, exercise or exchange such options, warrants, rights or securities has lapsed. The Call Notification having been duly given, or the Depositary having been irrevocably authorized by the corporation to give said notice, and the Call Amount (together with accrued and unpaid dividends to the Call Date) having been deposited, all as aforesaid, then all shares of Common Stock with respect to which such deposit shall have been made pursuant to exercise of the Call shall forthwith, whether or not the Call Date shall have occurred or the certificates for such shares of Common Stock shall have been surrendered for cancellation, be deemed no longer to be outstanding for any purpose, and all rights with respect to such shares shall thereupon cease and terminate, except the right of the holders of such shares to receive, out of such deposit in trust, on the Call Date, the Call Price (together with accrued and unpaid dividends to the Call Date) to which they are entitled, without interest. The Company will issue to GSK (or to its designated Affiliate), on the Call Date as specified in the Call Notification, a number of duly authorized and validly issued shares of Class A Common Stock equal to the number of shares of Common Stock acquired thereby by the Company upon cancellation of the Common Stock subject to the Call.

(ii) Promptly following the end of the Put Period, the corporation shall deposit or cause to be deposited with the Depositary the funds and shares in amounts sufficient to pay the Put Price for all shares of Common Stock with respect to which the Put has been properly exercised and for which certificates representing such shares, together with a properly executed Put Notice, have been surrendered to the Depositary. Each holder of shares of Common Stock who has properly exercised the Put, and who has surrendered the shares of Common Stock with respect to which the Put has been exercised, together with a properly executed Put Notice, shall be paid and issued the Put Price for each such share properly Put promptly following the end of the Put Period. A new certificate representing the shares of Common Stock not subject to the Put shall be issued to the

holder of such shares. The corporation will issue to GSK (or to its designated Affiliate), on the date of cancellation of the Common Stock redeemed by the Company pursuant to the Put (which date shall be no later than five Business Days following the end of the Put Period), a number of duly authorized and validly issued shares of Class A Common Stock equal to the number of shares of Common Stock acquired thereby by the Company.

(iii) Any Depository selected by the corporation shall have short-term credit ratings of not less than A-1 from S&P and not less than P-1 from Moody's, and shall have long-term credit ratings of not less than AA from S&P and not less than Aa2 from Moody's. The Depositary shall invest any and all funds received by it in accordance with this Section C.6 in short-term United States government securities and shall distribute any income from such investments to either GSK or GlaxoSmithKline upon its demand.

(iv) The shares of Common Stock to be redeemed from each stockholder pursuant to the Put or the Call, as the case may be, shall be redeemed pro-rata with respect to the number of shares represented by each certificate held by such stockholder.

(v) The corporation shall only use the funds received by GSK, GlaxoSmithKline or their Affiliates to fund the Depositary for the purposes of effecting the Call or the Put, as the case may be.

(b) *Redeemed Shares*. All shares of Common Stock redeemed by the corporation pursuant to the Call or the Put, as the case may be, shall be retired and cancelled promptly after the redemption thereof and may not be reissued.

7. *Default*. Unless the Call has been previously exercised, if, prior to the last day of the Put Period, (i) the corporation shall file a voluntary petition in bankruptcy, or seek reorganization, in order to effect a plan or other arrangement with creditors or any other relief under the Bankruptcy Reform Act, Title 11 of the United States Code, as amended or recodified from time to time (the "Bankruptcy Code"), or under any state or federal law granting relief to debtors, whether now or hereafter in effect, or (ii) any involuntary petition or proceeding pursuant to the Bankruptcy Code or any other applicable state or federal law relating to bankruptcy, reorganization or other relief for debtors is filed or commenced against the corporation and the same is not dismissed within thirty days, or the corporation shall file an answer admitting the jurisdiction of the court and the material allegations of any involuntary petition, or (iii) the corporation shall be adjudicated a bankrupt, or an order for relief shall be entered by any court of competent jurisdiction under the Bankruptcy Code or any other applicable state or federal law relating to bankruptcy, reorganization or other relief for debtors, then, and upon the occurrence of such event (an "Insolvency Event"), without notice of any kind whatsoever, the Put shall thereupon become immediately exercisable by the holders of shares of Common Stock that constitute Callable/Puttable Shares until the end of the Put Period.

8. *Optional Conversion Following the Call/Put Termination Date*. Each share of Class A Common Stock outstanding immediately following (i) the Call Date or (ii) the close of business on the last day of the Put Period (in either case, the "Call/Put Termination Date"), shall, upon the written request of the holder of shares of Class A Common Stock, be converted into one share of Common Stock in accordance with the terms and conditions set forth below. All shares of Class A Common Stock converted by the corporation pursuant to this Section C.8 shall be retired and cancelled. Subject to the issuance of shares of Class A Common Stock pursuant to Section C.6(a)(i) or (ii), no shares of Class A Common Stock shall be issued after the Call/Put Termination Date.

(a) *Mechanics of Conversion*. Before any holder of Class A Common Stock shall be entitled to voluntarily convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of this corporation or of any transfer agent for the Class A Common Stock, and shall give written notice to this corporation at its

principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. This corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Class A Common Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Class A Common Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date.

(b) *Reservation of Shares*. The corporation shall provide, free from preemptive rights, out of its authorized but unissued shares, or out of shares held in its treasury, sufficient shares of Common Stock to provide for the conversion of all issued and outstanding shares of Class A Common Stock following the Call/Put Termination Date. The corporation covenants that all shares of Common Stock which may be issued upon conversion of Class A Common Stock will upon issue be fully paid and non-assessable by the corporation and free from all taxes, liens and charges with respect to the issue thereof. The corporation further covenants that, if on the Call/Put Termination Date the Common Stock shall be listed on the New York Stock Exchange or on any other national securities exchange or the NASDAQ National Market System, the corporation will, if permitted by the rules of such exchange, seek to list on each such exchange or the NASDAQ National Market System, as the case may be, all shares of Common Stock, including those issuable upon conversion of the Class A Common Stock.

9. *Legend*. Each certificate representing shares of Common Stock that constitute Callable/Puttable Shares shall bear the following legend:

"One-half of the shares of Common Stock represented hereby are subject to (i) redemption at the option of the corporation during the period, at the price and on the terms and conditions specified in the corporation's Restated Certificate of Incorporation and (ii) an option on the part of the holder, under certain circumstances, to require the corporation to redeem such shares of Common Stock, at the price and on the terms and conditions specified in the corporation's Restated Certificate of Incorporation. After redemption, the redeemed shares represented by this certificate shall cease to be outstanding for all purposes and the holder hereof shall be entitled to receive only the redemption price for such shares, without interest."

10. *Voting Rights for the Election of Directors/Board Size*. (a) Until such time as (i) GSK's Percentage Interest (as defined in the Governance Agreement) has fallen below 15% or (ii) directly as a result of any sale or other disposition by GSK or its Affiliates of Voting Stock (as defined in the Governance Agreement), GSK's Percentage Interest has fallen below 19.0%, the holders of a majority of the Class A Common Stock outstanding, voting as a separate class, shall be entitled to elect one (1) director.

(b) After and for so long as GSK's Percentage Interest is 35.1% or greater and less than 50.1% during the Interim Period (as defined in the Governance Agreement), the holders of a majority of the Class A Common Stock outstanding, voting as a separate class, shall be entitled to elect (i) one (1) director and (ii) that number of Independent Directors (as defined in the Governance Agreement) equal to GSK's Percentage Interest multiplied by the total number of Independent Directors (with such number being rounded to the nearest whole number).

(c) After and for so long as GSK's Percentage Interest is 50.1% or greater, the holders of a majority of the Class A Common Stock outstanding, voting as a separate class, shall be entitled to elect (i) that number of directors equal to one-third of the then total number of directors

comprising the Board and (ii) that number of Independent Directors equal to one-half of the total number of Independent Directors.

(d) After and for so long as GSK's Percentage Interest is 50.1% or greater, the authorized number of directors on the Board shall be no less than nine, or any greater number that is divisible by three.

(e) In the case of any directors elected pursuant to paragraphs (a), (b), and (c) of this Section C.10, each director shall be nominated in accordance with the procedures set forth in the Governance Agreement and shall have the qualifications required by the Governance Agreement.

11. *Certain Definitions*. For purposes of this Article IV, Section C, the following terms shall have the following meaning:

(a) "Affiliate" shall have the meaning ascribed to it in the Governance Agreement.

(b) "Business Day" means any day which is not a Saturday, Sunday or a federal holiday.

(c) "Callable/Puttable Shares" means (i) all outstanding shares of Common Stock that are not subject to repurchase by the Company pursuant to any employee, officer, director or consultant compensation plan as of the Call Date or the final day of the Put Period, as the case may be, (ii) all shares of Common Stock subject to issuance upon the exercise of options to acquire Common Stock granted pursuant to any employee, officer, director or consultant compensation plan that are or will be fully vested as of the Call Date or the final day of the Put Period, as the case may be, (iii) all shares of Common Stock subject to issuance upon the exercise, exchange or conversion of warrants, exchangeable or convertible securities (other than any such options described in clause (ii)) that are by their terms exercisable, exchangeable or convertible as of the Call Date or the final day of the Put Period, as the case may be.

(d) "Change in Control" means a liquidation, dissolution or winding up of this corporation and shall be deemed to be occasioned by, or to include (i) the acquisition of this corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) that results in the transfer of fifty percent (50%) or more of the outstanding voting power of this corporation; or (ii) a sale of all or substantially all of the assets of this corporation.

(e) "Depositary" means the bank or trust company having combined capital, surplus and undivided profits of at least $500,000,000 which is appointed by the corporation to serve as agent for the purpose of receiving certificates representing shares of the Common Stock upon exercise of the Put or Call, as the case may be, and distributing the Call Price or the Put Price therefor, as the case may be.

(f) "Put Notice" means a written notice electing to have shares of Common Stock redeemed by the corporation pursuant to the exercise of the Put.

(g) "Put Notification" means a written notice from the corporation to the holders of the shares of Common Stock that constitute Callable/Puttable Shares of (i) the rights of such holder to cause the corporation to redeem shares of Common Stock during the Put Period, (ii) the date of the commencement and termination of the Put Period, (iii) the Put Price, (iv) the identity and address of the Depositary and (v) instructions as to how to exercise the Put. The Put Notification shall, in all respects, comply with the requirements of the Securities Exchange Act.

(h) "Put Period" means, subject to Section C.5(b) of this Article IV, the period commencing on August 1, 2007 and ending on the close of business on the thirtieth Business Day thereafter or such later date as may be provided in Section C.5(b) of this Article IV or as may be required under the Securities Exchange Act or the Hart-Scott Rodino Antitrust Improvements Act of 1976;

provided, that in the event of acceleration of the Put Period pursuant to Section C.7 of this Article IV, the Put Period shall be the period commencing as soon as practicable following the date of the occurrence of the Insolvency Event giving rise to such acceleration (but in no event later than ten days following such date) and ending on the close of business on the sixtieth Business Day thereafter or such later date as may be provided in Section C.5(b) of this Article IV or as may be required under the Securities Exchange Act.

(i) "Securities Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(j) "Qualified Change in Control Transaction" shall mean a Change in Control of the Company approved by a majority of the Independent Directors and consummated prior to July 1, 2007 that results in payment or issuance of securities prior to such date of cash or securities with a fair market value prior to such date (as determined in good faith by a majority of the Board) equal to or greater than $19.375 per share of Common Stock (appropriately adjusted to take into account stock dividends, stock splits, recapitalizations and the like).

12. *Put and Call Not Change in Control; Qualified Change in Control Transaction.*

(a) Notwithstanding any other provision of this Article IV of this Restated Certificate of Incorporation, the transactions to be consummated pursuant to exercise of the Put or the Call shall not be deemed to be a "Change in Control" for purposes of this Article IV.

(b) The call provisions and put provisions contained in Sections C.4 through C.8 of this Article IV shall expire and be of no further force or effect immediately prior to the consummation of a Qualified Change in Control Transaction.

ARTICLE V

Except as otherwise provided in this Restated Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of this corporation.

ARTICLE VI

Subject to the provisions of the Governance Agreement, the number of directors of this corporation shall be fixed from time to time as provided in the bylaws or any amendment thereof duly adopted by the Board of Directors or by the stockholders.

ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of this corporation shall so provide.

ARTICLE VIII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of this corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of this corporation.

ARTICLE IX

A director of this corporation shall, to the fullest extent permitted by the General Corporation Law as it now exists or as it may hereafter be amended, not be personally liable to this corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General

Corporation Law is amended to authorize corporation action further eliminating or limiting the personal liability of directors, then the liability of a director of this corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended.

Any amendment, repeal or modification of this Article IX, or the adoption of any provision of this Restated Certificate of Incorporation inconsistent with this Article IX, by the stockholders of this corporation shall not apply to or adversely affect any right or protection of a director of this corporation existing at the time of such amendment, repeal, modification or adoption.

ARTICLE X

This corporation reserves the right to amend, alter, change or repeal any provision contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation, provided that so long as any shares of Common Stock and Class A Common Stock are both outstanding, this corporation shall not amend Article IV without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of shares of Common Stock and the holders of at least a majority of the then outstanding shares of shares of Class A Common Stock, each voting as separate classes for this purpose.

ARTICLE XI

To the fullest extent permitted by applicable law, this corporation is authorized to provide indemnification of (and advancement of expenses to) directors and officers of this corporation (and any other persons to which General Corporation Law permits this corporation to provide indemnification) through bylaw provisions, agreements with such directors and officers or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to this corporation, its stockholders, and others.

Any amendment, repeal or modification of the foregoing provisions of this Article XI shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director of this corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

ARTICLE XII

A. In recognition and anticipation (i) that as a result of the exercise of the Put and/or the Call, GSK or companies which, following completion of the Transaction, are controlled by, control or are under common control with GSK (excluding the corporation and any company that is controlled by the corporation) (the "GSK Group") may own a majority of the outstanding capital stock of this corporation, (ii) that directors, officers, employees or designees of GSK may serve as directors of this corporation, (iii) that the GSK Group engages and is expected to continue to engage in the same, similar or related activities and lines of business as those in which the corporation and its affiliates may engage and/or engage in other business activities that overlap with or compete with those in which the corporation and its affiliates may engage, subject only to any agreements to which the GSK Group and this corporation and its affiliates may be parties, (iv) that the corporation and its affiliates will engage in material business transactions with the GSK Group, including (without limitation) being a significant supplier of the GSK Group and engaging in joint ventures and joint development activities, and that this corporation is expected to benefit therefrom, and (v) that the corporation and its affiliates, on the one hand, and the GSK Group, on the other hand, may seek to take advantage of the same or related business and corporate opportunities or may seek to take advantage of corporate and business

opportunities that are suitable for or of interest to the other or might be suitable for or of interest to the other if the other were aware of such opportunities, and (vi) that, as a consequence of the foregoing, it is in the best interests of this corporation that the respective rights and duties of the corporation and of GSK, and the duties of any directors or officers of this corporation who are serving as designees of GSK, be determined and delineated in respect of any transactions between, or opportunities that may be suitable for or of interest to, both of the corporation and its affiliates, on the one hand, and the GSK Group, on the other hand, the provisions of this Article XII shall regulate and define the conduct of certain of the business and affairs of the corporation and its affiliates in relation to GSK and any directors or officers of the corporation who are serving as designees of GSK. As used in this Article XII, the corporation's affiliates do not include members of the GSK Group.

B. 1. The corporation and its affiliates, on the one hand, and the GSK Group, on the other hand, may each take advantage of any or all business and corporate opportunities that may be available to them without offering the other any such business or corporate opportunity, informing the other of the existence of any such business or corporate opportunity, or giving the other the opportunity to participate in any such business or corporate opportunity, and the GSK Group shall have no duty arising from engaging in the same or similar activities or lines of business as the corporation and its affiliates, and neither the GSK Group nor any of its or their respective directors or officers shall be liable to this corporation or its stockholders for any breach of any duty to this corporation by reason of such activities by the GSK Group, except as expressly contemplated by section 2 of this Article XII, Section B. Without limiting the foregoing, the corporation and its affiliates, on the one hand, and the GSK Group, on the other hand, may separately compete for the same acquisition opportunities, in the development or acquisition of the same or similar technology or intellectual property rights, and for the same customers and the same suppliers. The corporation, on its own behalf and on behalf of its affiliates, to the fullest extent permitted by law, renounces any interest in or expectancy in, any or all corporate and business opportunities that are presented to the GSK Group or to any of their officers, directors and employees, even if such officers, directors or employees are also directors of the corporation, except as expressly contemplated by section 2 of this Article XII, Section B and waives any claim that any such opportunity constituted a corporate opportunity of the corporation that should have been presented to the corporation or any of its affiliates; provided, that such renunciation shall not prevent the corporation or its affiliates from separately seeking to take advantage of any or all of such corporate and business opportunities that come to the corporation or its affiliates, or its officers, directors or employees, in their own right, or that the corporation or its affiliates, or its officers, directors or employees become aware of in their own right. Without limiting the foregoing, except as expressly set forth in subsection 2 of this Article XII, Section B, no director, officer or employee of the GSK Group who is also a director or officer of the corporation shall have any duty to inform the corporation (or any of its other directors or its officers) of the availability or potential availability of any corporate or business opportunity known to such person in his or her capacity as an officer, director or employee of GSK or any member of the GSK Group or to inform the corporation (or its other directors or officers) of the plans of the GSK Group with respect thereto.

2. In the event that a director of the corporation who has been designated by GSK to serve on the board of directors acquires knowledge of a potential transaction or technology or other matter which may be a corporate or business opportunity for both the corporation and the GSK Group, such director shall to the fullest extent permitted by law have fully satisfied and fulfilled the fiduciary duty of such director to the corporation and its stockholders with respect to such corporate and business opportunity, and the corporation to the fullest extent permitted by law renounces its interest in and waives any claim that such corporate or business opportunity constituted a corporate opportunity of the

corporation that should have been presented to the corporation or any of its affiliates, if such director acts in a manner consistent with the following policy:

(a) A corporate or business opportunity offered to any person who is a director of this corporation, and who is not a director, officer or employee of the GSK Group, shall belong to the corporation; and

(b) A corporate or business opportunity offered to any person who is a director of the corporation and who is a director, officer or employee of GSK or a member of the GSK Group, shall belong to the corporation only if such opportunity is expressly offered to such person primarily in his or her capacity as a director of the corporation, and otherwise shall belong to GSK.

3. Nothing in this Article XII, Section B shall invalidate, limit or restrict the enforceability of any agreement properly entered into by the corporation and GSK, including any non-competition agreement or agreement to provide information or share business or corporate opportunities or participate in business or corporate opportunities, or agreement intended to further effectuate the general purposes of this Article XII, Section B.

C. The provisions of this Article XII shall have no further force or effect at such time as GSK shall first cease to be the owner, in the aggregate, of twenty percent (20%) or more of the Common Stock; *provided*, *however*, that such termination shall not terminate the effect of such provisions with respect to (a) any agreement that was entered into before such time or any transaction entered into in the performance of such agreement, whether entered into before or after such time, (b) any transaction entered into before such time, or (c) any business opportunity that first arose before that time.

D. Notwithstanding anything to the contrary elsewhere contained in this Restated Certificate of Incorporation, the affirmative vote of the holders of at least 85% of the voting power of all shares of the Corporation's voting stock then outstanding, voting together as a single class, shall be required to alter, amend or repeal, or to adopt any provision inconsistent with, this Article XII.

* * *

THIRD: The foregoing amendment and restatement of the Restated Certificate of Incorporation of this corporation was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law.

FOURTH: That said amendment and restatement was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 27th day of September, 2004.

/s/ RICK E WINNINGHAM

Rick E Winningham
Chief Executive Officer

QuickLinks

Exhibit 10.10

[*]=CERTAIN INFORMATION IN THIS EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

COLLABORATION AGREEMENT

by and between

THERAVANCE, INC.

and

GLAXO GROUP LIMITED

Dated: November 14, 2002

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COLLABORATION AGREEMENT

This COLLABORATION AGREEMENT ("Agreement") dated November 14, 2002, is made by and between THERAVANCE, INC., a Delaware corporation, and having its principal office at 901 Gateway Boulevard, South San Francisco, California 94080 ("Theravance"), and GLAXO GROUP LIMITED, a United Kingdom corporation, and having its principal office at Glaxo Wellcome House, Berkeley Avenue, Greenford, Middlesex, UB6 0NN, United Kingdom ("GSK"). Theravance and GSK may be referred to as a "Party" or together, the "Parties".

RECITALS

WHEREAS, Theravance is currently developing Long-Acting b_2 Adrenoceptor Agonists such as but not limited to TD-3327 and AMI-15471 for the treatment and/or prophylaxis of asthma and other respiratory diseases;

WHEREAS, GSK is also currently developing Long-Acting b_2 Adrenoceptor Agonists such as but not limited to [*], as well as other anti-inflammatory compounds, for the treatment and/or prophylaxis of respiratory disease;

WHEREAS, GSK and Theravance desire to pool certain of their respective development compounds on an exclusive, worldwide basis to commercialize at least one Long-Acting b_2 Adrenoceptor Agonist that can be used as a single agent and/or in combination with a Long-Acting Inhaled Corticosteroid and potentially other compounds for treatment and/or prophylaxis of respiratory disease;

WHEREAS, GSK and Theravance are willing to undertake research and development activities and investment and to coordinate such activities and investment as provided by this Agreement with respect to the Collaboration Products; and

WHEREAS, GSK and Theravance believe that a collaboration pursuant to this Agreement for the development and commercialization of Collaboration Products would be desirable and compatible with their respective business objectives.

NOW, THEREFORE, in consideration of the foregoing premises and the representations, covenants and agreements contained herein, Theravance and GSK, intending to be legally bound, hereby agree as follows:

ARTICLE 1
DEFINITIONS

For purposes of this Agreement, the following initially capitalized terms, whether used in the singular or plural, shall have the following meanings:

1.1 "AMI-15471" means the Long-Acting b_2 Adrenoceptor Agonist designated as such by Theravance and all pharmaceutically acceptable salts and solvates thereof.

[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

1.2 "Adverse Drug Experience" means any of: an "adverse drug experience," a "life-threatening adverse drug experience," a "serious adverse drug experience," or an "unexpected adverse drug experience," as those terms are defined at either 21 C.F.R.(S)312.32 or 21 C.F.R.(S)314.80.

1.3 "Affiliate" of a Party means any Person, whether de jure or de facto, which directly or indirectly controls, is controlled by, or is under common control with such Person for so long as such control exists, where "control" means the decision-making authority as to such Person and, further, where such control shall be presumed to exist where a Person owns more than fifty percent (50%) of the equity (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) having the power to vote on or direct the affairs of the entity.

1.4 "API Compound" means bulk quantities of active pharmaceutical ingredient compound prior to the commencement of secondary manufacturing resulting in a Collaboration Product.

1.5 "Breaching Party" shall have the meaning set forth in Section 14.2.

1.6 "Business Day" means any day on which banking institutions in both New York City, New York, United States and London, England are open for business.

1.7 "Calendar Month" means for each Calendar Year, each of the one-month periods.

1.8 "Calendar Quarter" means for each Calendar Year, each of the three month periods ending March 31, June 30, September 30 and December 31; provided, however, that the first calendar quarter for the first Calendar Year shall extend from the Effective Date to the end of the first complete calendar quarter thereafter.

1.9 "Calendar Year" means, for the first calendar year, the period commencing on the Effective Date and ending on December 31 of the calendar year during which the Effective Date occurs, and each successive period beginning on January 1 and ending twelve (12) consecutive calendar months later on December 31.

1.10 "Change in Control" means, with respect to a Party, any transaction or series of related transactions following which continuing stockholders of such Party hold less than 50% of the outstanding voting securities of either such Party or the entity surviving such transaction.

1.11 "Claim" means all charges, complaints, actions, suits, proceedings, hearings, investigations, claims and demands.

1.12 "Collaboration Product" means any of the Long-Acting â2 Adrenoceptor Agonists identified in Section 4.1 as Pooled Compounds (including any Theravance New Compounds and Replacement Compounds, as applicable) which may become Developed and Commercialized subject to and in accordance with the terms of this Agreement, which such Collaboration Product can be used as a single agent and/or in combination with other therapeutically active components, including but not limited to a Long-Acting Inhaled Corticosteroid, for the treatment and prophylaxis of respiratory diseases. The term "Collaboration Product" shall also include any formulation of [*] or other components necessary to prepare and deliver a pharmaceutically effective dose of the Pooled Compound and any other therapeutically active component together with any delivery device.

1.13 "Commercial Conflict" means a situation where Theravance determines that GSK's decision related to Development or Commercialization of a Collaboration Product is likely to result in a [*], and that such decision is not based on the technical profile of the Collaboration Product but primarily on commercial factors whereby GSK is likely to achieve [*].

1.14 "Commercial Failure" means failure of a Collaboration Product for reasons other than Technical Failure, based on the determination that such product will result in a [*] that is materially worse than the [*] based on GSK's normal and customary procedures for determining. The [*] of a Collaboration Product will be based on [*] from such product not taking into account the [*].

1.15 "Commercialization" means any and all activities directed to marketing, promoting, distributing, offering for sale and selling a Collaboration Product, importing a Collaboration Product (to the extent applicable) and conducting Phase IV Studies. When used as a verb, "Commercialize" means to engage in Commercialization.

1.16 "Competing Product" means a product that is intended for the treatment and/or prophylaxis of respiratory diseases.

1.17 "Confidential Information" means all secret, confidential or proprietary information, data or Know-How (including GSK Know-How and Theravance Know-How) whether provided in written, oral, graphic, video, computer or other form, provided by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") pursuant to this Agreement or generated pursuant to this Agreement, including but not limited to, information relating to the Disclosing Party's existing or proposed research, development efforts, patent applications, business or products, the terms of this Agreement and any other materials that have not been made available by the Disclosing Party to the general public. Confidential Information shall not include any information or materials that the Receiving Party can document with competent written proof:

1.17.1 were already known to the Receiving Party (other than under an obligation of confidentiality), at the time of disclosure by the Disclosing Party;

1.17.2 were generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party;

1.17.3 became generally available to the public or otherwise part of the public domain after its disclosure or development, as the case may be, and other than through any act or omission of a Party in breach of such Party's confidentiality obligations under this Agreement;

1.17.4 were disclosed to a Party, other than under an obligation of confidentiality, by a Third Party who had no obligation to the Disclosing Party not to disclose such information to others; or

1.17.5 were independently discovered or developed by or on behalf of the Receiving Party without the use of the Confidential Information belonging to the other Party.

1.18 "Country" means any generally recognized sovereign entity.

1.19 "Criteria" means the requirements set forth in Schedule 1.19 that the Replacement Compounds and Theravance New Compounds must meet to become a Pooled Compound. These requirements may be amended after the Effective Date by written agreement of the Parties (such agreement not to be unreasonably withheld by either Party) to take account of any newly established data or knowledge that has or have arisen since the Effective Date that affect or is likely to affect same.

1.20 "Designated Foreign Filing" shall have the meaning set forth in Section 13.1.2(b).

1.21 "Development" or "Develop" means preclinical and clinical drug development activities, including, among other things: test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, current Good Manufacturing Practices audits, current Good Clinical Practices audits, current Good Laboratory Practices audits, analytical method validation, manufacturing process validation, cleaning validation, scale-up and post approval changes, quality assurance/quality control development, statistical analysis and report writing, preclinical and clinical studies, regulatory filing submission and approval, and regulatory affairs related to the foregoing. When used as a verb, "Develop" means to engage in Development.

1.22 "Development Expenses" means the cost of all studies or activities performed by or on behalf of GSK or any of its Affiliates pursuant to this Agreement.

1.23 "Development Milestone" shall have the meaning set forth in Section 6.2.1.

1.24 "Development Plan" means the outline plan for each Collaboration Product designed to achieve the Development for such Collaboration Product, including, without limitation, the nature, number and schedule of Development activities as well as the estimated resources necessary to implement such activities as such may be amended in accordance with the terms of this Agreement.

1.25 "Diligent Efforts" means the carrying out of obligations in a sustained manner consistent with the efforts a Party devotes to [*], based on conditions then prevailing and [*], with the objective of [*]. Diligent Efforts requires that: (i) each Party [*] and monitor such progress on an on-going basis, (ii) each Party [*] for carrying out such obligations, and (iii) each Party [*] designed to advance progress with respect to such objectives.

1.26 "Disclosing Party" shall have the meaning set forth in Section 1.17.

1.27 "Effective Date" means the first business day following the date on which the last of the conditions contained in Section 16.15 of this Agreement has been satisfied.

1.28 "Exchange Act" shall have the meaning set forth in Section 15.1.1.

1.29 "FDA" means the United States Food and Drug Administration and any successor agency thereto.

1.30 "Field" means human pharmaceutical use of Long-Acting b_2 Adrenoceptor Agonists for the treatment and/or prophylaxis of respiratory diseases.

1.31 "First Commercial Sale" means the first shipment of commercial quantities of any Collaboration Product sold to a Third Party by a Party or its sublicensees in any Country after receipt of Marketing Authorization Approval for such Collaboration Product in such Country. Sales for test marketing, sampling and promotional uses, clinical trial purposes or compassionate or similar uses shall not be considered to constitute a First Commercial Sale.

1.32 "Force Majeure Event" shall have the meaning set forth in Section 16.3.

1.33 "Governmental Authority" means any court, tribunal, arbitrator, agency, legislative body, commission, official or other instrumentality of (i) any government of any Country, (ii) a federal, state, province, county, city or other political subdivision thereof or (iii) any supranational body, including without limitation the European Agency for the Evaluation of Medicinal Products.

1.34 "GSK Compound" means a GSK Initially Pooled Compound, any Replacement Compound offered up to the collaboration by GSK or a GSK non-LABA Compound utilised by GSK for Development purposes in relation to combination product activity under this Agreement currently owned or subsequently discovered by GSK and/or its predecessors in title or in-licensed from a Third Party by GSK and/or its predecessors in title.

1.35 "GSK Initially Pooled Compound" shall mean the chemical entities individually identified as [*] and all pharmaceutically acceptable [*] thereof.

1.36 "GSK Invention" means an Invention that is invented by an employee or agent of GSK solely or jointly with a Third Party.

1.37 "GSK Know-How" means all present and future information directly relating to the Collaboration Products, a GSK Compound or the GSK Inventions, including without limitation all data, records, and regulatory filings relating to Collaboration Products, that is required for Theravance to perform its obligations or exercise it rights under this Agreement, and which during the Term are in GSK's or any of its Affiliates' possession or control and are or become owned by, or otherwise may be licensed to (provided there is no restriction on GSK thereof), GSK. GSK Know-How does not include any GSK Patents.

1.38 "GSK non-LABA Compound" means any other compound contributed to the collaboration by GSK pursuant to Section 4.2.1 for the purpose of developing a combination product.

1.39 "GSK Patents" means all present and future patents and patent applications including United States provisional applications and any continuations, continuations-in-part, divisionals, registrations, confirmations, revalidations, reissues, Patent Cooperation Treaty applications, certificates of addition, utility models, design patents, petty patents as well as all other intellectual property related to the application or patent including extensions or restorations of terms thereof, pediatric use extensions, supplementary protection certificates or any other such right covering the Pooled Compounds, Collaboration Products, a GSK Compound or the GSK Inventions which are or become owned by GSK or GSK's Affiliates, or as to which GSK or GSK's Affiliates otherwise are or become licensed, now or in the future, where GSK has the right to grant the sublicense rights granted to Theravance under this Agreement, which such patent rights cover the making, having made, use, offer for sale, sale or importation of the Collaboration Products.

1.40 "Hatch-Waxman Certification" shall have the meaning set forth in Section 13.3.

1.41 "Hostile Tender Offer" shall have the meaning set forth in Section 15.2.6.

1.42 "Indemnified Party" shall have the meaning set forth in Section 12.3.1.

1.43 "Indemnifying Party" shall have the meaning set forth in Section 12.3.1.

1.44 "Invention" means any discovery (whether patentable or not) invented during the Term as a result of research, Development or manufacturing activities and specifically related to a Pooled Compound or Collaboration Product hereunder.

1.45 "Investigational Authorization" means, with respect to a Country, the regulatory authorization required to investigate a Collaboration Product in such Country as granted by the relevant Governmental Authority.

1.46 "Joint Invention" means an Invention that is invented jointly by employees and/or agents of both Theravance and GSK hereunder and the patent rights in such Invention.

1.47 "Joint Project Committee" shall have the meaning set forth in Section 3.2.

1.48 "Joint Steering Committee" shall have the meaning set forth in Section 3.1.

1.49 "LABA/ICS Combination Product" means a product that contains a Pooled Compound and a Long-Acting Inhaled Corticosteroid for the treatment and/or prophylaxis of respiratory diseases. A LABA/ICS Combination Product shall also be considered a Collaboration Product.

1.50 "Laws" means all laws, statutes, rules, regulations (including, without limitation, current Good Manufacturing Practice Regulations as specified in 21 C.F.R. (S)(S) 210 and 211; Investigational New Drug Application regulations at 21 C.F.R. (S) 312; NDA regulations at 21 C.F.R. (S) 314, relevant provisions of the Federal Food, Drug and Cosmetic Act, and other laws and regulations enforced by the FDA), ordinances and other pronouncements having the binding effect of law of any Governmental Authority.

1.51 "Litigation Condition" shall have the meaning set forth in Section 12.3.2.

1.52 "Long-Acting b_2 Adrenoceptor Agonist" or "LABA" means a chemical entity that (i) [*] and (ii) has significantly longer activity than [*].

1.53 "Long-Acting Inhaled Corticosteroid" or "ICS" means a corticosteroid that has duration of action of [*].

1.54 "Losses" means any and all damages (including all incidental, consequential, statutory an treble damages), awards, deficiencies, settlement amounts, defaults, assessments, fines, dues, penalties, costs, fees, liabilities, obligations, taxes, liens, losses, lost profits and expenses (including without limitation court costs, interest and reasonable fees of attorneys, accountants and other experts) incurred by or awarded to Third Parties and required to be paid to Third Parties with respect to a Claim by reason of any judgment, order, decree, stipulation or injunction, or any settlement entered into in accordance with the provisions of this Agreement, together with all documented out-of-pocket costs and expenses incurred in complying with any judgments, orders, decrees, stipulations and injunctions that arise from or relate to a Claim of a Third Party.

1.55 "Major Market Country" means each of the United States, Canada, Japan, France, United Kingdom, Italy, Germany and Spain.

1.56 "Marketing Authorization" means, with respect to a Country, the regulatory authorization required to market and sell a Collaboration Product in such Country as granted by the relevant Governmental Authority.

1.57 "Marketing Authorization Approval" shall mean approval by a Governmental Authority for sale of a Collaboration Product, including any applicable pricing, final labeling or reimbursement approvals.

1.58 "Marketing Plan" means for each relevant Collaboration Product the global plan prepared by GSK identifying the core strategic, commercial and promotional claims and objectives for the specific Collaboration Product as reviewed and approved under Section 5.1.1.

1.59 "NDA" means a new drug application or supplemental new drug application or any amendments thereto submitted to the FDA in the United States.

1.60 "NDA Acceptance" shall mean the written notification by the FDA that the NDA has met all the criteria for filing acceptance pursuant to 21 C.F.R.(S)314.101.

1.61 "Net Sales" means the [*] GSK, its Affiliates or their licensees (or such licensees' Affiliates) to a Third Party, less the following to the extent borne by the seller and not taken into account in determining [*]: (a) [*]; (b) [*], including [*]; and (c) [*]. Net Sales shall exclude Samples distributed in the usual course of business.

1.62 "Net Sales Report" shall have the meaning set forth in Section 6.4.2.

1.63 "Officers" shall have the meaning set forth in Section 3.1.5(b).

1.64 "Other Combination Product" means any product developed pursuant to this Agreement for the treatment and/or prophylaxis of respiratory disease that contains a [*].

1.65 "Patent Infringement Claim" shall have the meaning set forth in Section 13.2.1.

1.66 "Patent Infringement Notice" shall have the meaning set forth in Section 13.2.2.

1.67 "Person" means any natural person, corporation, general partnership, limited partnership, limited liability company, joint venture, proprietorship or other business organization.

1.68 "Phase I Studies" means that portion of the Development Plan or Development relating to each Collaboration Product which provides for the first introduction into humans of such Collaboration Product including small scale clinical studies conducted in normal volunteers to obtain information on such Collaboration Product's safety, tolerability, pharmacological activity, pharmacokinetics, drug metabolism and mechanism of action, as well as early evidence of effectiveness, as more fully defined in 21 C.F.R. (S) 312.21(a).

1.69 "Phase II Studies" means, subject to Section 6.2.2, that portion of the Development Plan or Development relating to each Collaboration Product which provides for well controlled clinical trials of such Collaboration Product in patients, including clinical studies conducted in patients with the condition, and designed to evaluate clinical efficacy and safety for such Collaboration Product for one or more indications, as well as to obtain an indication of the dosage regimen required, as more fully defined in 21 C.F.R. (S) 312.21(b).

1.70 "Phase III Studies" means that portion of the Development Plan or Development relating to each Collaboration Product which provides for large scale, pivotal, clinical studies conducted in a sufficient number of patients and whose primary objective is to obtain a definitive evaluation of the therapeutic efficacy and safety of the Collaboration Product in patients for the particular indication in question that is needed to evaluate the overall risk-benefit profile of the Collaboration Product and to provide adequate basis for obtaining requisite regulatory approval(s) and product labeling, as more fully defined in 21 C.F.R. (S) 312.21(c).

1.71 "Phase IV Studies" means a study for a Collaboration Product that is initiated after receipt of a Marketing Authorization for a Collaboration Product and is principally intended to support the marketing and Commercialization of such Collaboration Product, including without limitation investigator initiated trials, clinical experience trials and studies conducted to fulfill local commitments made as a condition of any Marketing Authorization.

1.72 "Pooled Compounds" means (i) the four Long-Acting Beta-2 Adrenoceptor Agonists provided by GSK as of the Effective Date (identified as [*]), (ii) the two Long-Acting Beta-2 Adrenoceptor Agonists provided by Theravance as of the Effective Date (identified as TD-3327 and AMI-15471), (iii) the Theravance New Compounds provided by Theravance pursuant to Section 4.1, and any Replacement Compounds provided by Theravance or GSK.

1.73 "Product Supplier" means any manufacturer, packager or processor of a Collaboration Product for development, marketing and sale.

1.74 "Promotional Materials" means the core written, printed, video or graphic advertising, promotional, educational and communication materials (other than Collaboration Product labeling) for marketing, advertising and promotion of the Collaboration Products.

1.75 "Receiving Party" shall have the meaning set forth in Section 1.17.

1.76 "Replacement Compound" means a Long-Acting b_2 Adrenoceptor Agonist that meets the Criteria and is provided by Theravance or GSK, as applicable, (and "GSK Replacement Compound" and "Theravance Replacement Compound" shall be interpreted accordingly) after the Effective Date to replace a Pooled Compound for which Development has been discontinued due to Technical Failure.

1.77 "ROW" means Countries other than the Major Market Countries.

1.78 "Samples" means Collaboration Product packaged and distributed as a complimentary trial for use by patients in the Territory.

1.79 "SEC" shall have the meaning set forth in Section 15.1.2.

1.80 "Selectively" means the chemical entity binds human b_2 adrenoreceptors (a) [*] as determined by receptor binding, radioligand displacement or functional *in vitro* assays, and (b) [*].

1.81 "TD-3327" means the Long-Acting â2 Adrenoceptor Agonist so designated by Theravance and all pharmaceutically acceptable salts and solvates thereof contributed to the collaboration by Theravance.

1.82 "Taxes" shall have the meaning set forth in Section 6.9.1.

1.83 "Technical Failure" means the discontinuation of Development of a Collaboration Product for [*] reasons, such as but not limited to, or the inability to [*], or demonstraton of [*], currently marketed products, or inability to manufacture [*], or inability to produce [*] with acceptable [*].

[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

1.84 "Term" means, on a Country-by-Country and Collaboration Product-by-Collaboration Product basis, the period from the Effective Date until the later of (a) the expiration or termination of the last Valid Claim of a Patent Right covering the Pooled Compound in such Collaboration Product in such Country, and (b) fifteen (15) years from First Commercial Sale in such Country, unless this Agreement is terminated earlier in accordance with Article 14.

1.85 "Terminated Collaboration Product" shall mean a Terminated Development Collaboration Product or a Terminated Commercialized Collaboration Product.

1.86 "Terminated Commercialized Collaboration Product" shall have the meaning set forth in Section 14.4.

1.87 "Terminated Development Collaboration Product" shall have the meaning set forth in Section 14.3.

1.88 "Territory" means worldwide.

1.89 "Theravance Compound" means TD-3327 and AMI-15471, (together the "Theravance Initially Pooled Compounds"), the two Theravance New Compounds and any Replacement Compound that is offered up to the collaboration by Theravance.

1.90 "Theravance New Compound" means each of the two chemical entities meeting the Criteria and provided by Theravance to the collaboration as Pooled Compounds after the Effective Date pursuant to Section 4.1.

1.91 "Housemark" means the name and logo of GSK or Theravance or any of their respective Affiliates as identified by one Party to the other from time to time.

1.92 "Theravance Invention" means an Invention that is invented by an employee or agent of Theravance solely or jointly with a Third Party.

1.93 "Theravance Know-How" means all present and future information directly relating to the Collaboration Products, a Theravance Compound or the Theravance Inventions that is required for GSK to perform its obligations or exercise its rights under this Agreement, and which during the Term are in Theravance's or any of its Affiliates' possession or control and are or become owned by, or otherwise may be licensed (provided there are no restrictions on Theravance thereof) by, Theravance. Theravance Know-How does not include any Theravance Patents.

1.94 "Theravance Patents" means all present and future patents and patent applications including United States provisional applications and any continuations, continuations-in-part, divisionals, registrations, confirmations, revalidations, reissues, Patent Cooperation Treaty applications, certificates of addition, utility models, design patents, petty patents as well as all other intellectual property related to the application or patent including extensions or restorations of terms thereof, pediatric use extensions, supplementary protection certificates or any other such right covering the Pooled Compounds, the Collaboration Products, a Theravance Compound or the Theravance Inventions which are or become owned by Theravance or Theravance's Affiliates, or as to which Theravance or Theravance's Affiliates are or become licensed, now or in the future, with the right to grant the sublicense rights granted to GSK under this Agreement, which patent rights cover the making, having made, use, offer for sale, sale or importation of Collaboration Products.

1.95 "Third Party" means a Person who is not a Party or an Affiliate of a Party.

1.96 "Third Party Claim" shall have the meaning set forth in Section 12.3.1.

1.97 "United States" means the United States, its territories and possessions.

1.98 "Valid Claim" means any claim(s) pending in a patent application or in an unexpired patent which has not been held unenforceable, unpatentable or invalid by a decision of a court or other governmental agency of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, and which has not has been admitted to be invalid or unenforceable through reissue or disclaimer. If in any country there should be two or more such decisions conflicting with respect to the validity of the same claim, the decision of the higher or highest tribunal shall thereafter control; however, should the tribunals be of equal rank, then the decision or decisions upholding the claim shall prevail when the decisions are equal in number, and the majority of decisions shall prevail when the conflicting decisions are unequal in number.

1.99 "Withholding Party" shall have the meaning set forth in Section 6.9.1.

ARTICLE 2
RIGHTS AND OBLIGATIONS

2.1 *License Grants from Theravance to GSK.*

2.1.1 *Development License.* Subject to the terms of this Agreement, including without limitation Section 2.2, Theravance grants to GSK, and GSK accepts, an exclusive (except as to Theravance and its Affiliates) license in the Field under the Theravance Patents, Theravance Know-How and Theravance's rights in the Joint Inventions to make, have made, use and Develop Collaboration Products for Commercialization in the Territory.

2.1.2 *Commercialization License.* Subject to the terms of this Agreement, including without limitation Section 2.2, Theravance hereby grants to GSK, and GSK accepts, an exclusive license in the Field under the Theravance Patents, Theravance Know-How and Theravance's rights in the Joint Inventions to make, have made use, sell, offer for sale and import Collaboration Products in the Territory.

2.1.3 *Manufacturing License.* Subject to the terms of this Agreement, including without limitation Section 2.2, Theravance grants to GSK an exclusive license in the Field under the Theravance Patents, Theravance Know-How and Theravance's rights in the Joint Inventions to make and have made API Compound or formulated Collaboration Product in the Territory.

2.2 *Sublicensing and Subcontracting.* GSK may sublicense or subcontract its rights to Develop, Manufacture or Commercialize the Collaboration Products in whole or in part to one or more of its Affiliates, provided that the rights sublicensed or subcontracted to such Affiliate shall automatically terminate upon a change of control of such Affiliate in connection with which such Affiliate ceases to be an Affiliate of GSK. GSK may also sublicense or subcontract any of GSK's rights to Develop or Manufacture the Collaboration Products, in whole or in part, to one or more Third Parties. In the event GSK wishes to sublicense or subcontract any of GSK's rights to Commercialize the Collaboration Products, in whole or in part, to one or more Third Parties, GSK shall obtain the prior written consent of Theravance, such consent not to be unreasonably withheld, provided always that no such restriction shall apply in respect of those countries of the Territory wherein GSK is or has been required under applicable local laws to appoint a Third Party as its distributor or marketing partner. GSK shall secure all appropriate covenants, obligations and rights from any such sublicensee or subcontractor granted by it under this Agreement, including, but not limited to, intellectual property rights and confidentiality obligations in any such agreement or other relationship, to ensure that such sublicensee can comply with all of GSK's covenants and obligations to Theravance under this Agreement. GSK's rights to sublicense, subcontract or otherwise transfer its rights granted under Section 2.1 are limited to those expressly set forth in this Section 2.2.

2.3 *Trademarks and Housemarks.*

2.3.1 *Trademarks.* The Collaboration Products shall be Commercialized under trademarks (the "Trademarks") and trade dress selected by the Joint Project Committee and approved by the Joint Steering Committee. Prior to any such proposed Trademark(s) being submitted to the Joint Project Committee, GSK shall be responsible for undertaking their preliminary selection. GSK shall exclusively own all Trademarks, and shall be responsible for the procurement, filing and maintenance of trademark registrations for such Trademarks and all costs and expenses related thereto. GSK shall also exclusively own all trade dress and copyrights associated with the Collaboration Products. Nothing herein shall create any ownership rights of Theravance in and to the Trademarks or the copyrights and trade dress associated with the Collaboration Products.

2.3.2 *Housemarks.* Each Party acknowledges the goodwill and reputation that has been associated with the other Party's Housemarks over the years, and shall use such Housemarks in a manner that maintains and promotes such goodwill and reputation and is consistent with trademark guidelines. Each Party shall take all reasonable precautions and actions to protect the goodwill and reputation that has inured to the other Party's Housemarks, shall refrain from doing any act that is reasonably likely to impair the reputation of such Housemarks, and shall cooperate fully to protect such Housemarks.

2.3.3 *Ownership of Inventions.* Each Party shall promptly disclose to the other Party all Inventions made by it during the Term; provided that GSK will be allowed a reasonable time to file patent applications covering GSK Inventions prior to disclosing the GSK Invention to Theravance, and Theravance will be allowed a reasonable time to file patent applications covering Theravance Inventions prior to disclosing the Theravance Invention to GSK. Theravance shall own all Theravance Inventions and GSK shall own all GSK Inventions. All Joint Inventions shall be owned jointly by Theravance and GSK, and each Party hereby consents to the assignment or license or other disposition by the other Party of its joint interests in Joint Inventions without the need to seek the consent of the other Party to such assignment or license or other disposition; provided that any such assignment, license or other disposition shall at all times be subject to the grant of rights and accompanying conditions under Sections 2.1 and 2.2 and Article 14. The determination of inventorship for Inventions shall be made in accordance with applicable laws relating to inventorship set forth in the patent laws of the United States (Title 35, United States Code).

ARTICLE 3
GOVERNANCE OF DEVELOPMENT AND COMMERCIALIZATION OF PRODUCTS

3.1 *Joint Steering Committee.*

3.1.1 *Purpose.* The purposes of the Joint Steering Committee shall be (i) to determine the overall strategy for this collaboration between the Parties and (ii) to coordinate the Parties' activities hereunder. The Parties intend that their respective organizations will work together and will use Diligent Efforts to assure success of the collaboration.

3.1.2 *Members; Officers.* Within thirty (30) days after the Effective Date, the Parties shall establish a joint steering committee (the "Joint Steering Committee"), which shall consist of four (4) members, two (2) of whom shall be designated by each of GSK and Theravance and shall have appropriate expertise, with at least one (1) member from each Party being at least at a vice president level or higher. Each of GSK and Theravance may replace any or all of its representatives on the Joint Steering Committee at any time upon written notice to the other Party. A Party may designate a substitute to temporarily attend and perform the functions of such Party's designee at any meeting of the Joint Steering Committee. GSK and Theravance each may, on advance written notice to the other Party, invite non-member representatives of such Party to

attend meetings of the Joint Steering Committee. The Joint Steering Committee shall be chaired on an annual rotating basis by a representative of either Theravance or GSK, as applicable, on the Joint Steering Committee, with Theravance providing the first such chairperson. The chairperson shall appoint a secretary of the Joint Steering Committee, who shall be a representative of the other Party and who shall serve for the same annual term as such chairperson.

3.1.3 *Responsibilities.* The Joint Steering Committee shall perform the following functions:

(a) Manage and oversee the Development and Commercialization of the Collaboration Products pursuant to the terms of this Agreement;

(b) Review and approve the Development Plans and the Marketing Plans for Collaboration Products and any material amendments to the Development Plans and Marketing Plans;

(c) At each meeting of the Joint Steering Committee, review Net Sales for the year-to-date as available;

(d) Review and approve the progress of the Joint Project Committee;

(e) Review and approve the Trademarks selected under Section 2.3;

(f) Review and approve "go/no-go" decisions and other matters referred to the Joint Steering Committee, including, without limitation, the continued Development of a particular Collaboration Product or the inclusion of Replacement Compounds;

(g) Life cycle management of, and intellectual property protection for, the Collaboration Products;

(h) In accordance with the procedures established in Section 3.1.5, resolve disputes, disagreements and deadlocks unresolved by the Joint Project Committee; and

(i) Have such other responsibilities as may be assigned to the Joint Steering Committee pursuant to this Agreement or as may be mutually agreed upon by the Parties from time to time.

3.1.4 *Meetings.* The Joint Steering Committee shall meet in person at least once during every Calendar Year, and more frequently (i) as mutually agreed by the Parties or (ii) as required to resolve disputes, disagreements or deadlocks in the Joint Project Committee, on such dates, and at such places and times, as such Parties shall agree; provided that the Parties shall endeavor to have the first meeting of the Joint Steering Committee within thirty (30) days after the establishment of the Joint Steering Committee. The Joint Steering Committee shall arrange to meet in person or convene otherwise to assess and approve any Development Plans or Marketing Plans, if any, submitted to the Joint Steering Committee in each Calendar Year so that such plans will be reviewed and approved within thirty (30) days following submission to the Joint Steering Committee. To the extent any such Development Plans or Marketing Plans are not approved and need to be reformulated by the Joint Project Committee, such plans shall be reviewed by the Joint Steering Committee as soon as reasonably practicable after resubmission of same. Meetings of the Joint Steering Committee that are held in person shall alternate between offices of GSK and Theravance, or such other place as the Parties may agree. In addition to the annual face to face meetings the Joint Steering Committee may also be held by means of telecommunications or, video conferences as deemed appropriate by the Parties.

3.1.5 *Decision-Making.*

(a) The Joint Steering Committee may make decisions with respect to any subject matter that is subject to the Joint Steering Committee's decision-making authority and functions as

set forth in Section 3.1.3. Except as specified in Section 3.1.5(b), all decisions of the Joint Steering Committee shall be made by consensus, with the representatives from each Party presenting a unified position on behalf of such Party. The Joint Steering Committee shall use Diligent Efforts to resolve the matters within its roles and functions or otherwise referred to it.

(b) With respect to any issue, if the Joint Steering Committee cannot reach consensus within ten (10) Business Days after the matter has been brought to the Joint Steering Committee's attention, then such issue shall be referred to the Chief Executive Officer of Theravance and the Chairman of R&D of GSK (collectively, the "Officers") for resolution. The Parties accept that the use of the Officers for resolution of any unresolved issues will be on an exceptional basis. In the event that the use of the Officers occurs on more than two occasions in any consecutive twelve (12) month period and such disputes are not related to [*], then GSK will from then on retain the final vote within the Joint Steering Committee for all issues [*]. If the Officers are unable to reach consensus within thirty (30) days after the matter has been referred to them, the final decision on such disputed issue will reside with GSK; provided, however, that if the disputed issue involves [*], then the final decision will be made by a mutually acceptable Third Party mediator. Either Party can initiate such mediation on [*] to the other Party. The Parties will use best efforts to agree on a mediator within such [*]. Such mediation will occur as promptly as practicable following selection of the mediator and will be held in [*]. The decision of the mediator will be final and binding on the Parties; provided that either party shall retain all rights to bring an action against the other for damages and other monetary relief related to or arising out of the issue decided by the mediator.

3.2 *Joint Project Committee.*

3.2.1 *Purpose.* The purposes of the Joint Project Committee shall be to manage the Parties' day-to-day activities hereunder.

3.2.2 *Members; Officers.* Within thirty (30) days after the Effective Date, the Parties shall establish a Project Committee (the "Joint Project Committee"), and GSK and Theravance shall designate an equal number of representatives, up to a maximum total of eight (8) members on such Joint Project Committee, with a maximum of four (4) from each Party. Each of GSK and Theravance may replace any or all of its representatives on the Joint Project Committee at any time upon written notice to the other Party. Such representatives shall include individuals who have the relevant experience and expertise for the next twelve months as included in the Development Plan for the Collaboration Products. A Party may designate a substitute to temporarily attend and perform the functions of such Party's designee at any meeting of the Joint Project Committee. GSK and Theravance each may, on advance written notice to the other Party, invite non-member representatives of such Party to attend meetings of the Joint Project Committee. The Joint Project Committee shall be chaired by a representative of GSK. The chairperson shall appoint a secretary of the Joint Project Committee, who shall be a representative of Theravance.

3.2.3 *Responsibilities.* The Joint Project Committee shall perform the following functions:

(a) Review the Development Plans as prepared by GSK;

(b) On an annual rolling basis beginning within six months of the Effective Date, update and amend any initial Development Plan and review the Development Plan for each Collaboration Product for the following Calendar Year so that it can immediately thereafter submit such proposed Development Plan to the Joint Steering Committee for review and approval;

(c) At each meeting of the Joint Project Committee, review the Development strategy for the Collaboration Products in the Territory;

(d) At each meeting of the Joint Project Committee, review and recommend to the Joint Steering Committee any material amendments or modifications to the Development Plans;

(e) Coordinate and monitor regulatory strategy and activities for the Collaboration Products in accordance with Article 8;

(f) Review and recommend to the Joint Steering Committee "go/no-go" decisions for the Development of Collaboration Products;

(g) Review the Marketing Plans where appropriate;

(h) Review and recommend to the Joint Steering Committee any material amendments or modifications to the Marketing Plans;

(j) Discuss the state of the markets for Collaboration Products and opportunities and issues concerning the Commercialization of the Collaboration Products, including consideration of marketing and promotional strategy, marketing research plans, labeling, Collaboration Product positioning and Collaboration Product profile issues;

(k) At each meeting of the Joint Project Committee, review the status of all Studies conducted on Collaboration Products and any results therefrom;

(l) At each meeting of the Joint Project Committee, review Net Sales for the year-to-date, as available; and

(m) Have such other responsibilities as may be assigned to the Joint Project Committee pursuant to this Agreement or as may be mutually agreed upon by the Parties through the Joint Steering Committee from time to time.

3.2.4 *Meetings*. The Joint Project Committee shall meet at least once during every Calendar Quarter, and more frequently as GSK and Theravance mutually agree on such dates, and at such places and times, as such Parties shall agree; provided that the Parties shall endeavor to have the first meeting of the Joint Project Committee as a face to face meeting within thirty (30) days after the establishment of the Joint Project Committee. Meetings of the Joint Project Committee that are held in person shall alternate between the offices of GSK and Theravance, or such other place as the Parties may agree and such face to face meetings shall occur no less than twice a year. The remaining meetings may be held by means of telecommunications or video conferences as deemed appropriate. Following Commercialization of a Collaboration Product in the first Major Market, the Joint Project Committee shall meet twice a year with only one annual face to face meeting required.

3.2.5 *Decision-Making*. The Joint Project Committee may make decisions with respect to any subject matter that is subject to the Joint Project Committee's decision-making authority and functions as set forth in Section 3.2.3. All decisions of the Joint Project Committee shall be made by consensus, with the representatives from each Party presenting a unified position on behalf of such Party. If the Joint Project Committee cannot reach consensus within ten (10) Business Days after it has first met and attempted to reach such consensus, the matter shall be referred on the eleventh (11^{th}) Business Day to the Joint Steering Committee for resolution.

3.3 *Minutes of Committee Meetings*. Definitive minutes of all committee meetings shall be finalized no later than thirty (30) days after the meeting to which the minutes pertain as follows:

3.3.1 *Distribution of Minutes*. Within ten (10) days after a committee meeting, the secretary of such committee shall prepare and distribute to all members of such committee draft minutes of

the meeting. Such minutes shall provide a list of any issues yet to be resolved, either within such committee or through the relevant resolution process.

3.3.2 *Review of Minutes.* The Party members of each committee shall have ten (10) days after receiving such draft minutes to collect comments thereon and provide them to the secretary of such committee.

3.3.3 *Discussion of Comments.* Upon the expiration of such second ten (10) day period, the Parties shall have an additional ten (10) days to discuss each other's comments and finalize the minutes. The secretary and chairperson(s) of such committee shall each sign and date the final minutes. The signature of such chairperson(s) and secretary upon the final minutes shall indicate each Party's assent to the minutes.

3.4 *Expenses.* Each Party shall be responsible for all travel and related costs and expenses for its members and other representatives to attend meetings of, and otherwise participate on, a committee.

3.5 *General Guidelines and Initial Coordination Efforts.* In all matters related to the collaboration established by this Agreement, the Parties shall strive to balance as best they can the legitimate interests and concerns of the Parties and to realize the economic potential of Collaboration Products. In all matters relating to this Agreement, the Parties shall seek to comply with good pharmaceutical and environmental practices. The Parties intend, following the Effective Date, to organize meetings of internal staff to communicate and explain the provisions of this Agreement to ensure the efficient and timely Development and Commercialization of the Collaboration Products.

ARTICLE 4
DEVELOPMENT OF PRODUCTS

4.1. *Pooling of Compounds.* Subject to and consistent with the further Development principles outlined herein, each Party will offer a minimum of four (4) identified LABA compounds to this collaboration, with the intention of commercializing [*] Long-Acting Beta2 Adrenoceptor Agonist as a single agent and/or as a LABA/ICS Combination Product. Upon commencement of the collaboration pursuant to this Agreement, GSK and Theravance will contribute the following LABA compounds as Pooled Compounds to the collaboration:

GSK Compounds [*] and Theravance Compounds [*].

For the avoidance of doubt, it is agreed and hereby acknowledged by both Parties that the compounds [*] are hereby accepted as Pooled Compounds.

Theravance will provide two (2) Theravance New Compounds to the collaboration within [*] of the Effective Date in order to meet the requirement that Theravance contribute a total of four (4) LABA compounds to the Pooled Compounds. Without prejudice to the foregoing, GSK will endeavor to provide Theravance, upon Theravance's request and at [*], such assistance as may be reasonably required by Theravance to achieve this objective, including providing directly or through GSK's vendors, assistance in (i) [*], (ii) [*], (iii) [*], (iv) [*], and (v) [*].

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4.2 *Obligations for Development.*

4.2.1 *General; GSK.* Under the direction of the Joint Project Committee, specific Pooled Compounds will be identified from time to time and, as applicable, selected for Development as a Collaboration Product. The Joint Project Committee will determine the number and extent of Development of the Pooled Compounds and the criteria to be used for selecting among the eight Pooled Compounds and, subject to the other terms of this Agreement, will endeavor to move [*] forward in Development. In relation to the foregoing, GSK shall have the overall responsibility for, and use Diligent Efforts in, the performance of all such Development activities which shall include, where applicable, relevant regulatory filings (as contemplated under Article 8) for any such Collaboration Product moved forward in Development. Further, GSK shall use Diligent Efforts to advance such Collaboration Product through Development in accordance with the Go/No-Go checkpoints identified in the then current Development Plan for such Collaboration Product. GSK shall also use Diligent Efforts to contribute [*] to the collaboration for the purpose of developing a combination product and Diligent Efforts to develop an [*] which may be [*] of the Collaboration Compound and Development activities of such may continue in parallel.

4.2.2 *GSK Funding Responsibility.* GSK shall bear all costs and expenses associated with the Development of Collaboration Products for Commercialization including those incurred by Theravance (or to which it has become obligated) after the signature date of this Agreement and which previously have been discussed with and agreed to by GSK and, so far as the aforementioned Theravance costs are concerned, for the avoidance of doubt, the maximum amount shall not exceed [*].

4.2.3 *Decisions with Respect to Products.*

(a) GSK shall have the sole discretion with respect to Development decisions for Collaboration Products subject to and in accordance with Sections 3.1.5, 3.2.5, and 4.3.

(b) Notwithstanding the foregoing, the Parties acknowledge that Theravance is about to initiate a Phase I Study in two parts, on TD-3327. The initiation of this study will be approved via the Joint Project Committee in accordance with all other Development activities. Theravance shall be responsible for the routine monitoring of this study and will transfer remaining clinical development responsibility for TD-3327 to the Joint Project Committee on [*].

(c) GSK shall provide the Joint Project Committee with an update report within thirty days of (i) the initiation (i.e., first person dosed) of any Study involving a Collaboration Product, and (ii) the last person dosed/last visit in any Study relating to a Collaboration Product. GSK will provide the Joint Project Committee with a reasonably detailed "top line results" report within sixty days following the last person dosed/last visit in any Study involving a Collaboration Product.

4.2.4 *Development Timelines.* It is hereby acknowledged that GSK's strategic objective is [*]. GSK will consult with the Joint Project Committee and will share, modify and further develop all applicable Development Plans and timelines in that forum. It is recognised that success can be optimised [*]. At a strategic level, GSK is committed to this objective. However, at an operational level it is recognised that [*]. GSK will use Diligent Efforts to secure the necessary resource and will keep the Joint Project Committee informed on the progress of individual studies and activities relating to Collaboration Products as part of any changes to Development Plans and timelines. The current objective of the Collaboration is to achieve Marketing Authorization Approval in the US and other Major Markets for a Collaboration Product from one of the eight Pooled Compounds which can be used as a single agent and/or in combination with other therapeutically active components (including but not limited to a Long Acting Inhaled Corticosteroid) for the treatment and/or prophylaxis of one or more respiratory diseases [*] and Development Plans and timelines will be developed and/or refined in an effort to achieve this objective.

4.3 *Replacement Compounds.* If within [*] after the Effective Date, the Development of Collaboration Products containing [*] of the Pooled Compounds contributed by a Party is [*], it will be the option of the Party who contributed the discontinued compounds to discover and offer up to the collaboration [*] Replacement Compounds as replacements for the discontinued compounds within [*] following the discontinuation of the [*] failed compound. For the avoidance of doubt, any such new compound that satisfies the Criteria will automatically be accepted as a Pooled Compound in place of the relevant Party's discontinued compound, subject to Joint Steering Committee approval pursuant to Section 3.1.3(f). Nothing in the foregoing shall preclude either Party from having the option of offering up a Replacement Compound for a Pooled Compound at any time during the period referred to in Section 14.5 (subject to the Criteria being met and Joint Steering Committee approval pursuant to Section 3.1.3(f)).

4.4 *Transfer of Data.* As soon as practicable but in no event more than thirty (30) days after the Effective Date, the Parties shall determine what data and materials relating to TD-3327 and AMI-15471 are necessary for GSK's Development obligations pursuant to this Article 4, including any technology transfer required for API Compound manufacturing activities contemplated by Article 9, and establish a process for transferring copies of such data and material to GSK (including, to the extent available, in appropriate electronic format) or provide means of access thereto reasonably acceptable to GSK.

4.5 *LABA Activity Inside and Outside of the Collaboration.*

4.5.1 The intent of the Parties in respect of the Pooled Compounds is that such Pooled Compounds remain exclusive to this Collaboration and, subject to Sections 4.5.2 - 4.5.4 and Article 14 below, no activity in respect of such Pooled Compounds shall be permitted outside of this Agreement.

4.5.2 Subject to Article 14 and to Section 4.5.4, if prior to First Commercial Sale of a GSK Initially Pooled Compound or a GSK Replacement Compound, Development of such compound is discontinued under this Agreement ("GSK Discontinued Compound"), all rights in respect of such GSK Discontinued Compound shall revert in full to GSK and such GSK Discontinued Compound shall automatically fall outside of this Agreement except that (i) GSK shall thereafter be prohibited from carrying out any further clinical Development work or clinical activity in respect of such GSK Discontinued Compound inside the Field for at least [*] after the termination of this Agreement, and (ii) for the avoidance of doubt, GSK shall pay to Theravance a royalty on Net Sales of any such GSK Discontinued Compound in accordance with Section 14.9.

4.5.3 Subject to Article 14 and Section 4.5.4, if prior to First Commercial Sale of a Theravance Compound, Development of such compound is discontinued under this Agreement ("Theravance Discontinued Compound"), all rights in respect of such Theravance Discontinued Compound shall revert in full to Theravance and such Theravance Discontinued Compound shall automatically fall outside of this Agreement except that (i) Theravance thereafter shall be prohibited from carrying out any further clinical Development work or clinical activity in respect of such Theravance Discontinued Compound inside the Field until after the termination of this Agreement, and (ii) for the avoidance of doubt, Theravance shall pay to GSK a royalty on Net Sales of any such Theravance Discontinued Compound in accordance with Section 14.9.

4.5.4 Notwithstanding Sections 4.5.2 and 4.5.3, for so long as there is one Collaboration Product being Developed under this Agreement, neither Party shall carry out clinical Development inside the Field with any Long Acting b_2 Adrenoceptor Agonist that is not a Pooled Compound under this Agreement; provided, however, that this restriction shall not apply to any compound or product (including new product line extensions and/or re-formulation work) where the original compound or product is, as of the date of signature of this Agreement, already Commercialized.

ARTICLE 5
COMMERCIALIZATION

5.1 *Global Marketing Plans.*

5.1.1 *General.* The Joint Project Committee shall be responsible for reviewing and approving a Global Marketing Plan for each Collaboration Product ("Marketing Plan"). Each Marketing Plan shall define the goals and objectives for Commercializing the Collaboration Products in the pertinent Calendar Year consistent with the applicable Development Plan.

5.1.2 *Contents of Each Marketing Plan.* The Marketing Plan for each Collaboration Product shall be prepared during the Calendar Year wherein, and where applicable, Phase III Studies for such Collaboration Product have commenced and shall be a rolling, three year plan, updated annually and shall contain at a minimum and as appropriate to current knowledge:

(a) Results of market research and strategy, including market size, dynamics, growth, customer segmentation, customer targeting, competitive analysis and global Collaboration Product positioning;

(b) Annual sales forecasts for Major Market Countries;

(c) For each major Market Country (as available): sales plans which will include target number of sales representatives, detail order and target number of details

(d) Core, global advertising and promotion programs and strategies, including literature, media plans, symposia and speaker programs; and

(e) Core Phase III/Phase IV Studies to be conducted

5.2 *Obligations for Commercialization.* GSK shall use Diligent Efforts to Commercialize the Collaboration Products.

5.3 *Commercialization.*

5.3.1 *GSK Responsibility.* GSK shall have the sole right and responsibility for Commercialization of Collaboration Products for distribution and sale. GSK shall bear all costs and expenses associated with the Commercialization of Collaboration Products for sale or distribution.

(a) GSK shall have the sole right and responsibility to distribute, sell, record sales and collect payments for Collaboration Products.

(b) GSK shall have the sole right and responsibility for establishing and modifying the terms and conditions with respect to the sale of Collaboration Products, including, without limitation, the price or prices at which the Collaboration Products will be sold, any discount applicable to payments or receivables, and similar matters.

(c) GSK will be responsible for storage, order receipt, order fulfillment, shipping and invoicing of Collaboration Products.

5.3.2 *Semi-Annual Reports.* GSK shall provide the Joint Project Committee reports semi-annually. Such reports shall set forth in summary form the results of GSK's Commercialization activities performed during such semi-annual period in the Major Markets.

5.3.3 *Exports to the United States.* To the extent permitted by Law, the Parties shall use Diligent Efforts to prevent the Collaboration Products distributed for sale in a particular Country other than the United States from being exported to the United States for sale.

ARTICLE 6
FINANCIAL PROVISIONS

6.1 *Signing Payment; Equity Investment; One-Time Fee.*

6.1.1 *Signing Payment.* In partial consideration for the acquisition of license rights under the Theravance Patents and the Theravance Know-How by GSK under this Agreement, GSK shall on the Effective Date, pay to Theravance a non-creditable, non-refundable amount of Ten Million United States Dollars (U.S. $10,000,000).

6.1.2 *Stock Purchase.* On the Effective Date, GSK will purchase 4,000,000 shares of Theravance Series E Preferred Stock at a price of U.S.$10.00 per share for total consideration of Forty Million United States Dollars (U.S. $40,000,000). Such purchase will be made pursuant to the Preferred Stock Purchase Agreement attached hereto as Schedule 6.1.2.

6.1.3 *One-Time Fee for* [*]. Within thirty days following receipt by GSK of Theravance's written notification of the decision by Theravance to nominate [*] as a "development candidate," and in further partial consideration for the acquisition of license rights under the Theravance Patents and the Theravance Know-How by GSK under this Agreement, GSK shall pay to Theravance a non-creditable, non-refundable amount of [*]. [*] will be declared a development candidate when Theravance (a) completes a study demonstrating [*] (as per the Criteria in Schedule 1.19), and (b) [*].

6.1.4 *One-Time Fee for Each Theravance New Compound.* Within thirty days following the acceptance by the Joint Project Committee or the Joint Steering Committee of each of the [*] Theravance New Compounds to be contributed to the collaboration pursuant to Section 4.1, and in further partial consideration for the acquisition of license rights under the Theravance Patents and the Theravance Know-How by GSK under this Agreement, GSK shall pay to Theravance a non-creditable, non-refundable amount of [*] for each such Theravance New Compound.

6.2 *Milestone Payments.*

6.2.1 *General.* In further consideration of the covenants and agreements contained herein, the Parties shall also pay to each other the payments set forth below for each such Development milestone referred to therein (each, a "Development Milestone"); provided always that each such payment shall be made only one time for each Collaboration Product regardless of how many times such Development Milestones are achieved for such Collaboration Product, and no payment shall be owed for a Development Milestone which is not reached (except that, upon achievement of a Development Milestone for a particular Collaboration Product, any previous Development Milestone for that Collaboration Product for which payment was not made shall be deemed achieved and payment therefore shall be made); provided further that, in the event that more than one Development Milestone is achieved with respect to the same Collaboration Product at one time, then all applicable payments under Section 6.2 shall be made. For example, [*]. In the event of termination of development of a particular Collaboration Product and an alternative Collaboration Product replaces such Terminated Collaboration Product then milestone payments for such replacement compound shall not be paid in respect of milestones already achieved by the Terminated Collaboration Product. For example, [*].

6.2.2 *GSK to Theravance.* GSK shall make the following milestone payments to Theravance upon the achievement of the indicated Development Milestone for the first Collaboration Product in which the Long-Acting b_2 Adrenoceptor Agonist is [*], and for the first LABA/ICS Combination Product in which the Long-Acting b_2 Adrenoceptor Agonist [*]:

Milestone	Amount
[*]*	[*]
[*]**	[*]
[*]**	[*]
[*]	[*]
Registration	
[*]	[*]
[*]	[*]
[*]	[*]
Launch	
[*]	[*]
[*]	[*]
[*]	[*]
Annual Worldwide Net Sales over [*] Collaboration Product	[*]
Annual Worldwide Net Sales over [*] Combination Product	[*]

* GSK will make a [*]. The [*] for [*] is defined as [*] and will [*]. The [*] is defined as [*] and will [*].

** [*] is defined as [*] where such [*]. [*] is defined as [*].

Other Combination Products that contain a Long-Acting b_2 Adrenoceptor Agonist that is a Theravance Compound are not subject to milestone payments by GSK *only* if [*]. The Parties intend that if the collaboration is successful [*] Collaboration Products that contain a Theravance Compound, Theravance be paid the applicable milestones [*].

If GSK, either individually or as a member of the Joint Steering Committee or Joint Project Committee, discontinues the Development of a [*] Collaboration Product that is a Theravance Compound for reasons other than [*], and such compound is the [*], it will [*].

6.2.3 *Theravance to GSK.* Theravance shall make the following milestone payments to GSK upon the achievement of the indicated Development Milestone for the first Collaboration Product in which the Long-Acting b_2 Adrenoceptor Agonist is a GSK Compound and for the first LABA/ICS Combination Product in which the Long-Acting b_2 Adrenoceptor Agonist is a GSK Compound:

Milestone	Amount
Registration	
[*]	[*]
[*]	[*]
[*]	[*]
Launch	
[*]	[*]
[*]	[*]
[*]	[*]

Other Combination Products that contain a Long-Acting b_2 Adrenoceptor Agonist that is a GSK Compound are not subject to milestone payments by Theravance *only* if all milestone payments through launch have otherwise been made to GSK from any Collaboration Product [*]. The Parties intend that if the collaboration is successful [*] Collaboration Products that contain a GSK Compound, GSK be paid the applicable milestones [*].

6.2.4 *Notification and Payment.* In the event a Party achieves a Development Milestone, such Party shall promptly, but in no event more than ten (10) days after the achievement of each such Development Milestone, notify the other Party in writing of the achievement of same. For all Development Milestones achieved, each Party shall promptly, but in no event more than thirty (30) days after notification of the achievement of each such Development Milestone, remit payment to the other Party for such Development Milestone.

6.3 *Payment of Royalties on Net Sales.*

6.3.1 *Royalty on Single-Agent Collaboration Products and LABA/ICS Combination Products.*

Within twenty (20) days after the end of each Calendar Quarter, GSK shall pay Theravance royalty payments based on Net Sales in such Calendar Quarter during the Term as follows:

[*]

it being understood that [*] for purposes of the foregoing royalty calculation.

The quarterly royalty payments made under this Section 6.3.1 may be based on estimated Net Sales. Within thirty (30) days after the end of each Calendar Quarter, GSK shall calculate the actual amount of Net Sales for the previous Calendar Quarter and either credit or debit the difference between such actual and projected amount on the succeeding Calendar Quarter's royalty payment to Theravance. As soon as practical following the end of each Calendar Month, but in no event later than the 10^{th} business day of the following month, GSK will provide Theravance with an estimate of Net Sales for such Calendar Month.

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The royalties payable under this Section 6.3 shall be paid on a Country-by-Country basis from the date of first commercial sale of each Collaboration Product in a particular Country for the Term of the Collaboration.

6.3.2 *Royalty Adjustment.* The [*] royalty payable on the first [*] of total annual worldwide Net Sales under this Section 6.3 shall be reduced to [*] if all of the following occur: (i) [*]; (ii) [*]; and (iii) [*]. The [*] royalty payable on [*] under this Section 6.3 shall be [*] if all of the following occur: (i) [*]; (ii) [*]; and (iii) [*]. Nothing in the foregoing shall affect other royalties owed under this Agreement.

6.3.3 *Royalties on Other Collaboration Products Launched After the LABA/ICS Combination Product.* For any Other Collaboration Product launched after the LABA/ICS Combination Product, GSK shall within twenty (20) days after the end of each Calendar Quarter, pay Theravance royalty payments based on Net Sales in such Calendar Quarter during the Term as follows:

Annual Net Sales	Percentage Royalty
[*]	[*]

For the avoidance of doubt, the Parties agree that the royalty set forth in this Section 6.3.3 shall only be effective if GSK has launched and is selling a LABA/ICS Combination Product that is subject to the royalties under Section 6.3.1. If GSK is not selling a LABA/ICS Combination Product, then the royalty set forth in Section 6.3.1 shall apply to the first Other Combination Product launched by GSK, provided such Other Combination Product does not contain a product [*]; if such Other Combination Product contains a product [*], then the royalty payable to Theravance will be [*], provided that in no case will the royalty payable to Theravance be less than set forth in this Section 6.3.3.

6.4 *Royalty Responsibilities; Net Sales Reports.*

6.4.1 *Payments to Third Parties.*

(a) If, as a result of a settlement approved by both Parties or as a result of a final non-appealable judgment, GSK is required to pay any amounts to a Third Party directly because using or selling a Theravance Compound is found to infringe the rights of such Third Party, GSK shall deduct [*] of any such amount paid to such Third Party from the royalties otherwise due Theravance for the Collaboration Product containing such Theravance Compound, provided in no event shall such reduction reduce the royalties otherwise payable to Theravance during any Calendar Year by more than [*]; provided, further, that any excess deduction shall be carried over into subsequent years of this Agreement until the full deduction is taken.

(b) GSK shall pay any amounts owed to a Third Party as a result of the use of GSK Patents or GSK Know-How with respect to sales of Collaboration Products and shall not deduct any of such amounts from the royalties due Theravance. The foregoing is subject to Section 6.3.3.

6.4.2 *Net Sales Report.* Within thirty (30) days after the end of each Calendar Quarter, GSK shall submit to Theravance a written report setting forth Net Sales in the Territory on a Country-by-Country and Collaboration Product-by-Collaboration Product basis during such Calendar Quarter, total royalty payments due Theravance, relevant market share data and any payments made to any Third Party pursuant to Section 6.4.1(a) (each a "Net Sales Report").

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6.5 *GAAP.* All financial terms and standards defined or used in this Agreement for sales or activities occurring in the United States shall be governed by and determined in accordance with United States generally accepted accounting principles, consistently applied. Except as otherwise set forth herein, all financial terms and standards defined or used in this Agreement for sales or activities occurring outside the United States shall be governed by and determined in accordance with United Kingdom generally accepted accounting principles, consistently applied.

6.6 *Currencies.* Monetary conversion from the currency of a foreign country in which Collaboration Product is sold into US Dollars shall be calculated in accordance with either (a) the methodology referred to in GSK's then current Corporate Finance Reporting Policy or (b) as otherwise may be mutually agreed by the Parties. The following summarizes GSK's current methodology applied in accordance with its current Corporate Finance Reporting System: the cumulative year-to-date Average Rates are calculated by determining the average of (i) the preceding 31st December Spot Rate plus (ii) the Closing Spot Rates of the relevant months to date using the exact figures provided by the Reuters 2000 download. (By way of example, the Average Rate for the five months from January, 2002 to May, 2002 would be computed by taking the sum of the Spot Rates for the preceding 31st December, 2001, plus the month-end Spot Rates for the five months to May, 2002, divided by six).

6.7 *Manner of Payments.* All sums due to either Party under this Section 6 shall be payable in United States Dollars by bank wire transfer in immediately available funds to such bank account(s) as each of GSK and Theravance shall designate. GSK shall notify Theravance as to the date and amount of any such wire transfer to Theravance at least five (5) Business Days prior to such transfer. Theravance shall notify GSK as to the date and amount of any such wire transfer to GSK at least five (5) Business Days prior to such transfer.

6.8 *Interest on Late Payments.* If either Theravance or GSK shall fail to make a timely payment pursuant to this Article 6, any such payment that is not paid on or before the date such payment is due under this Agreement shall bear interest, to the extent permitted by applicable law, at the average one-month London Inter-Bank Offering Rate (LIBOR) for the United States Dollar as reported from time to time in The Wall Street Journal, effective for the first date on which payment was delinquent and calculated on the number of days such payment is overdue or, if such rate is not regularly published, as published in such source as the Joint Steering Committee agrees.

6.9 *Tax Withholding.*

6.9.1 Any taxes, levies or other duties ("Taxes") paid or required to be withheld under the appropriate local tax laws by one of the Parties ("Withholding Party") on account of monies payable to the other Party under this Agreement shall, subject to Sections 6.9.2 and 6.9.3, be deducted from the amount of monies otherwise payable to the other Party under this Agreement. The Withholding Party shall secure and send to the other Party within a reasonable period of time proof of any such Taxes paid or required to be withheld by Withholding Party for the benefit of the other Party.

6.9.2 If GSK or any GSK Affiliate is or becomes liable to withhold any taxes from payments made to Theravance under Sections 6.1 and 6.2 of this Agreement, then GSK shall pay to Theravance an amount equal to the amount GSK or the applicable GSK Affiliate owes to the relevant tax authority provided always that if Theravance is able to obtain credit for any taxes withheld ("Creditable Taxes") against any liability to tax either in the year in which the receipt is taxable or any preceding years, Theravance shall reimburse to GSK an amount equivalent to the Creditable Taxes. Theravance shall provide GSK with such reasonable evidence as GSK may reasonably request to determine whether the taxes are creditable against taxes payable by Theravance.

6.9.3 If GSK or any GSK Affiliate is or becomes liable to withhold any taxes from payments made to Theravance under Section 6.3, then such taxes may be withheld by GSK or the applicable GSK Affiliate up to a limit of [*] of the relevant payment. GSK shall pay to Theravance an amount equal to the amount GSK owes to the relevant tax authority in excess of such [*] provided always that if Theravance is able to obtain credit for any taxes withheld ("Creditable Taxes") against any liability to tax either in the year in which the receipt is taxable or any preceding years, Theravance shall reimburse to GSK an amount equivalent to the Creditable Taxes. Theravance shall provide GSK with such reasonable evidence as GSK may reasonably request to determine whether the taxes are creditable against taxes payable by Theravance.

6.10 *Financial Records; Audits.* GSK shall keep, and shall cause its Affiliates and sublicensees to keep, such accurate and complete records of Net Sales as are necessary to determine the amounts due to Theravance under this Agreement and such records shall be retained by GSK or any of its Affiliates or sublicensees (in such capacity, the "Recording Party") for at least the three preceding Calendar Years to which the Net Sales relate. During normal business hours and with reasonable advance notice to the Recording Party, such records shall be made available for inspection, review and audit, at the request and expense of Theravance, by an independent certified public accountant, or the local equivalent, appointed by Theravance and reasonably acceptable to the Recording Party for the sole purpose of verifying the accuracy of the Recording Party's accounting reports and payments made or to be made pursuant to this Agreement; provided, however that such audits may not be performed by Theravance more than once per Calendar Year. Such accountants shall be instructed not to reveal to Theravance the details of its review, except for (i) such information as is required to be disclosed under this Agreement and (ii) such information presented in a summary fashion as is necessary to report the accountants' conclusions to Theravance, and all such information shall be deemed Confidential Information of the Recording Party; provided, however, that in any event such information may be presented to Theravance in a summary fashion as is necessary to report the accountants' conclusions. All costs and expenses incurred in connection with performing any such audit shall be paid by Theravance unless the audit discloses at least a [*] shortfall, in which case the Recording Party will bear the full cost of the audit for such Calendar Year. Theravance will be entitled to recover any shortfall in payments due to it as determined by such audit, plus interest thereon calculated in accordance with Section 6.8, or alternatively shall have the right to offset and deduct any such shortfall in payments due to it against payments Theravance is otherwise required to make to the Reporting Party under this Agreement. The documents from which were calculated the sums due under this Article 6 shall be retained by the relevant Party during the Term.

ARTICLE 7
PROMOTIONAL MATERIALS AND SAMPLES

7.1 *Promotional Materials.*

7.1.1 *Review of Core Promotional Materials.* Subject to applicable Law, in accordance with the direction of the Joint Project Committee, the Parties will jointly, through consultation and with the assistance of each other, review the core Promotional Materials. The relevant legal or regulatory personnel of each Party shall have the opportunity to review and comment on all such core Promotional Materials prior to use and such comments shall be considered by the Joint Project Committee in the review of such core Promotional Materials.

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7.1.2 *Markings of Promotional Materials.* To the extent required by applicable Law, and further to the extent reasonably practicable, all Promotional Materials will indicate the contribution of the license from Theravance for the Collaboration Products. Subject to the foregoing, the Theravance Housemark and the GSK Housemark shall both be given exposure and prominence on all promotional materials, labelling, package inserts or outserts and packaging for the Collaboration Products.

7.2 *Samples.* Packaging, package inserts and outserts, Sample labels and labeling shall each contain reference to Theravance and GSK indicating, in the case of Theravance, the contribution of the license from Theravance for the Collaboration Products, if appropriate, and as may be required under applicable FDA rules and regulations.

7.3 *Statements Consistent with Labeling.* GSK shall ensure that its sales representatives detail the Collaboration Products in a fair and balanced manner and consistent with the requirements of the Federal Food, Drug and Cosmetic Act of the United States, as amended, including, but not limited to, the regulations at 21 C.F.R. (S) 202 in the United States.

7.4 *Implications of Change in Control in Theravance.* In the event that there is a Change in Control of Theravance and the references contemplated in Sections 7.1.2 and 7.2 are no longer made to "Theravance,", then other than to the extent required by applicable Law, GSK shall have the right, not to be unreasonably exercised, to terminate its obligations under Sections 7.1 and 7.2.

ARTICLE 8
REGULATORY MATTERS

8.1 *Governmental Authorities.* GSK shall be solely responsible for communicating with Governmental Authorities and will keep Theravance informed, through the Joint Project Committee and Joint Steering Committee, of any significant issue or issues arising therefrom.

8.2 *Filings.* GSK shall also be solely responsible for filing drug approval applications for Collaboration Products and will use Diligent Efforts in seeking appropriate approvals in those Countries of the Territory for Collaboration Products as GSK reasonably determines and sees fit. Such regulatory documents for each filing shall be centralized and held at the offices of GSK. Theravance shall provide such reasonable assistance as may be required by GSK where liaison between the Parties is, or may be, necessary to enable GSK to fulfill its responsibilities hereunder. GSK shall be responsible for maintaining the Approvals obtained under this Section and shall solely own all such Approvals in the Territory. GSK shall be fully responsible for bearing all costs and expense associated with undertaking and completing said registration activities in the Territory, including but not limited to the costs of preparing and prosecuting applications for such Approvals and fees payable to regulatory agencies in obtaining and maintaining same.

8.3 *Exchange of Drug Safety Information.* Subject to the second sentence of this Section 8.3, GSK shall be responsible for recording, investigating, summarizing, notifying, reporting and reviewing all Adverse Drug Experiences in accordance with Law and shall require that its Affiliates (i) adhere to all requirements of applicable Laws which relate to the reporting and investigation of Adverse Drug Experiences, and (ii) keep the Joint Project Committee apprised on a regular basis of such matters arising therefrom. The foregoing shall be subject to any of Theravance's own clinical safety obligations mandated by Law as a result of its ongoing Development activity related to TD-3327 (as such activity is more specifically referred to in Article 4) and, in acknowledgement of this, it is thereby contemplated that the Parties' respective clinical safety groups may need to discuss and agree, at the appropriate time after the Effective Date, appropriate safety data exchange procedures related to same.

8.4 *Recalls or Other Corrective Action.* Each Party shall, as soon as practicable, notify the other Party of any recall information received by it in sufficient detail to allow the Parties to comply with any

and all applicable Laws. GSK shall promptly notify Theravance of any material actions to be taken by GSK with respect to any recall or market withdrawal or other corrective action related to a Collaboration Product prior to such action to permit Theravance a reasonable opportunity to consult with GSK with respect thereto. All costs and expenses with respect to a recall, market withdrawal or other corrective action shall be borne by GSK unless such recall, market withdrawal or other corrective action was due solely to the negligence, willful misconduct or breach of this Agreement by Theravance. GSK shall have sole responsibility for and shall make all decisions with respect to any recall, market withdrawals or any other corrective action related to the Collaboration Products.

8.5 *Events Affecting Integrity or Reputation.* During the Term, the Parties shall notify each other immediately of any circumstances of which they are aware and which could impair the integrity and reputation of the Collaboration Products or if a Party is threatened by the unlawful activity of any Third Party in relation to the Collaboration Products, which circumstances shall include, by way of illustration, deliberate tampering with or contamination of the Collaboration Products by any Third Party as a means of extorting payment from the Parties or another Third Party. In any such circumstances, the Parties shall use Diligent Efforts to limit any damage to the Parties and/or to the Collaboration Products. The Parties shall promptly call a Joint Steering Committee meeting to discuss and resolve such circumstances.

ARTICLE 9
ORDERS; SUPPLY AND RETURNS

9.1 *Orders and Terms of Sale.* Except as otherwise expressly stated in this Agreement, GSK shall have the sole right to (i) receive, accept and fill orders for the Collaboration Products, (ii) control invoicing, order processing and collection of accounts receivable for the Collaboration Products sales, (iii) record the Collaboration Products sales in its books of account, and (iv) establish and modify the commercial terms and conditions with respect to the sale and distribution of the Collaboration Products, including without limitation matters such as the price at which the Collaboration Products will be sold and whether any discounts, rebates or other deductions should be made, paid or allowed.

9.2 *Supply of API Compound and Formulated Collaboration Product for Development.*

9.2.1 *Supply of API Compound for Development.* Subject to the terms and conditions of this Agreement, GSK shall conduct or have conducted any chemical process development required to develop a commercially acceptable process for making API Compound and obtain supply for worldwide requirements of API Compound. Notwithstanding the foregoing, Theravance may transfer to GSK, at cost, whatever supply it has on hand of TD-3327 API and/or AMI-15471 API and/or intermediate materials for API manufacture, within specification as of the Effective Date, such cost not to exceed [*]. API Compound requirements for Development activities shall be set forth in the relevant Development Plan and shall be periodically updated by the Joint Project Committee.

9.2.2 *Supply of Formulated Collaboration Products for Development.* Subject to the terms and conditions of this Agreement, GSK shall obtain supply for worldwide requirements of formulated Collaboration Products. Notwithstanding the foregoing, Theravance agrees to transfer to GSK whatever supply it has on hand of formulated TD-3327, within specification, at cost as of the Effective Date, such cost not to exceed [*]. Formulated Collaboration Product requirements for Development activities shall be set forth in the relevant Development Plan and shall be periodically updated by the Joint Project Committee.

[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

9.3 *Supply of API Compound for Commercial Requirements.* Subject to the terms and conditions of this Agreement, GSK shall obtain supply of API Compound. A forecast for API Compound requirements for Commercialization of the Collaboration Products shall be prepared and periodically updated by the Joint Project Committee and coordinated with the applicable Marketing Plans for Collaboration Products.

9.4 *Supply of Collaboration Products for Commercialization.* Subject to the terms and conditions of this Agreement, GSK shall obtain supply of the commercial requirements of formulated, packaged and labeled Collaboration Products. Such formulated, packaged and labeled Collaboration Products shall be manufactured and supplied in accordance with all applicable Laws and current Good Manufacturing Practices. GSK shall be solely responsible for secondary manufacture, packaging and labeling of the Collaboration Product.

9.5 *Inventories.* GSK and its Product Suppliers shall maintain an inventory of API Compound and Collaboration Products in accordance with their normal practices and so as to ensure fulfillment of its respective supply obligations herein.

ARTICLE 10
CONFIDENTIAL INFORMATION

10.1 *Confidential Information.* Each of GSK and Theravance shall keep all Confidential Information received from the other Party with the same degree of care it maintains the confidentiality of its own Confidential Information. Neither Party shall use such Confidential Information for any purpose other than in performance of this Agreement or disclose the same to any other Person other than to such of its agents who have a need to know such Confidential Information to implement the terms of this Agreement or enforce its rights under this Agreement. A Receiving Party shall advise any agent who receives such Confidential Information of the confidential nature thereof and of the obligations contained in this Agreement relating thereto, and the Receiving Party shall ensure that all such agents comply with such obligations as if they had been a Party hereto. Upon termination of this Agreement, the Receiving Party shall return or destroy all documents, tapes or other media containing Confidential Information of the Disclosing Party that remain in the Receiving Party's or its agents' possession, except that the Receiving Party may keep one copy of the Confidential Information in the legal department files of the Receiving Party, solely for archival purposes. Such archival copy shall be deemed to be the property of the Disclosing Party, and shall continue to be subject to the provisions of this Article 10. Notwithstanding anything to the contrary in this Agreement, the Receiving Party shall have the right to disclose this Agreement or Confidential Information provided hereunder if, in the reasonable opinion of the Receiving Party's legal counsel, such disclosure is necessary to comply with the terms of this Agreement, or the requirements of any Law. Where possible, the Receiving Party shall notify the Disclosing Party of the Receiving Party's intent to make such disclosure pursuant to the provision of the preceding sentence sufficiently prior to making such disclosure so as to allow the Disclosing Party adequate time to take whatever action the Disclosing Party may deem to be appropriate to protect the confidentiality of the information. The Receiving Party will cooperate reasonably with the Disclosing Party's efforts to protect the confidentiality of the information. Each Party will be liable for breach of this Article 10 by any of its Affiliates.

10.2 *Permitted Disclosure and Use.* Notwithstanding Section 10.1, a Party may disclose Confidential Information belonging to the other Party only to the extent such disclosure is reasonably necessary to: (a) obtain Marketing Authorization of a Collaboration Product; (b) enforce the provisions of this Agreement; or (c) comply with Laws. If a Party deems it necessary to disclose Confidential Information of the other Party pursuant to this Section 10.2, such Party shall give reasonable advance notice of such disclosure to the other Party to permit such other Party sufficient opportunity to object to such disclosure or to take measures to ensure confidential treatment of such information. The

Receiving Party will cooperate reasonably with the Disclosing Party's efforts to protect the confidentiality of the information.

10.3 *Publications*. Subject to any Third Party rights existing as of the Effective Date, each Party shall submit to the Joint Project Committee for review and approval all proposed academic, scientific and medical publications and public presentations relating to a Collaboration Product or any research or Development activities under this Agreement for review in connection with preservation of Patent Rights, and trade secrets and/or to determine whether Confidential Information should be modified or deleted from the proposed publication or public presentation. Written copies of such proposed publications and presentations shall be submitted to the Joint Project Committee no later than sixty (60) days before submission for publication or presentation and the Joint Project Committee shall provide its comments with respect to such publications and presentations within ten (10) Business Days of its receipt of such written copy. The review period may be extended for an additional sixty (60) days if a representative of the non-publishing Party on the Joint Project Committee can demonstrate a reasonable need for such extension including, but not limited to, the preparation and filing of patent applications. By mutual agreement of the Parties, this period may be further extended. The Parties will each comply with standard academic practice regarding authorship of scientific publications and recognition of contribution of other parties in any publications relating to the Collaboration Products or any research or Development activities under this Agreement.

10.4 *Public Announcements*. Except as may be expressly permitted under Section 10.3 or required by applicable Laws and subject to the final two sentences of this Section 10.4, neither Party will make any public announcement of any information regarding this Agreement, the Collaboration Products or any research or Development activities under this Agreement without the prior written approval of the other Party, which approval shall not be withheld unreasonably. Once any statement is approved for disclosure by the Parties or information is otherwise made public in accordance with the preceding sentence, either Party may make a subsequent public disclosure of the contents of such statement without further approval of the other Party. Notwithstanding the foregoing, within sixty (60) days following the Effective Date, appropriate representatives of the Parties will meet and agree upon a process and principles for reaching timely consensus on how the Parties will make public disclosure concerning this Agreement, the Collaboration Products or any research and Development activities under this Agreement.

10.5 *Confidentiality of This Agreement.* The terms of this Agreement shall be Confidential Information of each Party and, as such, shall be subject to the provisions of this Article 10. Either party may disclose the terms of this Agreement if, in the opinion of its counsel, such disclosure is required by Law. In such event, the disclosing Party will seek appropriate confidentiality of those portions of the Agreement for which confidential treatment is typically permitted by the relevant Governmental Authority.

10.6 *Termination of Prior Confidentiality Agreements.* Except as expressly provided in this Section 10.6, this Agreement supercedes the Mutual Confidential Disclosure Agreement (the "MCDA") between the Parties dated April 10, 2002. Except as expressly provided in this Section 10.6 and in Paragraph 8 of the Confidentiality Agreement between the Parties dated October 2, 2002 (the "Patent CDA"), this Agreement supersedes the Patent CDA. Except as set forth in Paragraph 8 of the Patent CDA, all information disclosed pursuant to the MCDA and the Patent CDA shall be subject to the provisions of this Article 10.

10.7 *Survival.* The obligations and prohibitions contained in this Article 10 shall survive the expiration or termination of this Agreement for a period of ten (10) years.

ARTICLE 11
REPRESENTATIONS AND WARRANTIES; COVENANTS

11.1 *Mutual Representations and Warranties.* Theravance and GSK each represents and warrants to the other as of the Effective Date that:

11.1.1 Such Party (a) is a company duly organized, validly existing, and in good standing under the Laws of its incorporation; (b) is duly qualified as a corporation and in good standing under the Laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, where the failure to be so qualified would have a material adverse effect on its financial condition or its ability to perform its obligations hereunder; (c) has the requisite corporate power and authority and the legal right to conduct its business as now conducted and hereafter contemplated to be conducted; (d) has or will obtain all necessary licenses, permits, consents, or approvals from or by, and has made or will make all necessary notices to, all Governmental Authorities having jurisdiction over such Party, to the extent required for the ownership and operation of its business, where the failure to obtain such licenses, permits, consents or approvals, or to make such notices, would have a material adverse effect on its financial condition or its ability to perform its obligations hereunder; and (e) is in compliance with its charter documents;

11.1.2 The execution, delivery and performance of this Agreement by such Party and all instruments and documents to be delivered by such Party hereunder (a) are within the corporate power of such Party; (b) have been duly authorized by all necessary or proper corporate action; (c) do not conflict with any provision of the charter documents of such Party; (d) will not, to the best of such Party's knowledge, violate any law or regulation or any order or decree of any court of governmental instrumentality; (e) will not violate or conflict with any terms of any indenture, mortgage, deed of trust, lease, agreement, or other instrument to which such Party is a party, or by which such Party or any of its property is bound, which violation would have a material adverse effect on its financial condition or on its ability to perform its obligations hereunder;

11.1.3 This Agreement has been duly executed and delivered by such Party and constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as such enforceability may be limited by applicable insolvency and other Laws affecting creditors' rights generally, or by the availability of equitable remedies; and

11.1.4 All of its employees, officers, and consultants have executed agreements or have existing obligations under law requiring assignment to such Party of all Inventions made by such individuals during the course of and as the result of their association with such Party, and obligating such individuals to maintain as confidential such Party's Confidential Information.

11.1.5 Nothing contained in this Agreement shall give a Party the right to use the Confidential Information received from the other Party in connection with any activity other than Development and Commercialization of a Pooled Compound or Collaboration Product consistent with this Agreement.

11.1.6 As soon as practicably possible after the Effective Date, the Parties will each deliver to each other a schedule listing (i) in the case of GSK, GSK Patents as of the date of signature of this Agreement and (ii) in the case of Theravance, Theravance Patents as of the date of signature of this Agreement.

11.2 *Additional GSK Representations and Warranties.* GSK further represents, warrants and covenants to Theravance that:

11.2.1 It has utilized its own scientific, marketing and distribution expertise and experience to analyze and evaluate both the scientific and commercial value of this collaboration and has solely relied on such analysis and evaluations in deciding to enter into this Agreement;

11.2.2 Neither GSK nor any of its Affiliates is a party to or otherwise bound by any oral or written contract or agreement that will result in any Person obtaining any interest in, or that would give to any Person any right to assert any claim in or with respect to, any of GSK's rights granted under this Agreement;

11.2.3 There is no claim or demand of any person or entity pertaining to, or any proceeding which is pending or, to the knowledge of GSK, threatened, that challenges the rights of Theravance in respect of any GSK Know-How or GSK Patents, or that claims that any default exists under any license with respect to any GSK Know-How or GSK Patents to which GSK is a party, except where such claim, demand or proceeding would not materially and adversely affect the ability of GSK to carry out its obligations under this Agreement; and

11.2.4 Having carried out and completed diligent searches in relation to the GSK Patents, and other than as disclosed to Theravance's counsel by GSK's counsel, GSK is not aware, nor has been made aware, of any conflict or likely future conflict with the intellectual property rights of any Third Party with respect to GSK Patents.

11.3 *Additional Theravance Representations and Warranties.* Theravance further represents and warrants to GSK as of the Effective Date that:

11.3.1 Having carried out and completed diligent searches in relation to the Theravance Patents, and other than as disclosed to GSK's counsel by Theravance's counsel, Theravance is not aware, nor has been made aware, of any conflict or likely future conflict with the intellectual property rights of any Third Party with respect to Theravance Patents.

Theravance has not received notice from any Third Party of a claim that an issued patent of such Third Party would be infringed by the manufacture, distribution, marketing or sale of the Collaboration Products under this Agreement;

11.3.2 To Theravance's knowledge, the Theravance Patents are not subject to any pending or any threatened re-examination, opposition, interference or litigation proceedings;

11.3.3 Theravance has not received notice from any Third Party of a claim asserting the invalidity, misuse, unregisterability or unenforceability of any of the Theravance Patents, or challenging its right to use or ownership of any of the Theravance Patents or the Theravance Know-How, or making any adverse claim of ownership thereof;

11.3.4 Theravance has not received notice from any Third Party that any trade secrets or other intellectual property rights of such Third Party would be misappropriated by the development and reduction to practice of the Theravance Patents and Theravance Know-How; and

11.3.5 Theravance has, up to and including the Effective Date, furnished GSK with all material information requested by GSK concerning the quality, toxicity, safety and/or efficacy concerns that may materially impair the utility and/or safety of the Compound or Collaboration Products.

11.4 *Covenants.* Each Party hereby covenants and agrees during the Term that it shall carry out its obligations or activities hereunder in accordance with (i) the terms of this Agreement and (ii) all applicable Laws.

11.5 *Disclaimer of Warranty.* Subject to the specific warranties and representations given under Sections 11.1 through and including 11.3, nothing in this Agreement shall be construed as a warranty or representation by either Party (i) that any Collaboration Product made, used, sold or otherwise disposed of under this Agreement is or will be free from infringement of patents, copyrights, trademarks, industrial design or other intellectual property rights of any Third Party, (ii) regarding the effectiveness, value, safety, non-toxicity, patentability, or non-infringement of any patent technology, the Collaboration Products or any information or results provided by either Party pursuant to this Agreement or (iii) that any Collaboration Product will obtain Marketing Authorization or appropriate pricing approval. Each Party explicitly accepts all of the same as experimental and for development purposes, and without any express or implied warranty from the other Party. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY EXPRESSLY DISCLAIMS, WAIVES, RELEASES, AND RENOUNCES ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 12
INDEMNIFICATION

12.1 *Indemnification by GSK.* Subject to Sections 12.4 and 13.2, GSK shall defend, indemnify and hold harmless Theravance and its Affiliates and each of their officers, directors, shareholders, employees, successors and assigns from and against all Claims of Third Parties, and all associated Losses, to the extent arising out of (a) GSK's negligence or willful misconduct in performing any of its obligations under this Agreement, (b) a breach by GSK of any of its representations, warranties, covenants or agreements under this Agreement, or (c) the manufacture, use, handling, storage, marketing, sale, distribution or other disposition of Collaboration Products by GSK, its Affiliates, agents or sublicensees, except to the extent such losses result from the negligence or willful misconduct of Theravance.

12.2 *Indemnification by Theravance.* Subject to Sections 12.4 and 13.2, Theravance shall defend, indemnify and hold harmless GSK and its Affiliates and each of their officers, directors, shareholders, employees, successors and assigns from and against all Claims of Third Parties, and all associated Losses, to the extent arising out of (a) Theravance's negligence or willful misconduct in performing any of its obligations under this Agreement, or (b) a breach by Theravance of any of its representations, warranties, covenants or agreements under this Agreement.

12.3 *Procedure for Indemnification.*

12.3.1 *Notice.* Each Party will notify promptly the other in writing if it becomes aware of a Claim (actual or potential) by any Third Party (a "Third Party Claim") for which indemnification may be sought by that Party and will give such information with respect thereto as the other Party shall reasonably request. If any proceeding (including any governmental investigation) is instituted involving any Party for which such Party may seek an indemnity under Section 12.1 or 12.2, as the case may be (the "Indemnified Party"), the Indemnified Party shall not make any admission or statement concerning such Third Party Claim, but shall promptly notify the other Party (the "Indemnifying Party") orally and in writing and the Indemnifying Party and Indemnified Party shall meet to discuss how to respond to any Third Party Claims that are the subject matter of such proceeding. The Indemnifying Party shall not be obligated to indemnify the Indemnified Party to the extent any admission or statement made by the Indemnified Party or any failure by such Party to notify the Indemnifying Party of the claim materially prejudices the defense of such claim.

12.3.2 *Defense of Claim.* If the Indemnifying Party elects to defend or, if local procedural rules or laws do not permit the same, elects to control the defense of a Third Party Claim, it shall be entitled to do so provided it gives notice to the Indemnified Party of its intention to do so

within forty-five (45) days after the receipt of the written notice from the Indemnified Party of the potentially indemnifiable Third Party Claim (the "Litigation Condition"). The Indemnifying Party expressly agrees the Indemnifying Party shall be responsible for satisfying and discharging any award made to or settlement reached with the Third Party pursuant to the terms of this Agreement without prejudice to any provision in this Agreement or right at law which will allow the Indemnifying Party subsequently to recover any amount from the Indemnified Party to the extent the liability under such settlement or award was attributable to the Indemnified Party. Subject to compliance with the Litigation Condition, the Indemnifying Party shall retain counsel reasonably acceptable to the Indemnified Party (such acceptance not to be unreasonably withheld, refused, conditioned or delayed) to represent the Indemnified Party and shall pay the reasonable fees and expenses of such counsel related to such proceeding. In any such proceeding, the Indemnified Party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party. The Indemnified Party shall not settle any claim for which it is seeking indemnification without the prior written consent of the Indemnifying Party which consent shall not be unreasonably withheld, refused, conditioned or delayed. The Indemnified Party shall, if requested by the Indemnifying Party, cooperate in all reasonable respects in the defense of such claim that is being managed and/or controlled by the Indemnifying Party. The Indemnifying Party shall not, without the written consent of the Indemnified Party (which consent shall not be unreasonably withheld, refused, conditioned or delayed), effect any settlement of any pending or threatened proceeding in which the Indemnified Party is, or based on the same set of facts could have been, a party and indemnity could have been sought hereunder by the Indemnified Party, unless such settlement includes an unconditional release of the Indemnified Party from all liability on claims that are the subject matter of such proceeding. If the Litigation Condition is not met, then neither Party shall have the right to control the defense of such Third Party Claim and the Parties shall cooperate in and be consulted on the material aspects of such defense at each Party's own expense; provided that if the Indemnifying Party does not satisfy the Litigation Condition, the Indemnifying Party may at any subsequent time during the pendency of the relevant Third Party Claim irrevocably elect, if permitted by local procedural rules or laws, to defend and/or to control the defense of the relevant Third Party Claim so long as the Indemnifying Party also agrees to pay the reasonable fees and costs incurred by the Indemnified Party in relation to the defense of such Third Party Claim from the inception of the Third Party Claim until the date the Indemnifying Party assumes the defense or control thereof.

12.4 *Assumption of Defense.* Notwithstanding anything to the contrary contained herein, an Indemnified Party shall be entitled to assume the defense of any Third Party Claim with respect to the Indemnified Party, upon written notice to the Indemnifying Party pursuant to this Section 12.4, in which case the Indemnifying Party shall be relieved of liability under Section 12.1 or 12.2, as applicable, solely for such Third Party Claim and related Losses.

12.5 *Insurance.* During the Term of this Agreement and for a period of [*] after the termination or expiration of this Agreement, GSK shall obtain and/or maintain at its sole cost and expense, product liability insurance (including any self-insured arrangements) in amounts which are reasonable and customary in the U.S. pharmaceutical industry for companies of comparable size and activities. Such product liability insurance or self-insured arrangements shall insure against all liability, including without limitation personal injury, physical injury, or property damage arising out of the manufacture, sale, distribution, or marketing of the Collaboration Products. GSK shall provide written proof of the existence of such insurance to Theravance upon request.

[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

ARTICLE 13
PATENTS

13.1 *Prosecution and Maintenance of Patents.*

13.1.1 *Prosecution and Maintenance of Theravance Patents.* Theravance shall have the exclusive right and the obligation to (subject to Theravance's election not to file, prosecute, or maintain pursuant to Section 13.1.4) or to cause its licensors to, prepare, file, prosecute in a diligent manner (including without limitation by conducting interferences, oppositions and reexaminations or other similar proceedings), maintain (by timely paying all maintenance fees, renewal fees, and other such fees and costs required under applicable Laws) and extend all Theravance Patents and related applications. Theravance shall consult with GSK prior to abandoning any Theravance Patents or related applications that are material to the matters contemplated in this Agreement. Theravance shall regularly advise GSK of the status of all pending applications, including with respect to any hearings or other proceedings before any Governmental Authority, and, at GSK's request, shall provide GSK with copies of all documentation concerning such applications, including all correspondence to and from any Governmental Authority. Subject to Section 2.3.3, Theravance shall solicit GSK's advice and review of the nature and text of such patent applications and important prosecution matters related thereto in reasonably sufficient time prior to filing thereof, and Theravance shall take into account GSK's reasonable comments related thereto; provided, however, Theravance shall have the final decision authority with respect to any action relating to any Theravance Patent. Within the priority period, Theravance shall agree with GSK regarding the countries outside the United States in which corresponding applications should be filed ("OUS Filings"). It is presumed that a corresponding Patent Cooperation Treaty ("PCT") application will be filed unless otherwise agreed by the Parties. Theravance shall effect filing of all such applications within the priority period.

Subject to Section 13.1.4, Theravance shall be responsible for all costs incurred in the United States in connection with procuring Theravance Patents, including applications preparation, filing fees, prosecution, maintenance and all costs associated with reexamination and interference proceedings in the United States Patent and Trademark Office and United States Courts. GSK shall be responsible for all out-of-pocket costs and expenses incurred by Theravance after the Effective Date that are associated with procuring corresponding OUS patents, including without limitation PCT and individual country filing fees, translations, maintenance, annuities, and protest proceedings. For all such OUS patent applications, Theravance will invoice GSK on a quarterly basis beginning April 1, 2003, setting forth all such expenses incurred. Reimbursement will be made to Theravance in United States Dollars within thirty (30) days of receipt of the invoice by GSK. GSK will within thirty (30) days following the Effective Date identify the GSK representative that should receive such invoices from Theravance. GSK's obligations hereunder are in addition to any obligations of GSK under Section 13.1.2(b)

13.1.2 *Prosecution and Maintenance of Patents Covering Joint Inventions.*

(a) For Patents covering Joint Inventions, the Parties shall agree, without prejudice to ownership, which Party shall have the right to prepare and file a priority patent application, and prosecute such application(s) and maintain any patents derived therefrom, with the Parties equally sharing the reasonable out-of-pocket costs for the preparation, filing, prosecution and maintenance of such priority patent application. The Parties will reasonably cooperate to obtain any export licenses that might be required for such activities. Should the agreed upon Party elect not to prepare and/or file any such priority patent application, it shall (i) provide the other Party with written notice as soon as reasonably possible after making such election but in any event no later than sixty (60) days before the other Party would be faced with a possible loss of rights, (ii) give the other Party the right, at the other Party's discretion and sole expense, to prepare and file the

priority application(s), and (iii) offer reasonable assistance in connection with such preparation and filing at no cost to the other Party except for reimbursement of reasonable out-of-pocket expenses incurred by the agreed upon Party in rendering such assistance. The other Party, at its discretion and cost, shall prosecute such application(s) and maintain sole ownership of any patents derived therefrom.

(b) Within nine (9) months after the filing date of a priority application directed to an Invention, the Party filing the priority application shall request that the other Party identify those non-priority, non-PCT ("foreign") Countries in which the other Party desires that the Party filing the priority application file corresponding patent applications. Within thirty (30) days after receipt by the other Party of such request from the Party filing the priority application, the other Party shall provide to the Party filing the priority application a written list of such foreign countries in which the other Party wishes to effect corresponding foreign patent applications filings. The Parties will then attempt to agree on the particular countries in which such applications will be filed, provided that in the event agreement is not reached, the application will be filed in the disputed as well as the non-disputed countries (all such filings referred to hereinafter as "Designated Foreign Filings"). Thereafter, within twelve (12) months after the filing date of the priority application, the Party filing the priority application shall effect all such Designated Foreign Filings. It is presumed unless otherwise agreed in writing by the Parties, that a corresponding PCT application will be filed designating all PCT member countries. As to each Designated Foreign Filing and PCT application, GSK shall bear the costs for the filing and prosecutions of such Designated Foreign Filing and PCT application (including entering national phase in all agreed countries). Should the Party filing the priority application not agree to file or cause to be filed a Designated Foreign Filing, the other Party will have the right to effect such Designated Foreign Filing in its name.

(c) Should the filing Party pursuant to Section 13.1.2(a) or 13.1.2(b) no longer wish to prosecute and/or maintain any patent application or patent resulting from such application, the filing Party shall (i) provide the non-filing Party with written notice of its wish no later than sixty (60) days before the patent or patent applications would otherwise become abandoned, (ii) give the non-filing Party the right, at the non-filing Party's election and sole expense, to prosecute and/or maintain such patent or patent application, and (iii) offer reasonable assistance to the non-filing Party in connection with such prosecution and/or maintenance at no cost to the non-filing Party except for reimbursement of the filing Party's reasonable out-of-pocket expenses incurred by the filing Party in rendering such assistance.

(d) Should the non-filing Party pursuant to Section 13.1.2(c) not wish to incur its share of preparation, filing, prosecution and/or maintenance costs for a patent application filed pursuant to Section 13.1.2(a) or 13.1.2(b) or patents derived therefrom, it shall (i) provide the filing Party with written notice of its wish, and (ii) continue to offer reasonable assistance to the filing Party in connection with such prosecution or maintenance at no cost to the filing Party except for reimbursement of the non-filing Party's reasonable out-of-pocket expenses incurred by the non-filing Party in rendering such assistance.

(e) The Parties agree to cooperate in the preparation and prosecution of all patent applications filed under Section 13.1.2(a) and 13.1.2(b), including obtaining and executing necessary powers of attorney and assignments by the named inventors, providing relevant technical reports to the filing Party concerning the invention disclosed in such patent application, obtaining execution of such other documents which shall be needed in the filing and prosecution of such patent applications, and, as requested, updating each other regarding the status of such patent applications.

13.1.3 *Prosecution and Maintenance of GSK Patents.* GSK shall have the exclusive right and obligation to (subject to GSK's election not to file, prosecute or maintain pursuant to Section 13.1.5) or to cause its licensors to, prepare, file and prosecute in a diligent manner (including without limitation by conducting interferences, oppositions and reexaminations or other similar proceedings), maintain (by timely paying all maintenance fees, renewal fees, and other such fees and costs required under applicable Laws) and extend all GSK Patents and related applications. Consistent with Section 2.3.3, GSK will consult with Theravance within the priority period for any patent application that is material to this Agreement concerning Countries in which corresponding applications will be filed. In the event the Parties can not agree, GSK shall make the final decision. GSK shall consult with Theravance prior to abandoning any GSK Patents or related applications that are material to the matters contemplated in this Agreement. GSK shall regularly advise Theravance of the status of all pending applications, including with respect to any hearings or other proceedings before any Governmental Authority, and, at Theravance's request, shall provide Theravance with copies of documentation relating to such applications, including all correspondence to and from any Governmental Authority. Subject to Section 2.3.3, GSK shall solicit Theravance's advice and review of the nature and text of such patent applications and important prosecution matters related thereto in reasonably sufficient time prior to filing thereof, and GSK shall take into account Theravance's reasonable comments relating thereto; provided that GSK shall have the final decision authority with respect to any action relating to a GSK Patent.

13.1.4 *GSK Step-In Rights.* If Theravance elects not to file, prosecute or maintain the Theravance Patents or claims encompassed by such Theravance Patents necessary for GSK to exercise its rights hereunder in any Country, Theravance shall give GSK notice thereof within a reasonable period prior to allowing such Theravance Patents, or such claims encompassed by such Theravance Patents, to lapse or become abandoned or unenforceable, and GSK shall thereafter have the right, at its sole expense, to prepare, file, prosecute and maintain such Theravance Patents in such Country.

13.1.5 *Theravance Step-In Rights.* If GSK elects not to file, prosecute or maintain the GSK Patents or claims encompassed by such GSK Patents necessary for Theravance to exercise its license rights hereunder in any Country, GSK shall give Theravance notice thereof within a reasonable period prior to allowing such GSK Patents, or such claims encompassed by such GSK Patents, to lapse or become abandoned or unenforceable, and Theravance shall thereafter have the right, at its sole expense, to prepare, file, prosecute and maintain such GSK Patents in such Country. In the event that GSK elects not to file, prosecute or maintain GSK Patents or claims that would affect the royalty owed Theravance pursuant to Section 6.3, GSK shall reimburse Theravance for all out-of-pocket expenses incurred by Theravance in connection with Theravance exercising its Step-In Rights under this Section.

13.1.6 *Execution of Documents by Agents.* Each of the Parties shall execute or have executed by its appropriate agents such documents as may be necessary to obtain, perfect or maintain any Patent Rights filed or to be filed pursuant to this Agreement, and shall cooperate with the other Party so far as reasonably necessary with respect to furnishing all information and data in its possession reasonably necessary to obtain or maintain such Patent Rights.

13.1.7 *Patent Term Extensions.* The Parties shall cooperate with each other in gaining patent term extension where applicable to Collaboration Products. The Joint Steering Committee shall determine which patents the Parties shall endeavor to have extended. All filings for such extension will be made by the Party to whom the patent is assigned after consultation with the other Party. In the event the Joint Steering Committee can not agree, the Party who is assigned the compound patent covering the LABA in the Collaboration Product will make the decision.

13.2 *Patent Infringement.*

13.2.1 *Infringement Claims.* With respect to any and all Claims instituted by Third Parties against Theravance or GSK or any of their respective Affiliates for patent infringement involving the manufacture, use, license, marketing or sale of a Collaboration Product in the United States during the Term (each, a "Patent Infringement Claim") as applicable, Theravance and GSK will assist one another and cooperate in the defense and settlement of such Patent Infringement Claims at the other Party's request.

13.2.2 *Infringement of Theravance Patents.* In the event that Theravance or GSK becomes aware of actual or threatened infringement of a Theravance Patent during the Term, that Party will promptly notify the other Party in writing (a "Patent Infringement Notice"). Theravance will have the right but not the obligation to bring an infringement action against any Third Party. If Theravance elects to pursue such infringement action, Theravance shall be solely responsible for the costs and expenses associated with such action and retain all recoveries. During the Term, in the event that Theravance does not undertake such an infringement action, upon Theravance's written consent, which shall not be unreasonably withheld, refused, conditioned or delayed, GSK shall be permitted to do so in Theravance's or the relevant Theravance Affiliate's name and on Theravance's or the relevant Theravance Affiliate's behalf. If Theravance has consented to an infringement action but GSK is not recognized by the applicable court or other relevant body as having the requisite standing to pursue such action, then GSK may join Theravance as party-plaintiff. If GSK elects to pursue such infringement action, Theravance may be represented in such action by attorneys of its own choice and its own expense with GSK taking the lead in such action.

13.2.3 *Infringement of GSK Patents.* In the event that GSK or Theravance becomes aware of actual or threatened infringement of a GSK Patent during the Term, that Party will promptly notify the other Party in writing. GSK will have the right but not the obligation to bring an infringement action against any Third Party. If GSK elects to pursue such infringement action, GSK shall be solely responsible for the costs and expenses associated with such action and retain all recoveries. During the Term, in the event that GSK does not undertake such an infringement action, upon GSK's written consent, which shall not be unreasonably withheld, refused, conditioned or delayed, Theravance shall be permitted to do so in GSK's or the relevant GSK Affiliate's name and on GSK's or the relevant GSK Affiliate's behalf. If GSK has consented to an infringement action but Theravance is not recognized by the applicable court or other relevant body as having the requisite standing to pursue such action, then Theravance may join GSK as a party-plaintiff. If Theravance elects to pursue such infringement action, GSK may be represented in such action by attorneys of its own choice and at its own expense, with Theravance taking the lead in such action.

13.3 *Notice of Certification.* GSK and Theravance each shall immediately give notice to the other of any certification filed under the "U.S. Drug Price Competition and Patent Term Restoration Act of 1984" (or its foreign equivalent) claiming that a GSK Patent or a Theravance Patent is invalid or that infringement will not arise from the manufacture, use or sale of any Collaboration Product by a Third Party ("Hatch-Waxman Certification").

13.3.1 *Notice.* If a Party decides not to bring infringement proceedings against the entity making such a certification, such Party shall give notice to the other Party of its decision not to bring suit within twenty-one (21) days after receipt of notice of such certification.

13.3.2 *Option.* Such other Party then may, but is not required to, bring suit against the entity that filed the certification.

13.3.3 *Name of Party.* Any suit by Theravance or GSK shall either be in the name of Theravance or in the name of GSK, (or any Affiliate) or jointly in the name of Theravance and GSK (or any Affiliate), as may be required by law.

13.4 *Assistance.* For purposes of this Article 13, the Party not bringing suit shall execute such legal papers necessary for the prosecution of such suit as may be reasonably requested by the Party bringing suit. The out-of-pocket costs and expenses of the Party bringing suit shall be reimbursed first out of any damages or other monetary awards recovered in favor of GSK or Theravance. The documented out-of-pocket costs and expenses of the other Party shall then be reimbursed out of any remaining damages or other monetary awards. The Party initiating and prosecuting the action to completion will retain any remaining damages or other monetary awards following such reimbursements.

13.5 *Settlement.* No settlement or consent judgment or other voluntary final disposition of a suit under this Article may be entered into without the joint written consent of GSK and Theravance (which consent will not be withheld unreasonably).

ARTICLE 14
TERM AND TERMINATION

14.1 *Term and Expiration of Term.* Unless otherwise mutually agreed to by the Parties, this Agreement shall commence on the Effective Date and shall end upon expiration of the Term, unless terminated early as contemplated hereunder. Unless terminated early under this Article 14, the licenses granted by Theravance to GSK pursuant to Section 2.1 with respect to the Collaboration Products shall be considered fully-paid and shall become non-exclusive upon expiration of the Term.

14.2 *Termination for Material Breach.* Either Party may, without prejudice to any other remedies available to it at law or in equity, terminate this Agreement subject to Section 14.10 in the event that the other Party (as used in this subsection, the "Breaching Party") shall have materially breached or defaulted in the performance of any of its obligations. The Breaching Party shall, if such breach can be cured, have sixty (60) days after written notice thereof was provided to the Breaching Party by the non-breaching Party to remedy such default (or, if such default cannot be cured within such 60-day period, the Breaching Party must commence and diligently continue actions to cure such default during such 60-day period). Any such termination shall become effective at the end of such 60-day period unless the Breaching Party has cured any such breach or default prior to the expiration of such 60-day period (or, if such default is capable of being cured but cannot be cured within such 60-day period, the Breaching Party has commenced and diligently continued actions to cure such default provided always that, in such instance, such cure must have occurred within one hundred twenty (120) days after written notice thereof was provided to the Breaching Party by the non-breaching Party to remedy such default).

14.3 *GSK Right to Terminate Development of a Collaboration Product.* On a Collaboration Product-by-Collaboration Product basis, and at any time during Development and prior to First Commercial Sale of the applicable Collaboration Product, GSK shall have the right to terminate Development of such Collaboration Product (upon the provision of ninety (90) days written notice) for reasons of Technical Failure or Commercial Failure following communication to, and assessment of such proposed termination by, the Joint Project Committee and Joint Steering Committee (in which case such Collaboration Product shall be referred to as a "Terminated Development Collaboration Product"). For the avoidance of doubt, a "Terminated Development Collaboration Product" can be any of the following: (i) a Pooled Compound and/or (ii) a Replacement Compound and/or (iii) a single agent LABA Collaboration Product and/or (iv) a LABA/ICS Combination Product and/or (v) an Other Combination Product.

14.4 *GSK Right to Terminate Commercialization of a Collaboration Product Following First Commercial Sale.* On a Collaboration Product-by-Collaboration Product basis, and on a Country-by-Country basis, at any time after First Commercial Sale of the applicable Collaboration Product in such country, GSK shall have the right to terminate Commercialization of such Collaboration Product (upon the provision of one hundred and eighty (180) days written notice) for reasons of Commercial Failure or Technical Failure and following communication to, and assessment of such proposed termination by, the Joint Project Committee and Joint Steering Committee (in which case, such Collaboration Product shall be referred to as a "Terminated Commercialized Collaboration Product"). For the avoidance of doubt, a Terminated Commercialized Collaboration Product can be any of the following: (i) a single agent LABA Collaboration Product and/or (ii) a LABA/ICS Combination Product and/or (iii) an Other Combination Product.

14.5 *Termination of the Agreement Due to Discontinuation of Development of All Collaboration Products and All Pooled Compounds.* Any time following the [*] the Effective Date, either Party may terminate this Agreement, subject to Section 14.10, upon the provision of ninety (90) days written notice if Development of all Collaboration Products and all Pooled Compounds have been discontinued for Technical Failure and/or Commercial Failure. Notwithstanding the foregoing, in the event that (i) Development of all Collaboration Products and all Pooled Compounds (including any Replacement Compounds) has ceased for at least [*], (ii) all such termination and/or discontinuance decisions have been validly approved by the Joint Steering Committee, and (iii) both parties have provided written notice to the other that such party does not intend to contribute any additional Replacement Compounds to the collaboration, then either Party shall be entitled to terminate this Agreement, subject to Section 14.10, upon the provision of ninety (90) days written notice.

14.6 *Effects of Termination.*

14.6.1 *Effect of Termination for Material Breach.*

(a) *Material Breach by Theravance.* In the event this Agreement is terminated by GSK pursuant to Section 14.2 for material breach by Theravance, all licenses granted by Theravance to GSK under this Agreement shall survive, subject to GSK's continued obligation to pay milestones and royalties to Theravance hereunder. In such event, GSK shall retain all of its rights to bring an action against Theravance for damages and any other available remedies in law or equity, and shall be entitled to set-off against any monies payable to Theravance hereunder all amounts GSK reasonably believes constitute its damages incurred by such breach, subject to final judicial resolution or settlement. Also, Theravance shall, at its sole expense, promptly transfer to GSK copies of all data, reports, records and materials in its possession or control that relate to the Collaboration Products that contain a GSK Compound and return to GSK, or destroy at GSK's request, all relevant records and materials in its possession or control containing Confidential Information of GSK (provided that Theravance may keep one copy of such Confidential Information of GSK for archival purposes only in accordance with Section 10.1).

(b) *Material Breach By GSK.* In the event that this Agreement is terminated by Theravance pursuant to Section 14.2 for material breach by GSK:

(i) GSK shall [*] promptly transfer to Theravance copies of all data, reports, records and materials in its possession or control that relate to the Theravance Compounds and return to Theravance, or destroy at Theravance's request, all relevant records and materials in its possession or control containing Confidential Information of Theravance (provided that GSK may keep one copy of such Confidential Information of Theravance for archival purposes only in accordance with Section 10.1).

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(ii) GSK shall [*] transfer to Theravance, or shall cause its designee(s) to transfer to Theravance, ownership of all regulatory filings made or filed for any Collaboration Product that contains a LABA as a single agent (to the extent that any are held in GSK's or such designee(s)'s name), and such transfer to be as permitted by applicable Laws and regulations; otherwise GSK shall cooperate as necessary to permit Theravance to exercise its rights hereunder.

(iii) Theravance shall have the non-exclusive right to access, use and cite in any regulatory filing any data relating to formulation of a LABA/ICS Combination Product or Other Combination Product.

(iv) All of the provisions of Section [*] shall apply for the benefit of Theravance for any Collaboration Product for which [*] at the effective date of such termination, subject to the limitations set forth in Section [*].

(v) All the provisions of Section [*] shall apply for any Collaboration Product that has been Commercialized at the effective date of such termination.

(vi) All licenses granted by Theravance to GSK with respect to the applicable Theravance Compounds under this Agreement shall terminate.

(vii) Theravance shall retain all of its rights to bring an action against GSK for damages and any other available remedies in law or equity, and shall be entitled to set-off against any monies payable to GSK hereunder all amounts Theravance reasonably believes constitute its damages incurred by such breach, subject to final judicial resolution or settlement.

14.6.2 *Effect of Termination by GSK of Certain Terminated Development Collaboration Product(s).* If GSK terminates a Collaboration Product [*] concerning such Collaboration Product, and Development of all other Collaboration Products and Pooled Compounds have been discontinued for Technical Failure and/or Commercial Failure, then at the sole election of Theravance, the following shall apply:

(a) GSK shall [*] promptly transfer to Theravance copies of all data, reports, records and materials in its possession or control that relate to the Theravance Compounds and return to Theravance, or destroy at Theravance's request, all relevant records and materials in its possession or control containing Confidential Information of Theravance (provided that GSK may keep one copy of such Confidential Information of Theravance for archival purposes only in accordance with Section 10.1).

(b) GSK shall [*] transfer to Theravance, or shall cause its designee(s) to transfer to Theravance, ownership of all regulatory filings made or filed for the Terminated Development Collaboration Product that contains a LABA as a single agent (to the extent that any are held in GSK's or such designee(s)'s name), such transfer to be as permitted by any Third Party licenses or other such prior rights and applicable Laws and regulations, otherwise GSK shall cooperate as necessary to permit Theravance to exercise its rights hereunder.

(c) Theravance shall have the non-exclusive right to access, use and cite in any regulatory filing any data relating to formulation of a LABA/ICS Combination Product or Other Combination Product.

(d) For such Terminated Development Collaboration Product (excluding the non-LABA component of a LABA/ICS Combination Product and/or Other Combination Product [*] GSK shall grant to Theravance the appropriate licenses in the Territory under the GSK Patents, GSK Inventions and GSK Know-How related to the LABA compound, dry powder inhaler formulation, [*] to enable Theravance to Develop and Commercialize the Terminated Development Collaboration Product in the Field.

(e) In the event of a Change in Control of Theravance prior to termination by GSK under Section 14.3, none of the provisions under this Section 14.6.2 shall survive as they pertain to any Collaboration Product other than [*].

14.6.3 *Effect of Termination by GSK of a Terminated Commercialized Collaboration Product.* The provisions of this Section 14.6.3 shall apply only where a Terminated Commercialised Collaboration Product is *not* being or has not been replaced by an alternative Collaboration Product under this Agreement and provided that, in GSK's reasonable good faith judgment, exercise by Theravance alone or with a Third Party of any of the rights or activities contemplated by this Section 14.6.3 [*] will not materially damage GSK's continued development, regulatory or commercial use of such GSK Property.

(a) If GSK terminates a Collaboration Product after First Commercial Sale of such Collaboration Product in one or more of the Major Market Countries, Theravance shall have the right in its sole discretion and at its sole expense, for its own benefit or together with a Third Party, to commercialize such Terminated Commercialized Collaboration Product in any of such Major Market Countries where it has been terminated.

(b) If GSK terminates Commercialization of a Collaboration Product in all Countries of the Territory following the first commercial sale in any Country of the Territory, Theravance shall have the right in its sole discretion and at it sole expense, for its own benefit or together with a Third Party, to Commercialise such Terminated Commercialized Collaboration Product in the Territory.

(c) Subject to Section 14.6.3(a), GSK shall grant to Theravance the appropriate licenses in the Territory (or in the case of a Country-by-Country termination, in the relevant Countries) under the GSK Patents, GSK Inventions and GSK Know-How to enable Theravance by itself and/or through one or more Third Party sublicensees, to Commercialize the Terminated Commercialized Collaboration Product. GSK shall also provide Theravance with all such information and data which GSK, or its sublicensees reasonably have available in such Country, for example access to drug master file, clinical data and the like, and shall execute such instruments as Theravance reasonably requests, to enable Theravance to obtain the appropriate regulatory approvals to market such Terminated Commercialized Collaboration Product in such Country and for any other lawful purpose related to Commercialization of such Terminated Commercialized Collaboration Product in such Country.

(d) In the event Theravance exercises its rights under Section 14.6.3(a) and (b) above, the Parties shall negotiate in good faith a separate commercialization and supply agreement for such Terminated Commercialized Collaboration Product which shall ensure that, based on commercially reasonable terms (recognizing the Commercialized status of the Terminated Commercialized Collaboration Product), Theravance has a continuous and uninterrupted supply of such Terminated Commercialized Collaboration Product, for a suitable period of time to enable Theravance to secure Third Party supply.

(e) In the event of a Change in Control of Theravance, prior to termination by GSK under Section 14.4, none of the provisions under this Section 14.6.3 shall survive as they pertain to any Collaboration Product other than to a single agent LABA, its [*] formulation, [*]; and the Parties will meet in good faith to explore other potential commercial options e.g. use of one or more Third Parties for possible continued Commercialisation of such Terminated Commercialised Collaboration Product if it is a LABA/ICS Combination Product or Other Combination Product.

(f) If GSK, in the exercise of its reasonable good faith judgment, determines that exercise by Theravance alone or with a Third Party of any of the rights or activities contemplated by this Section 14.6.3 will materially damage GSK's continued development, regulatory or commercial use of GSK Property, then GSK shall grant to Theravance, for such Terminated Commercialized Collaboration Product (excluding the non-LABA component of a Combination Product and/or Other Combination Product [*]) the appropriate licenses in the Territory under the GSK Patents, GSK Inventions and GSK Know-How related to the LABA compound, [*] formulation, [*] as applicable, to enable Theravance to Commercialize a product containing the LABA Compound in the Field.

14.6.4 *Effect of Termination of the Agreement Due to Discontinuation of Development Prior to First Commercial Sale of All Collaboration Products and All Pooled Compounds.* In the event that the Agreement is terminated pursuant to Section 14.5, the following shall occur:

(i) *Return of Materials.* GSK shall [*] promptly transfer to Theravance copies of all data, reports, records and materials in its possession or control that relate to the Theravance Compounds and return to Theravance, or destroy at Theravance's request, all relevant records and materials in its possession or control containing Confidential Information of Theravance (provided that GSK may keep one copy of such Confidential Information of Theravance for archival purposes only in accordance with Section 10.1). Theravance shall, at its sole expense, promptly transfer to GSK copies of all data, reports, records and materials in its possession or control that relate to the GSK Compounds and return to GSK, or destroy at GSK's request, all relevant records and materials in its possession or control containing Confidential Information of GSK (provided that Theravance may keep one copy of such Confidential Information of GSK for archival purposes only in accordance with Section 10.1).

(ii) *Transfer of Regulatory Filings.* GSK shall [*] transfer to Theravance, or shall cause its designee(s) to transfer to Theravance, ownership of all regulatory filings made or filed for any Terminated Development Collaboration Product (to the extent that any are held in GSK's or such designee(s)'s name), but only where [*] and such transfer to be as permitted by applicable Laws and regulations. GSK, at its sole discretion, shall also give due consideration to transferring to Theravance any additional regulatory filings for a Terminated Development Collaboration Product which contains a [*].

(iii) *License Rights.* All licenses granted by Theravance to GSK with respect to the Collaboration Products under this Agreement shall terminate.

(iv) *Stock Return.* GSK shall return to Theravance all available formulated and API stocks that contain a Theravance Compound and which are then held by GSK or cause such API stocks to be provided to Theravance if held by a vendor or other Third Party on behalf of GSK.

(v) *Limitations on Further Development by GSK.* GSK shall not be permitted to continue or re-initiate clinical Development of any GSK Compound that is both a Terminated Collaboration Product and a LABA in the Field for a period of [*] after the date of such termination.

14.7 *License Rights.* Except as otherwise provided herein in, all licenses granted hereunder relating to Terminated Collaboration Products shall terminate. Also the Parties accept that nothing provided for in this Article 14 or elsewhere in this Agreement, grants any licenses (whether exclusive, semi-exclusive or otherwise) from GSK to Theravance for any (i) GSK Compound (ii) GSK Invention (ii) GSK Know How and (iv) GSK Patents, except for those rights essential and specific to enable Theravance to exercise those rights and carry out those activities contemplated under Section 14.6 above.

14.8 *Milestone Payments.* Neither Party shall be obligated to make a Development Milestone payment under Section 6.2 which is triggered by an event occurring after the effective date of termination of this Agreement with respect to a Collaboration Product.

14.9 *Subsequent Royalties.* If after termination of this Agreement either Party subsequently Develops and Commercializes any [*] for the treatment / prophylaxis of respiratory diseases which (i) was [*] or (ii) was a [*], it will pay to the other Party a royalty on Net Sales of any such products at the rate of [*] for a single-agent product and [*] for the first combination product for a period of [*] from the date of launch on a Country-by-Country basis; provided, however, that this royalty shall not apply to any compound or product (including new product line extensions and/or re-formulation work) where the original compound or product is, as of the date of signature of this Agreement, already Commercialized.

14.10 *Accrued Rights; Surviving Obligations.* Termination, relinquishment or expiration of this Agreement for any reason shall be without prejudice to any rights that shall have accrued to the benefit of any Party prior to such termination, relinquishment or expiration. Such termination, relinquishment or expiration shall not relieve any Party from obligations which are expressly or by implication intended to survive termination, relinquishment or expiration of this Agreement, including without limitation Article 10, and shall not affect or prejudice any provision of this Agreement which is expressly or by implication provided to come into effect on, or continue in effect after, such termination, relinquishment or expiration.

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ARTICLE 15
LIMITATIONS RELATING TO THERAVANCE EQUITY SECURITIES

15.1 *Purchases of Equity Securities.* So long as this Agreement remains in effect and for a period of [*] thereafter, except as permitted by Section 15.2, or as otherwise agreed in writing by Theravance, GSK and its Affiliates will not (and will not assist or encourage others to) directly or indirectly in any manner:

15.1.1 acquire, or agree to acquire, directly or indirectly, alone or in concert with others, by purchase, gift or otherwise, any direct or indirect beneficial ownership (within the meaning of Rule l3d-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) or interest in any securities or direct or indirect rights, warrants or options to acquire, or securities convertible into or exchangeable for, any securities of Theravance;

15.1.2 make, or in any way participate in, directly or indirectly, alone or in concert with others, any "solicitation" of "proxies" to vote (as such terms are used in the proxy rules of the Securities and Exchange Commission (the "SEC") promulgated pursuant to Section 14 of the Exchange Act); provided, however, that the prohibition in this Section 15.1.2 shall not apply to solicitations exempted from the proxy solicitation rules by Rule 14a-2 under the Exchange Act as such Rule 14a-2 is in effect as of the date hereof;

15.1.3 form, join or in any way participate in a "group" within the meaning of Section 13(d)(3) of the Exchange Act with respect to any voting securities of Theravance;

15.1.4 acquire or agree to acquire, directly or indirectly, alone or in concert with others, by purchase, exchange or otherwise, (i) any of the assets, tangible or intangible, of Theravance or (ii) direct or indirect rights, warrants or options to acquire any assets of Theravance, except for such assets as are then being offered for sale by Theravance;

15.1.5 enter into any arrangement or understanding with others to do any of the actions restricted or prohibited under Sections 15.1.1, 15.1.2, 15.1.3, or 15.1.4.

15.1.6 otherwise act in concert with others, to seek to offer to Theravance or any of its stockholders any business combination, restructuring, recapitalization or similar transaction to or with Theravance or otherwise seek in concert with others, to control, change or influence the management, board of directors or policies of Theravance or nominate any person as a director of Theravance who is not nominated by the then incumbent directors, or propose any matter to be voted upon by the stockholders of Theravance.

15.2 *Exceptions for Purchasing Securities of Theravance.* Nothing herein shall prevent GSK or its Affiliates (or in the case of Section 15.2.4, their employees) from:

15.2.1 purchasing the Series E Preferred Stock of Theravance on the Effective Date as contemplated herein.

15.2.2 purchasing additional equity securities of Theravance after the Effective Date if after such purchase GSK and its Affiliates would own in the aggregate no greater percent of the total voting power of all voting securities of Theravance then outstanding than GSK together with its Affiliates owned immediately after purchase of the Series E Preferred Stock on the Effective Date.

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15.2.3 acquiring securities of Theravance issued in connection with stock splits or recapitalizations or on exercise of pre-emptive rights afforded to Theravance stockholders generally.

15.2.4 purchasing securities of Theravance pursuant to (i) a pension plan established for the benefit of GSK's employees, (ii) any employee benefit plan of GSK, (iii) any stock portfolios not controlled by GSK or any of its Affiliates that invest in Theravance among other companies, or (iv) following an initial public offering of Theravance common stock, for the account of a GSK employee in such employee's personal capacity.

15.2.5 acquiring securities of another biotechnology or pharmaceutical company that beneficially owns any of Theravance's securities.

15.2.6 acquiring equity securities of Theravance without any limitation following initiation by a third party of an unsolicited tender offer to purchase [*] or more of any class or service of Theravance's publicly traded voting securities (a "Hostile Tender Offer"); provided that the exception provided by this Section 15.2.6 shall be limited to the classes or series of Theravance's securities that are the subject of the Hostile Tender Offer; provided, further, that, in the event that either (a) such Hostile Tender Offer is terminated or expires without the purchase of at least [*] of any class or series of Theravance's publicly traded voting securities by such third party, or (b) the Theravance Board of Directors subsequently recommends that such offer be accepted, then following the date of such termination, expiration or recommendation the acquisitions by GSK and/or its Affiliates under this Section 15.2.6 prior to the events described in clauses (a) and (b) above shall not be considered a breach by GSK of the provisions of Section 15.2 as long as GSK, at its option, either:

(i) divests (or cause to be divested) in one or more open-market transactions such number of shares of Theravance's securities acquired by it and its Affiliates pursuant to this Section 15.2.6 such that after such divestiture GSK and its Affiliates would own in the aggregate no greater percent of the total voting power of all voting securities of Theravance then outstanding than GSK together with its Affiliates owned immediately prior to the commencement of such Hostile Tender Offer, any such divestiture to be completed as expeditiously as possible consistent with applicable securities laws and regulations and in a manner intended to shield GSK and its Affiliates from liability for recovery of short swing profits under Section 16 of the Exchange Act and the rules promulgated thereunder; or

(ii) enters into a voting agreement, proxy or similar arrangement pursuant to which (A) all Theravance voting securities acquired pursuant to this Section 15.2.6 are voted on all matters to be voted on by holders of Theravance voting securities, including, but not limited to, in favor of any transaction involving a proposed Change in Control (as defined below) of Theravance in the same proportion as the outstanding Theravance voting securities not held by GSK or any GSK Affiliate are voted, (B) no Theravance voting securities beneficially owned by GSK and/or any Affiliate abstain from such a vote, and (C) no dissenter or appraisal or similar rights are exercised with respect to any vote relating to a Change in Control of Theravance.

15.3 *Voting.* Until the date of an initial public offering of Theravance common stock, GSK shall ensure that all outstanding Theravance voting securities beneficially owned by GSK and/or any GSK Affiliate are voted for management's nominees to the Board of Directors of Theravance to the extent not inconsistent with Section 2.8 of the Investors' Rights Agreement.

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15.4 *Theravance Voting Securities Transfer Restrictions.*

15.4.1 So long as this Agreement remains in effect and for a period of one (1) year thereafter, neither GSK nor any of its Affiliates shall dispose of beneficial ownership of Theravance voting securities except (i) pursuant to a bona fide public offering registered under the Securities Act of either Theravance voting securities or securities exchangeable or exercisable for Theravance voting securities (in which the securities are broadly distributed and GSK does not select the purchasers); or (ii) pursuant to Rule 144 under the Securities Act (provided that if Rule 144(k) is available, such transfer nevertheless is within the volume limits and manner of sale requirements applicable to non-144(k) transfers under Rule 144); or (iii) in transactions that to the knowledge of GSK do not, directly or indirectly, result in any person or group owning or having the right to acquire or intent to acquire beneficial ownership of Theravance voting securities with aggregate voting power of five percent or more of the aggregate voting power of all outstanding Theravance voting securities.

15.4.2 Notwithstanding the foregoing, the restrictions on disposition under Section 15.4.1 shall not apply if, as a result of such disposition, (A) no filing by any Person (including, but not limited to GSK or any of its Affiliates) shall be required under any Law (including but not limited to the Exchange Act) that would identify GSK or any of its Affiliates as the seller of the securities, and (B) neither GSK nor any of its Affiliates (or any transferee thereof) would be required by Law (including without limitation the disclosure requirements of the Securities Act of 1933, as amended (the "Securities Act"), and the Exchange Act) to make any public announcement of the transfer or disposition.

15.4.3 So long as this Agreement remains in effect and for a period of one (1) year thereafter, neither GSK nor any of its Affiliates may make any public disclosure of any holdings of or disposition of beneficial ownership of Theravance voting securities unless such disclosure is approved in advance in writing by Theravance, such approval not to be unreasonably withheld or delayed. Notwithstanding the foregoing, no consent of Theravance shall be required for any filing that GSK or any of its Affiliates is required to make under applicable Law in any jurisdiction, including without limitation any Form 144 under the Securities Act, any Form 4 under the Exchange Act, or any Schedule 13D or 13G or any amendments thereto under the Exchange Act; provided that, prior to making any such filings, GSK shall use reasonable efforts to (i) to provide Theravance notice and a copy of such proposed filings and (ii) consult with Theravance on the content of such filings.

15.5 *Termination of Purchase Restrictions.* The limitations on purchase of equity securities set forth in Section 15.1 shall terminate immediately upon a transaction or series of related transactions following a Change in Control of Theravance.

ARTICLE 16
MISCELLANEOUS

16.1 *Relationship of the Parties.* Each Party shall bear its own costs incurred in the performance of its obligations hereunder without charge or expense to the other except as expressly provided in this Agreement. Neither Party shall have any responsibility for the hiring, termination or compensation of the other Party's employees or for any employee benefits of such employee. No employee or representative of a Party shall have any authority to bind or obligate the other Party to this Agreement for any sum or in any manner whatsoever, or to create or impose any contractual or other liability on the other Party without said Party's approval. For all purposes, and notwithstanding any other provision of this Agreement to the contrary, GSK's legal relationship under this Agreement to Theravance shall be that of independent contractor. This Agreement is not a partnership agreement and nothing in this

Agreement shall be construed to establish a relationship of co-partners or joint venturers between the Parties.

16.2 *Registration and Filing of This Agreement.* To the extent, if any, that either Party concludes in good faith that it or the other Party is required to file or register this Agreement or a notification thereof with any Governmental Authority, including without limitation the U.S. Securities and Exchange Commission, the Competition Directorate of the Commission of the European Communities or the U.S. Federal Trade Commission, in accordance with Law, such Party shall inform the other Party thereof. Should both Parties jointly agree that either of them is required to submit or obtain any such filing, registration or notification, they shall cooperate, each at its own expense, in such filing, registration or notification and shall execute all documents reasonably required in connection therewith. In such filing, registration or notification, the Parties shall request confidential treatment of sensitive provisions of this Agreement, to the extent permitted by Law. The Parties shall promptly inform each other as to the activities or inquiries of any such Governmental Authority relating to this Agreement, and shall reasonably cooperate to respond to any request for further information there from on a timely basis.

16.3 *Force Majeure.* The occurrence of an event which materially interferes with the ability of a Party to perform its obligations or duties hereunder which is not within the reasonable control of the Party affected or any of its Affiliates, not due to malfeasance by such Party or its Affiliates, and which could not with the exercise of due diligence have been avoided (each, a "Force Majeure Event"), including, but not limited to, an injunction, order or action by a Governmental Authority, fire, accident, labor difficulty, strike, riot, civil commotion, act of God, inability to obtain raw materials, delay or errors by shipping companies or change in law, shall not excuse such Party from the performance of its obligations or duties under this Agreement, but shall merely suspend such performance during the continuation of the Force Majeure. The Party prevented from performing its obligations or duties because of a Force Majeure Event shall promptly notify the other Party of the occurrence and particulars of such Force Majeure and shall provide the other Party, from time to time, with its best estimate of the duration of such Force Majeure Event and with notice of the termination thereof. The Party so affected shall use Diligent Efforts to avoid or remove such causes of nonperformance as soon as is reasonably practicable. Upon termination of the Force Majeure Event, the performance of any suspended obligation or duty shall promptly recommence. The Party subject to the Force Majeure Event shall not be liable to the other Party for any direct, indirect, consequential, incidental, special, punitive, exemplary or other damages arising out of or relating to the suspension or termination of any of its obligations or duties under this Agreement by reason of the occurrence of a Force Majeure Event, provided such Party complies in all material respects with its obligations under this Section 16.3.

16.4 *Governing Law.* This Agreement shall be construed, and the respective rights of the Parties determined, according to the substantive law of the State of Delaware notwithstanding the provisions governing conflict of laws under such Delaware law to the contrary, except matters of intellectual property law which shall be determined in accordance with the intellectual property laws relevant to the intellectual property in question.

16.5 *Attorneys' Fees and Related Costs.* In the event that any legal proceeding is brought to enforce or interpret any of the provisions of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, court costs and expenses of litigation whether or not the action or proceeding proceeds to final judgment.

16.6 *Assignment.* This Agreement may not be assigned by either Party without the prior written consent of the other Party; provided, however that either Party may assign this Agreement, in whole or in part, to any of its Affiliates if such Party guarantees the performance of this Agreement by such Affiliate; and provided further that either Party may assign this Agreement to a successor to all or substantially all of the assets of such Party whether by merger, sale of stock, sale of assets or other similar transaction. This Agreement shall be binding upon, and subject to the terms of the foregoing sentence, inure to the benefit of the Parties hereto, their permitted successors, legal representatives and assigns.

16.7 *Notices.* All demands, notices, consents, approvals, reports, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally, by facsimile with confirmation of receipt, by mail (first class, postage prepaid), or by overnight delivery using a globally-recognized carrier, to the Parties at the following addresses:

Theravance:	Theravance, Inc. 901 Gateway Boulevard South San Francisco, CA 94080 Facsimile: 650-827-8683 Attn: Senior Vice President, Commercial Development
GSK:	Glaxo Group Limited Glaxo Wellcome House Berkeley Avenue Greenford Middlesex UB6 0NN United Kingdom Attn: Company Secretary Facsimile: 011 44 208-047-6912
With a copy to:	GlaxoSmithKline plc 980 Great West Road Brentford Middlesex TW8 9GS United Kingdom Attn: Corporate Law Facsimile: 011 44 208-047-6912
and with a copy to:	Brentford Middlesex TW8 9GS United Kingdom Attn: Vice President, Worldwide Business Development Facsimile: 011 44 208-990-8142

or to such other address as the addressee shall have last furnished in writing in accord with this provision to the addressor. All notices shall be deemed effective upon receipt by the addressee.

16.8 *Severability.* In the event of the invalidity of any provisions of this Agreement or if this Agreement contains any gaps, the Parties agree that such invalidity or gap shall not affect the validity of the remaining provisions of this Agreement. The Parties will replace an invalid provision or fill any gap with valid provisions which most closely approximate the purpose and economic effect of the invalid provision or, in case of a gap, the Parties' presumed intentions. In the event that the terms and conditions of this Agreement are materially altered as a result of the preceding sentences, the Parties shall renegotiate the terms and conditions of this Agreement in order to resolve any inequities. Nothing in this Agreement shall be interpreted so as to require either Party to violate any applicable laws, rules or regulations.

16.9 *Headings.* The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

16.10 *Waiver.* Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written

instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. Except as expressly set forth in this Agreement, all rights and remedies available to a Party, whether under this Agreement or afforded by law or otherwise, will be cumulative and not in the alternative to any other rights or remedies that may be available to such Party.

16.11 *Entire Agreement.* This Agreement (including the exhibits and schedules hereto) constitutes the entire agreement between the Parties hereto with respect to the within subject matter and supersedes all previous agreements and understandings between the Parties, whether written or oral. This Agreement may be altered, amended or changed only by a writing making specific reference to this Agreement and signed by duly authorized representatives of Theravance and GSK.

16.12 *No License.* Nothing in this Agreement shall be deemed to constitute the grant of any license or other right in either Party, to or in respect of any Collaboration Product, patent, trademark, Confidential Information, trade secret or other data or any other intellectual property of the other Party, except as expressly set forth herein.

16.13 *Third Party Beneficiaries.* None of the provisions of this Agreement shall be for the benefit of or enforceable by any Third Party, including without limitation any creditor of either Party hereto. No such Third Party shall obtain any right under any provision of this Agreement or shall by reasons of any such provision make any Claim in respect of any debt, liability or obligation (or otherwise) against either Party hereto.

16.14 *Counterparts.* This Agreement may be executed in any two counterparts, each of which, when executed, shall be deemed to be an original and both of which together shall constitute one and the same document.

16.15 *Single Closing Condition.* The obligation of each Party to consummate the transaction contemplated hereby is subject to the satisfaction of the following condition (the "Closing Condition"): All filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and any other similar competition or merger control laws that are necessary in any jurisdiction with respect to the transaction contemplated hereby shall have been made and any required waiting period under such laws shall have expired or been terminated and any Governmental Authority that has power under or authority to enforce such laws shall have, if applicable, approved, cleared or decided neither to initiate proceedings or otherwise intervene in respect of the transaction contemplated hereby nor to refer the transaction to any other competent Governmental Authority. Each Party shall use good faith efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other party in doing, all things necessary, proper or advisable to consummate and make effective the transaction contemplated by this Agreement, including, but not limited to satisfaction of the Closing Condition and each Party shall keep the other Party reasonably apprised of the status of matters relating to the completion of same. In connection with the foregoing, the Parties hereby agree to negotiate in good faith to make as soon as practicable any modification or amendment to this Agreement or any agreement related hereto that is required by the United States Federal Trade Commission, Department of Justice or equivalent Governmental Authority, provided that no Party shall be required to agree to any modification or amendment that, in the reasonable opinion of such Party's external legal or financial counsel, would be adverse to such Party. This Agreement may be terminated by either Party upon written notice any time after June 1, 2003 if the transactions contemplated by this Agreement shall not have been consummated by June 1, 2003 due to failure to satisfy the Closing Condition; provided, however, that the terminating Party shall not have breached in any material respect its obligations under this Agreement in any manner that shall have been the proximate cause of, or resulted in, the failure to satisfy the Closing Condition or otherwise to consummate the transactions contemplated by this Agreement by such date.

IN WITNESS WHEREOF, Theravance and GSK, by their duly authorized officers, have executed this Agreement on November 14, 2002.

THERAVANCE, INC.		GLAXO GROUP LIMITED	
By:	/s/ RICK E WINNINGHAM	By:	/s/ JEAN-PIERRE GARNIER
	Rick E Winningham Chief Executive Officer		Jean-Pierre Garnier Chief Executive Officer

Schedule 1.19

Criteria for Theravance New Compounds and Replacement Compounds

1. [*], patentable.
2. Potency [*].
3. [*] activity [*].
4. Selectivity [*].
5. Selectivity at [*].
6. No significant inhibition of [*].
7. Duration of agonist activity [*].
8. Stable compound, [*].
9. Oral bioavailability [*].
10. No significant generation [*].
11. Irritation [*].

[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

Schedule 6.1.2

Preferred Stock Purchase Agreement

THERAVANCE, INC.

SERIES E PREFERRED

STOCK PURCHASE AGREEMENT

December 19, 2002

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THERAVANCE, INC.

SERIES E PREFERRED STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT is made as of the 19th day of December, 2002, by and among Theravance, Inc., a Delaware corporation (the "Company"), and Glaxo Group Limited, a limited liability company organized under the laws of England and Wales (the "Investor").

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. *Purchase and Sale of Stock.*

1.1 *Sale and Issuance of Series E Preferred Stock.*

(a) The Company shall adopt and file with the Secretary of State Delaware on or before the Closing (as defined below) the Restated Certificate of Incorporation in the form attached hereto as *Exhibit A* (the "Restated Certificate").

(b) On or prior to the Closing (as defined below), the Company shall have authorized (i) the sale and issuance pursuant to this Agreement of up to an aggregate of 4,000,000 shares at a price of $10.00 per share of its Series E Preferred Stock and (ii) the issuance of the same number of shares of its Common Stock to be issued upon conversion of the Series E Preferred Stock (the "Conversion Shares"). The Series E Preferred Stock and the Conversion Shares shall have the rights, preferences, privileges and restrictions set forth in the Restated Certificate.

(c) Subject to the terms and conditions of this Agreement, the Investor agrees, severally and not jointly, to purchase at the Closing and the Company agrees to sell and issue to the Investor at the Closing, 4,000,000 shares of the Company's Series E Preferred Stock for an aggregate purchase price of $40,000,000.

1.2 *Closing.* The purchase and sale of the Series E Preferred Stock shall take place at the offices of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, 610 Lincoln Street, Waltham, MA 02451, at 10:00 A.M., on the date all conditions to closing set forth in Sections 4 and 5 have been satisfied or effectively waived, or at such other time and place as the Company and Investor mutually agree upon orally or in writing (which time and place are designated as the "Closing"). At the Closing the Company shall deliver to the Investor a certificate representing the Series E Preferred Stock that the Investor is purchasing against payment of the purchase price therefor by check or wire transfer, or any combination thereof.

2. *Representations and Warranties of the Company.* The Company hereby represents and warrants to the Investor that, except as set forth on a Schedule of Exceptions (the "Schedule of Exceptions") furnished to the Investor, which exceptions shall be deemed to be representations and warranties as if made hereunder:

2.1 *Organization, Good Standing and Qualification.* The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to (i) execute, deliver and perform its obligations under this Agreement and the Amended and Restated Investors' Rights Agreement dated of even date herewith, by and among the Company and the Investors, the form of which is attached hereto as *Exhibit B* (the "Investors' Rights Agreement"), (ii) to issue and sell the Series E Preferred Stock hereunder, (iii) to issue the Conversion Shares in accordance with the Restated Certificate, (iv) to perform its obligations under the Restated Certificate, and (v) to carry on its business as now conducted and as proposed to be conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect on its business or properties.

2.2 *Capitalization and Voting Rights*. The authorized capital of the Company will consist immediately prior to the Closing, of:

(a) *Preferred Stock.* 50,000,000 shares of Preferred Stock (the "Preferred Stock"), of which (i) 5,020,000 shares have been designated Series A Preferred Stock (the "Series A Preferred Stock"), 4,988,000 of which are outstanding; (ii) 5,100,000 shares have been designated Series B Preferred Stock (the "Series B Preferred Stock"), 5,074,000 of which are outstanding; (iii) 18,823,000 shares have been designated Series C Preferred Stock (the "Series C Preferred Stock"), 18,745,166 of which are outstanding; (iv) 1,666,666 shares have been designated Series D Preferred Stock (the "Series D Preferred Stock"), 1,666,666 of which are outstanding (which are initially convertible into 2,777,777 shares of Common Stock); (v) 13,888,889 shares have been designated Series D-1 Preferred Stock (the "Series D-1 Preferred Stock"), 13,169,905 of which are outstanding; and (vi) 4,000,000 shares have been designated Series E Preferred Stock (the "Series E Preferred Stock"), none of which will be outstanding prior to the Closing, and up to all of which may be sold pursuant to this Agreement. The rights, privileges and preferences of the Preferred Stock will be as stated in the Company's Restated Certificate.

(b) *Common Stock.* 120,000,000 shares of common stock, par value $0.01 ("Common Stock"), of which 11,158,392 shares are issued and outstanding.

(c) The outstanding shares of Common Stock and Preferred Stock are all duly and validly authorized and issued, fully paid and nonassessable, and were issued in accordance with the registration or qualification provisions of the Securities Act of 1933, as amended (the "Act") and any relevant state securities laws, or pursuant to valid exemptions therefrom.

(d) Except for (A) the conversion privileges of the Preferred Stock, (B) the rights provided in Section 2.5 of the Investors' Rights Agreement, (C) currently outstanding warrants to purchase 4,000 shares of Series A Preferred Stock, (D) currently outstanding warrants to purchase 4,000 shares of Series B Preferred Stock, (E) currently outstanding warrants to purchase 45,000 shares of Series C Preferred Stock, (F) a currently outstanding warrant to purchase 48,611 shares of Series D-1 Preferred Stock, and (G) currently outstanding options to purchase 7,187,436 shares of Common Stock granted to employees, directors, board members, consultants and service providers, there are not outstanding any options, warrants, rights (including conversion or preemptive rights) or agreements for the purchase or acquisition from the Company of any shares of its capital stock. In addition to the aforementioned options, the Company has reserved an additional 969,493 shares of its Common Stock for issuance upon exercise of options to be granted in the future under the Company's 1997 Stock Plan. Except for the provisions of the Restated Certificate, the Investors' Rights Agreement and of that certain Amended and Restated Stockholders' Voting Agreement dated as of January 25, 1999 by and among the Company and the other parties listed therein, the Company is not a party or subject to any agreement or understanding, and, to the best of the Company's knowledge, there is no agreement or understanding between any persons and/or entities, which affects or relates to the voting or giving of written consents with respect to any security or by a director of the Company. No stock plan, stock purchase, stock option or other agreement or understanding between the Company and any holder of any equity securities or rights to purchase equity securities provides for acceleration or other changes in the vesting provisions of such agreement or understanding as the result of any merger, consolidated sale of stock or assets, change in control or any other similar transaction(s) by the Company.

2.3 *Subsidiaries*. The Company does not presently own or control, directly or indirectly, any interest in any other corporation, association or other business entity, other than Theravance East, Inc., a Delaware corporation and a direct wholly-owned subsidiary of the Company. The Company is not a participant in any joint venture, partnership, or similar arrangement.

2.4 *Authorization.* All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement and the Investors' Rights Agreement (collectively, the "Transaction Documents"), the performance of all obligations of the Company hereunder and thereunder, and the authorization, issuance (or reservation for issuance), sale and delivery of the Series E Preferred Stock being sold hereunder and the Common Stock issuable upon conversion of the Series E Preferred Stock has been taken or will be taken prior to the Closing, and the Transaction Documents constitute valid and legally binding obligations of the Company, enforceable in accordance with their respective terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, and (iii) to the extent the indemnification provisions contained in the Investors' Rights Agreement may be limited by applicable federal or state securities laws.

2.5 *Valid Issuance of Preferred and Common Stock.* The Series E Preferred Stock that is being purchased by the Investor hereunder, when issued, sold and delivered in accordance with the terms of this Agreement for the consideration expressed herein, will be duly and validly issued, fully paid, and nonassessable, and will be free of restrictions on transfer other than restrictions on transfer under the Transaction Documents and under applicable state and federal securities laws. The Common Stock issuable upon conversion of the Series E Preferred Stock purchased under this Agreement has been duly and validly reserved for issuance and, upon issuance in accordance with the terms of the Restated Certificate, will be duly and validly issued, fully paid, and nonassessable and will be free of restrictions on transfer other than restrictions on transfer under the Transaction Documents and under applicable state and federal securities laws. The Series E Preferred Stock that is being purchased by the Investor hereunder, and the Common Stock issuable upon conversion of such Series E Preferred Stock is not subject to preemptive rights or rights of first refusal that have not been waived or complied with. The outstanding Series A, Series B, Series C, Series D and Series D-1 Preferred Stock was duly and validly issued, fully paid, and is nonassessable. The Common Stock issuable upon conversion of the outstanding Series A, Series B, Series C, Series D and Series D-1 Preferred Stock has been duly and validly reserved for issuance and, upon issuance in accordance with the terms of the Restated Certificate, will be duly and validly issued, fully paid, and nonassessable and will be free of restrictions on transfer other than restrictions on transfer under the documents executed in connection with the sale of the Series A, Series B, Series C, Series D and Series D-1 Preferred Stock and under applicable state and federal securities laws. The outstanding Series A, Series B, Series C, Series D and Series D-1 Preferred Stock and the Common Stock issuable upon conversion of such Preferred Stock is not subject to preemptive rights or rights of first refusal that have not been waived or complied with.

2.6 *Governmental Consents.* No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority on the part of the Company is required in connection with the consummation of the transactions contemplated by this Agreement, except (i) a filing under the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), (ii) the filing of the Restated Certificate with the Secretary of State of Delaware; and (iii) certain post-closing filings as may be required pursuant to federal securities laws and under the "Blue Sky" laws of the various states.

2.7 *Offering.* Subject in part to the truth and accuracy of the Investor's representations set forth in Section 3 of this Agreement, the offer, sale and issuance of the Series E Preferred Stock and the Conversion Shares as contemplated by this Agreement are exempt from the registration requirements of any applicable state and federal securities laws, and neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemption.

2.8 *Litigation.* There is no action, suit, proceeding or investigation pending or, to the Company's knowledge, currently threatened against the Company that questions the validity of the Transaction

Documents, or the right of the Company to enter into such agreements, or to consummate the transactions contemplated hereby or thereby, or if determined adversely, might result, either individually or in the aggregate, in (i) any material adverse changes in the assets or business of the Company, financially or otherwise or (ii) any change in the current equity ownership of the Company, nor is the Company aware that there is any basis for the foregoing. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit, proceeding or investigation by the Company currently pending or that the Company intends to initiate.

2.9 *Patents and Trademarks.* The Company owns, or has rights to use pursuant to a valid license, all patents, trademarks, service marks, trade names, copyrights, trade secrets, information, proprietary rights and processes necessary for its business as now conducted. There are no outstanding options, licenses or agreements of any kind relating to the foregoing proprietary rights, nor is the Company bound by or a party to any options, licenses or agreements of any kind with respect to the patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information and other proprietary rights and processes of any other person or entity other than such licenses or agreements arising from the purchase of "off the shelf" or standard products. The use, modification, licensing, sublicensing, sale, or any other exercise of rights involving such intellectual property does not infringe any copyright, trade secret, trademark, service mark, trade name, firm name, logo, trade dress, mask work, moral right, other intellectual property right, right of privacy or right in personal data, or to the knowledge of the Company, any patent, of any person. No claims (i) challenging the validity, effectiveness, or ownership by the Company of any of the Company's intellectual property, or (ii) to the effect that the use, reproduction, modification, manufacturing, distribution, licensing, sublicensing, sale or any other exercise of rights in any product, work, technology, service or process as used, provided or offered at any time, or as proposed for use, reproduction, modification, distribution, licensing, sublicensing, sale or any other exercise of rights, by the Company infringes or will infringe on any intellectual property or other proprietary or personal right of any person have been asserted or, to the knowledge of the Company, (A) are threatened by any person nor (B) are there any valid grounds for any bona fide claim of any such kind. To the knowledge of the Company, there is no unauthorized use, infringement or misappropriation of any of the Company's intellectual property by any third party, employee or former employee. The Company's employees are not obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of his or her best efforts to promote the interests of the Company or that would conflict with the Company's business as proposed to be conducted. Neither the execution nor delivery of the Transaction Documents, nor the carrying on of the Company's business by the employees of the Company, nor the conduct of the Company's business as proposed, will, to the best of the Company's knowledge, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated. The Company does not believe it is or will be necessary to utilize any inventions of any of its employees made prior to their employment by the Company unless such inventions are properly assigned to the Company.

2.10 *Compliance with Other Instruments.* The Company is not in violation or default in any material respect of any provision of its Restated Certificate or Bylaws, or in any material respect of any instrument, judgment, order, writ, decree or contract to which it is a party or by which it is bound, or, to the best of its knowledge, of any provision of any statute, rule or regulation applicable to the Company. The execution, delivery and performance of the Transaction Documents, and the consummation of the transactions contemplated hereby and thereby will not result in any such violation or be in conflict with or constitute, with or without the passage of time and giving of notice, either a default under any such provision, instrument, judgment, order, writ, decree or contract or an event that results in the creation of any lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, impairment, forfeiture, or nonrenewal of any material permit, license,

authorization, or approval applicable to the Company, its business or operations or any of its assets or properties.

2.11 *Agreements; Action.*

(a) Except for agreements explicitly contemplated by the Transaction Documents, there are no agreements, understandings or proposed transactions between the Company and any of its officers, directors, affiliates, or any affiliate thereof.

(b) There are no agreements, understandings, instruments, contracts, proposed transactions, judgments, orders, writs or decrees to which the Company is a party or by which it is bound that may involve (i) provisions restricting or affecting the development, manufacture or distribution of the Company's products or services; (ii) obligations (contingent or otherwise) of, or payments to, the Company in excess of $100,000 (other than obligations of, or payments to, the Company arising from agreements entered into in the ordinary course of business); or (iii) indemnification by the Company with respect to infringements of proprietary rights (other than indemnification obligations arising from agreements entered into in the ordinary course of business).

(c) The Company has not (i) declared or paid any dividends or authorized or made any distribution upon or with respect to any class or series of its capital stock, (ii) incurred any indebtedness for money borrowed or any other liabilities individually in excess of $1,000,000 or in the aggregate in excess of $5,000,000, (iii) made any loans or advances to any person, other than ordinary advances for travel expenses, or (iv) sold, exchanged or otherwise disposed of any of its assets or rights, other than the sale of its inventory in the ordinary course of business.

(d) For the purposes of subsection (c) above, all indebtedness and liabilities involving the same person or entity (including persons or entities the Company has reason to believe are affiliated therewith) shall be aggregated for the purpose of meeting the individual minimum dollar amounts of such subsection.

(e) The Company is not a party to and is not bound by any contract, agreement or instrument, or subject to any restriction under its Restated Certificate or Bylaws that adversely affects its business as now conducted or as proposed to be conducted, its properties or its financial condition.

(f) The Company has not engaged in the past three (3) months in any discussion (i) with any representative of any corporation or corporations regarding the consolidation or merger of the Company with or into any such corporation or corporations, (ii) with any corporation, partnership, association or other business entity or any individual regarding the sale, conveyance or disposition of all or substantially all of the assets of the Company or a transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company is disposed of, or (iii) regarding any other form of acquisition, liquidation, dissolution or winding up of the Company.

2.12 *Related-Party Transactions.* No employee, officer, or director of the Company or member of his or her immediate family is indebted to the Company, nor is the Company indebted (or committed to make loans or extend or guarantee credit) to any of them. To the Company's knowledge, none of such persons has any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated or with which the Company has a business relationship, or any firm or corporation that competes with the Company, except that employees, officers, or directors of the Company and members of their immediate families may own stock in publicly traded companies that may compete with the Company. No member of the immediate family of any officer or director of the Company is directly or indirectly interested in any material contract with the Company.

2.13 *Permits.* The Company has all franchises, permits, licenses, and any similar authority necessary for the conduct of its business as now being conducted by it, the lack of which could materially and adversely affect the business, properties, prospects, or financial condition of the Company, and the Company believes it can obtain, without undue burden or expense, any similar authority for the conduct of its business as planned to be conducted. The Company is not in default in any material respect under any of such franchises, permits, licenses, or other similar authority.

2.14 *Disclosure.* The Company has provided the Investor with all information requested by the Investor in connection with their decision to purchase the Shares, including all information the Company believes is reasonably necessary to make such investment decision. To the Company's knowledge, neither this Agreement, the Investors' Rights Agreement, nor any other statements or certificates made or delivered in connection herewith or therewith contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements herein or therein not misleading.

2.15 *Corporate Documents.* Except for amendments necessary to satisfy representations and warranties or conditions contained herein (the form of which amendments has been approved by the Investor), the Restated Certificate and Bylaws of the Company are in the form previously provided to the Investor.

2.16 *Title to Property and Assets.* The Company owns its property and assets free and clear of all mortgages, liens, loans and encumbrances, except such encumbrances and liens that arise in the ordinary course of business and do not materially impair the Company's ownership or use of such property or assets and has good and marketable title to such property. With respect to the property and assets it leases, the Company is in compliance with such leases and holds a valid leasehold interest free of any liens, claims or encumbrances.

2.17 *Tax Returns, Payments and Elections.* The Company has timely filed all tax returns and reports as required by law. These returns and reports are true and correct in all material respects. The Company has paid all taxes and assessments due, except those contested by it in good faith, if any. The Company has not been advised (a) that any of its federal, state or local returns are being audited as of the date hereof, or (b) of any deficiency in assessment or proposed judgment to its federal, state or other taxes. The Company has no knowledge of any liability of any tax to be imposed upon its properties or assets as of the date of this Agreement that isn't adequately provided for.

2.18 *Environmental Law.* To the Company's knowledge, the Company is not in violation of and has no liability or potential liability under any applicable statute, law, or regulation relating to the environment, and to the best of its knowledge, no material expenditures are or will be required in order to comply with any such existing statute, law, or regulation.

2.19 *Proprietary Information and Employment Agreements.* Each current and former employee, officer and consultant of the Company has executed a standard Proprietary Information and Inventions Agreement. The Company is not aware that any of its employees, officers or consultants are in violation thereof, and the Company will use its best efforts to prevent any such violation. The Company has not entered into any employment agreements.

2.20 *Financial Statements.* The Company has made available to the Investor its audited financial statements as of and for the twelve-month period ended December 31, 2001, and its unaudited financial statements for the six-month period ending September 30, 2002 (the "Financial Statements"). The Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods indicated and with each other except that the unaudited Financial Statements may not contain all footnotes required by generally accepted accounting principles. The Financial Statements fairly present the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein, subject in the case of the

unaudited Financial Statements to normal year-end audit adjustments. Except as set forth in the Financial Statements, the Company has no material liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to the date of the Financial Statements and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under generally accepted accounting principles to be reflected in the Financial Statements, which, in both cases, individually or in the aggregate, are not material to the financial condition or operating results of the Company. Except as disclosed in the Financial Statements, the Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with generally accepted accounting principles.

2.21 *Changes.* Since September 30, 2002 there has not been:

(a) any change in the assets, liabilities, financial condition or operating results of the Company from that reflected in the Financial Statement, except changes in the ordinary course of business that have not been, in the aggregate, materially adverse;

(b) any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the assets, properties, financial condition, operating results, prospects or business of the Company (as such business is presently conducted and as it is proposed to be conducted);

(c) any waiver by the Company of a valuable right or of a material debt owed to it;

(d) any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company, except in the ordinary course of business and that is not material to the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted and as it is proposed to be conducted);

(e) any material change or amendment to a material contract or arrangement by which the Company or any of its assets or properties is bound or subject;

(f) any material change in any compensation arrangement or agreement with any employee;

(g) any sale, assignment or transfer of any patents, trademarks, copyrights, trade secrets or other intangible assets;

(h) any resignation or termination of employment of any key employee or officer of the Company; and the Company, to the best of its knowledge, does not know of the impending resignation or termination of employment of any such employee or officer;

(i) receipt of notice that there has been a loss of, or material order cancellation by, any major customer of the Company;

(j) any mortgage, pledge, transfer of a security interest in, or lien, created by the Company, with respect to any of its material properties or assets, except liens for taxes not yet due or payable;

(k) any loans or guarantees made by the Company to or for the benefit of its employees, officers or directors, or any members of their immediate families, other than travel advances and other advances made in the ordinary course of its business;

(l) any declaration, setting aside or payment or other distribution in respect of any of the Company's capital stock, or any direct or indirect redemption, purchase or other acquisition of any of such stock by the Company;

(m) to the best of the Company's knowledge, any other event or condition of any character that might materially and adversely affect the assets, properties, financial condition, operating

results or business of the Company (as such business is presently conducted and as it is proposed to be conducted); or

(n) any agreement or commitment by the Company to do any of the things described in this Section 2.21.

2.22 *Registration Rights.* Except as required pursuant to the Investors' Rights Agreement, the Company is not presently under any obligation, and has not granted, any rights to register any of the Company's presently outstanding securities or any of its securities that may hereafter be issued.

2.23 *Real Property Holding Corporation.* The Company is not a real property holding corporation within the meaning of Code Section 897(c)(2) and any regulations promulgated thereunder.

2.24 *Labor Agreements.* The Company is not bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any labor union, and no labor union has requested or, to the Company's knowledge, has sought to represent any of the employees, representatives or agents of the Company. There is no strike or other labor dispute involving the Company pending, or to the Company's knowledge, threatened, that could have a material adverse effect on its business or properties, nor is the Company aware of any labor organization activity involving its employees.

2.25 *Insurance.* The Company maintains in full force and effect such types and amounts of insurance issued by insurers of recognized responsibility insuring the Company with respect to its business and properties, in such amounts and against such losses and risks which are usual and customary in the Company's business as to amount and scope.

3. *Representations and Warranties of the Investor.* The Investor hereby represents and warrants that:

3.1 *Authorization.* The Investor has full power and authority to enter into the Transaction Documents, and each such Agreement constitutes its valid and legally binding obligation, enforceable in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, and (iii) to the extent the indemnification provisions contained in the Investors' Rights Agreement may be limited by applicable federal or state securities laws.

3.2 *Purchase Entirely for Own Account.* This Agreement is made with the Investor in reliance upon the Investor's representation to the Company, which by the Investor's execution of this Agreement the Investor hereby confirms, that the Series E Preferred Stock to be received by the Investor and the Common Stock issuable upon conversion thereof (collectively, the "Securities") will be acquired for investment for the Investor's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same in violation of applicable securities laws. By executing this Agreement, the Investor further represents that the Investor does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Securities.

3.3 *Disclosure of Information.* The Investor further represents that it has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Series E Preferred Stock and the business, properties, prospects and financial condition of the Company. The foregoing, however, does not limit or modify the representations and warranties of the Company in Section 2 of this Agreement or the right of the Investor to rely thereon.

3.4 *Investment Experience.* The Investor is an investor in securities of companies in the development stage and acknowledges that it is able to fend for itself, can bear the economic risk of its

investment, and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Series E Preferred Stock. The Investor also represents that it has not been organized for the purpose of acquiring the Series E Preferred Stock.

3.5 *Accredited Investor.* The Investor is an "accredited investor" within the meaning of SEC Rule 501 of Regulation D, as presently in effect.

3.6 *Restricted Securities.* The Investor understands that the Securities it is purchasing are characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the Act, only in certain limited circumstances. In this connection, the Investor represents that it is familiar with SEC Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Act.

3.7 *Further Limitations on Disposition.* Without in any way limiting the representations set forth above, the Investor further agrees not to make any disposition of all or any portion of the Securities unless and until the transferee has agreed in writing for the benefit of the Company to be bound by this Section 3 and the Investors' Rights Agreement provided and to the extent this Section and such agreements are then applicable, and:

(a) There is then in effect a Registration Statement under the Act covering such proposed disposition and such disposition is made in accordance with such Registration Statement; or

(b) (i) The Investor shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, including, but not limited to, the name of the transferee, and (ii) if reasonably requested by the Company, the Investor shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company that such disposition will not require registration of such shares under the Act. It is agreed that the Company will not require opinions of counsel for transactions made pursuant to Rule 144 except in unusual circumstances.

(c) Notwithstanding the provisions of Section 3.2 or Paragraphs (a) and (b) above, no such registration statement or opinion of counsel shall be necessary for a transfer by the Investor (i) that is a partnership to a partner of such partnership or a retired partner of such partnership who retires after the date hereof, or to the estate of any such partner or retired partner or the transfer by gift, will or intestate succession of any partner to his or her spouse or to the siblings, lineal descendants or ancestors of such partner or his or her spouse, or (ii) to any entity that is not a natural person and is controlled by, controls or is under common control with the Investor, if the transferee agrees in writing to be subject to the terms hereof to the same extent as if he or she were an original Investor hereunder.

(d) In addition, Investor agrees that, without the Company's written consent, in no event shall any transfer of Securities by the Investor made prior to the initial public offering of the Company's Common Stock pursuant to an effective registration statement under the Act be effective if the transferee is a direct competitor with the primary business of the Company (as determined in the sole discretion of the Company's Board of Directors). The Company agrees that it shall not unreasonably withhold consent for any transfer by Investor to a member or affiliate of Investor or an affiliate of GlaxoSmithKline PLC.

3.8 *Legends.* It is understood that the certificates evidencing the Securities may bear one or all of the following legends:

(a) "These securities have not been registered under the Securities Act of 1933, as amended. They may not be sold, offered for sale, pledged or hypothecated in the absence of a registration statement in effect with respect to the securities under such Act or an opinion of counsel

satisfactory to the Company that such registration is not required or unless sold pursuant to Rule 144 of such Act."

(b) Any legend required by the laws of any state.

4. *Conditions of Investor's Obligations at Closing.* The obligations of the Investor under subsection 1.1(c) of this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions, the waiver of which shall not be effective against the Investor if it does not consent thereto:

4.1 *Representations and Warranties.* The representations and warranties of the Company contained in Section 2 shall have been true on and as of the date of this Agreement.

4.2 *Performance.* The Company shall have performed and complied with all agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing.

4.3 *Compliance Certificate.* The Chief Executive Officer of the Company shall deliver to each Investor at the Closing a certificate stating that the conditions specified in Sections 4.1 and 4.2 have been fulfilled.

4.4 *Qualifications.* All authorizations, approvals, or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be duly obtained and effective as of the Closing.

4.5 *Proceedings and Documents.* All corporate and other proceedings in connection with the transactions contemplated at the Closing and all documents incident thereto shall be reasonably satisfactory in form and substance to the Investor, and they shall have received all such counterpart original and certified or other copies of such documents as they may reasonably request.

4.6 *Opinion of Company Counsel.* The Investor shall have received from Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, counsel for the Company, an opinion, dated as of the Closing, in the form attached hereto as *Exhibit C*.

4.7 *Investors' Rights Agreement.* The Company and the Investor shall have entered into the Investors' Rights Agreement.

4.8 *Filing of the Restated Certificate.* The Restated Certificate shall have been filed with the Secretary of State of Delaware, and shall not have been amended or modified since the date of filing.

4.9 *HSR Act.* The waiting period applicable to the consummation of the transactions contemplated hereby and by that certain Collaboration Agreement between the Company and the Investor under the HSR Act shall have expired or been terminated and no action by the Department of Justice or Federal Trade Commission challenging or seeking to enjoin the consummation of such transactions shall have been instituted and be pending.

5. *Conditions of the Company's Obligations at Closing.* The obligations of the Company to the Investor under this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions by the Investor:

5.1 *Representations and Warranties.* The representations and warranties of the Investor contained in Section 3 shall be true on and as of the Closing with the same effect as though such representations and warranties had been made on and as of the Closing.

5.2 *Qualifications.* All authorizations, approvals, or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with

the lawful issuance and sale of the Securities pursuant to this Agreement shall be duly obtained and effective as of the Closing.

5.3 *Investors' Rights Agreement.* The Company and the Investor shall have entered into the Investors' Rights Agreement.

5.4 *HSR Act.* The waiting period applicable to the consummation of the transactions contemplated hereby and by that certain Collaboration Agreement between the Company and the Investor under the HSR Act shall have expired or been terminated and no action by the Department of Justice or Federal Trade Commission challenging or seeking to enjoin the consummation of such transactions shall have been instituted and be pending.

6. *Miscellaneous.*

6.1 *Survival of Warranties.* The warranties, representations and covenants of the Company and the Investor contained in or made pursuant to this Agreement shall survive the execution and delivery of this Agreement and the Closing and shall in no way be affected by any investigation of the subject matter thereof made by or on behalf of the Investor or the Company.

6.2 *Successors and Assigns.* Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties (including transferees of any Securities). Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

6.3 *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of California as applied to agreements among California residents entered into and to be performed entirely within California.

6.4 *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.5 *Titles and Subtitles.* The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

6.6 *Notices.* All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, if not, then on the next business day or (c) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. Notwithstanding the foregoing or any provision to the contrary in the Investors' Rights Agreement or the Restated Certificate, the Company agrees that when any notice is given to the Investor, whether under this Agreement, the Investors' Rights Agreement or the Restated Certificate, such notice shall not be deemed to be effectively given until a copy of such notice is transmitted to the Investor via facsimile. All notices and certificates will be addressed to the Investor at the address set forth on the signature page hereto or at such other address as the Company or the Investor may designate by ten (10) days advance written notice to the other parties hereto.

6.7 *Finder's Fee.* The Investor agrees to indemnify and to hold harmless the Company from any liability for any commission or compensation in the nature of a finders' fee (and the costs and expenses of defending against such liability or asserted liability) for which such Investor or any of its officers, partners, employees, or representatives is responsible.

The Company agrees to indemnify and hold harmless the Investor from any liability for any commission or compensation in the nature of a finders' fee (and the costs and expenses of defending

against such liability or asserted liability) for which the Company or any of its officers, employees or representatives is responsible.

6.8 *Expenses.* Irrespective of whether the Closing is effected, each party shall bear their own costs and expenses incurred with respect to the negotiation, execution, delivery and performance of this Agreement. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the Investors' Rights Agreement or the Restated Certificate, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

6.9 *Amendments and Waivers.* Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Investor. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding (including securities into which such securities are convertible), each future holder of all such securities, and the Company.

6.10 *Severability.* If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

6.11 *Confidentiality.* Any confidential information obtained by the Investor pursuant to this Agreement which is labeled or otherwise identified as confidential or proprietary shall be treated as confidential and shall not be disclosed to a third party without the prior written consent of the Company and shall not be used by the Investor for any purpose other than monitoring the Investor's investment in the Company, except that the Investor may disclose such information (i) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company, (ii) to its affiliates, officers, directors, shareholders, members and/or partners in the ordinary course of business or pursuant to disclosure obligation to affiliates, shareholders, members and/or partners; provided that such information is provided to such persons and entities with notice that such information is confidential and should be treated as such, (iii) to any prospective purchaser of the Investor's shares of the Company, provided (in the case of disclosure in clause (iii)) the recipient agrees to keep such information confidential and to use such information solely for evaluation of such proposed purchase, or (iv) as may otherwise be required by law. Notwithstanding the foregoing, such information shall not be deemed confidential for the purpose of enforcement of this Agreement and said information shall not be deemed confidential after it becomes publicly known through no fault of the recipient. The provisions of this Section 6.11 shall be in addition to, and not in substitution for, the provisions of any separate confidentiality agreement executed by the parties hereto; provided that if there is any conflict between the provisions of this Section 6.11 and the more restrictive provisions of such separate confidentiality agreement, the provisions of such separate confidentiality agreement shall prevail.

6.12 *Publicity.* No party or any affiliate of a party shall make, or cause to be made, any publicity, news release or other such general public announcement or make any other disclosure to any third party in respect of this Agreement or the transactions contemplated hereby (including, without limitation, disclosure of Investor's ownership interest in the Company) without the prior written consent of the other parties; *provided however*, that the foregoing provision is not intended to limit communications deemed reasonably necessary or appropriate by a party or its affiliates to its employees, stockholders, partners, directors, officers, potential investors, accountants and legal counsel who are under an obligation to preserve the confidentiality of the foregoing. Notwithstanding the foregoing provision, the parties and their respective affiliates shall not be prohibited from making any disclosure or release that is required by law, court order, or applicable regulation, or is considered

necessary by legal counsel to fulfill an obligation under securities laws or the rules of a national stock exchange.

6.13 *Entire Agreement.* This Agreement and the documents referred to herein constitute the entire agreement among the parties and no party shall be liable or bound to any other party in any manner by any warranties, representations, or covenants except as specifically set forth herein or therein.

6.14 *Waiver of Conflicts.* Each party to this Agreement acknowledges that Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP ("Gunderson Dettmer"), counsel for the Company, has in the past and may continue to perform legal services for certain of the Investors in the purchase of the Company's Series A, Series B, Series C, Series D, Series D-1 and Series E Preferred Stock and other matters. Accordingly, each party to this Agreement hereby (1) acknowledges that they have had an opportunity to ask for information relevant to this disclosure; (2) acknowledges that Gunderson Dettmer represented the Company in the transaction contemplated by this Agreement and has not represented any individual Investor or any individual stockholder or employee of the Company in connection with such transaction; and (3) gives its informed consent to Gunderson Dettmer's representation of certain of the Investors in such unrelated matters and to Gunderson Dettmer's representation of the Company in connection with this Agreement and the transactions contemplated hereby.

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

THERAVANCE, INC.

By: /s/ RICK E WINNINGHAM

Rick E Winningham
President and Chief Executive Officer

QuickLinks

[*]=CERTAIN INFORMATION HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

Exhibit 10.15

STRATEGIC ALLIANCE AGREEMENT

by and between

THERAVANCE, INC.

and

GLAXO GROUP LIMITED

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[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

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STRATEGIC ALLIANCE AGREEMENT

This STRATEGIC ALLIANCE AGREEMENT ("Agreement") dated March 30, 2004, is made by and between THERAVANCE, INC., a Delaware corporation, and having its principal office at 901 Gateway Boulevard, South San Francisco, California 94080 ("Theravance"), and GLAXO GROUP LIMITED, a United Kingdom corporation, and having its principal office at Glaxo Wellcome House, Berkeley Avenue, Greenford, Middlesex, UB6 0NN, United Kingdom ("GSK"). Theravance and GSK may be referred to as a "Party" or together, the "Parties".

RECITALS

WHEREAS, GSK and Theravance have previously entered into a Collaboration Agreement dated as of November 14, 2002 (the "LABA Collaboration Agreement"); and

WHEREAS, Theravance is engaged in drug discovery for other compounds outside the LABA Collaboration Agreement;

WHEREAS, GSK desires to receive from Theravance and Theravance desires to grant to GSK the right to Develop and Commercialize other compounds discovered by Theravance on an exclusive, worldwide basis in accordance with the terms and conditions of this Agreement;

WHEREAS, GSK and Theravance are willing to undertake research, Development and Commercialization activities and investment and to coordinate such activities and investment as provided by this Agreement with respect to the Alliance Products; and

WHEREAS, GSK and Theravance believe that a strategic alliance pursuant to this Agreement for the performance of research, Development and Commercialization of Alliance Products in which Theravance conducts experimental and research work in certain program areas to discover chemical entities suitable for development and GSK, at its option, undertakes the development and commercialization of such chemical entities would be desirable and compatible with their respective business objectives.

NOW, THEREFORE, in consideration of the foregoing premises and the representations, covenants and agreements contained herein, Theravance and GSK, intending to be legally bound, hereby agree as follows:

ARTICLE 1
DEFINITIONS

For purposes of this Agreement, the following initially capitalized terms, whether used in the singular or plural, shall have the following meanings:

1.1 "Alliance" shall mean the Parties' strategic alliance pursuant to this Agreement.

1.2 "Alliance Product" means any Theravance Compound for which GSK has exercised its Opt-In Right subject to and in accordance with the terms of this Agreement, which such Alliance Product can be used as a single agent and/or in combination with other therapeutically active components for human pharmaceutical applications. The term "Alliance Product" shall also include any formulation of excipients, stabilizers, propellants, or other components necessary to prepare and deliver a pharmaceutically effective dose of such Theravance Compound and [*].

1.3 "Alliance Program" shall mean any Discovery Program for which GSK has exercised its Opt-In Right.

1.4 "Alliance Program Acceptance Date" shall have the meaning set forth in Section 13.1.1.

[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

1.5 "Additional Respiratory Discovery Program" shall mean any new, additional Respiratory Discovery Program initiated between the Effective Date and [*]. The foregoing shall be without prejudice to the possibility that other additional Discovery Programs in other therapeutic areas may be initiated by Theravance as contemplated by Sections 1.36 and 4.1.4.

1.6 "Adverse Drug Experience" means any of: an "adverse drug experience," a "life-threatening adverse drug experience," a "serious adverse drug experience," or an "unexpected adverse drug experience," as those terms are defined at either 21 C.F.R.(S)312.32 or 21 C.F.R.(S)314.80.

1.7 "Affiliate" of a Party means any Person, whether de jure or de facto, which directly or indirectly controls, is controlled by, or is under common control with such Person for so long as such control exists, where "control" means the decision-making authority as to such Person and, further, where such control shall be presumed to exist where a Person owns more than fifty percent (50%) of the equity (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) having the power to vote on or direct the affairs of the entity.

1.8 "API Compound" means bulk quantities of each active pharmaceutical ingredient compound of a particular Alliance Product prior to the commencement of secondary manufacturing.

1.9 "Breaching Alliance Program" shall have the meaning set forth in Section 14.2.

1.10 "Breaching Party" shall have the meaning set forth in Section 14.2.

1.11 "Business Day" means any day on which banking institutions in both New York City, New York, United States and London, England are open for business.

1.12 "Calendar Month" means for each Calendar Year, each of the one-month periods.

1.13 "Calendar Quarter" means for each Calendar Year, each of the three month periods ending March 31, June 30, September 30 and December 31; provided, however, that the first calendar quarter for the first Calendar Year shall extend from the Effective Date to the end of the first complete calendar quarter thereafter.

1.14 "Calendar Year" means, for the first calendar year, the period commencing on the Effective Date and ending on December 31 of the calendar year during which the Effective Date occurs, and each successive period beginning on January 1 and ending twelve (12) consecutive calendar months later on December 31.

1.15 "Change in Control" means, with respect to a Party, any transaction or series of related transactions following which continuing stockholders of such Party hold less than 50% of the outstanding voting securities of either such Party or the entity surviving such transaction.

1.16 "Claim" means all charges, complaints, actions, suits, proceedings, hearings, investigations, claims and demands.

1.17 "Closing Condition" shall have the meaning set forth in Section 15.14.

1.18 "Combination Product" means an Alliance Product that contains one or more therapeutically active agents in addition to the Theravance Compound.

1.19 "Commercial Conflict" means a situation where Theravance determines that GSK's decision related to Development or Commercialization of an Alliance Product is likely to result in [*], and that such decision is not based on [*] but primarily [*] whereby GSK is likely to achieve [*].

1.20 "Commercial Failure" means failure of an Alliance Product for reasons other than Technical Failure, based on the determination that such product will result in [*] that is materially worse than [*] based on GSK's normal and customary procedures for determining [*]. The [*] of an Alliance Product will be based on [*] from such product not taking into account [*].

1.21 "Commercialization" means any and all activities directed to marketing, promoting, distributing, offering for sale and selling an Alliance Product, importing an Alliance Product (to the extent applicable) and conducting Phase IV Studies. When used as a verb, "Commercialize" means to engage in Commercialization.

1.22 "Competing Product" means a product that is intended for the treatment of the same disease as an Alliance Product and which is not an Alliance Product.

1.23 "Confidential Information" means all secret, confidential or proprietary information, data or Know-How (including GSK Know-How and Theravance Know-How) whether provided in written, oral, graphic, video, computer or other form, provided by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") pursuant to this Agreement or generated pursuant to this Agreement, including but not limited to, information relating to the Disclosing Party's existing or proposed research, development efforts, patent applications, business or products, the terms of this Agreement and any other materials that have not been made available by the Disclosing Party to the general public. Confidential Information shall not include any information or materials that the Receiving Party can document with competent written proof:

1.23.1 were already known to the Receiving Party (other than under an obligation of confidentiality), at the time of disclosure by the Disclosing Party;

1.23.2 were generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party;

1.23.3 became generally available to the public or otherwise part of the public domain after its disclosure or development, as the case may be, and other than through any act or omission of a Party in breach of such Party's confidentiality obligations under this Agreement;

1.23.4 were disclosed to a Party, other than under an obligation of confidentiality, by a Third Party who had no obligation to the Disclosing Party not to disclose such information to others; or

1.23.5 were independently discovered or developed by or on behalf of the Receiving Party without the use of the Confidential Information belonging to the other Party.

1.24 "Co-Promote" shall mean, as applied to Theravance, to promote and detail Alliance Products through its own sales force and to otherwise engage in activities as contemplated and/or mutually agreed by the Parties under Section 5.3.

1.25 "Co-Promotion Option" shall have the meaning set forth in Section 5.3.2(a).

1.26 "Country" means any generally recognized sovereign entity.

1.27 "Creditable taxes" shall have the meaning set forth in Section 6.9.2.

1.28 "Date of Final Delivery of Opt-In Data" shall have the meaning set forth in Sections 4.2.1(a), 4.2.2(a) and 4.2.2(b).

1.29 "Designated Foreign Filings" shall have the meaning set forth in Section 13.1.2(b).

1.30 "Development Candidate Data" means the material, data and supporting documentation relating to a Respiratory Compound prepared by Theravance and delivered to GSK which demonstrates that such compound meets the applicable Respiratory Discovery Criteria. The Development Candidate Data will be presented in sufficient detail to enable GSK, to determine whether or not to exercise its Opt-In Right with respect to such Respiratory Compound in accordance with Section 4.2.1.

1.31 "Development" or "Develop" means preclinical and clinical drug development activities, including, among other things: test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, current Good Manufacturing Practices audits, current Good Clinical Practices audits, current Good Laboratory Practices audits, analytical method validation, manufacturing process validation, cleaning validation, scale-up and post approval changes, quality assurance/quality control development, statistical analysis and report writing, preclinical and clinical studies, regulatory filing submission and approval, and regulatory affairs related to the foregoing. When used as a verb, "Develop" means to engage in Development.

1.32 "Development Milestone" shall have the meaning set forth in Section 6.2.1

1.33 "Development Plan" means the outline plan for each Alliance Product in an Alliance Program designed to achieve the Development for such Alliance Product, including, without limitation, the nature, number and schedule of Development activities as such may be amended in accordance with the terms of this Agreement.

1.34 "Diligent Efforts" means the carrying out of obligations in a sustained manner consistent with the efforts a Party devotes (or would devote) to [*] conditions then prevailing, including [*], with the objective of [*] and the other terms and conditions of this Agreement. Diligent Efforts requires that: (i) each Party [*] and monitor such progress on an on-going basis, (ii) each Party [*] for carrying out such obligations, and (iii) each Party [*] designed to advance progress with respect to such objectives.

1.35 "Disclosing Party" shall have the meaning set forth in Section 1.23.

1.36 "Discovery Program" means [*] that exists as of the Effective Date or is initiated during the Research Term having the goal of discovering compounds [*] and, for non-respiratory programs, completing early Development of any such discovered compounds. A list of existing Discovery Programs as of the Effective Date is attached as Schedule 1.36. Theravance shall notify GSK of the initiation of any additional Discovery Program during the Research Term in accordance with Section 4.1.4.

1.37 "Effective Date" means the first business day following the date on which the last of the conditions contained in Section 15.14 of this Agreement has been satisfied.

1.38 "European Union" or "Europe" means collectively the Countries of the European Union.

1.39 "FDA" means the United States Food and Drug Administration and any successor agency thereto.

1.40 "Filing for Regulatory Approval" shall have the meaning set forth in Section 6.2.2.

1.41 "First Commercial Sale" means the first shipment of commercial quantities of any Alliance Product sold to a Third Party by a Party or its sublicensees in any Country after receipt of Marketing Authorization Approval for such Alliance Product in such Country. Sales for test marketing, sampling and promotional uses, clinical trial purposes or compassionate or similar uses shall not be considered to constitute a First Commercial Sale.

1.42 "First Theravance Compound" shall have the meaning set forth in Sections 4.2.1(a), 4.2.2(a) and 4.2.2(b).

1.43 "Force Majeure Event" shall have the meaning set forth in Section 15.3

1.44 "Governmental Authority" means any court, tribunal, arbitrator, agency, legislative body, commission, official or other instrumentality of (i) any government of any Country, (ii) a federal, state, province, county, city or other political subdivision thereof or (iii) any supranational body, including without limitation the European Agency for the Evaluation of Medicinal Products.

[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

1.45 "GSK Invention" means an Invention that is invented by an employee or agent of GSK solely or jointly with a Third Party.

1.46 "GSK Know-How" means all present and future information directly relating to the Alliance Products including without limitation all data, records, and regulatory filings relating to Alliance Products, that is required for Theravance to perform its obligations or exercise its rights under this Agreement, and which during the Term are in GSK's or any of its Affiliates' possession or control and are or become owned by, or otherwise may be licensed to (provided there is no restriction on GSK thereof), GSK. GSK Know-How does not include any GSK Patents.

1.47 "GSK Patents" means all present and future patents and patent applications including United States provisional applications and any continuations, continuations-in-part, divisionals, registrations, confirmations, revalidations, reissues, Patent Cooperation Treaty applications, certificates of addition, utility models, design patents, petty patents as well as all other intellectual property related to the application or patent including extensions or restorations of terms thereof, pediatric use extensions, supplementary protection certificates or any other such right covering Alliance Product(s) or the GSK Inventions which are or become owned by GSK or GSK's Affiliates, or as to which GSK or GSK's Affiliates otherwise are or become licensed, now or in the future, where GSK has the right to grant the sublicense rights granted to Theravance under this Agreement, which such patent rights cover the making, having made, use, offer for sale, sale or importation of the Alliance Products. For the avoidance of doubt, GSK Patents shall include GSK's interest in any patents covering Joint Inventions.

1.48 "GSK Property" shall have the meaning set forth in Section 14.5.2(b)(iv).

1.49 "GSK's Percentage Interest" means the percentage of voting power, determined on the basis of the number of shares of Voting Stock actually outstanding, that is controlled directly or indirectly by GSK and its Affiliates.

1.50 "Hatch-Waxman Certification" shall have the meaning set forth in Section 13.3.

1.51 "Housemark" means the name and logo of GSK or Theravance or any of their respective Affiliates as identified by one Party to the other from time to time.

1.52 "Indemnified Party" shall have the meaning set forth in Section 12.3.1.

1.53 "Indemnifying Party" shall have the meaning set forth in Section 12.3.1.

1.54 "Initial Due Diligence Commencement Date" shall have the meaning set forth in Sections 4.2.1(a), 4.2.2(a) and 4.2.2(b).

1.55 "Initiation of a Phase I Study" shall have the meaning set forth in Section 6.2.2.

1.56 "Initiation of a Phase III Study" shall have the meaning set forth in Section 6.2.2.

1.57 "Interim Period" shall have the meaning set forth in Section 4.3.2.

1.58 "Invention" means any discovery (whether patentable or not) invented during the Term as a result of research, Development or manufacturing activities and specifically related to an Alliance Product hereunder.

1.59 "Investigational Authorization" means, with respect to a Country, the regulatory authorization required to investigate an Alliance Product in such Country as granted by the relevant Governmental Authority.

1.60 "Joint Invention" means an Invention that is invented jointly by employees and/or agents of both Theravance and GSK hereunder and the patent rights in such Invention.

1.61 "Joint Program Committee" shall have the meaning set forth in Section 3.3.

1.62 "Joint Steering Committee" shall have the meaning set forth in Section 3.2.

1.63 "Launch" shall have the meaning set forth in Section 6.2.2.

1.64 "Laws" means all laws, statutes, rules, regulations (including, without limitation, current Good Manufacturing Practice Regulations as specified in 21 C.F.R. (S) 210 and 211; Investigational New Drug Application regulations at 21 C.F.R. (S) 312; NDA regulations at 21 C.F.R. (S) 314, relevant provisions of the Federal Food, Drug and Cosmetic Act, and other laws and regulations enforced by the FDA), ordinances and other pronouncements having the binding effect of law of any Governmental Authority.

1.65 "Litigation Condition" shall have the meaning set forth in Section 12.3.2.

1.66 "Long Acting Muscarinic Antagonist Respiratory Discovery Criteria" shall have the meaning set forth in Schedule 1.66.

1.67 "Losses" means any and all damages (including all incidental, consequential, statutory and treble damages), awards, deficiencies, settlement amounts, defaults, assessments, fines, dues, penalties, costs, fees, liabilities, obligations, taxes, liens, losses, lost profits and expenses (including without limitation court costs, interest and reasonable fees of attorneys, accountants and other experts) incurred by or awarded to Third Parties and required to be paid to Third Parties with respect to a Claim by reason of any judgment, order, decree, stipulation or injunction, or any settlement entered into in accordance with the provisions of this Agreement, together with all documented out-of-pocket costs and expenses incurred in complying with any judgments, orders, decrees, stipulations and injunctions that arise from or relate to a Claim of a Third Party.

1.68 "Major Market Country" means each of the United States, Canada, Japan, France, United Kingdom, Italy, Germany and Spain.

1.69 "Marketing Authorization" means, with respect to a Country, the regulatory authorization required to market and sell an Alliance Product in such Country as granted by the relevant Governmental Authority.

1.70 "Marketing Authorization Approval" means approval by a Governmental Authority for sale of a pharmaceutical product for human use, including any applicable pricing, final labeling or reimbursement approvals.

1.71 "Marketing Plan" means for each relevant Alliance Product the global plan prepared by GSK identifying the core strategic, commercial and promotional claims and objectives for the specific Alliance Product as reviewed under Section 5.1.

1.72 "Muscarinic Antagonist-Beta Agonist Respiratory Discovery Criteria" shall have the meaning set forth in Schedule 1.72.

1.73 "NDA" means a new drug application or supplemental new drug application or any amendments thereto submitted to the FDA in the United States.

1.74 "NDA Acceptance" shall mean the written notification by the FDA that the NDA has met all the criteria for filing acceptance pursuant to 21 C.F.R.(S)314.101.

1.75 "Net Sales" means [*] GSK, its Affiliates or their licensees (or such licensees' Affiliates) to a Third Party, less the following to the extent borne by the seller and not taken into account in determining gross sales price: (a) [*]; (b) [*] which [*] (c) [*]; (d) any other adjustments required [*]. Net Sales shall exclude Samples distributed in the usual course of business.

1.76 "Net Sales Report" shall have the meaning set forth in Section 6.4.2.

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1.77 "Non-validated Target" means a biological drug target against which no drug has received Marketing Authorization Approval.

1.78 "Officers" shall have the meaning set forth in Section 3.2.5.

1.79 "Opt-In Right" shall have the meaning set forth in Section 4.2.

1.80 "OUS Filings" shall have the meaning set forth in Section 13.1.1.

1.81 "Patent Infringement Claim" shall have the meaning set forth in Section 13.2.1.

1.82 "Patent Infringement Notice" shall have the meaning set forth in Section 13.2.2.

1.83 "PCT" shall have the meaning set forth in Section 13.1.1.

1.84 "Person" means any natural person, corporation, general partnership, limited partnership, limited liability company, joint venture, proprietorship or other business organization.

1.85 "Phase I Studies" means that portion of the Development Plan or Development relating to each Alliance Product which provides for the first introduction into humans of such Alliance Product including small scale clinical studies conducted in normal volunteers to obtain information on such Alliance Product's safety, tolerability, pharmacological activity, pharmacokinetics, drug metabolism and mechanism of action, as well as early evidence of effectiveness.

1.86 "Phase II Studies" means that portion of the Development Plan or Development relating to each Alliance Product which provides for well controlled clinical trials of such Alliance Product in patients, including clinical studies conducted in patients with the disease or condition, and designed to evaluate clinical efficacy and safety for such Alliance Product for one or more indications, and/or to obtain an indication of the dosage regimen required.

1.87 "Phase IIa Study" means a controlled study conducted in patients with the disease or condition designed to evaluate clinical efficacy and safety for such Alliance Product for one or more indications using generally accepted primary clinical endpoint(s). For the avoidance of doubt, a Phase IIa Study shall not be a study designed [*].

1.88 "Phase IIb Study" means the definitive study or studies in patients with the disease or condition designed to evaluate clinical efficacy and safety for such Alliance Product for one or more indications, and/or to obtain the dosage regimen required for subsequent Phase III Studies.

1.89 "Phase III Studies" means that portion of the Development Plan or Development relating to each Alliance Product which provides for large scale, pivotal, clinical studies conducted in a sufficient number of patients and whose primary objective is to obtain a definitive evaluation of the therapeutic efficacy and safety of the Alliance Product in patients for the particular indication in question that is needed to evaluate the overall risk-benefit profile of the Alliance Product and to provide adequate basis for obtaining requisite regulatory approval(s) and product labeling.

1.90 "Phase IV Studies" means a study or studies for an Alliance Product that is initiated after receipt of a Marketing Authorization for an Alliance Product and is principally intended to support the marketing and Commercialization of such Alliance Product, including without limitation investigator initiated trials, clinical experience trials and studies conducted to fulfill local commitments made as a condition of any Marketing Authorization.

1.91 "POC Validated Target Data" means the material, data and supporting documentation relating to achievement of clinical proof of concept by a Theravance Compound, prepared by Theravance and delivered to GSK in sufficient detail and which enables GSK to determine whether or not to exercise its Opt-In Right with respect to such Discovery Program in accordance with Section 4.2.2(a).

1.92 "POC Non-Validated Target Data" means the material, data and supporting documentation relating to achievement of clinical proof of concept by a Theravance Compound, prepared by Theravance and delivered to GSK in sufficient detail and which enables GSK to determine whether or not to exercise its Opt-In Right with respect to such Discovery Program in accordance with Section 4.2.2(b).

1.93 "Product Supplier" means any manufacturer, packager or processor of an Alliance Product for development, marketing and sale.

1.94 "Promotional Materials" means the core written, printed, video or graphic advertising, promotional, educational and communication materials (other than Alliance Product labeling) for marketing, advertising and promotion of the Alliance Products.

1.95 "Receiving Party" shall have the meaning set forth in Section 1.23.

1.96 "Recording Party" shall have the meaning set forth in Section 6.10.

1.97 "Respiratory Compound" means a compound discovered by Theravance intended for the treatment of respiratory disease [*] and that meets the Respiratory Discovery Criteria.

1.98 Respiratory Discovery Criteria" means the requirements that a compound within a Respiratory Discovery Program must meet before the Development Candidate Data is then delivered to GSK under Section 4.2.1. The Long-Acting Muscarinic Antagonist Compound Criteria and the Muscarinic Antagonist—Beta Agonist Bronchodilator Compound Criteria are each attached hereto as Schedule 1.66 and 1.72, respectively. The Respiratory Discovery Criteria for any Additional Respiratory Discovery Program initiated pursuant to the Alliance formed under this Agreement will be (i) comparable in scope and detail with the criteria set forth in Schedules 1.66 and 1.72 hereto, and (ii) established by mutual written agreement of the Parties at the time of notification of initiation of such Additional Respiratory Discovery Program by Theravance to GSK pursuant to Section 4.1.

1.99 "Respiratory Discovery Program" shall mean any Theravance Discovery Program having the goal of [*].

1.100 "Research Term" shall have the meaning set forth in Section 3.1.1.

1.101 "Reversion Program" shall have the meaning set forth in Sections 4.2.1(a), 4.2.2(a) and 4.2.2(b)(i).

1.102 "ROW" means Countries other than the Major Market Countries.

1.103 "Samples" means Alliance Product packaged and distributed as a complimentary trial for use by patients in the Territory.

1.104 "Specific Alliance Product Development & Commercialization Appendix" shall have the meaning set forth in Sections 4.2.1(a), 4.2.2(a)(i) and 4.2.2(b)(i).

1.105 "Subsequent Theravance Compound" shall have the meaning set forth in Sections 4.2.1(b), 4.2.2(a)(ii) and 4.2.2(b)(ii).

1.106 "Successful completion of a Phase II Study" shall have the meaning set forth in Section 6.2.2.

1.107 "Taxes" shall have the meaning set forth in Section 6.9.1.

1.108 "Technical Failure" means the discontinuation of Development of an Alliance Product for [*] reasons, such as but not limited to [*] the inability to [*], or demonstration of [*] currently marketed products, or inability to produce [*] with acceptable [*].

1.109 "Technology Transfer Package" means all Theravance Confidential Information and Theravance Know-How relating to: (1) the lead Theravance Compound in the relevant Alliance Program, as well as any back-up and follow up Theravance Compound for which Theravance in good faith believes there is sufficient in vivo data and which are part of such Alliance Program; (2) where applicable, all information regarding the bulk drug substance and finished dosage form(s) and methods of manufacturing the same, including without limitation analytical methods; and (3) the full disclosure of all information relating to the lead Theravance Compound and any such back-up Theravance Compound (including, where applicable and without limitation, clinical and protocol results, analytical methodologies, bulk and final product manufacturing processes, batch records, pre-formulation studies, reports summarizing development pharmaceutics, vendor information, validation documentation, regulatory documentation, patent information), regulatory filings, transfer of information related to regulatory information and filings, pre-clinical and clinical data, adverse event data, regulatory correspondence (including records of meetings and telephone conversations), analyses, and manufacturing data.

1.110 "Term" means, on a Country-by-Country and Alliance Product-by-Alliance Product basis, the period from the Effective Date until the later of (a) the expiration or termination of the last Valid Claim of a Patent Right covering the Alliance Compound in such Country, or (b) fifteen (15) years from First Commercial Sale in such Country, unless this Agreement is terminated earlier in accordance with Article 14.

1.111 "Terminated Alliance Product" means a Terminated Development Alliance Product or a Terminated Commercialized Alliance Product.

1.112 "Terminated Commercialized Alliance Product" shall have the meaning set forth in Section 14.4.

1.113 "Terminated Development Alliance Product" shall have the meaning set forth in Section 14.3.

1.114 "Terminated Non-Respiratory Commercialized Alliance Product" shall have the meaning set forth in Section 14.5.3(a).

1.115 "Terminated Non-Respiratory Development Alliance Product" shall have the meaning set forth in Section 14.5.2(a).

1.116 "Terminated Respiratory Commercialized Alliance Product" shall have the meaning set forth in Section 14.5.3(b).

1.117. "Terminated Respiratory Development Alliance Product" shall have the meaning set forth in Section 14.5.2(b).

1.118 "Territory" means worldwide.

1.119 "Theravance Compound" means a chemical entity, including all of [*], that results from a Discovery Program.

1.120 "Theravance Invention" means an Invention that is invented by an employee or agent of Theravance solely or jointly with a Third Party.

1.121 "Theravance Know-How" means all present and future information directly relating to an Alliance Product that is required for GSK to perform its obligations or exercise its rights under this Agreement and which up until five (5) years after the First Commercial Sale of such Alliance Product is in Theravance's or any of its Affiliates' possession or control and is or are, or becomes owned by, or otherwise may be licensed (provided there are no restrictions on Theravance thereof) by, Theravance. Theravance Know-How does not include any Theravance Patents.

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1.122 "Theravance Patents" means all present and future patents and patent applications including United States provisional applications and any continuations, continuations-in-part, divisionals, registrations, confirmations, revalidations, reissues, Patent Cooperation Treaty applications, certificates of addition, utility models, design patents, petty patents as well as all other intellectual property related to the application or patent including extensions or restorations of terms thereof, pediatric use extensions, supplementary protection certificates or any other such right covering an Alliance Product(s) or the Theravance Inventions which are or become owned by Theravance or Theravance's Affiliates, or as to which Theravance or Theravance's Affiliates are or become licensed, now or in the future, with the right to grant the sublicense rights granted to GSK under this Agreement, which patent rights cover the making, having made, use, offer for sale, sale or importation of the Alliance Product(s). For the avoidance of doubt, Theravance Patents shall include Theravance's interest in any patents covering Joint Inventions.

1.123 "Third Party" means a Person who is not a Party or an Affiliate of a Party.

1.124 "Third Party Claim" shall have the meaning set forth in Section 12.3.1.

1.125 "Top-Up Fees" shall have the meaning set forth in Section 4.3.2

1.126 "Trademarks" shall have the meaning set forth in Section 2.3.1.

1.127 "United States" means the United States, its territories and possessions.

1.128 "Valid Claim" means any claim(s) pending in a patent application or in an unexpired patent which has not been held unenforceable, unpatentable or invalid by a decision of a court or other governmental agency of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, and which has not has been admitted to be invalid or unenforceable through reissue or disclaimer.

1.129 "Validated Target" means a biological drug target against which any drug has received Marketing Authorization Approval.

1.130 "Voting Stock" means the outstanding securities of Theravance having the right to vote generally in any election of Directors to the Board of Directors of Theravance.

1.131 "Weighted Average Sales Price" means the average sales price calculated by, where applicable.

1.132 "Withholding Party" shall have the meaning set forth in Section 6.9.1.

ARTICLE 2
RIGHTS AND OBLIGATIONS

2.1 *License Grants from Theravance to GSK.*

2.1.1 *Development License.* Effective only upon a Theravance Compound becoming an Alliance Product and on an Alliance Product-by-Alliance Product basis, and subject to the terms of this Agreement, including without limitation Section 2.2, Theravance grants to GSK, and GSK accepts, an exclusive (except as to Theravance and its Affiliates) license under the Theravance Patents and Theravance Know-How to make, have made, use and Develop Alliance Products for Commercialization in the Territory.

2.1.2 *Commercialization License.* Subject to the terms of this Agreement, including without limitation Section 2.2 and Theravance's Co-Promotion rights in Section 5.3.2, Theravance hereby grants to GSK, and GSK accepts, an exclusive license under the Theravance Patents and Theravance Know-How to make, have made, use, sell, offer for sale and import Alliance Products in the Territory.

2.1.3 *Manufacturing License.* Subject to the terms of this Agreement, including without limitation Section 2.2, Theravance grants to GSK an exclusive license under the Theravance Patents and Theravance Know-How to make and have made API Compound or formulated Alliance Product in the Territory.

2.1.4 *Licenses to Third Parties.* The licenses granted to GSK under Sections 2.1.1, 2.1.2 and 2.1.3 shall not prevent Theravance from granting licenses to Third Parties under Theravance Patents and Theravance Know-How for a purpose other than the research in connection with or the Development, manufacture or Commercialization of an Alliance Product. For the avoidance of doubt, in no event shall any such license to a Third Party as contemplated by the preceding sentence of this Section 2.1.4 conflict with the terms and provisions of this Agreement, including but not limited to Theravance's obligations, and GSK's concomitant rights, in respect of the delivery up of any Discovery Program, and GSK's Opt-In Rights thereof, as more particularly set forth in Article 4.

2.2 *Sublicensing and Subcontracting.* GSK may sublicense or subcontract its rights to Develop, Manufacture or Commercialize the Alliance Products in whole or in part to one or more of its Affiliates, provided that the rights sublicensed or subcontracted to such Affiliate shall automatically terminate upon any event in connection with which such Affiliate ceases to be an Affiliate of GSK. GSK may also sublicense or subcontract any of GSK's rights to Develop or Manufacture the Alliance Products, in whole or in part, to one or more Third Parties. In the event GSK wishes to sublicense or subcontract any of GSK's rights to Commercialize the Alliance Products, in whole or in part, to one or more Third Parties, GSK shall obtain the prior written consent of Theravance, such consent not to be unreasonably withheld, provided always that no such restriction shall apply in respect of those countries of the Territory wherein GSK is or has been required under applicable local laws to appoint a Third Party as its distributor or marketing partner. GSK shall secure all appropriate covenants, obligations and rights from any such sublicensee or subcontractor granted by it under this Agreement, including, but not limited to, intellectual property rights and confidentiality obligations in any such agreement or other relationship, to ensure that such sublicensee can comply with all of GSK's covenants and obligations to Theravance under this Agreement. GSK's rights to sublicense, subcontract or otherwise transfer its rights granted under Section 2.1 are limited to those expressly set forth in this Section 2.2.

2.3 *Trademarks and Housemarks.*

2.3.1 *Trademarks.* The Alliance Products shall be Commercialized under trademarks (the "Trademarks") and trade dress selected by the Joint Program Committee and approved by the Joint Steering Committee. Prior to any such proposed Trademark(s) being submitted to the Joint Program Committee, GSK shall be responsible for undertaking their preliminary selection. GSK shall exclusively own all Trademarks, and shall be responsible for the procurement, filing and maintenance of trademark registrations for such Trademarks and all costs and expenses related thereto. GSK shall also exclusively own all trade dress and copyrights associated with the Alliance Products. Nothing herein shall create any ownership rights of Theravance in and to the Trademarks or the copyrights and trade dress associated with the Alliance Products.

2.3.2 *Housemarks.* Each Party shall enter into appropriate licenses and covenants in respect of its or its Affiliates' use of the other Party's Housemarks at such time as the Joint Steering Committee determines prior to Commercialization of the applicable Alliance Product. Such licenses shall ensure that each Party

acknowledges the goodwill and reputation that has been associated with the other Party's Housemarks over the years, and shall use such Housemarks in a manner that maintains and promotes such goodwill and reputation and is consistent with trademark guidelines. Further, such licenses shall ensure that each Party shall take all reasonable precautions and actions to protect the goodwill and reputation that has inured to the other Party's Housemarks, shall refrain from doing any act that is reasonably likely to impair the reputation of such Housemarks, and shall cooperate fully to protect such Housemarks.

ARTICLE 3
GOVERNANCE OF RESEARCH, DEVELOPMENT AND COMMERCIALIZATION OF ALLIANCE PRODUCTS

3.1 *Discovery Programs.* Subject to the terms of this Agreement, GSK will have an option to obtain exclusive rights to any Discovery Program that exists or that is initiated during the Research Term. For the avoidance of doubt, in respect of any new Discovery Program that is initiated by Theravance during the Research Term, the provisions of Article 4 shall apply in respect of both Theravance's obligation to offer such Discovery Program to the Alliance and GSK's Opt-In Rights in relation thereto, even if at the time such Discovery Program is actually ready to be offered by Theravance to GSK under Section 4.2 the Research Term may have then expired.

3.1.1 *Research Term.* Subject to the terms of this Agreement, Theravance shall have sole responsibility for the conduct of all activities under each Discovery Program. The Research Term (the "Research Term") will be the period beginning on the Effective Date and ending on September 1, 2007 unless (i) terminated earlier in accordance with the provisions of this Agreement or (ii) extended by mutual agreement of the Parties or (iii) automatically extended for an additional five (5) year period commencing on September 1, 2007 if, pursuant to the Governance Agreement to be entered into between the Parties in the form attached hereto as Schedule 6.1.3(A), GSK's Percentage Interest exceeds fifty per cent (50%) at the Call/Put Termination Date (as defined in the Governance Agreement). If however, pursuant to the Governance Agreement, GSK's Percentage Interest is 50.1% or greater and thereafter GSK breaches its obligation not to dispose of beneficial ownership of Voting Stock prior to September 1, 2012, the Research Term shall end simultaneously with such breach and accordingly all of GSK's future Opt-In Rights to Theravance's Discovery Programs on or after such date of breach (but not, for the avoidance of doubt, any pre-existing Alliance Program in respect of which GSK has already exercised its Opt-In Right) shall terminate forthwith.

3.2 *Joint Steering Committee.*

3.2.1 *Purpose.* The purposes of the Joint Steering Committee shall be (i) to determine the overall strategy for this alliance between the Parties and (ii) to coordinate the Parties' activities hereunder. The Parties intend that their respective organizations will work together and will use Diligent Efforts to assure success of the alliance.

3.2.2 *Members; Officers.* Within thirty (30) days after the Effective Date, the Parties shall establish a joint steering committee (the "Joint Steering Committee"), which shall consist of eight (8) members, four (4) of whom shall be designated by each of GSK and Theravance and shall have appropriate expertise, with at least one (1) member from GSK being its Senior Vice-President, Drug Discovery, and one member from Theravance being its Executive Vice President, Research. Subject to the foregoing requirement, each of GSK and Theravance may replace its other representatives on the Joint Steering Committee at any time upon written notice to the other Party. A Party may designate a substitute to temporarily attend and perform the functions of such Party's designee at any meeting of the Joint Steering Committee. GSK and Theravance each may, on advance written notice to the other Party, invite non-member representatives of such Party to attend meetings of the Joint Steering Committee. The Joint Steering Committee shall be chaired on an annual rotating basis by a representative of either Theravance or GSK, as applicable, on the Joint Steering Committee, with Theravance providing the first such chairperson. The chairperson shall appoint a secretary of the Joint Steering Committee, who shall be a representative of the other Party and who shall serve for the same annual term as such chairperson.

3.2.3 *Responsibilities.* The Joint Steering Committee shall perform the following functions:

(a) Review the status and progress of all Discovery Programs (through updates provided to the Joint Steering Committee by Theravance as contemplated and required by Section 4.1), including any additional work related to any Discovery Program as contemplated by Sections 4.2.1(b) and 4.2.2(b);

(b) Oversee the Development and Commercialization of the Alliance Products pursuant to the terms of this Agreement;

(c) Review the Development Plans and the Marketing Plans for Alliance Products and any material amendments to the Development Plans and Marketing Plans;

(d) At each meeting of the Joint Steering Committee, review Net Sales for the year-to-date as available;

(e) Review the progress of any Joint Program Committee;

(f) Review the Trademarks selected under Section 2.3;

(g) Subject to GSK's termination rights under and in accordance with Article 14, review and approve "go/no-go" decisions and other matters referred to the Joint Steering Committee, including, without limitation, the continued Development of a particular Alliance Product except that, notwithstanding the foregoing, GSK shall always be required, through the Joint Steering Committee, to notify Theravance of, and obtain Theravance's consent (such consent not to be unreasonably withheld) to:

(i) any anticipated and/or actual cumulative delay of more than [*] between each key progression point in the Development of a particular Alliance Product (where "key progression point in the Development of a particular Alliance Product" for this purpose shall mean the planned initiation of either a Phase I Study, a Phase II Study or a Phase III Study for such Alliance Product, as applicable); and

(ii) any GSK wish to cease Development of a lead Theravance Compound in an Alliance Program (other than for Technical Failure) where, instead of termination of the relevant Alliance Program under Section 14, GSK wishes to progress Development of the relevant back-up Theravance Compound in such Alliance Program and such proposed activity will or is likely to result in a corresponding delay in Development within such Alliance Program of more than [*];

(h) Oversee life cycle management of, and intellectual property protection for, the Alliance Products;

(i) In accordance with the procedures established in Section 3.2.5, resolve disputes, disagreements and deadlocks unresolved by the Joint Program Committee; and

(j) Have such other responsibilities as may be assigned to the Joint Steering Committee pursuant to this Agreement or as may be mutually agreed upon by the Parties from time to time.

3.2.4 *Meetings.* The Joint Steering Committee shall meet at least quarterly during every Calendar Year (of which at least two such meetings shall be face-to-face meetings), and more or less frequently (i) as mutually agreed by the Parties or (ii) as required to resolve disputes, disagreements or deadlocks in the Joint Program Committee, on such dates, and at such places and times, as such Parties shall agree; provided that the Parties shall endeavor to have the first meeting of the Joint Steering Committee within thirty (30) days after the establishment of the Joint Steering Committee. The Joint Steering Committee shall arrange to meet in person or convene otherwise to review any Development Plans or Marketing Plans, if any, submitted to the Joint Steering Committee in each Calendar Year so that such plans will be reviewed within thirty (30) days following submission to the Joint Steering Committee. To the extent any such Development Plans or Marketing Plans need to be reformulated by the Joint Program Committee, such plans shall be reviewed by the Joint Steering Committee as soon as reasonably practicable after resubmission of same. Meetings of the Joint Steering Committee that are held in person shall alternate between offices of GSK and Theravance, or such other place as the Parties may agree. In addition to face to face meetings the Joint Steering Committee may also be held by means of telecommunications or, video conferences as deemed appropriate by the Parties.

3.2.5 *Decision-Making.*

(a) The Joint Steering Committee may make decisions with respect to any subject matter that is subject to the Joint Steering Committee's decision-making authority and functions as set forth in Section 3.2.3. Except as specified in Section 3.2.5(b), all decisions of the Joint Steering Committee shall be made by consensus, with the representatives from each Party presenting a unified position on behalf of such Party. The Joint Steering Committee shall use Diligent Efforts to resolve the matters within its roles and functions or otherwise referred to it.

(b) With respect to any issue, if the Joint Steering Committee cannot reach consensus within ten (10) Business Days after the matter has been brought to the Joint Steering Committee's attention, then such issue shall be referred to the Chief Executive Officer of Theravance and either the Chairman of GSK R&D (if the issue relates to a discovery and/or development matter) or the Chief Executive Officer of GSK (if the issue relates to a commercial matter) (collectively, the "Officers") for resolution. The Parties accept that the use of the Officers for resolution of any unresolved issues will be on an exceptional basis. In the event that the use of the Officers occurs on more than two occasions in any consecutive twelve (12) month period and such disputes are not related to Commercial Conflict issues, then GSK will from then on retain the final vote within the Joint Steering Committee for all issues other than Commercial Conflict. If the Officers are unable to reach consensus within thirty (30) days after the matter has been referred to them, the final decision on such disputed issue will reside with GSK; provided, however, that if the disputed issue involves [*], then the final decision will be made by a mutually acceptable Third Party mediator. Either Party can initiate such mediation on [*] to the other Party. The Parties will use best efforts to agree on a mediator within such [*]. Such mediation will occur as promptly as practicable following selection of the mediator and will be held in [*]. The decision of the mediator will be final and binding on the Parties; provided that either Party shall retain all rights to bring an action against the other for damages and other monetary relief related to or arising out of the issue decided by the mediator.

3.3 *Joint Program Committee.*

3.3.1 *Purpose.* The purposes of each Joint Program Committee shall be to manage the Parties' day-to-day activities hereunder with respect to each corresponding Alliance Program. For the avoidance of doubt, there will be a separate Joint Program Committee for each Alliance Program (unless, in certain circumstances, the Parties mutually agree upon the appropriateness of combining two or more Joint Program Committees).

3.3.2 *Members; Officers.* Within ten (10) days after each relevant Theravance Compound in a Discovery Program is accepted by GSK as an Alliance Product, the Parties shall establish a Program Committee for such Alliance Product (the "Joint Program Committee"), and GSK and Theravance shall designate an equal number of representatives, up to a maximum total of eight (8) members on such Joint Program Committee, with a maximum of four (4) from each Party. Each of GSK and Theravance may replace any or all of its representatives on the Joint Program Committee at any time upon written notice to the other Party. Such representatives shall include individuals who have the relevant experience and expertise for the next twelve months as included in the Development Plan for the relevant Alliance Product. A Party may designate a substitute to temporarily attend and perform the functions of such Party's designee at any meeting of the Joint Program Committee. GSK and Theravance each may, on advance written notice to the other Party, invite non-member representatives of such Party to attend meetings of the Joint Program Committee. The Joint Program Committee shall be chaired by a representative of GSK. The chairperson shall appoint a secretary of the Joint Program Committee, who shall be a representative of Theravance.

3.3.3 *Responsibilities.* Each Joint Program Committee shall perform the following functions:

(a) Review the Development Plan(s) in relation to the relevant Alliance Product as prepared by GSK;

(b) On an annual rolling basis beginning within six months of the establishment of the Joint Program Committee, update and amend any initial Development Plan and review the Development Plan for the relevant Alliance Product for the following Calendar Year so that it can immediately thereafter submit such proposed Development Plan to the Joint Steering Committee for review;

(c) At each meeting of the Joint Program Committee, review and recommend to the Joint Steering Committee any material amendments or modifications to the Development Plan(s) for such Alliance Product;

(d) Review and recommend to the Joint Steering Committee "go/no-go" decisions for the Development of the relevant Alliance Product;

(e) Review the Marketing Plans where appropriate;

(f) Review and recommend to the Joint Steering Committee any material amendments or modifications to the Marketing Plans;

(g) Discuss the state of the markets for the relevant Alliance Product and opportunities and issues concerning the Commercialization of such Alliance Product, including consideration of marketing and promotional strategy, marketing research plans, labeling, Alliance Product positioning and Alliance Product profile issues;

(h) At each meeting of the Joint Program Committee, review the status of all Studies conducted on the relevant Alliance Product and any results therefrom;

(i) At each meeting of the Joint Program Committee, review Net Sales in relation to the relevant Alliance Product for the year-to-date, as available; and

(j) Have such other responsibilities as may be assigned to the Joint Program Committee pursuant to this Agreement or as may be mutually agreed upon by the Parties through the Joint Steering Committee from time to time.

3.3.4 *Meetings*. The Joint Program Committee shall meet at least once during every Calendar Quarter, and more frequently as GSK and Theravance mutually agree on such dates, and at such places and times, as such Parties shall agree; provided that the Parties shall endeavor to have the first meeting of the Joint Program Committee as a face to face meeting within thirty (30) days after the establishment of the Joint Program Committee. Meetings of the Joint Program Committee that are held in person shall alternate between the offices of GSK and Theravance, or such other place as the Parties may agree and such face to face meetings shall occur no less than twice a year. The remaining meetings may be held by means of telecommunications or video conferences as deemed appropriate. Following Commercialization of the relevant Alliance Product in the first Major Market, the Joint Program Committee shall meet twice a year with only one annual face to face meeting required.

3.3.5 *Decision-Making*. The Joint Program Committee may make decisions with respect to any subject matter that is subject to the Joint Program Committee's decision-making authority and functions as set forth in Section 3.3.3. All decisions of the Joint Program Committee shall be made by consensus, with the representatives from each Party presenting a unified position on behalf of such Party. If the Joint Program Committee cannot reach consensus within ten (10) Business Days after it has first met and attempted to reach such consensus, the matter shall be referred on the eleventh (11^{th}) Business Day to the Joint Steering Committee for resolution.

3.4 *Minutes of Committee Meetings.* Definitive minutes of all committee meetings shall be finalized no later than thirty (30) days after the meeting to which the minutes pertain as follows:

3.4.1 *Distribution of Minutes*. Within ten (10) days after a committee meeting, the secretary of such committee shall prepare and distribute to all members of such committee draft minutes of the meeting. Such minutes shall provide a list of any issues yet to be resolved, either within such committee or through the relevant resolution process.

3.4.2 *Review of Minutes*. The Party members of each committee shall have ten (10) days after receiving such draft minutes to collect comments thereon and provide them to the secretary of such committee.

3.4.3 *Discussion of Comments*. Upon the expiration of such second ten (10) day period, the Parties shall have an additional ten (10) days to discuss each other's comments and finalize the minutes. The secretary and chairperson(s) of such committee shall each sign and date the final minutes. The signature of such chairperson(s) and secretary upon the final minutes shall indicate each Party's assent to the minutes.

3.5 *Expenses*. Each Party shall be responsible for all travel and related costs and expenses for its members and other representatives to attend meetings of, and otherwise participate on, a committee.

3.6 *General Guidelines and Initial Coordination Efforts.* In all matters related to the collaboration established by this Agreement, the Parties shall strive to balance as best they can the legitimate interests and concerns of the Parties and to maximize the economic potential of Alliance Products. In all matters relating to this Agreement, the Parties shall seek to comply with good pharmaceutical and environmental practices. The Parties intend, following the Effective Date, to organize meetings of internal staff to communicate and explain the provisions of this Agreement to ensure the efficient and timely Development and Commercialization of the Alliance Products.

ARTICLE 4
DELIVERY OF THERAVANCE COMPOUNDS AND
DEVELOPMENT OF ALLIANCE PRODUCTS

4.1 *Delivery of Theravance Compounds.* During the Research Term it is Theravance's goal to discover and deliver to the Alliance:

(i) in the case of each Respiratory Discovery Program, a lead Respiratory Compound and a back-up Respiratory Compound, each in a different structural class, each of which meets the relevant Respiratory Discovery Criteria established by the Parties for such compounds;

(ii) in the case of each non-respiratory Discovery Program directed at a Validated Target, a Theravance Compound that has successfully completed a Phase IIa Study and, excepting the following two Existing Discovery Programs: [*] (as more particularly referred to in Schedule 1.36), a back-up compound at Development Candidate stage in a different structural class; and

(iii) in the case of each non-respiratory Discovery Program directed at a Non-validated Target, a Theravance Compound that has successfully completed the Phase IIb Study and a back-up compound at Development Candidate Stage in a different structural class.

In relation to its achievement of the foregoing goals, Theravance shall use Diligent Efforts at all times, it being understood, however, that Theravance shall maintain at all times sole decision making authority with respect to its Discovery Programs, including without limitation decisions relating to initiation and termination of Discovery Programs, and staffing and resource allocation between and among Discovery Programs. Through the Joint Steering Committee, Theravance shall provide GSK with updates of the status and progress of each Existing Discovery Program and any Additional Discovery Program that has been initiated, or whose initiation is at such time under consideration and shall consider any comments and further input from GSK in relation to same.

4.1.2 *Theravance Funding Responsibility.* Theravance shall bear all costs and expenses associated with any Discovery Program.

4.1.3 *GSK Assistance.* Without prejudice to the foregoing, GSK will endeavor to provide Theravance, upon Theravance's request, and at GSK's sole discretion, such assistance as may be reasonably required by Theravance to achieve this objective, which such assistance may include providing directly or through GSK's vendors, assistance in (i) [*], (ii) [*], (iii) [*], (iv) [*], and (v) [*].

4.1.4. *Additional Discovery Programs.* Theravance shall use Diligent Efforts at all times to initiate at least three new full Discovery Programs during the Research Term. Theravance shall inform GSK, through the Joint Steering Committee, of the initiation of any Additional Discovery Program and the Parties, through the Joint Steering Committee, shall also mutually agree at that point whether or not such Additional Discovery Program is directed at Validated or Non-Validated Targets. For the avoidance of doubt, the Parties agree that Theravance's existing programs set forth on Schedule 1.36 are each Discovery Programs directed at Validated Targets.

4.2 *GSK Opt-In Rights.* GSK shall have the exclusive option (in each case, an "Opt-in Right") on a Discovery Program-by-Discovery Program basis, to Develop and Commercialize any Theravance Compound arising out of each such Discovery Program pursuant to the terms and conditions of this Agreement, and as more fully set forth below in this Section 4.2. For the avoidance of doubt, GSK may exercise its Opt-In Right at any time up through the applicable sixty (60) day periods following the Date of Final Delivery of Opt-In Data set forth in Sections 4.2.1 and 4.2.2.

[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

4.2.1 *Existing and Additional Respiratory Discovery Programs.*

(a) At the appropriate time in respect of each Existing or Additional Respiratory Discovery Program, and upon the provision to GSK of at least two (2) days advance written notice, Theravance shall deliver on such date ("Initial Due Diligence Commencement Date") and to GSK's appointed designee (in a manner and format to be specified by GSK), all available Development Candidate Data on the first Theravance Compound ("First Theravance Compound") in an Existing or Additional Respiratory Discovery Program (it being recognized, and it being in the contemplation of the Parties, that not all but a substantial amount of Development Candidate Data on the First Theravance Compound in the relevant Discovery Program will be made available at this point). At such time, and in light of GSK's funding obligations under Section 4.3.2, Theravance shall also deliver up to GSK an outline budget of its proposed expenditures in relation to such Discovery Program for the next one hundred and twenty (120) days) (which such proposed expenditures shall be proposed net external expenditures only, including any planned Third Party contracting and future committed expenditures, but shall not, for the avoidance of doubt include the internal salary costs of Theravance employees). If such outline budget is [*] or less, it shall remain in Theravance's sole discretion; provided, however, GSK shall be permitted to bring to Theravance's attention areas of potential cost savings or comparable efficiencies and Theravance will reasonably consider any recommendations by GSK in this regard. To the extent that the outline budget exceeds [*], the Parties shall as promptly as possible meet and attempt to mutually agree either to changes in the schedule of activities such that the total budget for the relevant period does not exceed [*] or alternatively, if GSK agrees that the circumstances warrant activities that justify a budget in excess of such amount, a higher maximum budget. If the Parties cannot reach mutual agreement on any excess budgeted amounts then GSK shall not be obligated to pay for such excess budgeted amounts under Section 4.3.2. Within a further sixty days of the Initial Due Diligence Commencement Date, Theravance shall deliver to GSK final and complete Development Candidate Data in respect of such First Theravance Compound ("Date of Final Delivery of Opt-In Data"). To facilitate GSK's review throughout the aforesaid periods, Theravance shall deliver all such materials to GSK in a diligent, prompt and timely manner and shall respond promptly and fully to any GSK requests and/or queries raised as part of such review. It is hereby anticipated and acknowledged by the Parties that such process as contemplated hereunder shall take the form of as many face-to-face meetings between the Parties as GSK shall reasonably request of Theravance. GSK shall also notify Theravance of its most likely plans for Development in respect of such Alliance Program and such intent shall form the basis of the first Development Plan to be drawn up pursuant to Section 3.3.3. It is anticipated that the Parties will also endeavor to agree, where appropriate, any specific and/or additional terms related to GSK's proposed future Development and Commercialization activities in relation to such Alliance Program, particularly where appropriate provisions are not contained in this Agreement or, if such provisions are contained in this Agreement, such provisions are not, for whatever reason, relevant. It is further envisaged that such specific and/or additional terms will then be appended to this Agreement as a Specific Alliance Product Development & Commercialization Appendix. Within a further sixty (60) days after the Date of Final Delivery of Opt-In Data, GSK shall notify Theravance in writing as to whether or not it is exercising its Opt-In Right with respect to such Discovery Program. If GSK notifies Theravance in writing of its wish to exercise its Opt-In Right in respect of such Discovery Program, such notice of exercise shall not take effect until the date of satisfaction of the Alliance Program Closing Condition (the "Effective Date of GSK's Exercise of its Opt-In Right"). On the Effective Date of GSK's Exercise of its Opt-In Right, (i) such Discovery Program for which GSK has notified Theravance of its wish to exercise its Opt-In Right shall become an Alliance Program; (ii) any payment and/or compensation that becomes payable by GSK to Theravance as a consequence, including but not limited to the payment of an Opt-In Fee and/or any relevant Development Milestone, shall be paid by GSK to Theravance (subject to and in accordance with the further provisions of Article 6); and (iii) Theravance shall promptly deliver to GSK at no cost to GSK the Technology Transfer Package. If GSK elects not to exercise its Opt-In Right for such Discovery Program, or if the Alliance Program Closing Condition is not satisfied or is terminated pursuant to Section 15.15, the Discovery Program will revert in full to Theravance (a "Reversion Program") and Theravance will be entitled to pursue development of all compounds from such Reversion Program outside the Alliance alone or with a Third Party.

(b) If at the Date of Final Delivery of Opt-In Data, only data related to the First Theravance Compound is available, then, without prejudice to GSK's exercise of its Opt-In Right with respect to such Discovery Program in accordance with Section 4.2.1(a) (including but not limited to the specified process and timelines related thereto), Theravance shall, at Theravance's expense, diligently work toward the goal of delivering up to GSK within a further [*] from the Date of Final Delivery of Opt-In Data further discovery data related to such Discovery Program including but not limited to data related to any back-up Respiratory Compound which meets the relevant Respiratory Discovery Criteria ("Subsequent Theravance Compound(s)"). Further, if Development of the First Theravance Compound is subsequently discontinued and/or terminated by GSK for reasons of Technical Failure and for whatever reason no Subsequent Theravance Compound(s) in such Discovery Program exists or has been made available to GSK by Theravance or does not meet the relevant Respiratory Discovery Criteria on or before the expiration of [*] from the Date of Final Delivery of Opt-In Data, then the next payment to be made by GSK to Theravance under this Agreement (whether an Opt-In Fee, Development Milestone or any other payment) shall [*].

(c) If GSK elects not to exercise its Opt-In Right for any Discovery Program under Section 4.2.1, it will no longer have any Opt-In Right for any subsequent Theravance Compound arising out of the same Discovery Program.

4.2.2 *Non-respiratory Discovery Programs.*

(a) *Discovery Programs Directed at Validated Targets*

(i) At the appropriate time in respect of each non-respiratory, Validated Target Discovery Program, and upon the provision to GSK of at least two (2) days advance written notice, Theravance shall deliver on such date ("the Initial Due Diligence Commencement Date") and to GSK's appointed designee (in a manner and format to be specified by GSK), all available POC Validated Target Data on the first Theravance Compound ("First Theravance Compound") in such non-respiratory, validated target Discovery Program (it being recognized, and it being in the contemplation of the Parties, that not all but a substantial amount of POC Validated Target Data on the First Theravance Compound in such non-respiratory, validated target Discovery Program will be made available at this point). At such time, and in light of GSK's funding obligations under Section 4.3.2, Theravance shall also deliver up to GSK an outline budget of its proposed expenditures in relation to such Discovery Program for the next one hundred and twenty (120) days) (which such proposed expenditures shall be proposed net external expenditures only, including any planned Third Party contracting and future committed expenditures, but shall not, for the avoidance of doubt include the internal salary costs of Theravance employees). If such outline budget is [*] or less, it shall remain in Theravance's sole discretion; provided, however, GSK shall be permitted to bring to Theravance's attention areas of potential cost savings or comparable efficiencies and Theravance will reasonably consider any recommendations by GSK in this regard. To the extent that the outline budget exceeds [*], the Parties shall as promptly as possible meet and attempt to mutually agree either to changes in the schedule of activities such that the total budget for the relevant period does not exceed [*] or alternatively, if GSK agrees that the circumstances warrant activities that justify a budget in excess of such amount, a higher maximum budget. If the Parties cannot reach mutual agreement on any excess budgeted amounts then GSK shall not be obligated to pay for such excess budgeted amounts under Section 4.3.2. Within a further sixty days of the Initial Due Diligence Commencement Date, Theravance shall deliver to GSK final and complete POC Validated Target Data in respect of such First Theravance Compound ("Date of Final Delivery of Opt-In Data"). To facilitate GSK's review throughout the aforesaid periods, Theravance shall deliver all such materials to GSK in a diligent, prompt and timely manner and shall respond promptly and fully to any GSK requests and/or queries raised as part of such review. It is hereby anticipated and acknowledged by the Parties that such process as contemplated hereunder shall take the form of as many face-to-face meetings between the Parties as GSK shall reasonably request of Theravance. GSK shall also notify Theravance of its most likely plans for Development in respect of such Alliance Program and such intent shall form the basis of the first Development Plan to be drawn up pursuant to Section 3.3.3. It is anticipated that, within such sixty (60) day period the Parties will also endeavor to agree, where appropriate, any specific and/or additional terms related to GSK's proposed future Development and Commercialization activities in relation to such Alliance Program, particularly where appropriate provisions are not contained in this Agreement or, if such provisions are contained in this Agreement, such provisions are not, for whatever reason, relevant. It is further envisaged that such specific and/or additional terms will then be appended to this Agreement as a Specific Alliance Product Development & Commercialization Appendix. Within a further sixty (60) days after Date of Final Delivery of Opt-In Data, GSK shall notify Theravance in writing as to whether or not it is exercising its Opt-In Right with respect to such Discovery Program. If GSK notifies Theravance in writing of its wish to exercise its Opt-In Right in respect of such Discovery Program, such notice of exercise shall not take effect until the date of satisfaction of the Alliance Program Closing Condition (the "Effective Date of GSK's Exercise of its Opt-In Right"). On the Effective Date of GSK's Exercise of its Opt-In Right, (i) such Discovery Program for which GSK has notified Theravance of its wish to exercise its Opt-In Right shall become an Alliance Program; (ii) any payment and/or compensation that becomes payable by GSK to Theravance as a consequence, including but not limited to the payment of an Opt-In Fee and/or any relevant Development Milestone, shall be paid by GSK to Theravance (subject to and in accordance with the further provisions of Article 6); and (iii) Theravance shall promptly deliver to GSK at no cost to GSK the Technology Transfer Package. If GSK elects not to exercise its Opt-In Right for such Discovery Program, or if the Alliance Program Closing Condition is not satisfied or is terminated pursuant to Section 15.15, the Discovery Program will become a Reversion Program (a "Reversion Program") and Theravance will be entitled to pursue development of all compounds from such Reversion Program outside the Alliance alone or with a Third Party.

(ii) Subject to the exclusion contained in Section 4.1(ii), if at the Date of Final Delivery of Opt-In Data, only data related to the First Theravance Compound is available, then, without prejudice to GSK's exercise of its Opt-In Right with respect to such Discovery Program in accordance with Section 4.2.2(a)(i) (including but not limited to the specified process and timelines related thereto), Theravance shall, at Theravance's expense, diligently work toward the goal of delivering up to GSK within a further [*] from the Date of Final Delivery of Opt-In Data further discovery data related to such Discovery Program including but not limited to data related to any back-up Non-respiratory Compound ("Subsequent Theravance Compound(s)"). Further, if Development of the First Theravance Compound is subsequently discontinued and/or terminated by GSK for reasons of Technical Failure and for whatever reason no Subsequent Theravance Compound(s) in such Discovery Program exists or has been made available to GSK by Theravance on or before the expiration of [*] from the Date of Final Delivery of Opt-In Data, then the next payment to be made by GSK to Theravance under this Agreement (whether an Opt-In Fee, Development Milestone or any other payment) shall [*].

(iii) If GSK elects not to exercise its Opt-In Right for any Discovery Program under Section 4.2.2(a)(i), it will no longer have any Opt-In Right for any subsequent Theravance Compound arising out of the same Discovery Program.

(b) *Discovery Programs Directed at Non-validated Targets.*

(i) At the appropriate time in respect of each non-respiratory, Non-Validated Target Discovery Program, and upon the provision to GSK of at least two (2) days advance written notice, Theravance shall deliver on such date ("the Initial Due Diligence Commencement Date") and to GSK's appointed designee (in a manner and format to be specified by GSK), all available POC Non-Validated Target Data on the first Theravance Compound ("First Theravance Compound") in such non-respiratory, non-validated target Discovery Program (it being recognized, and it being in the contemplation of the Parties, that not all but a substantial amount of POC Non-Validated Target Data on the First Theravance Compound in such non-respiratory, non-validated target Discovery Program will be made available at this point). At such time, and in light of GSK's funding obligations under Section 4.3.2, Theravance shall also deliver up to GSK an outline budget of its proposed expenditures in relation to such Discovery Program for the next one hundred and twenty (120) days) (which such proposed expenditures shall be proposed net external expenditures only, including any planned Third Party contracting and future committed expenditures, but shall not, for the avoidance of doubt include the internal salary costs of Theravance employees). If such outline budget is [*] or less, it shall remain in Theravance's sole discretion; provided, however, GSK shall be permitted to bring to Theravance's attention areas of potential cost savings or comparable efficiencies and Theravance will reasonably consider any recommendations by GSK in this regard. To the extent that the outline budget exceeds [*], the Parties shall as promptly as possible meet and attempt to mutually agree either to changes in the schedule of activities such that the total budget for the relevant period does not exceed [*] or alternatively, if GSK agrees that the circumstances warrant activities that justify a budget in excess of such amount, a higher maximum budget. If the Parties cannot reach mutual agreement on any excess budgeted amounts then GSK shall not be obligated to pay for such excess budgeted amounts under Section 4.3.2. Within a further sixty days of the Initial Due Diligence Commencement Date, Theravance shall deliver to GSK final and complete POC Non-Validated Target Data in respect of such First Theravance Compound ("Date of Final Delivery of Opt-In Data"). To facilitate GSK's review throughout the aforesaid periods, Theravance shall deliver all such materials to GSK in a diligent, prompt and timely manner and shall respond promptly and fully to any GSK requests and/or queries raised as part of such review. It is hereby anticipated and acknowledged by the Parties that such process as contemplated hereunder shall take the form of as many face-to-face meetings between the Parties as GSK shall reasonably request of Theravance. GSK shall also notify Theravance of its most likely plans for Development in respect of such Alliance Program and such intent shall form the basis of the first Development Plan to be drawn up pursuant to Section 3.3.3. It is anticipated that, within such sixty (60) day period the Parties will also endeavor to agree, where appropriate, any specific and/or additional terms related to GSK's proposed future Development and Commercialization activities in relation to such Alliance Program, particularly where appropriate provisions are not contained in this Agreement or, if such provisions are contained in this Agreement, such provisions are not, for whatever reason, relevant. It is further envisaged that such specific and/or additional terms will then be appended to this Agreement as a Specific Alliance Product Development & Commercialization Appendix. Within a further sixty (60) days after Date of Final Delivery of Opt-In Data, GSK shall notify Theravance in writing as to whether or not it is exercising its Opt-In Right with respect to such Discovery Program. If GSK notifies Theravance in writing of its wish to exercise its Opt-In Right in respect of such Discovery Program, such notice of exercise shall not take effect until the date of satisfaction of the Alliance Program Closing Condition (the "Effective Date of GSK's Exercise of its Opt-In Right"). On the Effective Date of GSK's Exercise of its Opt-In Right, (i) such Discovery Program for which GSK has notified Theravance of its wish to exercise its Opt-In Right shall become an Alliance Program; (ii) any payment and/or compensation that becomes payable by GSK to Theravance as a consequence, including but not limited to the payment of an Opt-In Fee and/or any relevant Development Milestone, shall be paid by GSK to Theravance (subject to and in accordance with the further provisions of Article 6); and (iii) Theravance shall promptly deliver to GSK at no cost to GSK the Technology Transfer Package. If GSK elects not to exercise its Opt-In Right for such Discovery Program, or if the Alliance Program Closing Condition is not satisfied or is terminated pursuant to Section 15.15, the Discovery Program will become a Reversion Program (a "Reversion Program") and Theravance will be entitled to pursue development of all compounds from such Reversion Program outside the Alliance alone or with a Third Party.

(ii) If at the Date of Final Delivery of Opt-In Data, only data related to the First Theravance Compound is available, then, without prejudice to GSK's exercise of its Opt-In Right with respect to such Discovery Program in accordance with Section 4.2.2(b)(i) (including but not limited to the specified process and timelines related thereto), Theravance shall, at Theravance's expense, diligently work toward the goal of delivering up to GSK within a further [*] from the Date of Final Delivery of Opt-In Data further discovery data related to such Discovery Program including but not limited to data related to any back-up Non-respiratory Compound ("Subsequent Theravance Compound(s)"). Further, if Development of the First Theravance Compound is subsequently discontinued and/or terminated by GSK for reasons of Technical Failure and for whatever reason no Subsequent Theravance Compound(s) in such Discovery Program exists or has been made available to GSK by Theravance on or before the expiration of [*] from the Date of Final Delivery of Opt-In Data, then the next payment to be made by GSK to Theravance under this Agreement (whether an Opt-In Fee, Development Milestone or any other payment) shall [*].

(iii) If GSK elects not to exercise its Opt-In Right for any Discovery Program under Section 4.2.2(b)(i), it will no longer have any Opt-In Right for any subsequent Theravance Compound arising out of the same Discovery Program.

4.2.3 *Early Opt-In* Nothing contained herein shall prevent GSK from exercising an Opt-In Right with respect to a Discovery Program at any time earlier than set forth in Sections 4.2.1 and 4.2.2 in which case such Discovery Program shall become an Alliance Program. Should GSK determine that it would like to consider exercising its Opt-In Right with respect to a Discovery Program prior to the expected or anticipated Initial Due Diligence Date, GSK shall notify Theravance through the Joint Steering Committee and the parties shall use their reasonable efforts to mutually agree on the information requirements and timetables applicable to such a decision.

4.3 *Obligations for Development.*

4.3.1 *General; GSK.* GSK will, subject to the other terms of this Agreement (including Section 3.2.3(g)), endeavor to move Alliance Products forward in Development from each Discovery Program for which GSK has exercised an Opt-In Right provided always that it is understood and hereby acknowledged by the Parties that any GSK decision to pursue Development of [*] shall not, for the avoidance of doubt, constitute a breach of GSK's Diligent Efforts obligations under this Agreement. GSK shall have the overall responsibility for, and use Diligent Efforts in, the performance of all such Development activities which shall include, where applicable, relevant regulatory filings (as contemplated under Article 8) for any such Alliance Product moved forward in Development. Further, GSK shall use Diligent Efforts to advance such Alliance Product through Development in accordance with the Go/No-Go checkpoints identified in the then current Development Plan for such Alliance Product. GSK shall also use Diligent Efforts to develop an optimal formulation of such Alliance Product.

4.3.2 *GSK Funding Responsibility.* As of the Effective Date of GSK's Exercise of its Opt-In Right with respect to any Alliance Program, GSK shall bear all subsequent costs and expenses associated with the Development of Alliance Products from such Alliance Program (excepting at all times, for the avoidance of doubt, any costs related to any Theravance continuing work on Subsequent Theravance Compounds in relation to such Alliance Program as contemplated by Sections 4.2.1(b), 4.2.2(a)(ii) and 4.2.2(b)(ii), which such costs shall be excluded from such computation). Further, if GSK elects to exercise its Opt-In Right for any Discovery Program and, subject to satisfaction under Section 15.15 of the Alliance Program Closing Condition, the Discovery Program thereby becomes an Alliance Program then, during the period [*] (the "Interim Period"), and recognizing the increase in the value of the licences granted hereunder as a result of the work performed by Theravance in the Interim Period, the Opt-In Fee payable under Section 6.1.4 will [*] (the "Top-Up Fees") and GSK shall reimburse Theravance for such Top-Up Fees provided always that unless otherwise agreed by the Parties the amount of any such Top-Up Fees shall be strictly in accordance with the budget established by the Parties pursuant to Sections 4.2.1 (a), 4.2.2 (a)(i) or 4.2.2(b)(i), as applicable. Notwithstanding the foregoing, the Parties hereby acknowledge and recognize that the timing of GSK's payment to Theravance of the aforesaid Top-Up Fees may not necessarily be simultaneous with the timing of GSK's payment of the relevant Opt-In Fee, since the payment of the Top-Up Fees by GSK will require prior submission from Theravance to GSK of an appropriate and suitable invoice for monies spent and GSK shall have thirty (30) days to reimburse Theravance from the date of GSK's receipt of said invoice.

4.3.3 *Decisions with Respect to Alliance Products.*

(a) GSK shall have the sole discretion with respect to Development decisions for Alliance Products subject to and in accordance with Sections 3.2.5, 3.3.5, and 4.3.1.

(b) GSK will provide the Joint Program Committee with (i) a notification within thirty (30) days of the initiation (i.e. the first person dosed) of any Study involving an Alliance Product, and (ii) a "top line results" report within sixty (60) days following the last person dosed/last visit in any Study involving an Alliance Product.

4.3.4 *Development Timelines*. It is hereby acknowledged that the Parties' mutual strategic objective is to move Alliance Products into Development and subsequent Commercialization at the earliest opportunity. GSK will consult with the Joint Program Committee and will share, modify and further develop all applicable Development Plans and timelines in that forum. GSK will use Diligent Efforts to secure the necessary resources and will keep the Joint Program Committee informed on the progress of individual studies and activities relating to Alliance Products in accordance with Section 3.2.3.

4.4 *Activity Outside of the Alliance.* The Parties acknowledge that the research, Development and Commercialization objectives of this Alliance are intended to be complementary to GSK's other research, development and commercialization efforts outside this Alliance. Accordingly, the Parties agree that GSK shall be free to discover and develop other compounds for the treatment of diseases targeted by Alliance Products outside of this Agreement, subject to GSK's obligations hereunder with respect to any Alliance Product for which GSK has exercised its Opt-In Right.

ARTICLE 5
COMMERCIALIZATION

5.1 *Global Marketing Plans.*

5.1.1 *General.* The Joint Program Committee shall be responsible for reviewing a Global Marketing Plan for each Alliance Product ("Marketing Plan"). Each Marketing Plan shall define the goals and objectives for Commercializing the Alliance Products in the pertinent Calendar Year consistent with the applicable Development Plan.

5.1.2 *Contents of Each Marketing Plan.* The Marketing Plan for each Alliance Product shall be prepared during the Calendar Year wherein, and where applicable, Phase III Studies for such Alliance Product have commenced and shall be a rolling, three-year plan, updated annually and shall contain at a minimum and as appropriate to current knowledge:

(a) Results of market research and strategy, including market size, dynamics, growth, customer segmentation, customer targeting, competitive analysis and global Alliance Product positioning;

(b) Annual sales forecasts for Major Market Countries;

(c) For each major Market Country (as available): sales plans, which will include target number of sales representatives, detail order and target number of details;

(d) Core, global advertising and promotion programs and strategies, including literature, media plans, symposia and speaker programs; and

(e) Core Phase III/Phase IIIb Studies to be conducted.

5.2 *Obligations for Commercialization.* GSK shall use Diligent Efforts to Commercialize the Alliance Products.

5.3 *Commercialization.*

5.3.1 *GSK Responsibility.* Subject to Section 5.3.2:

(a) GSK shall have the sole right and responsibility for Commercialization of Alliance Products for distribution and sale. GSK shall bear all costs and expenses associated with the Commercialization of Alliance Products for sale or distribution;

(b) GSK shall have the sole right and responsibility to distribute, sell, record sales and collect payments for Alliance Products;

(c) GSK shall have the sole right and responsibility for establishing and modifying the terms and conditions with respect to the sale of Alliance Products, including, without limitation, the price or prices at which the Alliance Products will be sold, any discount applicable to payments or receivables, all managed care contracting issues and any other similar matters; and

(d) GSK will be responsible for storage, order receipt, order fulfillment, shipping and invoicing of Alliance Products.

5.3.2 *Limited Co-Promotion in the United States.* Theravance may elect to Co-Promote in the United States an Alliance Product where such Alliance Product is primarily targeted to specialist and/or hospital-based healthcare providers in the United States in the manner and to the extent set forth below. The limited right to Co-Promote as set forth herein is non-exclusive, and also may not be sublicensed or sub-contracted by Theravance to a Third Party.

(a) *Co-Promotion Option.* Theravance will notify GSK in writing if it wishes to Co-Promote an Alliance Product, not later than the date of the filing of the New Drug Application for an Alliance Product in the United States. If GSK is willing to progress discussions, the parties will then meet as soon as practicable to further discuss and agree in good faith suitable terms provided always that any such proposed arrangement shall always be [*]. Any such terms that are agreed shall be documented separately, executed by the Parties and/or their Affiliate(s), as applicable, and a copy thereof appended to this Agreement.

(b) *Co-Promotion Plan.* The Co-Promotion Plan will be an amendment to the Marketing Plan and will be finalized not later than six (6) months before launch in the United States.

5.3.3 *Semi-Annual Reports.* GSK shall provide the Joint Program Committee reports semi-annually. Such reports shall set forth in summary form the results of GSK's Commercialization activities performed during such semi-annual period in the Major Markets.

5.3.4 *Exports to the United States.* To the extent permitted by Law, the Parties shall use Diligent Efforts to prevent the Alliance Products distributed for sale in a particular Country other than the United States from being exported to the United States for sale.

ARTICLE 6
FINANCIAL PROVISIONS

6.1 *Option Fee; Equity Investment; Governance Agreement; Opt-In Fee.*

6.1.1 *Option Fee.* In partial consideration for the right to Opt-In for Discovery Programs hereunder, GSK shall on the Effective Date, pay to Theravance a non-refundable amount of Twenty Million United States Dollars (U.S. $20,000,000).

6.1.2 *Equity Investment.* On the Effective Date, GSK shall purchase nine million nine hundred thousand (9,900,000) newly issued shares of Theravance Class A Common Stock at a price of U.S. $11.00 per share for total consideration of One Hundred Eight Million Nine Hundred Thousand United States Dollars (U.S. $108,900,000.00). Such purchase will be made pursuant to the Stock Purchase Agreement attached hereto as Schedule 6.1.2(A).

Simultaneously with the foregoing payment and investment by GSK, all outstanding Theravance Preferred Stock not owned by GSK will be converted into shares of Theravance Common Stock, and all outstanding shares of Theravance Preferred Stock owned by GSK will be converted into shares of Theravance Class A Common Stock.

6.1.3 *Governance Agreement.* On the Effective Date the Parties also will enter into the Governance Agreement attached hereto as Schedule 6.1.3(A).

6.1.4 *Opt-In Fee.* Upon the Effective Date of GSK's Exercise of its Opt-In Right with respect to any Discovery Program, it shall simultaneously pay to Theravance a non-refundable fee in partial consideration for the acquisition of license rights under the Theravance Patents and the Theravance Know-How by GSK under this Agreement, as follows:

(i) for a Discovery Program in which the lead Theravance Compound [*] as of the Initial Due Diligence Commencement Date: [*];

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(ii) for a Discovery Program in which the lead Theravance Compound [*] as of the Initial Due Diligence Commencement Date: [*]; and

(iii) for a Discovery Program in which the lead Theravance Compound [*] as of the Initial Due Diligence Commencement Date: [*].

provided always that, in recognition of the increased value of the licences granted hereunder as a result of the work performed by Theravance in the Interim Period, [*].

6.2 *Milestone Payments.*

6.2.1 *General.* In further consideration for the acquisition of license rights under the Theravance Patents and Theravance Know How, GSK shall also pay to Theravance the payments set forth below for each such Development milestone referred to therein (each, a "Development Milestone"); provided always that each such payment shall be made only one time for each Alliance Product regardless of how many times such Development Milestones are achieved for such Alliance Product, and no payment shall be owed for a Development Milestone which is not reached (except that, upon achievement of a Development Milestone for a particular Alliance Product, any previous Development Milestone for that Alliance Product for which payment was not made shall be deemed achieved and payment therefore shall be made); provided further that, in the event that more than one Development Milestone is achieved with respect to the same Alliance Product at one time, then all applicable payments under Section 6.2 shall be made. For example, if a single-agent Alliance Product and a Combination Product are approved in the same Marketing Authorization Approval, then in addition to the relevant milestone for the single-agent Alliance Product, the relevant milestone for the Combination Product shall be paid simultaneously. In the event of termination of development of a particular Alliance Product for Technical Failure and an alternative Alliance Product in the same Discovery Program replaces such Terminated Alliance Product then milestone payments for such alternative Alliance Product shall not be paid in respect of milestones already achieved by the Terminated Alliance Product.

6.2.2 *Specific Milestones.* GSK shall make the following milestone payments to Theravance upon the achievement of the indicated Development Milestone for each of the first single agent Alliance Product and the first Combination Alliance Product per Alliance Program:

Milestone	Amount
Initiation of [*]*	[*]
Successful completion of [*]** (where [*] means [*] for a Validated Target and [*] for a Non-Validated Target, as such Validated/Non-Validated Targets will have been agreed by the Parties pursuant to Section 4.1.4).	[*]
Initiation of [*]	[*]
Filing for Regulatory Approval	
[*]	[*]
[*]	[*]
[*]	[*]
Launch	
[*]	[*]
[*]	[*]
[*]	[*]

* [*] milestone is only payable for Theravance Compounds from Discovery Programs for which GSK has given notice of its wish to exercise its Opt-In Right prior to initiation of a [*] for the first Theravance Compound in such Discovery Program.

** [*] milestone is only payable for Theravance Compounds from Discovery Programs for which GSK has given notice of its wish to exercise its Opt-In Right prior to initiation of a [*] for the first Theravance Compound in such Discovery Program.

For the purpose of this Section 6.2, the following definitions shall apply:

"Initiation of [*]" means [*] for the applicable Alliance Product

"Successful completion of [*]" means [*] conducted in the target population for the applicable Alliance Product.

"Initiation of [*]" means [*] for the applicable Alliance Product.

"Filing for Regulatory Approval" means (i) in the case of [*], the date on which [*] in relation to the applicable Alliance Product [*]; (ii) in the case of [*], the earlier of (aa) the date on which the appropriate regulatory authorities in [*] for the applicable Alliance Product filed by or on behalf of GSK in such Country or (bb) the date on which [*] or any successor thereto [*] for the applicable Alliance Product filed by or on behalf of GSK; and (iii) in the case of [*], the date on which the relevant governmental authority in [*] for the applicable Alliance Product filed by or on behalf of GSK in [*].

"Launch" means the date of First Commercial Sale in either [*], as applicable.

If GSK, either individually or as a member of the Joint Steering Committee or Joint Program Committee, discontinues the Development of [*] for reasons other than Technical Failure, and the Theravance Compound that comprises such Alliance Product is also in a [*], GSK will not compensate Theravance for the unpaid milestone payments otherwise due to Theravance under Section 6.2.2 except where, and notwithstanding GSK's intent to commercialize only [*], treatment with [*] also forms a distinct part of the [*] for that [*] (so, for example, the safety and efficacy of the [*] is evaluated in a separate group of patients in a [*]) such that the aforesaid milestone is also achieved for the [*] in which case such milestone shall be due and payable by GSK. And, for the avoidance of doubt, if in such a situation, notwithstanding GSK's original intent to commercialize only [*], GSK then decides to commercialize [*] and the Filing and Launch milestones are achieved in respect of such [*], then such milestones shall also be due and payable by GSK.

6.2.3 *Notification and Payment.* In the event an Alliance Product achieves a Development Milestone, GSK shall promptly, but in no event more than ten (10) days after the achievement of each such Development Milestone, notify Theravance in writing of the achievement of same. For all Development Milestones achieved, but subject always to satisfaction under Section 15.15 of the relevant Alliance Program Closing Condition, GSK shall promptly, but in no event more than thirty (30) days after notification of the achievement of each such Development Milestone, remit payment to Theravance for such Development Milestone.

6.3 *Payment of Royalties on Net Sales.*

6.3.1 *[*] Royalty on Single-Agent Alliance Products from Discovery Programs for Which GSK Exercised its Opt-In Right [*] for the First Theravance Compound in Such Discovery Program.* As further consideration for the acquisition of license rights under the Theravance Patents under this Agreement, and in those Countries of the Territory in which there is a Valid Claim of a Theravance Patent covering the Alliance Product in the Country of sale at the time such Net Sales occur (for the avoidance of doubt, "covering" as used in this Section and subsequent Sections shall include the making, using, selling, offering for sale, or importing the Alliance Product), GSK shall pay Theravance, within twenty (20) days after the end of each Calendar Quarter, royalty payments for each such Alliance Product based on Net Sales in such Calendar Quarter on a Country by Country basis, as follows:

[*]

6.3.2 *[*] Royalty on Single-Agent Alliance Products from Discovery Programs for Which GSK Exercised its Opt-In Right [*] for the First Theravance Compound in Such Discovery Program.* As further consideration for the acquisition of license rights under the Theravance Patents under this Agreement, and in those Countries of the Territory where an obligation to pay royalties under Section 6.3.1 has applied during the Term but is no longer applicable (as a result of subsequent expiration or termination of the last Valid Claim of a Theravance Patent covering the Alliance Product in the Country of sale at the time such Net Sales occur), GSK shall pay Theravance, within twenty (20) days after the end of each Calendar Quarter, royalty payments for each such Alliance Product based on Net Sales in such Calendar Quarter on a Country by Country basis, as follows:

[*]

6.3.3 *[*] Royalty on Single-Agent Alliance Products from Discovery Programs for Which GSK Exercised its Opt-In Right [*] for the First Theravance Compound in Such Discovery Program.* As further consideration for the acquisition of Theravance Know-How by GSK under this Agreement, and in those countries which are not subject to the royalty obligation referred to in either Sections 6.3.1 or 6.3.2, GSK shall pay Theravance, within twenty (20) days after the end of each Calendar Quarter, royalty payments for each such Alliance Product based on Net Sales in such Calendar Quarter on a Country by Country basis, as follows:

[*]

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6.3.4 *[*] Royalty on Single-Agent Alliance Products from Discovery Programs for Which GSK Exercised its Opt-In Right [*] for the First Theravance Compound in Such Discovery Program.* As further consideration for the acquisition of license rights under the Theravance Patents under this Agreement, and in those Countries of the Territory in which there is a Valid Claim of a Theravance Patent covering the Alliance Product in the Country of sale at the time such Net Sales occur, GSK shall pay Theravance, within twenty (20) days after the end of each Calendar Quarter, royalty payments for each such Alliance Product based on Net Sales in such Calendar Quarter on a Country by Country basis, as follows:

[*]

6.3.5 *[*] Royalty on Single-Agent Alliance Products from Discovery Programs for Which GSK Exercised its Opt-In Right [*] for the First Theravance Compound in Such Discovery Program.* As further consideration for the acquisition of license rights under the Theravance Patents under this Agreement, and in those Countries of the Territory where an obligation to pay royalties under Section 6.3.4 has applied during the Term but is no longer applicable (as a result of subsequent expiration or termination of the last Valid Claim of a Theravance Patent covering the Alliance Product in the Country of sale at the time such Net Sales occur), GSK shall pay Theravance, within twenty (20) days after the end of each Calendar Quarter, royalty payments for each such Alliance Product based on Net Sales in such Calendar Quarter on a Country by Country basis, as follows:

[*]

6.3.6 *[*] Royalty on Single-Agent Alliance Products from Discovery Programs for Which GSK Exercised its Opt-In Right [*] for the First Theravance Compound in Such Discovery Program.* As further consideration for the acquisition of Theravance Know-How by GSK under this Agreement, and in those countries which are not subject to the royalty obligation referred to in either Sections 6.3.4 or 6.3.5, GSK shall pay Theravance, within twenty (20) days after the end of each Calendar Quarter, royalty payments for each such Alliance Product based on Net Sales in such Calendar Quarter on a Country by Country basis, as follows:

[*]

6.3.7 *Royalty on Combination Products.* For the purpose of determining royalty payments, then if the Combination Product is commercialized but the Theravance single agent is not sold separately in finished form, [*] of the royalty rates referred to in Sections 6.3.1 - 6.3.6 inclusive (whichever is applicable) shall apply. If the Combination Product is commercialized and the relevant Theravance single agent in such Combination Product is also separately commercialized for which Theravance is receiving separate royalty payments then, if there are [*] active ingredients in such Combination Product and one such active ingredient is such Theravance single agent, [*] of the royalty rates referred to in Sections 6.3.1 - 6.3.6 inclusive (whichever is applicable) shall apply; and if there are [*] active ingredients in such Combination Product and one such active ingredient is the Theravance single agent, [*] of the royalty rates referred to in Sections 6.3.1 - 6.3.6 inclusive (whichever is applicable) shall apply.

6.3.8 *Estimates.* The quarterly royalty payments made hereunder may be based on estimated Net Sales. Within thirty (30) days after the end of each Calendar Quarter, GSK shall calculate the actual amount of Net Sales for the previous Calendar Quarter and either credit or debit the difference between such actual and projected amount on the succeeding Calendar Quarter's royalty payment to Theravance. GSK will also provide Theravance with those estimates of future Net Sales as it provides in accordance with its own internal procedures.

6.3.9 *Duration of Royalty Payments*

(a) *Commencement* All royalties payable hereunder shall be paid on a Country-by-Country basis from the date of first commercial sale of each Alliance Product in a particular Country and additionally, in the case of Sections 6.3.1 and 6.3.4, at such time as there is a Valid Claim of a Theravance Patent covering the Alliance Product sold.

(b) *Duration of* [*] *Royalties* Royalty obligations under Sections 6.3.1 and 6.3.4 in each Country of the Territory shall remain until the expiration or termination of the last Valid Claim of a Theravance Patent covering the Alliance Product in such Country.

(c) *Duration of [*] Royalties* Royalty obligations under Sections 6.3.2 and 6.3.5 in each Country of the Territory shall apply for a maximum period of fifteen (15) years from First Commercial Sale of the relevant Alliance Product in each such Country (where, for the avoidance of doubt, such period would include, and not be additional to, the time for which a full patent royalty was previously payable under either Section 6.3.1 or Section 6.3.4, as applicable).

(d) *Duration of [*] Royalties* Royalty obligations under Sections 6.3.3 and 6.3.6 in each Country of the Territory shall apply for a maximum period of ten (10) years from First Commercial Sale of the relevant Alliance Product in each such country.

6.4 *Royalty Responsibilities; Net Sales Reports.*

6.4.1 *Payments to Third Parties.*

(a) If, as a result of a settlement approved by both Parties or as a result of a final non-appealable judgment, GSK is required to pay any amounts to a Third Party directly because using or selling a Theravance Compound is found to infringe the rights of such Third Party, GSK shall deduct [*] of any such amount paid to such Third Party from the royalties otherwise due Theravance for the Alliance Product containing such Theravance Compound, provided in no event shall the aggregate of any such reduction(s) reduce the royalties otherwise payable to Theravance during any Calendar Year by more than [*]; provided, further, that any excess deduction shall be carried over into subsequent years of this Agreement until the full deduction is taken. In the event that at the time GSK elects to exercise its Opt-In Right with respect to a Discovery Program, either (a) the formulation containing the relevant Theravance Compound or (b) the process used to prepare the relevant Theravance Compound that has been used or will be used for clinical trial material or commercial supply, requires a license from a Third Party, the same reduction in royalties payable to Theravance as set forth hereinabove shall apply.

(b) GSK shall pay any amounts owed to a Third Party as a result of the use of GSK Patents or GSK Know-How or for any other reason other than in connection with 6.4.1 (a) with respect to sales of Alliance Products and shall not deduct any of such amounts from the royalties due Theravance.

6.4.2 *Net Sales Report.* Within thirty (30) days after the end of each Calendar Quarter, GSK shall submit to Theravance a written report setting forth Net Sales in the Territory on a Country-by-Country and Alliance Product-by-Alliance Product basis during such Calendar Quarter, total royalty payments due Theravance, relevant market share data and any payments made to any Third Party pursuant to Section 6.4.1(a) (each a "Net Sales Report").

6.5 *IFRS.* All financial terms and standards defined or used in this Agreement for sales or activities occurring in the Territory shall be governed by and determined in accordance with the generally accepted accounting principles as referred to in the International Financial Reporting Standards ("IFRS").

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6.6 *Currencies.* Monetary conversion from the currency of a foreign country in which Alliance Product is sold into US Dollars shall be calculated in accordance with the methodology referred to in GSK's then current Corporate Finance Reporting Policy. The following summarizes GSK's current methodology applied in accordance with its current Corporate Finance Reporting System: the cumulative year-to-date Average Rates are calculated by determining the average of (i) the preceding 31st December Spot Rate plus (ii) the Closing Spot Rates of the relevant months to date using the exact figures provided by the Reuters 2000 download. (By way of example, the Average Rate for the five months from January, 2005 to May, 2005 would be computed by taking the sum of the Spot Rates for the preceding 31st December, 2004, plus the month-end Spot Rates for the five months to May, 2005, divided by six).

6.7 *Manner of Payments.* All sums due under this Article 6 shall be payable in United States Dollars by bank wire transfer in immediately available funds to such bank account(s) as Theravance shall designate. GSK shall notify Theravance as to the date and amount of any such wire transfer to Theravance at least five (5) Business Days prior to such transfer.

6.8 *Interest on Late Payments.* If GSK shall fail to make a timely payment pursuant to this Article 6, any such payment that is not paid on or before the date such payment is due under this Agreement shall bear interest, to the extent permitted by applicable law, at the average one-month London Inter-Bank Offering Rate (LIBOR) for the United States Dollar as reported from time to time in *The Wall Street Journal*, effective for the first date on which payment was delinquent and calculated on the number of days such payment is overdue or, if such rate is not regularly published, as published in such source as the Joint Steering Committee agrees.

6.9 *Tax Withholding.*

6.9.1 Any taxes, levies or other duties ("Taxes") paid or required to be withheld under the appropriate local tax laws by one of the Parties ("Withholding Party") on account of monies payable to the other Party under this Agreement shall, subject to Sections 6.9.2 and 6.9.3, be deducted from the amount of monies otherwise payable to the other Party under this Agreement. The Withholding Party shall secure and send to the other Party within a reasonable period of time proof of any such Taxes paid or required to be withheld by Withholding Party for the benefit of the other Party.

6.9.2 If GSK or any GSK Affiliate is or becomes liable to withhold any taxes from payments made to Theravance under Sections 6.1 and/or 6.2, then GSK shall pay to Theravance an amount equal to the amount GSK or the applicable GSK Affiliate owes to the relevant tax authority provided always that if Theravance is able to obtain credit for any taxes withheld ("Creditable Taxes") against any liability to tax either in the year in which the receipt is taxable or any preceding years, Theravance shall reimburse to GSK an amount equivalent to the Creditable Taxes. Theravance shall provide GSK with such reasonable evidence as GSK may reasonably request to determine whether the taxes are creditable against taxes payable by Theravance.

6.9.3 If GSK or any GSK Affiliate is or becomes liable to withhold any taxes from payments made to Theravance under Section 6.3, then such taxes may be withheld by GSK or the applicable GSK Affiliate up to a limit of [*] of the relevant payment. GSK shall pay to Theravance an amount equal to the amount GSK owes to the relevant tax authority in excess of such [*] provided always that if Theravance is able to obtain any Creditable Taxes against any liability to tax either in the year in which the receipt is taxable or any preceding years, Theravance shall reimburse to GSK an amount equivalent to the Creditable Taxes. Theravance shall provide GSK with such reasonable evidence as GSK may reasonably request to determine whether the taxes are creditable against taxes payable by Theravance.

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6.10 *Financial Records; Audits.* GSK shall keep, and shall cause its Affiliates and sublicensees to keep, such accurate and complete records of Net Sales as are necessary to determine the amounts due to Theravance under this Agreement and such records shall be retained by GSK or any of its Affiliates or sublicensees (in such capacity, the "Recording Party") for at least the three subsequent Calendar Years to which the Net Sales relate. During normal business hours and with reasonable advance notice to the Recording Party, such records shall be made available for inspection, review and audit, at the request and expense of Theravance, by an independent certified public accountant, or the local equivalent, appointed by Theravance and reasonably acceptable to the Recording Party for the sole purpose of verifying the accuracy of the Recording Party's accounting reports and payments made or to be made pursuant to this Agreement; provided, however that such audits may not be performed by Theravance more than once per Calendar Year. Such accountants shall be instructed not to reveal to Theravance the details of its review, except for (i) such information as is required to be disclosed under this Agreement and (ii) such information presented in a summary fashion as is necessary to report the accountants' conclusions to Theravance, and all such information shall be deemed Confidential Information of the Recording Party; provided, however, that in any event such information may be presented to Theravance in a summary fashion as is necessary to report the accountants' conclusions. All costs and expenses incurred in connection with performing any such audit shall be paid by Theravance unless the audit discloses at least a [*] shortfall, in which case the Recording Party will bear the full cost of the audit for such Calendar Year. Theravance will be entitled to recover any shortfall in payments due to it as determined by such audit, plus interest thereon calculated in accordance with Section 6.8, or alternatively shall have the right to offset and deduct any such shortfall in payments due to it against payments Theravance is otherwise required to make to the Reporting Party under this Agreement. The documents from which were calculated the sums due under this Article 6 shall be retained by the relevant Party during the Term.

ARTICLE 7
COMMUNICATIONS, PROMOTIONAL MATERIALS AND SAMPLES

7.1 *Communications and Promotional Materials.*

7.1.1 *Housemark Exposure.* To the extent allowed by applicable Law, and further to the extent reasonably practicable, all communications and Promotional Materials will indicate the contribution of the license from Theravance for the Alliance Products. Subject to the foregoing, the Theravance Housemark and the GSK Housemark shall both be given exposure and prominence on all communications and promotional materials, labeling, package inserts or outserts and packaging for the Alliance Products.

7.1.2 *Review of Core Promotional Materials.* Subject to applicable Law, in accordance with the direction of the Joint Program Committee and *only* in the event of a co-promotion under Section 5.3.2, (i) the Parties will jointly, through consultation and with the assistance of each other, review the core Promotional Materials, and (ii) the relevant legal or regulatory personnel of each Party shall have the opportunity to review and comment on all such core Promotional Materials prior to use and such comments shall be considered by the Joint Program Committee in the review of such core Promotional Materials.

7.2 *Samples.* Packaging, package inserts and outserts, Sample labels and labeling shall each contain reference to Theravance and GSK indicating, in the case of Theravance, the contribution of the license from Theravance for the Alliance Products, if appropriate, and as may be required under applicable FDA rules and regulations.

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7.3 *Statements Consistent with Labeling.* GSK shall ensure that its sales representatives detail the Alliance Products in a fair and balanced manner and consistent with the requirements of the Federal Food, Drug and Cosmetic Act of the United States, as amended, including, but not limited to, the regulations at 21 C.F.R. (S) 202 in the United States.

7.4 *Implications of Change in Control in Theravance.* In the event that there is a Change in Control of Theravance that does not involve GSK or its Affiliates and the references contemplated in Sections 7.1.2 and 7.2 are no longer made to "Theravance," then other than to the extent required by applicable Law, GSK shall have the right, not to be unreasonably exercised, to terminate its obligations under Sections 7.1 and 7.2.

ARTICLE 8
REGULATORY MATTERS

8.1 *Governmental Authorities.* GSK shall be solely responsible for communicating with Governmental Authorities in connection with the Development and Commercialization of an Alliance Product and will keep Theravance informed, through the Joint Program Committee and Joint Steering Committee, of any significant issue or issues arising therefrom.

8.2 *Filings.* Subject to any necessary transitional arrangements that may be identified and agreed by the Parties under Section 4.2, and which would then form part of the Specific Alliance Product Development & Commercialization Appendix for same, GSK shall also be solely responsible for filing drug approval applications for Alliance Products and will use Diligent Efforts in seeking appropriate approvals in those Countries of the Territory for Alliance Products as GSK reasonably determines and sees fit. Such regulatory documents for each filing shall be centralized and held at the offices of GSK. Theravance shall provide such reasonable assistance as may be required by GSK where liaison between the Parties is, or may be, necessary to enable GSK to fulfill its responsibilities hereunder. GSK shall be responsible for maintaining the Approvals obtained under this Section 8.2 and shall solely own all such Approvals in the Territory. GSK shall be fully responsible for bearing all costs and expense associated with undertaking and completing said registration activities in the Territory, including but not limited to the costs of preparing and prosecuting applications for such Approvals and fees payable to regulatory agencies in obtaining and maintaining same.

8.3 *Exchange of Drug Safety Information.* Subject to and upon completion of appropriate Safety Exchange requirements and/or transfer of all appropriate safety data identified and agreed by the Parties under Section 4.2 (and which would then form part of the Specific Alliance Product Development & Commercialization Appendix for same), at the time a Theravance Compound becomes an Alliance Product under this Agreement GSK shall be responsible for recording, investigating, summarizing, notifying, reporting and reviewing all Adverse Drug Experiences in relation to Alliance Products in accordance with Law and shall require that its Affiliates (i) adhere to all requirements of applicable Laws which relate to the reporting and investigation of Adverse Drug Experiences, and (ii) keep the Joint Program Committee apprised on a regular basis of such matters arising therefrom.

8.4 *Recalls or Other Corrective Action.* Each Party shall, as soon as practicable, notify the other Party of any recall information received by it in sufficient detail to allow the Parties to comply with any and all applicable Laws. GSK shall promptly notify Theravance of any material actions to be taken by GSK with respect to any recall or market withdrawal or other corrective action related to an Alliance Product prior to such action to permit Theravance a reasonable opportunity to consult with GSK with respect thereto. All costs and expenses with respect to a recall, market withdrawal or other corrective action shall be borne by GSK unless such recall, market withdrawal or other corrective action was due solely to the negligence, willful misconduct or breach of this Agreement by Theravance. GSK shall have sole responsibility for and shall make all decisions with respect to any recall, market withdrawals or any other corrective action related to the Alliance Products.

8.5 *Events Affecting Integrity or Reputation.* During the Term, the Parties shall notify each other immediately of any circumstances of which they are aware and which could impair the integrity and reputation of the Alliance Products or if a Party is threatened by the unlawful activity of any Third Party in relation to the Alliance Products, which circumstances shall include, by way of illustration, deliberate tampering with or contamination of the Alliance Products by any Third Party as a means of extorting payment from the Parties or another Third Party. In any such circumstances, the Parties shall use Diligent Efforts to limit any damage to the Parties and/or to the Alliance Products. The Parties shall promptly call a Joint Steering Committee meeting to discuss and resolve such circumstances.

ARTICLE 9
ORDERS; SUPPLY AND RETURNS

9.1 *Orders and Terms of Sale.* Except as otherwise expressly stated in this Agreement, GSK shall have the sole right to (i) receive, accept and fill orders for the Alliance Products, (ii) control invoicing, order processing and collection of accounts receivable for the Alliance Products sales, (iii) record the Alliance Products sales in its books of account, and (iv) establish and modify the commercial terms and conditions with respect to the sale and distribution of the Alliance Products, including without limitation matters such as the price at which the Alliance Products will be sold and whether any discounts, rebates or other deductions should be made, paid or allowed.

9.2 *Supply of API Compound and Formulated Alliance Product for Development.*

9.2.1 *Supply of API Compound for Development.* Subject to the terms and conditions of this Agreement, GSK shall conduct or have conducted any chemical process development required to develop a commercially acceptable process for making API Compound and obtain supply for worldwide requirements of API Compound. Notwithstanding the foregoing, Theravance shall transfer on or after the Effective Date of GSK's Exercise of its Opt-In Right, at cost, all reasonable quantities of API supply it has on hand of a Theravance Compound for which GSK has exercised its Opt-In Right and/or intermediate materials for API manufacture and provided also that such API supplies shall always be in conformity with GSK's own requirements. API Compound requirements for Development activities shall be set forth in the relevant Development Plan and shall be periodically updated by the Joint Program Committee. For the purposes of this Section 9.2.1, "at cost" means Theravance's fully allocated cost of manufacturing, comprising all direct costs (including but not limited to, labor, materials, energy, utilities, quality control and costs of third party manufacture) and indirect costs (including but not limited to administrative labor costs, manufacturing facility and equipment maintenance, relevant insurance and depreciation of manufacturing equipment and manufacturing facilities) specifically allocable to the production and delivery of API and/or Alliance Product, as applicable, to GSK; such calculation being based upon accepted contract manufacturing industry standards or generally accepted accounting principles.

9.2.2 *Supply of Formulated Alliance Products for Development.* Subject to the terms and conditions of this Agreement, GSK shall be solely responsible for manufacture and supply for worldwide requirements of formulated Alliance Products. Notwithstanding the foregoing, Theravance agrees to transfer to GSK on or after the Effective Date of GSK's Exercise of its Opt-In Right, at cost, all reasonable quantities of formulated Alliance Product for which GSK has exercised its Opt-In Right and provided also that such formulated Alliance Product shall always be in conformity with GSK's own requirements. Formulated Alliance Product requirements for Development activities shall be set forth in the relevant Development Plan and shall be periodically updated by the Joint Project Committee (in the form and at the times the Joint Project Committee determines).

9.2.3 *At Cost.* For the purposes of this Section 9.2, "at cost" means Theravance's fully allocated cost of manufacturing, comprising all direct costs (including but not limited to, labor, materials, energy, utilities, quality control and costs of third party manufacture) and indirect costs (including but not limited to administrative labor costs, manufacturing facility and equipment maintenance, relevant insurance and depreciation of manufacturing equipment and manufacturing facilities) specifically allocable to the production and delivery of API and/or Alliance Product, as applicable, to GSK; such calculation being based upon accepted contract manufacturing industry standards or generally accepted accounting principles.

9.3 *Supply of API Compound for Commercial Requirements.* Subject to the terms and conditions of this Agreement, GSK shall be solely responsible for the manufacture and supply of API Compound. A forecast for API Compound requirements for Commercialization of the Alliance Products shall be prepared and periodically updated by the Joint Program Committee (in the form and at the times the Joint Program Committee determines), and coordinated with the applicable Marketing Plans for Alliance Products.

9.4 *Supply of Alliance Products for Commercialization.* Subject to the terms and conditions of this Agreement, GSK shall be solely responsible for the manufacture and supply of commercial requirements of formulated, packaged and labeled Alliance Products. Such formulated, packaged and labeled Alliance Products shall be manufactured and supplied in accordance with all applicable Laws and current Good Manufacturing Practices. GSK shall be solely responsible for secondary manufacture (formulation of finished drug product), packaging and labeling of the Alliance Product.

9.5 *Inventories.* GSK and its Product Suppliers shall maintain an inventory of API Compound and Alliance Products in accordance with their normal practices and so as to ensure fulfillment of its respective supply obligations herein.

9.6 *Potential Differences in Supply/Manufacturing Needs on an Alliance Product by Alliance Product Basis.* The provisions of Sections 9.2-9.5 inclusive shall apply in respect of each Alliance Product save where the Parties mutually agree otherwise to amend and/or supplement such terms for any Alliance Product. Any such mutually agreed terms would then form part of the Specific Alliance Product Development & Commercialization Appendix for such Alliance Product.

ARTICLE 10
CONFIDENTIAL INFORMATION

10.1 *Confidential Information.* Each of GSK and Theravance shall keep all Confidential Information received from the other Party with the same degree of care it maintains the confidentiality of its own Confidential Information. Neither Party shall use such Confidential Information for any purpose other than in performance of this Agreement or disclose the same to any other Person other than to such of its agents who have a need to know such Confidential Information to implement the terms of this Agreement or enforce its rights under this Agreement. A Receiving Party shall advise any agent who receives such Confidential Information of the confidential nature thereof and of the obligations contained in this Agreement relating thereto, and the Receiving Party shall ensure that all such agents comply with such obligations as if they had been a Party hereto. Upon termination of this Agreement, the Receiving Party shall return or destroy all documents, tapes or other media containing Confidential Information of the Disclosing Party that remain in the Receiving Party's or its agents' possession, except that the Receiving Party may keep one copy of the Confidential Information in the legal department files of the Receiving Party, solely for archival purposes. Such archival copy shall be deemed to be the property of the Disclosing Party, and shall continue to be subject to the provisions of this Article 10. Notwithstanding anything to the contrary in this Agreement, the Receiving Party shall have the right to disclose this Agreement or Confidential Information provided hereunder if, in the reasonable opinion of the Receiving Party's legal counsel, such disclosure is necessary to comply with the terms of this Agreement, or the requirements of any Law. Where possible, the Receiving Party shall notify the Disclosing Party of the Receiving Party's intent to make such disclosure pursuant to the provision of the preceding sentence sufficiently prior to making such disclosure so as to allow the Disclosing Party adequate time to take whatever action the Disclosing Party may deem to be appropriate to protect the confidentiality of the information. The Receiving Party will cooperate reasonably with the Disclosing Party's efforts to protect the confidentiality of the information. Each Party will be liable for breach of this Article 10 by any of its Affiliates or agents.

10.2 *Permitted Disclosure and Use.* Notwithstanding Section 10.1, a Party may disclose Confidential Information belonging to the other Party only to the extent such disclosure is reasonably necessary to: (a) obtain Marketing Authorization of an Alliance Product; (b) enforce the provisions of this Agreement; or (c) comply with Laws. If a Party deems it necessary to disclose Confidential Information of the other Party pursuant to this Section 10.2, such Party shall give reasonable advance notice of such disclosure to the other Party to permit such other Party sufficient opportunity to object to such disclosure or to take measures to ensure confidential treatment of such information. The Receiving Party will cooperate reasonably with the Disclosing Party's efforts to protect the confidentiality of the information.

10.3 *Publications.* Subject to any Third Party rights existing as of the Effective Date, each Party shall submit to the Joint Program Committee for review and approval all proposed academic, scientific and medical publications and public presentations relating to an Alliance Product or any Development

activities under this Agreement for review in connection with preservation of related patent rights, and trade secrets and/or to determine whether Confidential Information should be modified or deleted from the proposed publication or public presentation. Written copies of such proposed publications and presentations shall be submitted to the Joint Program Committee no later than sixty (60) days before submission for publication or presentation and the Joint Program Committee shall provide its comments with respect to such publications and presentations within ten (10) Business Days of its receipt of such written copy. The review period may be extended for an additional sixty (60) days if a representative of the non-publishing Party on the Joint Program Committee can demonstrate a reasonable need for such extension including, but not limited to, the preparation and filing of patent applications. By mutual agreement of the Parties, this period may be further extended. The Parties will each comply with standard academic practice regarding authorship of scientific publications and recognition of contribution of other Parties in any publications relating to the Alliance Products or any Development activities under this Agreement.

10.4 *Public Announcements.* Except as may be expressly permitted under Section 10.3 or required by applicable Laws and subject to the final two sentences of this Section 10.4, neither Party will make any public announcement of any information regarding this Agreement, the Alliance Products or any Development activities under this Agreement without the prior written approval of the other Party, which approval shall not be withheld unreasonably. Once any statement is approved for disclosure by the Parties or information is otherwise made public in accordance with the preceding sentence, either Party may make a subsequent public disclosure of the contents of such statement without further approval of the other Party. Notwithstanding the foregoing, within sixty (60) days following the Effective Date, appropriate representatives of the Parties will meet and agree upon a process and principles for reaching timely consensus on how the Parties will make public disclosure concerning this Agreement, the Alliance Products or any Development activities under this Agreement.

10.5 *Confidentiality of This Agreement.* The terms of this Agreement shall be Confidential Information of each Party and, as such, shall be subject to the provisions of this Article 10. Either Party may disclose the terms of this Agreement if, in the opinion of its counsel, such disclosure is required by Law. In such event, the Disclosing Party will seek appropriate confidentiality of those portions of the Agreement for which confidential treatment is typically permitted by the relevant Governmental Authority.

10.6 *Further Agreements Concerning Confidentiality.* In connection with any due diligence activities conducted by GSK prior to making a decision on exercising GSK's Opt-In Right under Article 4, GSK shall execute confidentiality agreement(s) relating to Theravance's intellectual property and the chemistry being reviewed, such confidentiality agreements to be substantially similar to those executed by GSK in connection with its review of Theravance's intellectual property in connection with the LABA Collaboration Agreement.

10.7 *Survival.* The obligations and prohibitions contained in this Article 10 shall survive the expiration or termination of this Agreement for a period of ten (10) years.

ARTICLE 11
REPRESENTATIONS AND WARRANTIES; COVENANTS

11.1 *Mutual Representations and Warranties.* Theravance and GSK each represents and warrants to the other as of the Effective Date that:

11.1.1 Such Party (a) is a company duly organized, validly existing, and in good standing under the Laws of its incorporation; (b) is duly qualified as a corporation and in good standing under the Laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, where the failure to be so qualified would have a material adverse effect on its financial condition or its ability to perform its obligations hereunder; (c) has the requisite corporate power and authority and the legal right to conduct its business as now conducted and hereafter contemplated to be conducted; (d) has or will obtain all necessary licenses, permits, consents, or approvals from or by, and has made or will make all necessary notices to, all Governmental Authorities having jurisdiction over such Party, to the extent required

for the ownership and operation of its business, where the failure to obtain such licenses, permits, consents or approvals, or to make such notices, would have a material adverse effect on its financial condition or its ability to perform its obligations hereunder; and (e) is in compliance with its charter documents;

11.1.2 The execution, delivery and performance of this Agreement by such Party and all instruments and documents to be delivered by such Party hereunder (a) are within the corporate power of such Party; (b) have been duly authorized by all necessary or proper corporate action; (c) do not conflict with any provision of the charter documents of such Party; (d) will not, to the best of such Party's knowledge, violate any law or regulation or any order or decree of any court of governmental instrumentality; (e) will not violate or conflict with any terms of any indenture, mortgage, deed of trust, lease, agreement, or other instrument to which such Party is a Party, or by which such Party or any of its property is bound, which violation would have a material adverse effect on its financial condition or on its ability to perform its obligations hereunder;

11.1.3 This Agreement has been duly executed and delivered by such Party and constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as such enforceability may be limited by applicable insolvency and other Laws affecting creditors' rights generally, or by the availability of equitable remedies; and

11.1.4 All of its employees, officers, and consultants have executed agreements or have existing obligations under law requiring assignment to such Party of all Inventions made by such individuals during the course of and as the result of their association with such Party, and obligating such individuals to maintain as confidential such Party's Confidential Information.

11.1.5 Nothing contained in this Agreement shall give a Party the right to use the Confidential Information received from the other Party in connection with any activity other than Development and Commercialization of an Alliance Product consistent with this Agreement.

11.2 *Additional GSK Representations and Warranties.* GSK further represents, warrants and covenants to Theravance that neither GSK nor any of its Affiliates is a Party to or otherwise bound by any oral or written contract or agreement that will result in any Person obtaining any interest in, or that would give to any Person any right to assert any claim in or with respect to, any of GSK's rights granted under this Agreement.

11.3 *Additional Theravance Representations and Warranties.* Theravance further represents and warrants to GSK as of the Effective Date that:

11.3.1 In the normal course of business in connection with each Discovery Program, Theravance carries out diligent literature searches in relation to the Theravance Patents, and will disclose to GSK's counsel any conflict or likely future conflict of which Theravance is aware with the intellectual property rights of any Third Party with respect to Theravance Patents for the relevant Theravance Compounds in the Discovery Program during the course of any due diligence by GSK in connection with GSK's Opt-In Right decision under Article 4.

11.3.2 Theravance has not received notice from any Third Party of a claim that an issued patent of such Third Party would be infringed by the manufacture, distribution, marketing or sale of the potential Alliance Products existing as of the date of signature of this Agreement;

11.3.3 To Theravance's knowledge, none of Theravance's current patent rights are subject to any pending or any threatened re-examination, opposition, interference or litigation proceedings;

11.3.4 Theravance has not received notice from any Third Party of a claim asserting the invalidity, misuse, unregisterability or unenforceability of any of Theravance's current patent rights, or challenging its right to use or ownership of any of Theravance's current patent rights or Theravance's know-how, or making any adverse claim of ownership thereof; and

11.3.5 Theravance has not received notice from any Third Party that any trade secrets or other intellectual property rights of such Third Party would be misappropriated by the development and reduction to practice of Theravance's current patent rights and Theravance's know-how.

11.3.6 Theravance will not at any time during the Term disclose to any Third Party(ies) and/or publish in the public domain any proprietary and secret Theravance Know-How that is proprietary and secret as of the date this Agreement is signed by the Parties.

11.4 *Covenants.* Each Party hereby covenants and agrees during the Term that it shall carry out its obligations or activities hereunder in accordance with (i) the terms of this Agreement and (ii) all applicable Laws.

11.5 *Disclaimer of Warranty.* Subject to the specific warranties and representations given under Sections 11.1 through and including 11.3, nothing in this Agreement shall be construed as a warranty or representation by either Party (i) that any Alliance Product made, used, sold or otherwise disposed of under this Agreement is or will be free from infringement of patents, copyrights, trademarks, industrial design or other intellectual property rights of any Third Party, (ii) regarding the effectiveness, value, safety, non-toxicity, patentability, or non-infringement of any patent technology, the Alliance Products or any information or results provided by either Party pursuant to this Agreement or (iii) that any Alliance Product will obtain Marketing Authorization or appropriate pricing approval. Each Party explicitly accepts all of the same as experimental and for development purposes, and without any express or implied warranty from the other Party. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY EXPRESSLY DISCLAIMS, WAIVES, RELEASES, AND RENOUNCES ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 12
INDEMNIFICATION

12.1 *Indemnification by GSK.* Subject to Sections 12.3, 12.4 and 13.2, GSK shall defend, indemnify and hold harmless Theravance and its Affiliates and each of their officers, directors, shareholders, employees, successors and assigns from and against all Claims of Third Parties, and all associated Losses, to the extent arising out of (a) GSK's negligence or willful misconduct in performing any of its obligations under this Agreement, (b) a breach by GSK of any of its representations, warranties, covenants or agreements under this Agreement, or (c) the manufacture, use, handling, storage, marketing, sale, distribution or other disposition of Alliance Products by GSK, its Affiliates, agents or sublicensees, except to the extent such losses result from the negligence or willful misconduct of Theravance.

12.2 *Indemnification by Theravance.* Subject to Sections 12.3, 12.4 and 13.2, Theravance shall defend, indemnify and hold harmless GSK and its Affiliates and each of their officers, directors, shareholders, employees, successors and assigns from and against all Claims of Third Parties, and all associated Losses, to the extent arising out of (a) Theravance's negligence or willful misconduct in performing any of its obligations under this Agreement, (b) a breach by Theravance of any of its representations, warranties, covenants or agreements under this Agreement, or (c) any API Compound or Formulated Alliance Product transferred from Theravance to GSK pursuant to Section 9.2.1 or 9.2.2, respectively, which is not in compliance with GSK's own requirements, except to the extent such losses result from the negligence or willful misconduct of GSK.

12.3 *Procedure for Indemnification.*

12.3.1 *Notice.* Each Party will notify promptly the other in writing if it becomes aware of a Claim (actual or potential) by any Third Party (a "Third Party Claim") for which indemnification may be sought by that Party and will give such information with respect thereto as the other Party shall reasonably request. If any proceeding (including any governmental investigation) is instituted involving any Party for which such Party may seek an indemnity under Section 12.1 or 12.2, as the case may be (the "Indemnified Party"), the Indemnified Party shall not make any admission or statement concerning such Third Party Claim, but shall promptly notify the other Party (the "Indemnifying Party") orally and in writing and the Indemnifying Party and Indemnified Party shall meet to discuss how to respond to any Third Party Claims that are the subject matter of such proceeding. The Indemnifying Party shall not be obligated to indemnify the Indemnified Party to the extent any admission or statement made by the Indemnified Party or any failure by such Party to notify the Indemnifying Party of the claim materially prejudices the defense of such claim.

12.3.2 *Defense of Claim.* If the Indemnifying Party elects to defend or, if local procedural rules or laws do not permit the same, elects to control the defense of a Third Party Claim, it shall be entitled to do so provided it gives notice to the Indemnified Party of its intention to do so within forty-five (45) days after the receipt of the written notice from the Indemnified Party of the potentially indemnifiable Third Party Claim (the "Litigation Condition"). The Indemnifying Party expressly agrees the Indemnifying Party shall be responsible for satisfying and discharging any award made to or settlement reached with the Third Party pursuant to the terms of this Agreement without prejudice to any provision in this Agreement or right at law which will allow the Indemnifying Party subsequently to recover any amount from the Indemnified Party to the extent the liability under such settlement or award was attributable to the Indemnified Party. Subject to compliance with the Litigation Condition, the Indemnifying Party shall retain counsel reasonably acceptable to the Indemnified Party (such acceptance not to be unreasonably withheld, refused, conditioned or delayed) to represent the Indemnified Party and shall pay the reasonable fees and expenses of such counsel related to such proceeding. In any such proceeding, the Indemnified Party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party. The Indemnified Party shall not settle any claim for which it is seeking indemnification without the prior written consent of the Indemnifying Party which consent shall not be unreasonably withheld, refused, conditioned or delayed. The Indemnified Party shall, if requested by the Indemnifying Party, cooperate in all reasonable respects in the defense of such claim that is being managed and/or controlled by the Indemnifying Party. The Indemnifying Party shall not, without the written consent of the Indemnified Party (which consent shall not be unreasonably withheld, refused, conditioned or delayed), effect any settlement of any pending or threatened proceeding in which the Indemnified Party is, or based on the same set of facts could have been, a Party and indemnity could have been sought hereunder by the Indemnified Party, unless such settlement includes an unconditional release of the Indemnified Party from all liability on claims that are the subject matter of such proceeding. If the Litigation Condition is not met, then neither Party shall have the right to control the defense of such Third Party Claim and the Parties shall cooperate in and be consulted on the material aspects of such defense at each Party's own expense; provided that if the Indemnifying Party does not satisfy the Litigation Condition, the Indemnifying Party may at any subsequent time during the pendency of the relevant Third Party Claim irrevocably elect, if permitted by local procedural rules or laws, to defend and/or to control the defense of the relevant Third Party Claim so long as the Indemnifying Party also agrees to pay the reasonable fees and costs incurred by the Indemnified Party in relation to the defense of such Third Party Claim from the inception of the Third Party Claim until the date the Indemnifying Party assumes the defense or control thereof.

12.4 *Assumption of Defense.* Notwithstanding anything to the contrary contained herein, an Indemnified Party shall be entitled to assume the defense of any Third Party Claim with respect to the Indemnified Party, upon written notice to the Indemnifying Party pursuant to this Section 12.4, in which case the Indemnifying Party shall be relieved of liability under Section 12.1 or 12.2, as applicable, solely for such Third Party Claim and related Losses.

12.5 *Insurance.* During the Term of this Agreement and for a period of [*] after the termination or expiration of this Agreement, GSK shall obtain and/or maintain at its sole cost and expense, product liability insurance (including any self-insured arrangements) in amounts which are reasonable and customary in the U.S. pharmaceutical industry for companies of comparable size and activities. Such product liability insurance or self-insured arrangements shall insure against all liability, including without limitation personal injury, physical injury, or property damage arising out of the manufacture, sale, distribution, or marketing of the Alliance Products. GSK shall provide written proof of the existence of such insurance to Theravance upon request. Theravance represents and covenants to GSK that Theravance shall, for the period of the Term and for a period of [*] thereafter maintain at its sole cost and expense general liability insurance and product liability insurance (as it relates to Theravance's early stage clinical development activities) which is reasonable and customary in the U.S. pharmaceutical industry for a company of comparable size and activity provided always that such levels of insurance will not be lower than [*]. Theravance shall provide written proof of the existence of such insurance to GSK upon request.

ARTICLE 13
PATENTS and INVENTIONS

13.1 *Prosecution and Maintenance of Patents.*

13.1.1 *Prosecution and Maintenance of Theravance Patents.* Theravance shall have the exclusive right and the obligation to (subject to Theravance's election not to file, prosecute, or maintain pursuant to Section 13.1.4) or to cause its licensors to, prepare, file, prosecute in a diligent manner (including without limitation by conducting interferences, oppositions and reexaminations or other similar proceedings), maintain (by timely paying all maintenance fees, renewal fees, and other such fees and costs required under applicable Laws) and extend all Theravance Patents and related applications. Following the Effective Date of Exercise by GSK of its Opt-In Right with respect to a particular Alliance Program hereunder (the "Alliance Program Acceptance Date"), Theravance shall regularly advise GSK of the status of all pending applications relating to such Alliance Program, including with respect to any hearings or other proceedings before any Governmental Authority, and, at GSK's request, shall provide GSK with copies of all documentation concerning such applications, including all correspondence to and from any Governmental Authority. Theravance shall consult with GSK prior to abandoning any Theravance Patents or related applications that are material to such Alliance Program. Subject to Section 13.6, Theravance shall solicit GSK's advice and review of the nature and text of such patent applications and important prosecution matters related thereto in reasonably sufficient time prior to filing thereof, and Theravance shall take into account GSK's reasonable comments related thereto; provided, however, Theravance shall have the final decision authority with respect to any action relating to any Theravance Patent. If the Alliance Program Acceptance Date is within the priority period for a particular Theravance Patent, Theravance shall agree with GSK regarding the countries outside the United States in which corresponding applications should be filed ("OUS Filings"). It is presumed that a corresponding Patent Cooperation Treaty ("PCT") application will be filed unless otherwise agreed by the Parties. Theravance shall effect filing of all such OUS applications within the priority period. The Parties may, if mutually agreed during the Term of this Agreement, agree to lists of countries that are relevant for particular Inventions in which Theravance Patents will be filed within the priority period.

Subject to Section 13.1.4, Theravance shall be responsible for all costs incurred in the United States in connection with procuring Theravance Patents, including applications preparation, filing fees, prosecution, maintenance and costs associated with reexamination and interference proceedings in the United States Patent and Trademark Office and United States Courts. GSK shall be responsible for all out-of-pocket costs and expenses incurred by Theravance after the relevant Alliance Program Acceptance Date which such costs and expenses are associated with procuring OUS patents corresponding to the relevant Theravance Patents related to such Alliance Program, including without limitation PCT and individual country filing fees, translations, maintenance, annuities, and protest proceedings. For all such OUS patent applications, Theravance will invoice GSK on a quarterly basis beginning with the Alliance Program Acceptance Date, setting forth all such expenses incurred since the Alliance Program Acceptance Date. Notwithstanding the foregoing, if GSK exercises its Opt-In Right in relation to a Respiratory Discovery Program, GSK shall also reimburse Theravance for all reasonable expenses incurred from the Effective Date to the Alliance Program Acceptance Date in connection with OUS patent applications corresponding to the relevant Theravance Patents related to such Alliance Program. Reimbursement will be made to Theravance in United States Dollars within thirty (30) days of receipt of such invoice by GSK. GSK will within thirty (30) days following the Effective Date identify the GSK representative that should receive such invoices from Theravance. GSK's obligations hereunder are in addition to any obligations of GSK under Section 13.1.2(b).

13.1.2 *Prosecution and Maintenance of Patents Covering Joint Inventions.*

(a) For Patents covering Joint Inventions, the Parties shall agree, without prejudice to ownership, which Party shall have the right to prepare and file a priority patent application, and prosecute such application(s) and maintain any patents derived therefrom, with the Parties equally sharing the reasonable out-of-pocket costs for the preparation, filing, prosecution and maintenance

of such priority patent application. The Parties will reasonably cooperate to obtain any export licenses that might be required for such activities. Should the agreed upon Party elect not to prepare and/or file any such priority patent application, it shall (i) provide the other Party with written notice as soon as reasonably possible after making such election but in any event no later than sixty (60) days before the other Party would be faced with a possible loss of rights, (ii) give the other Party the right, at the other Party's discretion and sole expense, to prepare and file the priority application(s), and (iii) offer reasonable assistance in connection with such preparation and filing at no cost to the other Party except for reimbursement of reasonable out-of-pocket expenses incurred by the agreed upon Party in rendering such assistance. The other Party, at its discretion and cost, shall prosecute such application(s) and maintain sole ownership of any patents derived therefrom.

(b) Within nine (9) months after the filing date of a priority application directed to an Invention, the Party filing the priority application shall request that the other Party identify those non-priority, non-PCT ("foreign") Countries in which the other Party desires that the Party filing the priority application file corresponding patent applications. Within thirty (30) days after receipt by the other Party of such request from the Party filing the priority application, the other Party shall provide to the Party filing the priority application a written list of such foreign countries in which the other Party wishes to effect corresponding foreign patent applications filings. The Parties will then agree on the particular countries in which such applications will be filed, provided that in the event agreement is not reached, the application will be filed in the disputed as well as the non-disputed countries (all such filings referred to hereinafter as "Designated Foreign Filings"). Thereafter, within twelve (12) months after the filing date of the priority application, the Party filing the priority application shall effect all such Designated Foreign Filings. It is presumed unless otherwise agreed in writing by the Parties, that a corresponding PCT application will be filed designating all PCT member countries. As to each Designated Foreign Filing and PCT application, GSK shall bear the costs for the filing and prosecutions of such Designated Foreign Filing and PCT application (including entering national phase in all agreed countries). Should the Party filing the priority application not agree to file or cause to be filed a Designated Foreign Filing, the other Party will have the right to effect such Designated Foreign Filing.

(c) Should the filing Party pursuant to Section 13.1.2(a) or 13.1.2(b) no longer wish to prosecute and/or maintain any patent application or patent resulting from such application, the filing Party shall (i) provide the non-filing Party with written notice of its wish no later than sixty (60) days before the patent or patent applications would otherwise become abandoned, (ii) give the non-filing Party the right, at the non-filing Party's election and sole expense, to prosecute and/or maintain such patent or patent application, and (iii) offer reasonable assistance to the non-filing Party in connection with such prosecution and/or maintenance at no cost to the non-filing Party except for reimbursement of the filing Party's reasonable out-of-pocket expenses incurred by the filing Party in rendering such assistance.

(d) Should the non-filing Party pursuant to Section 13.1.2(c) not wish to incur its share of preparation, filing, prosecution and/or maintenance costs for a patent application filed pursuant to Section 13.1.2(a) or 13.1.2(b) or patents derived therefrom, it shall (i) provide the filing Party with written notice of its wish, and (ii) continue to offer reasonable assistance to the filing Party in connection with such prosecution or post-grant matters at no cost to the filing Party except for reimbursement of the non-filing Party's reasonable out-of-pocket expenses incurred by the non-filing Party in rendering such assistance.

(e) The Parties agree to cooperate in the preparation and prosecution of all patent applications filed under Section 13.1.2(a) and 13.1.2(b), including obtaining and executing necessary powers of attorney and assignments by the named inventors, providing relevant technical reports to the filing Party concerning the invention disclosed in such patent application, obtaining execution of such other documents which shall be needed in the filing and prosecution of such patent applications, and, as requested, updating each other regarding the status of such patent applications.

13.1.3 *Prosecution and Maintenance of GSK Patents.* GSK shall have the exclusive right and obligation to (subject to GSK's election not to file, prosecute or maintain pursuant to Section 13.1.5) or to cause its licensors to, prepare, file and prosecute in a diligent manner (including without limitation by conducting interferences, oppositions and reexaminations or other similar proceedings), maintain (by timely paying all maintenance fees, renewal fees, and other such fees and costs required under applicable Laws) and extend all GSK Patents and related applications. Consistent with Section 13.6, GSK will consult with Theravance within the priority period for any patent application that is material to this Agreement concerning Countries in which corresponding applications will be filed provided always that GSK shall not be required to consult with Theravance under this Section 13.1.3 in relation to patent applications that GSK reasonably considers significant to activities beyond the scope of this Agreement, such as devices, delivery technology and/or any other proprietary GSK technology(ies). In the event the Parties cannot agree, GSK shall make the final decision. GSK shall consult with Theravance prior to abandoning any GSK Patents or related applications that are material to the matters contemplated in this Agreement. GSK shall regularly advise Theravance of the status of all pending applications, including with respect to any hearings or other proceedings before any Governmental Authority, and, at Theravance's request, shall provide Theravance with copies of documentation relating to such applications, including all correspondence to and from any Governmental Authority. Subject to Section 13.6, GSK shall solicit Theravance's advice and review of the nature and text of such patent applications and important prosecution matters related thereto in reasonably sufficient time prior to filing thereof, and GSK shall take into account Theravance's reasonable comments relating thereto; provided that GSK shall have the final decision authority with respect to any action relating to a GSK Patent.

13.1.4 *GSK Step-In Rights.* If Theravance elects not to file, prosecute or maintain the Theravance Patents or claims encompassed by such Theravance Patents necessary for GSK to exercise its rights hereunder in any Country, Theravance shall give GSK notice thereof within a reasonable period prior to allowing such Theravance Patents, or such claims encompassed by such Theravance Patents, to lapse or become abandoned or unenforceable, and GSK shall thereafter have the right, at its sole expense, to prepare, file, prosecute and maintain such Theravance Patents in such Country.

13.1.5 *Theravance Step-In Rights.* If GSK elects not to file, prosecute or maintain the GSK Patents or claims encompassed by such GSK Patents necessary for Theravance to exercise its license rights hereunder in any Country, GSK shall give Theravance notice thereof within a reasonable period prior to allowing such GSK Patents, or such claims encompassed by such GSK Patents, to lapse or become abandoned or unenforceable, and Theravance shall thereafter have the right, at its sole expense, to prepare, file, prosecute and maintain such GSK Patents in such Country; provided always that nothing herein shall give Theravance any Step-In Rights in respect of any proprietary *Diskus* technology(ies).

13.1.6 *Execution of Documents by Agents.* Each of the Parties shall execute or have executed by its appropriate agents such documents as may be necessary to obtain, perfect or maintain any Patent Rights filed or to be filed pursuant to this Agreement, and shall cooperate with the other Party so far as reasonably necessary with respect to furnishing all information and data in its possession reasonably necessary to obtain or maintain such Patent Rights.

13.1.7 *Patent Term Extensions.* The Parties shall cooperate with each other in gaining patent term extension where applicable to an Alliance Product. The Joint Steering Committee shall determine which patents relating to a particular Alliance Product the Parties shall endeavor to have extended. All filings for such extension will be made by the Party to whom the patent is assigned after consultation with the other Party. In the event the Joint Steering Committee can not agree, the Party Commercializing the Theravance Compound will make the decision.

13.2 *Patent Infringement.*

13.2.1 *Infringement Claims.* With respect to any and all Claims instituted by Third Parties against Theravance or GSK or any of their respective Affiliates for patent infringement involving

the manufacture, use, license, marketing or sale of an Alliance Product in the United States during the Term (each, a "Patent Infringement Claim") as applicable, Theravance and GSK will assist one another and cooperate in the defense and settlement of such Patent Infringement Claims at the other Party's request.

13.2.2 *Infringement of Theravance Patents.* In the event that Theravance or GSK becomes aware of actual or threatened infringement of a Theravance Patent during the Term, that Party will promptly notify the other Party in writing (a "Patent Infringement Notice"). Theravance will have the right but not the obligation to bring an infringement action against any Third Party. If Theravance elects to pursue such infringement action, Theravance shall be solely responsible for the costs and expenses associated with such action and retain all recoveries. During the Term, in the event that Theravance does not undertake such an infringement action, upon Theravance's written consent, which shall not be unreasonably withheld, refused, conditioned or delayed, GSK shall be permitted to do so in Theravance's or the relevant Theravance Affiliate's name and on Theravance's or the relevant Theravance Affiliate's behalf. If Theravance has consented to an infringement action but GSK is not recognized by the applicable court or other relevant body as having the requisite standing to pursue such action, then GSK may join Theravance as party-plaintiff. If GSK elects to pursue such infringement action, Theravance may be represented in such action by attorneys of its own choice and its own expense with GSK taking the lead in such action. If Theravance recommends not to pursue an infringement action, and GSK elects to pursue such infringement action by joining Theravance as a party plaintiff, then GSK agrees to indemnify and hold harmless Theravance for all losses and damages arising from said infringement action.

13.2.3 *Infringement of GSK Patents.* In the event that GSK or Theravance becomes aware of actual or threatened infringement of a GSK Patent during the Term, that Party will promptly notify the other Party in writing. GSK will have the right but not the obligation to bring an infringement action against any Third Party. If GSK elects to pursue such infringement action, GSK shall be solely responsible for the costs and expenses associated with such action and retain all recoveries. During the Term, in the event that GSK does not undertake such an infringement action, upon GSK's written consent, which shall not be unreasonably withheld, refused, conditioned or delayed, Theravance shall be permitted to do so in GSK's or the relevant GSK Affiliate's name and on GSK's or the relevant GSK Affiliate's behalf. If GSK has consented to an infringement action but Theravance is not recognized by the applicable court or other relevant body as having the requisite standing to pursue such action, then Theravance may join GSK as a party-plaintiff. If Theravance elects to pursue such infringement action, GSK may be represented in such action by attorneys of its own choice and at its own expense, with Theravance taking the lead in such action. If GSK recommends not to pursue an infringement action, and Theravance elects to pursue such infringement action by joining GSK as a party plaintiff, then Theravance agrees to indemnify and hold harmless GSK for all losses and damages arising from said infringement action.

13.2.4 *Notice and Cooperation.* In the event that GSK or Theravance becomes aware of actual or threatened infringement of a Joint Patent, that Party will promptly notify the other Party in writing. In such event the matter will be handled the same as provided for GSK Patents in Section 13.2.3 and Theravance will cooperate as reasonably required by GSK in connection with such enforcement.

13.3 *Notice of Certification.* GSK and Theravance each shall immediately give notice to the other of any certification filed under the "U.S. Drug Price Competition and Patent Term Restoration Act of 1984" (or its foreign equivalent) claiming that a GSK Patent or a Theravance Patent is invalid or that infringement will not arise from the manufacture, use or sale of any Alliance Product by a Third Party ("Hatch-Waxman Certification").

13.3.1 *Notice.* If a Party decides not to bring infringement proceedings against the entity making such a certification, such Party shall give notice to the other Party of its decision not to bring suit within twenty-one (21) days after receipt of notice of such certification.

13.3.2 *Option.* Such other Party then may, but is not required to, bring suit against the entity that filed the certification. If the other Party decides to bring suit, the provisions of Section 13.2.2 or Section 13.2.3 shall apply as appropriate.

13.3.3 *Name of Party.* Any suit by Theravance or GSK shall either be in the name of Theravance or in the name of GSK, (or any Affiliate) or jointly in the name of Theravance and GSK (or any Affiliate), as may be required by law.

13.4 *Assistance.* For purposes of this Article 13, the Party not bringing suit shall execute such legal papers necessary for the prosecution of such suit as may be reasonably requested by the Party bringing suit. The out-of-pocket costs and expenses of the Party bringing suit shall be reimbursed first out of any damages or other monetary awards recovered in favor of GSK or Theravance. The documented out-of-pocket costs and expenses of the other Party shall then be reimbursed out of any remaining damages or other monetary awards. The Party initiating and prosecuting the action to completion will retain any remaining damages or other monetary awards following such reimbursements.

13.5 *Settlement.* No settlement or consent judgment or other voluntary final disposition of a suit under this Article may be entered into without the joint written consent of GSK and Theravance (which consent will not be withheld unreasonably).

13.6 *Ownership of Inventions.* Each Party shall promptly disclose to the other Party all Inventions made by it during the Term; provided that GSK will be allowed a reasonable time to file patent applications covering GSK Inventions prior to disclosing the GSK Invention to Theravance, and Theravance will be allowed a reasonable time to file patent applications covering Theravance Inventions prior to disclosing the Theravance Invention to GSK. Theravance shall own all Theravance Inventions and GSK shall own all GSK Inventions. All Joint Inventions shall be owned jointly by Theravance and GSK, and each Party hereby consents (without granting any license) to the exercise, assignment or license or other disposition by the other Party of its joint interests in Joint Inventions without accounting or the need to seek the consent of the other Party to such assignment or license or other disposition; provided that any such assignment, license or other disposition shall at all times be subject to the grant of rights and accompanying conditions under Sections 2.1 and 2.2 and Article 14. The determination of inventorship for Inventions shall be made in accordance with applicable laws relating to inventorship set forth in the patent laws of the United States (Title 35, United States Code).

ARTICLE 14
TERM AND TERMINATION

14.1 *Term and Expiration of Term.* Except as otherwise mutually agreed to by the Parties, this Agreement shall commence on the Effective Date and shall end upon expiration of the Term, unless terminated early as contemplated hereunder. Unless terminated early under this Article 14, the licenses granted by Theravance to GSK pursuant to Section 2.1 with respect to the Alliance Products shall be considered fully-paid and shall become non-exclusive upon expiration of the Term.

14.2 *Termination for Material Breach.* Either Party may, without prejudice to any other remedies available to it at law or in equity, terminate only that portion of the Agreement as such relates to the relevant Alliance Program (and not, for the avoidance of doubt any other Alliance Program) in the event that the other Party (as used in this subsection, the "Breaching Party") shall have materially breached or defaulted in the performance of any of its obligations in relation to such Alliance Program (the "Breaching Alliance Program"). The Breaching Party shall, if such breach can be cured, have sixty (60) days after written notice thereof was provided to the Breaching Party by the non-breaching Party to remedy such default (or, if such default cannot be cured within such 60-day period, the Breaching Party must commence and diligently continue actions to cure such default during such 60-day period). Any such termination shall become effective at the end of such 60-day period unless the Breaching Party has cured any such breach or default prior to the expiration of such 60-day period (or, if such default is capable of being cured but cannot be cured within such 60-day period, the Breaching Party has commenced and diligently continued actions to cure such default provided always that, in such instance, such cure must have occurred within one hundred twenty (120) days after written notice thereof was provided to the Breaching Party by the non-breaching Party to remedy such default).

14.3 *GSK Right to Terminate Development of an Alliance Product.* On an Alliance Product-by-Alliance Product basis, and at any time during Development and prior to First Commercial Sale of the applicable Alliance Product, GSK shall have the right to terminate Development of such Alliance Product (upon the provision of ninety (90) days written notice) for reasons of Technical Failure or Commercial Failure following communication to, and assessment of such proposed termination by, the Joint Program Committee and Joint Steering Committee (in which case such Alliance Product shall be referred to as a "Terminated Development Alliance Product").

14.4 *GSK Right to Terminate Commercialization of an Alliance Product Following First Commercial Sale.* On an Alliance Product-by-Alliance Product basis, and on a Country-by-Country basis, at any time after First Commercial Sale of the applicable Alliance Product in such country, GSK shall have the right to terminate Commercialization of such Alliance Product (upon the provision of one hundred and eighty (180) days written notice) for reasons of Commercial Failure or Technical Failure and following communication to, and assessment of such proposed termination by, the Joint Program Committee and Joint Steering Committee (in which case, such Alliance Product shall be referred to as a "Terminated Commercialized Alliance Product").

14.5 *Effects of Termination.*

14.5.1 *Effect of Termination for Material Breach.*

(a) *Material Breach by Theravance.* In the event that the Breaching Alliance Program is terminated by GSK pursuant to Section 14.2 for material breach by Theravance, all licenses in respect of such Breaching Alliance Program granted by Theravance to GSK under this Agreement shall survive, subject to GSK's continued obligation to pay royalties to Theravance hereunder. In such event, GSK shall be entitled to set-off against any monies payable to Theravance hereunder all amounts GSK reasonably believes constitute its damages incurred by such breach, subject to final judicial resolution or settlement, without prejudice to any and all of GSK's rights to bring an action against Theravance for damages and any other available remedies in law or equity. Also, Theravance shall, at its sole expense, promptly return to GSK or destroy at GSK's request all relevant records and materials in its possession or control containing Confidential Information of GSK (provided that Theravance may keep one copy of such Confidential Information of GSK for archival purposes only in accordance with Section 10.1).

(b) *Material Breach by GSK.* In the event that the Breaching Alliance Program is terminated by Theravance for material breach by GSK pursuant to Section 14.2, the provisions of Section 14.5.2 or Section 14.5.3 shall apply to such Breaching Alliance Program depending upon the Development or Commercialization status of same. In addition, Theravance shall be entitled to set-off against any monies payable to GSK hereunder all amounts Theravance reasonably believes constitute its damages incurred by such breach, subject to final judicial resolution or settlement, without prejudice to any and all of Theravance's rights to bring an action against GSK for damages and any other available remedies in law or equity.

14.5.2 *Effect of Termination of Development of an Alliance Product.*

(a) *Non-Respiratory Alliance Products.* In the event that GSK terminates Development of an Alliance Product under Section 14.3 and such Alliance Product is a Non-Respiratory Alliance Product (hereinafter "Terminated Non-Respiratory Development Alliance Product"), and provided that such Terminated Non-Respiratory Development Alliance Product is not being or has not been replaced by an alternative Non-Respiratory Development Alliance Product, the following shall occur in respect of such Terminated Non-Respiratory Development Alliance Product:

(i) *Return of Materials*. GSK shall [*] transfer to Theravance copies of all material data, reports, records and materials in its possession or control that relate to the Terminated Non-Respiratory Development Alliance Product and/or destroy at Theravance's request, all relevant records and materials in its possession or control containing Confidential Information of Theravance (provided that GSK may keep one copy of such Confidential Information of Theravance for archival purposes only in accordance with Section 10.1).

(ii) *Transfer of Regulatory Filings*. GSK shall [*] transfer to Theravance, or shall cause its designee(s) to transfer to Theravance, ownership of all regulatory filings made or filed for any such Terminated Non-Respiratory Development Alliance Product (to the extent that any are held in GSK's or such designee(s)'s name), and such transfer to be as permitted by applicable Laws and regulations. GSK shall cooperate as reasonably necessary to permit Theravance to exercise its rights hereunder; provided, however, that if such transfer cannot be effected by GSK in a particular Country within [*] of the effective date of termination for such Terminated Non-Respiratory Development Alliance Product (for example, as a result of Theravance not having the appropriate entity in any such Country to whom ownership of such regulatory filing(s) would be required to be transferred) then GSK, after the expiration of such aforesaid period, shall forthwith be entitled to surrender ownership of such regulatory filing(s) and/or applications for cancellation in respect of such Country.

(iii) *Return of License Rights to Theravance.* All licenses granted by Theravance to GSK with respect to the Terminated Non-Respiratory Development Alliance Product under this Agreement shall terminate.

(iv) *Grant of License Rights*. GSK shall grant to Theravance appropriate licenses (as the Parties reasonably determine) to such intellectual property rights as GSK owns and is legally able to grant to enable Theravance and/or any Third Party designee to continue development and commercialization of and to produce such Terminated Non-Respiratory Development Alliance Product provided always that if any such GSK right(s) has an applicability to other GSK owned or licensed-in products then any such license will be granted to Theravance on a non-exclusive basis but if such right(s) are specific to the Terminated Non-Respiratory Development Alliance Product and have no applicability to other GSK owned or licensed-in products then such license will be granted to Theravance on an exclusive basis. For the avoidance of doubt, any such licenses granted by GSK shall assure that GSK shall retain no right to Develop or Commercialize, or to license a Third Party to Develop or Commercialize, such Terminated Non-Respiratory Development Alliance Product.

(v) *Trademark Assignment.* Upon the request of Theravance, GSK shall prepare a global assignment to Theravance of any Trademark extensively and publicly used by GSK and Theravance in connection with the Terminated Non-Respiratory Development Alliance Product. If Theravance elects to record the Assignment, Theravance shall undertake such recordal tasks and shall bear the costs and fees associated with the recordal, including but not limited to all filing fees, agent fees, and costs of notarization and legalizations. GSK shall cooperate with Theravance as reasonably necessary. Notwithstanding the foregoing, in the event that any Trademark is used by GSK on any other product, GSK shall not assign such Trademark as contemplated in the preceding sentence but shall license such Trademark to Theravance on a non-exclusive basis and subject to any further license terms to be agreed by the Parties in good faith at the time.

[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

(vi) *Stock Return and Supply*. GSK shall return to Theravance all available formulated and API stocks (if such stocks exist) of the Terminated Non-Respiratory Development Alliance Product and which are then held by GSK or cause such API stocks to be provided to Theravance if held by a vendor or other Third Party on behalf of GSK. The parties shall also consider the appropriateness of entering into any interim supply arrangements to facilitate the transfer contemplated herein and if appropriate, the continued development of the Terminated Non-Respiratory Development Alliance Product by Theravance for an interim period.

(b) *Respiratory Alliance Products.* In the event that GSK terminates Development of an Alliance Product under Section 14.3 and such Alliance Product is a Respiratory Alliance Product (hereinafter "Terminated Respiratory Development Alliance Product"), and provided that such Terminated Respiratory Development Alliance Product is not being or has not been replaced by an alternative Respiratory Development Alliance Product the following shall occur in respect of such Terminated Respiratory Development Alliance Product:

(i) *Return of Materials*. GSK shall [*] transfer to Theravance copies of all material data, reports, records and materials in its possession or control that relate to the Terminated Respiratory Development Alliance Product, but only insofar as the Terminated Respiratory Development Alliance Product is a single agent product and contains the Theravance Compound as a single agent, and/or destroy at Theravance's request, all relevant records and materials in its possession or control containing Confidential Information of Theravance (provided that GSK may keep one copy of such Confidential Information of Theravance for archival purposes only in accordance with Section 10.1).

(ii) *Transfer of Regulatory Filings*. GSK shall [*] transfer to Theravance, or shall cause its designee(s) to transfer to Theravance, ownership of all regulatory filings made or filed for any Terminated Respiratory Development Alliance Product (to the extent that any are held in GSK's or such designee(s)'s name), but only where the Terminated Respiratory Development Alliance Product is a single agent product and contains the Theravance Compound as the single agent, and such transfer to be as permitted by applicable Laws and regulations. GSK shall cooperate as reasonably necessary to permit Theravance to exercise its rights hereunder; provided, however, that if such transfer cannot be effected by GSK in a particular Country within one hundred fifty (150) days of the effective date of termination for such Terminated Respiratory Development Alliance Product (for example, as a result of Theravance not having the appropriate entity in any such Country to whom ownership of such regulatory filing(s) would be required to be transferred) then GSK, after the expiration of such aforesaid period, shall forthwith be entitled to surrender ownership of such regulatory filing(s) and/or applications for cancellation in respect of such Country.

(iii) *Return of License Rights to Theravance.* All licenses granted by Theravance to GSK with respect to the Terminated Respiratory Development Alliance Product under this Agreement shall terminate.

(iv) *Grant of License Rights to Theravance.* GSK shall grant to Theravance the appropriate licenses (as the Parties reasonably determine) to such intellectual property rights as GSK owns and is legally able to grant [*], to enable Theravance and/or any Third Party designee in the Territory (or in the case of a Country-by-Country termination, in the relevant Countries) to continue development and commercialization of and to produce such Terminated Respiratory Development Alliance Product but only where the Terminated Respiratory Development Alliance Product is a single agent product and contains the Theravance Compound as the single agent and provided always that if any such GSK right(s) has an applicability to other GSK owned or licensed-in products then any such license will be granted to Theravance on a non-exclusive basis but if such right(s) are specific to the Terminated Respiratory Development Alliance Product and have no applicability to other GSK owned or licensed-in products then such license will be granted to Theravance on an exclusive basis. For the avoidance of doubt, any such licenses granted by GSK shall assure that GSK shall retain no right to Develop or Commercialize, or to license a Third Party to Develop or Commercialize, such Terminated Respiratory Commercialized Alliance Product (insofar as same is a single agent product and contains the Theravance Compound as the single agent).

(v) *Trademark Assignment.* Upon the request of Theravance, GSK shall prepare a global assignment to Theravance of any Trademark extensively and publicly used by GSK and Theravance in connection with the Terminated Respiratory Development Alliance Product. If Theravance elects to record the Assignment, Theravance shall undertake such recordal tasks and shall bear the costs and fees associated with the recordal, including but not limited to all filing fees, agent fees, and costs of notarization and legalizations. GSK shall cooperate with Theravance as reasonably necessary. Notwithstanding the foregoing, in the event that any Trademark is used by GSK on any other product, GSK shall not assign such Trademark as contemplated in the preceding sentence but shall license such Trademark to Theravance on a non-exclusive basis and subject to any further license terms to be agreed by the Parties in good faith at the time.

(vi) *Stock Return.* GSK shall return to Theravance all available formulated and API stocks (if such stocks exist) of the Terminated Respiratory Development Alliance Product (but only insofar as the Terminated Respiratory Development Alliance Product is a single agent product and contains the Theravance Compound as a single agent) and which are then held by GSK or cause such API stocks to be provided to Theravance if held by a vendor or other Third Party on behalf of GSK. The Parties shall also consider the appropriateness of entering into any interim supply arrangements to facilitate the transfer contemplated herein.

(vii) *Compensation to Theravance*

(aa) Subject to sub-paragraph (bb) below, any GSK termination of a Terminated Respiratory Development Alliance Product will result in GSK paying to Theravance compensation as follows: [*], payable by GSK to Theravance in two equal installments [*], the first such payment of [*] to be made by GSK within ninety (90) days of the date GSK's termination of such Terminated Respiratory Development Alliance Product Alliance hereunder becomes effective ("the effective date of termination") and the second such payment of [*] to be made by GSK within thirty (30) days of the first twelve (12) month anniversary of the effective date of termination.

(bb) The provisions of sub-paragraph (aa) shall not apply (and thereby no compensation as comtemplated thereunder shall be paid by GSK to Theravance) if any of the following apply in respect of the Terminated Respiratory Development Alliance Product:

(xx) A Technical Failure has occurred (either in respect of the relevant Lead Theravance Compound and/or any back-up within the relevant Alliance Program); or

(yy) As of the effective date of termination, GSK has not commenced any clinical study or studies related to and/or directed at the Terminated Respiratory Development Alliance Product in any proprietary GSK device(s), including *Diskus*; or

(zz) The Theravance Compound contained in the Terminated Respiratory Development Alliance Product is contained in another Alliance Product being Developed hereunder.

14.5.3 *Effect of Termination by GSK of a Terminated Commercialized Alliance Product.*

(a) *Non-Respiratory Alliance Products*. In the event that GSK terminates Commercialization of an Alliance Product under Section 14.4 and such Alliance Product is a Non-Respiratory Alliance Product (hereinafter "Terminated Non-Respiratory Commercialized Alliance Product"), and provided that such Terminated Non-Respiratory Commercialized Alliance Product is not being or has not been replaced by an alternative Non-Respiratory Alliance Product, the following shall occur:

(i) *Theravance Rights to Commercialize.* If GSK terminates a Non-Respiratory Commercialized Alliance Product after First Commercial Sale of such Alliance Product in one or more of the Major Market Countries, Theravance shall have the right in its sole discretion and at its sole expense, for its own benefit or together with a Third Party, to commercialize such Terminated Commercialized Alliance Product in any of such Major Market Countries where it has been terminated. If GSK terminates a Non-Respiratory Commercialized Alliance Product in all Countries of the Territory following the first commercial sale in any Country of the Territory, Theravance shall have the right in its sole discretion and at it sole expense, for its own benefit or together with a Third Party, to Commercialize such Terminated Non-Respiratory Commercialized Alliance Product in the Territory. In either case, GSK will use reasonable efforts to assist Theravance in locating a mutually acceptable Third Party to carry out the rights and activities contemplated herein.

(ii) *Return of Materials*. GSK shall [*] transfer to Theravance copies of all data, reports, records and materials in its possession or control that relate to the Terminated Non-Respiratory Commercialized Alliance Product or destroy at Theravance's request, all relevant records and materials in its possession or control containing Confidential Information of Theravance (provided that GSK may keep one copy of such Confidential Information of Theravance for archival purposes only in accordance with Section 10.1).

(iii) *Transfer of Regulatory Filings.* GSK shall [*] transfer to Theravance, or shall cause its designee(s) to transfer to Theravance, ownership of all regulatory filings made or filed for any Terminated Non-Respiratory Commercialized Alliance Product (to the extent that any are held in GSK's or such designee(s)'s name) and such transfer to be as permitted by applicable Laws and regulations. GSK shall cooperate as reasonably necessary to permit Theravance to exercise its rights hereunder; provided, however, that if such transfer cannot be effected by GSK in a particular Country [*] of the effective date of termination for such Terminated Non-Respiratory Commercialized Alliance Product (for example, as a result of Theravance not having the appropriate entity in any such Country to whom ownership of such regulatory filing(s) would be required to be transferred) then GSK, after the expiration of such aforesaid period, shall forthwith be entitled to surrender ownership of such regulatory filing(s) and/or applications for cancellation in respect of such Country.

(iv) *Return of License Rights to Theravance.* All licenses granted by Theravance to GSK with respect to the Terminated Non-Respiratory Commercialized Alliance Product under this Agreement shall terminate.

(v) *Grant of License Rights to Theravance.* Subject to the first paragraph of Section 14.5.3(b), GSK shall grant to Theravance the appropriate licenses in the Territory (or in the case of a Country-by-Country termination, in the relevant Countries) under the GSK Patents, GSK Inventions and GSK Know-How to enable Theravance by itself and/or through one or more Third Party sublicensees, to Commercialize the Terminated Respiratory Commercialized Alliance Product provided always that if any such GSK right(s) has an applicability to other GSK owned or licensed-in products then any such license will be granted to Theravance on a non-exclusive basis but if such right(s) are specific to the Terminated Respiratory Commercialized Alliance Product and have no applicability to other GSK owned or licensed-in products then such license will be granted to Theravance on an exclusive basis. For the avoidance of doubt, any such licenses granted by GSK shall assure that GSK shall retain no right to Develop or Commercialize, or to license a Third Party to Develop or Commercialize, such Terminated Respiratory Commercialized Alliance Product. GSK shall also provide Theravance with all such information and data which GSK, or its sublicensees reasonably have available in such Country, for example access to drug master file, clinical data and the like, and shall execute such instruments as Theravance reasonably requests, to enable Theravance to obtain the appropriate regulatory approvals to market such Terminated Respiratory Commercialized Alliance Product in such Country and for any other lawful purpose related to Commercialization of such Terminated Respiratory Commercialized Alliance Product in such Country.

(vi) *Trademark Assignment.* Upon the request of Theravance, GSK shall prepare a global assignment to Theravance of any Trademark extensively and publicly used by GSK and Theravance in connection with the Terminated Non-Respiratory Commercialized Alliance Product. If Theravance elects to record the Assignment, Theravance shall undertake such recordal tasks and shall bear the costs and fees associated with the recordal, including but not limited to all filing fees, agent fees, and costs of notarization and legalizations. GSK shall cooperate with Theravance as reasonably necessary. Notwithstanding the foregoing, in the event that any Trademark is used by GSK on any other product, GSK shall not assign such Trademark as contemplated in the preceding sentence but shall license such Trademark to Theravance on a non-exclusive basis and subject to any further license terms to be agreed by the Parties in good faith at the time.

(vii) *Supply.* If requested by Theravance, the Parties shall negotiate and agree in good faith to a separate commercialization and supply agreement for any Terminated Respiratory Commercialized Alliance Product which shall ensure that, based on commercially reasonable terms (recognizing the Commercialized status of such product), Theravance has a continuous and uninterrupted supply of such Terminated Respiratory Commercialized Alliance Product, for a suitable period of time to enable Theravance to secure Third Party supply provided always that such period of time shall not exceed a period of [*] from the effective date of termination.

(b) *Respiratory Alliance Products.* In the event that GSK terminates Commercialization of an Alliance Product under Section 14.4 and such Alliance Product is a Respiratory Alliance Product (hereinafter "Terminated Respiratory Commercialized Alliance Product"), and provided that such Terminated Respiratory Commercialized Alliance Product is not being or has not been replaced by an alternative Respiratory Alliance Product and provided further that, in GSK's good faith reasonable judgment, the exercise by Theravance alone or with a Third Party of any of the rights or activities contemplated by this Section 14.5.3(b) will not materially damage GSK's continued development, regulatory or commercial use of GSK Property the following shall occur:

(i) *Theravance Rights to Commercialize.* If GSK terminates a Respiratory Commercialized Alliance Product after First Commercial Sale of such Alliance Product in one or more of the Major Market Countries, Theravance shall have the right in its sole discretion and at its sole expense, for its own benefit or together with a Third Party, to commercialize such Terminated Respiratory Commercialized Alliance Product in any of such Major Market Countries where it has been terminated. If GSK terminates a Respiratory Commercialized Alliance Product in all Countries of the Territory following the first commercial sale in any Country of the Territory, Theravance shall have the right in its sole discretion and at it sole expense, for its own benefit or together with a Third Party, to Commercialize such Terminated Respiratory Commercialized Alliance Product in the Territory. In either case, GSK will use reasonable efforts to assist Theravance in locating a mutually acceptable Third Party to carry out the rights and activities contemplated herein.

(ii) *Return of Materials*. GSK shall [*****] transfer to Theravance copies of all material data, reports, records and materials in its possession or control that relate to the Terminated Respiratory Commercialized Alliance Product but only insofar as the Terminated Respiratory Commercialized Alliance Product is a single agent product and contains the Theravance Compound as a single agent, and/or destroy at Theravance's request, all relevant records and materials in its possession or control containing Confidential Information of Theravance (provided that GSK may keep one copy of such Confidential Information of Theravance for archival purposes only in accordance with Section 10.1).

(iii) *Transfer of Regulatory Filings.* GSK shall [*****] transfer to Theravance, or shall cause its designee(s) to transfer to Theravance, ownership of all regulatory filings made or filed for any Terminated Respiratory Commercialized Alliance Product (to the extent that any are held in GSK's or such designee(s)'s name) but only where the Terminated Respiratory Commercialized Alliance Product is a single agent product and contains the Theravance Compound as a single agent, and such transfer to be as permitted by applicable Laws and regulations. GSK shall cooperate as reasonably necessary to permit Theravance to exercise its rights hereunder; provided, however, that if such transfer cannot be effected by GSK in a particular Country [*****] of the effective date of termination for such Terminated Respiratory Commercialized Alliance Product (for example., as a result of Theravance not having the appropriate entity in any such Country to whom ownership of such regulatory filing(s) would be required to be transferred) then GSK, after the expiration of such aforesaid period, shall forthwith be entitled to surrender ownership of such regulatory filing(s) and/or applications for cancellation in respect of such Country.

(iv) *Return of License Rights to Theravance.* All licenses granted by Theravance to GSK with respect to the Terminated Respiratory Commercialized Alliance Product under this Agreement shall terminate.

[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

(v) *Grant of License Rights to Theravance.* Subject to the first paragraph of Section 14.5.3(b), GSK shall grant to Theravance the appropriate licenses in the Territory (or in the case of a Country-by-Country termination, in the relevant Countries) under the GSK Patents, GSK Inventions and GSK Know-How to enable Theravance by itself and/or through one or more Third Party sublicensees, to Commercialize the Terminated Respiratory Commercialized Alliance Product provided always that if any such GSK right(s) has an applicability to other GSK owned or licensed-in products then any such license will be granted to Theravance on a non-exclusive basis but if such right(s) are specific to the Terminated Respiratory Commercialized Alliance Product and have no applicability to other GSK owned or licensed-in products then such license will be granted to Theravance on an exclusive basis. For the avoidance of doubt, any such licenses granted by GSK shall assure that GSK shall retain no right to Develop or Commercialize, or to license a Third Party to Develop or Commercialize, such Terminated Respiratory Commercialized Alliance Product. GSK shall also provide Theravance with all such information and data which GSK, or its sublicensees reasonably have available in such Country, for example access to drug master file, clinical data and the like, and shall execute such instruments as Theravance reasonably requests, to enable Theravance to obtain the appropriate regulatory approvals to market such Terminated Respiratory Commercialized Alliance Product in such Country and for any other lawful purpose related to Commercialization of such Terminated Respiratory Commercialized Alliance Product in such Country.

(vi) *Trademark Assignment.* Upon the request of Theravance, GSK shall prepare a global assignment to Theravance of any Trademark extensively and publicly used by GSK and Theravance in connection with the Terminated Respiratory Commercialized Alliance Product. If Theravance elects to record the Assignment, Theravance shall undertake such recordal tasks and shall bear the costs and fees associated with the recordal, including but not limited to all filing fees, agent fees, and costs of notarization and legalizations. GSK shall cooperate with Theravance as reasonably necessary. Notwithstanding the foregoing, in the event that any Trademark is used by GSK on any other product, GSK shall not assign such Trademark as contemplated in the preceding sentence but shall license such Trademark to Theravance on a non-exclusive basis and subject to any further license terms to be agreed by the Parties in good faith at the time.

(vii) *Supply.* If requested by Theravance, the Parties shall negotiate and agree in good faith to a separate commercialization and supply agreement for any Terminated Respiratory Commercialized Alliance Product which shall ensure that, based on commercially reasonable terms (recognizing the Commercialized status of such product), Theravance has a continuous and uninterrupted supply of such Terminated Respiratory Commercialized Alliance Product, for a suitable period of time to enable Theravance to secure Third Party supply provided always that such period of time shall not exceed a period of [*] from the effective date of termination.

14.6 *Effect of Post-Termination Provisions on a Change in Control in Theravance.* In the event of a Change in Control of Theravance prior to termination by GSK under Section 14.4 (other than a Change in Control of Theravance involving GSK or a GSK Affiliate) none of the provisions under Section 14.5.3 shall survive as they pertain to any Alliance Product other than to an Alliance Product that contains a Theravance Compound as a single agent or a Combination Product containing another agent that is not GSK Property and the Parties will meet in good faith to explore other potential commercial options, e.g. use of one or more Third Parties for possible continued Commercialization of such Terminated Commercialized Alliance Product.

14.7 *Milestone Payments.* GSK shall not be obligated to make a Development Milestone payment under Section 6.2 which is triggered by an event occurring after the effective date of termination of this Agreement with respect to an Alliance Product or after the effective date of termination of Development or Commercialization of such Alliance Product, as applicable.

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14.8 *Accrued Rights; Surviving Obligations.* Termination, relinquishment or expiration of this Agreement for any reason shall be without prejudice to any rights that shall have accrued to the benefit of any Party prior to such termination, relinquishment or expiration. Such termination, relinquishment or expiration shall not relieve any Party from obligations which are expressly or by implication intended to survive termination, relinquishment or expiration of this Agreement, including without limitation Article 10, and shall not affect or prejudice any provision of this Agreement which is expressly or by implication provided to come into effect on, or continue in effect after, such termination, relinquishment or expiration.

ARTICLE 15
MISCELLANEOUS

15.1 *Relationship of the Parties.* Each Party shall bear its own costs incurred in the performance of its obligations hereunder without charge or expense to the other except as expressly provided in this Agreement. Neither Party shall have any responsibility for the hiring, termination or compensation of the other Party's employees or for any employee benefits of such employee. No employee or representative of a Party shall have any authority to bind or obligate the other Party to this Agreement for any sum or in any manner whatsoever, or to create or impose any contractual or other liability on the other Party without said Party's approval. For all purposes, and notwithstanding any other provision of this Agreement to the contrary, GSK's legal relationship under this Agreement to Theravance shall be that of independent contractor. This Agreement is not a partnership agreement and nothing in this Agreement shall be construed to establish a relationship of co-partners or joint venturers between the Parties.

15.2 *Registration and Filing of This Agreement.* To the extent, if any, that either Party concludes in good faith that it or the other Party is required to file or register this Agreement or a notification thereof with any Governmental Authority, including without limitation the U.S. Securities and Exchange Commission, the Competition Directorate of the Commission of the European Communities or the U.S. Federal Trade Commission, in accordance with Law, such Party shall inform the other Party thereof. Should both Parties jointly agree that either of them is required to submit or obtain any such filing, registration or notification, they shall cooperate, each at its own expense, in such filing, registration or notification and shall execute all documents reasonably required in connection therewith. In such filing, registration or notification, the Parties shall request confidential treatment of sensitive provisions of this Agreement, to the extent permitted by Law. The Parties shall promptly inform each other as to the activities or inquiries of any such Governmental Authority relating to this Agreement, and shall reasonably cooperate to respond to any request for further information there from on a timely basis.

15.3 *Force Majeure.* The occurrence of an event which materially interferes with the ability of a Party to perform its obligations or duties hereunder which is not within the reasonable control of the Party affected or any of its Affiliates, not due to malfeasance by such Party or its Affiliates, and which could not with the exercise of due diligence have been avoided (each, a "Force Majeure Event"), including, but not limited to, an injunction, order or action by a Governmental Authority, fire, accident, labor difficulty, strike, riot, civil commotion, act of God, inability to obtain raw materials, delay or errors by shipping companies or change in law, shall not excuse such Party from the performance of its obligations or duties under this Agreement, but shall merely suspend such performance during the continuation of the Force Majeure. The Party prevented from performing its obligations or duties because of a Force Majeure Event shall promptly notify the other Party of the occurrence and particulars of such Force Majeure and shall provide the other Party, from time to time, with its best estimate of the duration of such Force Majeure Event and with notice of the termination thereof. The Party so affected shall use Diligent Efforts to avoid or remove such causes of nonperformance as soon as is reasonably practicable. Upon termination of the Force Majeure Event, the performance of any

suspended obligation or duty shall promptly recommence. The Party subject to the Force Majeure Event shall not be liable to the other Party for any direct, indirect, consequential, incidental, special, punitive, exemplary or other damages arising out of or relating to the suspension or termination of any of its obligations or duties under this Agreement by reason of the occurrence of a Force Majeure Event, provided such Party complies in all material respects with its obligations under this Section 15.3.

15.4 *Governing Law.* This Agreement shall be construed, and the respective rights of the Parties determined, according to the substantive law of the State of Delaware notwithstanding the provisions governing conflict of laws under such Delaware law to the contrary, except matters of intellectual property law which shall be determined in accordance with the intellectual property laws relevant to the intellectual property in question.

15.5 *Attorneys' Fees and Related Costs.* In the event that any legal proceeding is brought to enforce or interpret any of the provisions of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees, court costs and expenses of litigation whether or not the action or proceeding proceeds to final judgment.

15.6 *Assignment.* This Agreement may not be assigned by either Party without the prior written consent of the other Party; provided, however that either Party may assign this Agreement, in whole or in part, to any of its Affiliates if such Party guarantees the performance of this Agreement by such Affiliate; and provided further that either Party may assign this Agreement to a successor to all or substantially all of the assets of such Party whether by merger, sale of stock, sale of assets or other similar transaction. This Agreement shall be binding upon, and subject to the terms of the foregoing sentence, inure to the benefit of the Parties hereto, their permitted successors, legal representatives and assigns.

15.7 *Notices.* All demands, notices, consents, approvals, reports, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally, by facsimile with confirmation of receipt, by mail (first class, postage prepaid), or by overnight delivery using a globally-recognized carrier, to the Parties at the following addresses:

Theravance:	Theravance, Inc. 901 Gateway Boulevard South San Francisco, CA 94080 Facsimile: 650-827-8683 Attn: Senior Vice President, Commercial Development
GSK:	Glaxo Group Limited 980 Great West Road Brentford Middlesex TW8 9GS United Kingdom Attn: Company Secretary Facsimile: 011 44 208-047-6912
With a copy to:	GlaxoSmithKline plc 980 Great West Road Brentford Middlesex TW8 9GS United Kingdom Attn: Corporate Law Facsimile: 011 44 208-047-6912

and with a copy to:

GlaxoSmithKline Research & Development
Greenford Road
Greenford
Middlesex UB6 0HE
United Kingdom
Attn: Vice President, Worldwide Business Development
Facsimile: 011 44 208 966 5371

or to such other address as the addressee shall have last furnished in writing in accord with this provision to the addressor. All notices shall be deemed effective upon receipt by the addressee.

15.8 *Severability.* In the event of the invalidity of any provisions of this Agreement or if this Agreement contains any gaps, the Parties agree that such invalidity or gap shall not affect the validity of the remaining provisions of this Agreement. The Parties will replace an invalid provision or fill any gap with valid provisions which most closely approximate the purpose and economic effect of the invalid provision or, in case of a gap, the Parties' presumed intentions. In the event that the terms and conditions of this Agreement are materially altered as a result of the preceding sentences, the Parties shall renegotiate the terms and conditions of this Agreement in order to resolve any inequities. Nothing in this Agreement shall be interpreted so as to require either Party to violate any applicable laws, rules or regulations.

15.9 *Waiver.* Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. Except as expressly set forth in this Agreement, all rights and remedies available to a Party, whether under this Agreement or afforded by law or otherwise, will be cumulative and not in the alternative to any other rights or remedies that may be available to such Party.

15.10 *Entire Agreement.* This Agreement (including the exhibits and schedules hereto) constitutes the entire agreement between the Parties hereto with respect to the within subject matter and supersedes all previous agreements and understandings between the Parties, whether written or oral. This Agreement may be altered, amended or changed only in writing and by making specific reference to this Agreement and signed by duly authorized representatives of Theravance and GSK.

15.11 *No License.* Nothing in this Agreement shall be deemed to constitute the grant of any license or other right in either Party, to or in respect of any Alliance Product, patent, trademark, Confidential Information, trade secret or other data or any other intellectual property of the other Party, except as expressly set forth herein.

15.12 *Third Party Beneficiaries.* None of the provisions of this Agreement shall be for the benefit of or enforceable by any Third Party, including without limitation any creditor of either Party hereto. No such Third Party shall obtain any right under any provision of this Agreement or shall by reasons of any such provision make any Claim in respect of any debt, liability or obligation (or otherwise) against either Party hereto.

15.13 *Counterparts.* This Agreement may be executed in any two counterparts, each of which, when executed, shall be deemed to be an original and both of which together shall constitute one and the same document.

15.14 *Agreement Closing Condition.* The obligation of each Party to consummate the transaction contemplated hereby is subject to the satisfaction of the following condition (the "Closing Condition"): All filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and any other similar laws that are necessary in any jurisdiction with respect to the transaction contemplated hereby shall have

been made and any required waiting period under such laws shall have expired or been terminated and any Governmental Authority in a jurisdiction with an applicable mandatory pre-closing waiting period that has power under or authority to enforce such laws shall have, if applicable, approved, cleared or decided neither to initiate proceedings or otherwise intervene in respect of the transaction contemplated hereby nor to refer the transaction to any other competent Governmental Authority. Each Party shall use good faith efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Party in doing, all things necessary, proper or advisable to consummate and make effective the transaction contemplated by this Agreement, including, but not limited to satisfaction of the Closing Condition and each Party shall keep the other Party reasonably apprised of the status of matters relating to the completion of same. In connection with the foregoing, the Parties hereby agree to negotiate in good faith to make as soon as practicable any modification or amendment to this Agreement or any agreement related hereto that is required by the United States Federal Trade Commission, Department of Justice or equivalent Governmental Authority, provided that no Party shall be required to agree to any modification or amendment that, in the reasonable opinion of such Party's external legal or financial counsel, would be adverse to such Party. This Agreement may be terminated by either Party upon written notice any time after September 30, 2004 if the transactions contemplated by this Agreement shall not have been consummated by September 30, 2004 due to failure to satisfy the Closing Condition; provided, however, that the terminating Party shall not have breached in any material respect its obligations under this Agreement in any manner that shall have been the proximate cause of, or resulted in, the failure to satisfy the Closing Condition or otherwise to consummate the transactions contemplated by this Agreement by such date.

15.15 *Alliance Program Closing Condition.*

(a) If GSK notifies Theravance in writing of its wish to exercise its Opt-In Right in respect of a particular Discovery Program pursuant to Section 4.2.1(a), Section 4.2.2(a) or Section 4.2.2(b), such notice of exercise shall not take effect until satisfaction of the condition set forth in Section 15.15 (b) below, if applicable (the "Alliance Program Closing Condition").

(b) All filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and any other similar laws that are necessary in any jurisdiction with respect to the exercise of such Opt-In Right contemplated hereby shall have been made and any required waiting period under such laws shall have expired or been terminated and any Governmental Authority in a jurisdiction with an applicable mandatory pre-closing waiting period that has power under or authority to enforce such laws shall have, if applicable, approved, cleared or decided neither to initiate proceedings or otherwise intervene in respect of the exercise of such Opt-In Right contemplated hereby nor to refer same to any other competent Governmental Authority. Each Party shall use good faith efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Party in doing, all things necessary, proper or advisable to consummate and make effective the exercise of any such Opt-In Right contemplated by this Agreement, including, but not limited to satisfaction of the Alliance Program Closing Condition and each Party shall keep the other Party reasonably apprised of the status of matters relating to the completion of same. In connection with the foregoing, the Parties shall use all reasonable efforts to make any such filing(s), if applicable, within five (5) business days of the date GSK notifies Theravance in writing of its wish to exercise its Opt-In Right in respect of a particular Discovery Program pursuant to Section 4.2.1(a), Section 4.2.2(a) or Section 4.2.2(b). Further, the Parties hereby agree to negotiate in good faith to make as soon as practicable any modification or amendment to this Agreement or any agreement related hereto that is required by the United States Federal Trade Commission, Department of Justice or equivalent Governmental Authority, provided that no Party shall be required to agree to any modification or amendment that, in the reasonable opinion of such Party's external legal or financial counsel, would be adverse to such Party. GSK's rights to

exercise any such Opt-In Right in respect of a particular Discovery Program under this Agreement may be terminated by either Party upon written notice any time after 180 days (one hundred and eighty days) from the relevant Initial Due Diligence Commencement Date if the exercise of such Opt-In Right contemplated hereby shall not have been consummated by the aforesaid 180 days (one hundred and eighty days) due to failure to satisfy the Alliance Program Closing Condition; provided, however, that the terminating Party shall not have breached in any material respect its obligations under this Agreement in any manner that shall have been the proximate cause of, or resulted in, the failure to satisfy the Alliance Program Closing Condition or otherwise to consummate the exercise of such Opt-In Right contemplated by this Agreement by such date.

IN WITNESS WHEREOF, Theravance and GSK, by their duly authorized officers, have executed this Agreement on March 30, 2004.

THERAVANCE, INC.		GLAXO GROUP LIMITED	
By:	/s/ RICK E WINNINGHAM	By:	/s/ JEAN-PIERRE GARNIER
	Rick E Winningham Chief Executive Officer		Jean-Pierre Garnier Chief Executive Officer

Schedule 1.36

Existing Discovery Programs

Non-Respiratory

Modified Glycopeptide	—Antibiotic for Treatment of Gram Positive Bacteria
Overactive Bladder	—M2 Muscarinic Antagonist for OAB
5-HT4	—Agonist for GI Motility Disorders
SASH	—Short Acting Sedative Hypnotic

Respiratory

LAMA—Long Acting Muscarinic Antagonist for Treatment of Respiratory Disease

MABA—Pan-Muscarinic Antagonist and Beta Agonist for use in Respiratory Disease

Long Acting Muscarinic Antagonist Respiratory Discovery Criteria

- Chemical and Pharmaceutical development

  Structure

  - Spectroscopic evidence of [*].

  Synthetic Process

  - Existing synthetic route [*].

  Physical Properties/stability

  - Crystalline API should be [*].
  - Solubility [*].
  - Drug Substance exists in [*].
  - Can be [*]. Particle size [*]. No marked shift [*].
  - Moisture sorption-non hydroscopic
    - Mass change [*].
    - Does not [*].
  - No significant changes [*].

- In Vitro Pharmacology:
  - [*].
  - Not significantly [*].
  - The compound must [*].
  - General in vitro pharmacology [*].

- In Vivo Pharmacology:
  - Projected human dose estimated from [*].
  - [*].
  - Functional lung selectivity [*]. Full dose response curves [*].
  - Onset of action [*].

- Pharmacokinetics:
  - Oral bioavailability [*].
  - Limited permeability in [*].
  - Dose related exposure [*].
  - No significant [*].
  - [*].

- Safety:
  - Less than [*].
  - No irritation to the respiratory tract [*].
  - Negative in a [*].

[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

List of Protocols:

1. Theravance [*] assay
2. Theravance [*] assay
3. [*]
4. Theravance [*]
5. Theravance [*] Assay
6. Theravance [*] Assay
7. Theravance [*] assay
8. Theravance [*]
9. Theravance [*] assay

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Muscarinic Antagonist-Beta Agonist Respiratory Discovery Criteria

- Chemical and Pharmaceutical development

  Structure

  - Spectroscopic evidence of [*].

  Synthetic Process

  - Existing synthetic route [*]. Synthesis [*] with no insurmountable safety, health or environmental issues.

  Physical Properties/stability

  - Crystalline API should be [*].
  - Solubility [*].
  - Drug Substance exists in [*].
  - Can be [*]. Particle size [*]. No marked shift [*].
  - Moisture sorption-non hydroscopic
    - Mass change [*].
    - Does not [*].
  - No significant changes [*].

- In Vitro Pharmacology:
  - [*].
  - Not significantly [*].
  - The compound must [*].
  - The ratio of [*].
  - The potency at [*].
  - The selectivity [*].
  - [*].
  - General in vitro pharmacology [*].

- In Vivo Pharmacology:
  - [*].
  - Significant [*]. Ratio of [*].
  - [*]. There should be no [*].

- Pharmacokinetics:
  - Oral bioavailability [*].
  - Limited permeability in [*].
  - Dose related exposure [*].
  - No significant [*].
  - [*].

- Safety:
    - Less than [*].
    - No irritation to the respiratory tract [*].
    - Negative in a [*].

List of Protocols:

1. Theravance [*] Assay
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5. Theravance [*] Assay
6. Theravance [*] Assay
7. Theravance [*]
8. Theravance [*]
9. Theravance [*]
10. Theravance [*]
11. Theravance [*]
12. Theravance [*] assay

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Class A Common Stock Purchase Agreement

THERAVANCE, INC.

CLASS A COMMON

STOCK PURCHASE AGREEMENT

March 30, 2004

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THERAVANCE, INC.

CLASS A COMMON STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (the "Agreement") is made as of the 30th day of March, 2004, by and among Theravance, Inc., a Delaware corporation (the "Company"), and SmithKline Beecham Corporation, a Pennsylvania corporation (the "Investor").

WHEREAS, Glaxo Group Limited, a limited liability company organized under the laws of England and Wales ("GGL") and the Company have entered into that certain Strategic Alliance Agreement dated as of the date hereof (the "Alliance Agreement"), pursuant to which, among other things, the Company has granted GGL an option to develop and commercialize certain therapeutic compounds on an exclusive, worldwide basis;

WHEREAS, the Investor and the Company are contemporaneously entering into this Agreement, pursuant to which the Investor shall purchase shares of the Company's Class A Common Stock, par value $0.01 (the "Class A Common Stock");

WHEREAS, as a condition to the stock purchase contemplated by this Agreement and to facilitate an eventual underwritten public offering of the Company's equity securities, all outstanding shares of the Company's Preferred Stock not owned by GGL must be converted into shares of the Company's Common Stock; and

WHEREAS, in connection with the stock purchase contemplated by this Agreement, the Company intends to implement a retention plan designed to retain and incent key employees, which shall include various equity incentives following a successful underwritten public offering of the Company's equity securities.

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. *Purchase and Sale of Stock*.

1.1 *Sale and Issuance of Class A Common Stock*.

(a) On or prior to the Closing (as defined below), (i) all issued and outstanding shares of preferred stock of the Company shall have converted into common stock and (ii) the Company shall adopt and file with the Secretary of State Delaware the Restated Certificate of Incorporation in the form attached hereto as *Exhibit A* (the "Restated Certificate").

(b) On or prior to the Closing (as defined below), the Company shall have authorized the sale and issuance pursuant to this Agreement of 9,900,000 shares of its Class A Common Stock at a price of $11.00 per share. The Class A Common Stock shall have the rights, preferences, privileges and restrictions set forth in the Restated Certificate.

(c) Subject to the terms and conditions of this Agreement, the Investor agrees to purchase at the Closing and the Company agrees to sell and issue to the Investor at the Closing, 9,900,000 shares of the Company's Class A Common Stock for an aggregate purchase price of $108,900,000.

1.2 *Closing*. The purchase and sale of the Class A Common Stock shall take place at the offices of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, 155 Constitution Drive, Menlo Park, CA 94025, at 10:00 A.M., on the date all conditions to closing set forth in Sections 4 and 5 have been satisfied or effectively waived, or at such other time and place as the Company and Investor mutually agree upon orally or in writing (which time and place are designated as the "Closing"). At the Closing the Company shall deliver to the Investor a certificate representing the Class A Common Stock that the Investor is purchasing against payment of the purchase price therefor by check or wire transfer, or any combination thereof.

1.3 *Exchange of Shares of Common Stock for Shares of Class A Common Stock*. Upon the Closing, GGL shall be deemed to have automatically exchanged, as of the date of the Closing, on a one-for-one basis, each share of Common Stock held by GGL for one share of Class A Common Stock. The rights, preferences and privileges of the Common Stock and Class A Common Stock are as set forth in the Restated Certificate.

2. *Representations and Warranties of the Company*. The Company hereby represents and warrants to the Investor that, as of the date hereof, and except as set forth on a Schedule of Exceptions (the "Schedule of Exceptions") furnished to the Investor, which exceptions shall be deemed to be representations and warranties as if made hereunder:

2.1 *Organization, Good Standing and Qualification*. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to (i) execute, deliver and perform its obligations under this Agreement and the Amended and Restated Investors' Rights Agreement, by and among the Company and the investors who are parties thereto, the form of which is attached hereto as *Exhibit B* (the "Investors' Rights Agreement"), (ii) to issue and sell the Class A Common Stock hereunder, (iii) to perform its obligations under the Restated Certificate, and (iv) to carry on its business as now conducted and as proposed to be conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect on its business or properties.

2.2 *Capitalization and Voting Rights*.

(a) As of the date of this Agreement, the authorized capital of the Company consists of:

(i) *Preferred Stock*. 51,500,000 shares of Preferred Stock (the "Preferred Stock"), of which (i) 5,020,000 shares have been designated Series A Preferred Stock (the "Series A Preferred Stock"), 4,988,000 of which are outstanding; (ii) 5,100,000 shares have been designated Series B Preferred Stock (the "Series B Preferred Stock"), 5,074,000 of which are outstanding; (iii) 18,823,000 shares have been designated Series C Preferred Stock (the "Series C Preferred Stock"), 18,765,166 of which are outstanding; (iv) 1,666,666 shares have been designated Series D Preferred Stock (the "Series D Preferred Stock"), 1,666,666 of which are outstanding (which are initially convertible into 2,777,777 shares of Common Stock); (v) 13,888,889 shares have been designated Series D-1 Preferred Stock (the "Series D-1 Preferred Stock"), 13,169,905 of which are outstanding; and (vi) 4,000,000 shares have been designated Series E Preferred Stock (the "Series E Preferred Stock"), all of which are outstanding. The rights, privileges and preferences of the Preferred Stock will be as stated in the Company's Restated Certificate of Incorporation on file with the Secretary of State of the State of Delaware on the date hereof.

(ii) *Common Stock*. 120,000,000 shares of common stock, par value $0.01 ("Common Stock"), of which 11,413,885 shares are issued and outstanding.

(iii) The outstanding shares of Common Stock are all duly and validly authorized and issued, fully paid and nonassessable, and were issued in accordance with the registration or qualification provisions of the Securities Act of 1933, as amended (the "Act") and any relevant state securities laws, or pursuant to valid exemptions therefrom.

(iv) Except for (A) the conversion privileges of the Preferred Stock, (B) the rights provided in Section 2.5 of the Investors' Rights Agreement, (C) currently outstanding warrants to purchase 4,000 shares of Series A Preferred Stock, (D) currently outstanding warrants to purchase 4,000 shares of Series B Preferred Stock, (E) currently outstanding warrants to purchase 48,611 shares of Series D-1 Preferred Stock, and (F) currently

outstanding options to purchase 13,630,463 shares of Common Stock granted to employees, directors, board members, consultants and service providers, there are not outstanding any options, warrants, rights (including conversion or preemptive rights) or agreements for the purchase or acquisition from the Company of any shares of its capital stock. In addition to the aforementioned options, the Company has reserved an additional 962,000 shares of its Common Stock for issuance upon exercise of options to be granted in the future under the Company's 1997 Stock Plan. Except for the provisions of the Restated Certificate, the Investors' Rights Agreement and of that certain Amended and Restated Stockholders' Voting Agreement dated as of January 25, 1999 by and among the Company and the other parties listed therein, the Company is not a party or subject to any agreement or understanding, and, to the best of the Company's knowledge, there is no agreement or understanding between any persons and/or entities, which affects or relates to the voting or giving of written consents with respect to any security or by a director of the Company. No stock plan, stock purchase, stock option or other agreement or understanding between the Company and any holder of any equity securities or rights to purchase equity securities provides for acceleration or other changes in the vesting provisions of such agreement or understanding as the result of any merger, consolidated sale of stock or assets, change in control or any other similar transaction(s) by the Company.

(b) Immediately prior to the Closing, upon the filing of the Restated Certificate and assuming between the date hereof and the date of Closing (x) the exchange of shares of Common Stock held by the Investor for shares of Class A Common Stock pursuant to Section 1.3 hereof, (y) no issuance by the Company of its capital stock or any security exercisable for or convertible into capital stock of the Company pursuant to any employee, director or consultant compensation plan that has been approved by the majority of the Board of Directors and (z) no exercise or conversion of any outstanding option, warrant or other security exercisable for or convertible into the capital stock of the Company, the authorized capital of the Company shall consist of:

(i) *Preferred Stock*. 5,000,000 shares of Preferred Stock (the "Preferred Stock"), none of which shall be outstanding.

(ii) *Common Stock*. 175,000,000 shares of Common Stock, par value $0.01 ("Common Stock"), 56,188,733 of which shall be outstanding

(iii) *Class A Common Stock*. 13,900,000 shares of Class A Common Stock, 4,000,000 of which shall be outstanding and 9,900,000 of which shall be sold pursuant to this Agreement.

2.3 *Subsidiaries*. The Company does not presently own or control, directly or indirectly, any interest in any other corporation, association or other business entity, other than Theravance East, Inc., a Delaware corporation and a direct wholly-owned subsidiary of the Company. The Company is not a participant in any joint venture, partnership, or similar arrangement.

2.4 *Authorization*. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement, the Investors' Rights Agreement and the Governance Agreement to be entered into by the Company and the Investor (and its affiliates), in substantially the form attached hereto as *Exhibit C* (the "Governance Agreement," and collectively with this Agreement and the Investors' Rights Agreement, the "Transaction Documents"), the performance of all obligations of the Company hereunder and thereunder, and the authorization, issuance (or reservation for issuance), sale and delivery of the Class A Common Stock being sold hereunder has been taken or will be taken prior to the Closing, and the Transaction Documents constitute valid and legally binding obligations of the Company, enforceable in accordance with their respective terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general

application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, and (iii) to the extent the indemnification provisions contained in the Investors' Rights Agreement may be limited by applicable federal or state securities laws.

2.5 *Valid Issuance of Preferred and Common Stock*. The Class A Common Stock that is being purchased by the Investor hereunder, when issued, sold and delivered in accordance with the terms of this Agreement for the consideration expressed herein, will be duly and validly issued, fully paid, and nonassessable, and will be free of restrictions on transfer other than restrictions on transfer under the Transaction Documents and under applicable state and federal securities laws. The Class A Common Stock that is being purchased by the Investor hereunder will not be subject to preemptive rights or rights of first refusal that have not been waived or complied with. Prior to the filing of the Restated Certificate, the outstanding Series A, Series B, Series C, Series D, Series D-1 and Series E Preferred Stock was duly and validly issued, fully paid, and is nonassessable. Upon the filing of the Restated Certificate, the Common Stock issuable upon conversion of the outstanding Series A, Series B, Series C, Series D, Series D-1 and Series E Preferred Stock will be duly and validly reserved for issuance and, upon issuance, will be duly and validly issued, fully paid, and nonassessable and will be free of restrictions on transfer other than restrictions on transfer under the documents executed in connection with the sale of the Series A, Series B, Series C, Series D, Series D-1 and Series E Preferred Stock and under applicable state and federal securities laws. The outstanding Series A, Series B, Series C, Series D, Series D-1 and Series E Preferred Stock is not subject to preemptive rights or rights of first refusal that have not been waived or complied with and, upon the execution and delivery of the Investors' Rights Agreement by the requisite holders of Company capital stock necessary to amend and restate the "Prior Agreement" (as such term is defined in the Investors' Rights Agreement), the Common Stock and Class A Common Stock issuable upon conversion of such Preferred Stock will not be subject to preemptive rights or rights of first refusal that have not been waived or complied with.

2.6 *Governmental Consents*. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority on the part of the Company is required in connection with the consummation of the transactions contemplated by this Agreement, except (i) a filing under the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), (ii) the filing of the Restated Certificate with the Secretary of State of Delaware; and (iii) certain post-closing filings as may be required pursuant to federal securities laws and under the "Blue Sky" laws of the various states.

2.7 *Offering*. Subject in part to the truth and accuracy of the Investor's representations set forth in Section 3 of this Agreement, the offer, sale and issuance of the Class A Common Stock as contemplated by this Agreement are exempt from the registration requirements of any applicable state and federal securities laws, and neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemption.

2.8 *Litigation*. There is no action, suit, proceeding or investigation pending or, to the Company's knowledge, currently threatened against the Company that questions the validity of the Transaction Documents, or the right of the Company to enter into such agreements, or to consummate the transactions contemplated hereby or thereby, or if determined adversely, might result, either individually or in the aggregate, in (i) any material adverse changes in the assets, business or prospects of the Company, financially or otherwise or (ii) any change in the current equity ownership of the Company, nor is the Company aware that there is any basis for the foregoing. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit, proceeding or investigation by the Company currently pending or that the Company intends to initiate.

2.9 *Patents and Trademarks*. The Company owns, or has rights to use pursuant to a valid license, all patents, trademarks, service marks, trade names, copyrights, trade secrets, information, proprietary rights and processes necessary for its business as now conducted. There are no outstanding options, licenses or agreements of any kind relating to the foregoing proprietary rights, nor is the Company bound by or a party to any options, licenses or agreements of any kind with respect to the patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information and other proprietary rights and processes of any other person or entity other than such licenses or agreements arising from the purchase of "off the shelf" or standard products. The use, modification, licensing, sublicensing, sale, or any other exercise of rights involving such intellectual property does not infringe any copyright, trade secret, trademark, service mark, trade name, firm name, logo, trade dress, mask work, moral right, other intellectual property right, right of privacy or right in personal data, or to the knowledge of the Company, any patent, of any person. No claims (i) challenging the validity, effectiveness, or ownership by the Company of any of the Company's intellectual property, or (ii) to the effect that the use, reproduction, modification, manufacturing, distribution, licensing, sublicensing, sale or any other exercise of rights in any product, work, technology, service or process as used, provided or offered at any time, or as proposed for use, reproduction, modification, distribution, licensing, sublicensing, sale or any other exercise of rights, by the Company infringes or will infringe on any intellectual property or other proprietary or personal right of any person have been asserted or, to the knowledge of the Company, (A) are threatened by any person nor (B) are there any valid grounds for any bona fide claim of any such kind. To the knowledge of the Company, there is no unauthorized use, infringement or misappropriation of any of the Company's intellectual property by any third party, employee or former employee. The Company's employees are not obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of his or her best efforts to promote the interests of the Company or that would conflict with the Company's business as proposed to be conducted. Neither the execution nor delivery of the Transaction Documents, nor the carrying on of the Company's business by the employees of the Company, nor the conduct of the Company's business as proposed, will, to the best of the Company's knowledge, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated. The Company does not believe it is or will be necessary to utilize any inventions of any of its employees made prior to their employment by the Company unless such inventions are properly assigned to the Company.

2.10 *Compliance with Other Instruments*. The Company is not in violation or default in any material respect of any provision of its Restated Certificate or Bylaws, or in any material respect of any instrument, judgment, order, writ, decree or contract to which it is a party or by which it is bound, or, to the best of its knowledge, of any provision of any statute, rule or regulation applicable to the Company. The execution, delivery and performance of the Transaction Documents, and the consummation of the transactions contemplated hereby and thereby will not result in any such violation or be in conflict with or constitute, with or without the passage of time and giving of notice, either a default under any such provision, instrument, judgment, order, writ, decree or contract or an event that results in the creation of any lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, impairment, forfeiture, or nonrenewal of any material permit, license, authorization, or approval applicable to the Company, its business or operations or any of its assets or properties.

2.11 *Agreements; Action*.

(a) Except for agreements explicitly contemplated by the Transaction Documents, there are no agreements, understandings or proposed transactions between the Company and any of its officers, directors, affiliates, or any affiliate thereof.

(b) Except for this Agreement, the Governance Agreement, the Strategic Alliance Agreement and the Collaboration Agreement dated as of November 14, 2002 by and between the Company and the Investor (the "Collaboration Agreement"), there are no agreements, understandings, instruments, contracts, proposed transactions, judgments, orders, writs or decrees to which the Company is a party or by which it is bound that may involve (i) provisions restricting or affecting the development, manufacture or distribution of the Company's products or services; (ii) obligations (contingent or otherwise) of, or payments to, the Company in excess of $100,000 (other than obligations of, or payments to, the Company arising from agreements entered into in the ordinary course of business); or (iii) indemnification by the Company with respect to infringements of proprietary rights (other than indemnification obligations arising from agreements entered into in the ordinary course of business).

(c) The Company has not (i) declared or paid any dividends or authorized or made any distribution upon or with respect to any class or series of its capital stock, (ii) incurred any indebtedness for money borrowed or any other liabilities individually in excess of $1,000,000 or in the aggregate in excess of $5,000,000, (iii) made any loans or advances to any person, other than ordinary advances for travel expenses, or (iv) sold, exchanged or otherwise disposed of any of its assets or rights, other than the sale of its inventory in the ordinary course of business.

(d) For the purposes of subsection (c) above, all indebtedness and liabilities involving the same person or entity (including persons or entities the Company has reason to believe are affiliated therewith) shall be aggregated for the purpose of meeting the individual minimum dollar amounts of such subsection.

(e) The Company is not a party to and is not bound by any contract, agreement or instrument, or subject to any restriction under its Restated Certificate or Bylaws that adversely affects its business as now conducted or as proposed to be conducted, its properties or its financial condition.

(f) The Company has not engaged in the past three (3) months in any discussion (i) with any representative of any corporation or corporations regarding the consolidation or merger of the Company with or into any such corporation or corporations, (ii) with any corporation, partnership, association or other business entity or any individual regarding the sale, conveyance or disposition of all or substantially all of the assets of the Company or a transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company is disposed of, or (iii) regarding any other form of acquisition, liquidation, dissolution or winding up of the Company.

2.12 *Related-Party Transactions*. No employee, officer, or director of the Company or member of his or her immediate family is indebted to the Company, nor is the Company indebted (or committed to make loans or extend or guarantee credit) to any of them. To the Company's knowledge, none of such persons has any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated or with which the Company has a business relationship, or any firm or corporation that competes with the Company, except that employees, officers, or directors of the Company and members of their immediate families may own stock in publicly traded companies that may compete with the Company. No member of the immediate

family of any officer or director of the Company is directly or indirectly interested in any material contract with the Company.

2.13 *Permits*. The Company has all material franchises, permits, licenses, and any similar authority necessary for the conduct of its business as now being conducted by it, and the Company believes it can obtain, without undue burden or expense, any similar authority for the conduct of its business as planned to be conducted. The Company is not in default in any material respect under any of its franchises, permits, licenses, or other similar authority.

2.14 *Disclosure*. The Company has provided the Investor with all information requested by the Investor in connection with their decision to purchase the Class A Common Stock, including all information the Company believes is reasonably necessary to make such investment decision. To the Company's knowledge, neither this Agreement, the Investors' Rights Agreement, nor any other statements or certificates made or delivered in connection herewith or therewith contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements herein or therein not misleading.

2.15 *Corporate Documents*. Except for amendments necessary to satisfy representations and warranties or conditions contained herein (the form of which amendments has been approved by the Investor), the Restated Certificate and Bylaws of the Company are in the form previously provided to the Investor.

2.16 *Title to Property and Assets*. The Company owns its property and assets free and clear of all mortgages, liens, loans and encumbrances, except such encumbrances and liens that arise in the ordinary course of business and do not materially impair the Company's ownership or use of such property or assets, and has good and marketable title to such property. With respect to the property and assets it leases, the Company is in compliance with such leases and holds a valid leasehold interest free of any liens, claims or encumbrances.

2.17 *Tax Returns, Payments and Elections*. The Company has timely filed all tax returns and reports as required by law. These returns and reports are true and correct in all material respects. The Company has paid all taxes and assessments due, except those contested by it in good faith, if any. The Company has not been advised (a) that any of its federal, state or local returns are being audited as of the date hereof, or (b) of any deficiency in assessment or proposed judgment to its federal, state or other taxes. The Company has no knowledge of any tax liabilities due with respect to the Company or its properties or assets as of the date of this Agreement that are not adequately provided for.

2.18 *Environmental Law*. To the Company's knowledge, the Company is not in violation of and has no liability or potential liability under any applicable statute, law, or regulation relating to the environment, and to the best of its knowledge, no material expenditures are or will be required in order to comply with any such existing statute, law, or regulation.

2.19 *Proprietary Information and Employment Agreements*. Each current and former employee, officer and consultant of the Company has executed a standard Proprietary Information and Inventions Agreement. The Company is not aware that any of its employees, officers or consultants are in violation thereof, and the Company will use its best efforts to prevent any such violation. The Company has not entered into any employment agreements.

2.20 *Financial Statements*. The Company has made available to the Investor its audited financial statements as of December 31, 2002 and its unaudited financials as of and for the twelve-month period ended December 31, 2003 (the "Financial Statements"). The Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods indicated and with each other except that the unaudited Financial Statements may not contain all footnotes required by generally accepted accounting

principles. The Financial Statements fairly present the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein, subject in the case of the unaudited Financial Statements to normal year-end audit adjustments. Except as set forth in the Financial Statements, the Company has no material liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to the date of the Financial Statements and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under generally accepted accounting principles to be reflected in the Financial Statements, which, in both cases, individually or in the aggregate, are not material to the financial condition or operating results of the Company. Except as disclosed in the Financial Statements, the Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with generally accepted accounting principles.

2.21 *Changes*. Since December 31, 2003 there has not been:

(a) any change in the assets, liabilities, financial condition or operating results of the Company from that reflected in the Financial Statement, except changes in the ordinary course of business that have not been, in the aggregate, materially adverse;

(b) any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the assets, properties, financial condition, operating results, prospects or business of the Company (as such business is presently conducted and as it is proposed to be conducted);

(c) any waiver by the Company of a valuable right or of a material debt owed to it;

(d) any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company, except in the ordinary course of business and that is not material to the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted and as it is proposed to be conducted);

(e) any material change or amendment to a material contract or arrangement by which the Company or any of its assets or properties is bound or subject;

(f) any material change in any compensation arrangement or agreement with any employee;

(g) any sale, assignment or transfer of any patents, trademarks, copyrights, trade secrets or other intangible assets;

(h) any resignation or termination of employment of any key employee or officer of the Company; and the Company, to the best of its knowledge, does not know of the impending resignation or termination of employment of any such employee or officer;

(i) receipt of notice that there has been a loss of, or material order cancellation by, any major customer of the Company;

(j) any mortgage, pledge, transfer of a security interest in, or lien, created by the Company, with respect to any of its material properties or assets, except liens for taxes not yet due or payable;

(k) any loans or guarantees made by the Company to or for the benefit of its employees, officers or directors, or any members of their immediate families, other than travel advances and other advances made in the ordinary course of its business;

(l) any declaration, setting aside or payment or other distribution in respect of any of the Company's capital stock, or any direct or indirect redemption, purchase or other acquisition of any of such stock by the Company;

(m) to the best of the Company's knowledge, any other event or condition of any character that might materially and adversely affect the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted and as it is proposed to be conducted); or

(n) any agreement or commitment by the Company to do any of the things described in this Section 2.21.

2.22 *Registration Rights*. Except as required pursuant to the Investors' Rights Agreement, the Company is not presently under any obligation, and has not granted, any rights to register any of the Company's presently outstanding securities or any of its securities that may hereafter be issued.

2.23 *Real Property Holding Corporation*. The Company is not a real property holding corporation within the meaning of Section 897(c)(2) of the Internal Revenue Code of 1986 (the "Code"), as amended, and any regulations promulgated thereunder.

2.24 *Labor Agreements*. The Company is not bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any labor union, and no labor union has requested or, to the Company's knowledge, has sought to represent any of the employees, representatives or agents of the Company. There is no strike or other labor dispute involving the Company pending, or to the Company's knowledge, threatened, that could have a material adverse effect on its business or properties, nor is the Company aware of any labor organization activity involving its employees.

2.25 *Insurance*. The Company maintains in full force and effect such types and amounts of insurance issued by insurers of recognized responsibility insuring the Company with respect to its business and properties, in such amounts and against such losses and risks which are usual and customary in the Company's business as to amount and scope.

2.26 *Directors and Senior Management*. No plan currently maintained by the Company or agreement entered into and currently in effect with any employee of the Company (each, a "*Plan*" and, collectively, the "*Plans*") provides for the payment of separation, severance, termination or similar benefits to any person. None of the Plans obligates the Company to pay any benefits solely or partially as a result of any transaction contemplated by this Agreement or as a result of a change in the ownership or effective control of the Company within the meaning of Section 280G of the Code. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby, either alone or together with a termination of service, will (i) result in any payment (including, without limitation, severance, golden parachute, forgiveness of indebtedness or otherwise) becoming due under any Plan, whether or not such payment is contingent, (ii) increase any benefits otherwise payable under any Plan or other arrangement, or (iii) result in the acceleration of the time of payment, vesting or funding of any benefits including, but not limited to, the acceleration of the vesting and exercisability of any Company Option, whether or not contingent.

2.27 *Officer and Key Employee Incentive Plan*. The Board has approved the Officer and Key Employee Incentive Plan substantially in the form attached hereto as *Exhibit F*.

3. *Representations and Warranties of the Investor*. The Investor hereby represents and warrants that:

3.1 *Authorization*. The Investor has full power and authority to enter into the Transaction Documents, and each such Agreement constitutes its valid and legally binding obligation,

enforceable in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, and (iii) to the extent the indemnification provisions contained in the Investors' Rights Agreement may be limited by applicable federal or state securities laws.

3.2 *Purchase Entirely for Own Account*. This Agreement is made with the Investor in reliance upon the Investor's representation to the Company, which by the Investor's execution of this Agreement the Investor hereby confirms, that the Class A Common Stock to be received by the Investor (the "Securities") will be acquired for investment for the Investor's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same in violation of applicable securities laws. By executing this Agreement, the Investor further represents that the Investor does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Securities.

3.3 *Disclosure of Information*. The Investor further represents that it has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Class A Common Stock and the business, properties, prospects and financial condition of the Company. The foregoing, however, does not limit or modify the representations and warranties of the Company in Section 2 of this Agreement or the right of the Investor to rely thereon.

3.4 *Investment Experience*. The Investor is an investor in securities of companies in the development stage and acknowledges that it is able to fend for itself, can bear the economic risk of its investment, and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Class A Common Stock. The Investor also represents that it has not been organized for the purpose of acquiring the Class A Common Stock.

3.5 *Accredited Investor*. The Investor is an "accredited investor" within the meaning of Rule 501 of Regulation D adopted pursuant to the Act, as presently in effect.

3.6 *Restricted Securities*. The Investor understands that the Securities it is purchasing are characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the Act, only in certain limited circumstances. In this connection, the Investor represents that it is familiar with Rule 144 adopted pursuant to the Act, as presently in effect, and understands the resale limitations imposed thereby and by the Act.

4. *Conditions of Investor's Obligations at Closing*. The obligations of the Investor under subsection 1.1(c) of this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions, the waiver of which shall not be effective against the Investor if it does not consent thereto:

4.1 *Performance*. The Company shall have performed and complied with all agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing.

4.2 *Compliance Certificate*. The Chief Executive Officer of the Company shall deliver to the Investor at the Closing a certificate stating that the conditions specified in Sections 4.1 have been fulfilled.

4.3 *Qualifications*. All authorizations, approvals, or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be duly obtained and effective as of the Closing.

4.4 *Proceedings and Documents*. All corporate and other proceedings in connection with the transactions contemplated at the Closing and all documents incident thereto shall be reasonably satisfactory in form and substance to the Investor, and they shall have received all such counterpart original and certified or other copies of such documents as they may reasonably request.

4.5 *Opinion of Company Counsel*. The Investor shall have received from Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, counsel for the Company, an opinion, dated as of the Closing, in the form attached hereto as *Exhibit D*.

4.6 *Investors' Rights Agreement*. The Company, the Investor and the requisite holders of Company capital stock necessary to amend and restate the "Prior Agreement" (as such term is defined in the Investors' Rights Agreement) shall have entered into the Investors' Rights Agreement.

4.7 *Approval and Filing of the Restated Certificate*. The requisite holders of Company capital stock shall have approved the Restated Certificate and the Restated Certificate shall have been filed with the Secretary of State of Delaware, and shall not have been amended or modified since the date of filing.

4.8 *Conversion of Existing Preferred Stock*. All shares of the Company's Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock and Series E Preferred Stock shall have been converted into shares of Common Stock.

4.9 *Governance Agreement*. The Company and the Investor shall have entered into the Governance Agreement.

4.10 *Strategic Alliance Agreement*. The Strategic Alliance Agreement shall have become Effective (as such term is defined in the Strategic Alliance Agreement) as of the Closing.

4.11 *HSR Act*. The waiting period applicable to the consummation of the transactions contemplated hereby under the HSR Act shall have expired or been terminated and no action by the Department of Justice or Federal Trade Commission challenging or seeking to enjoin the consummation of such transactions shall have been instituted and be pending.

4.12 *Executive Lock-Up Agreements*. Each of P. Roy Vagelos, Rick E Winningham, Marty Glick and Patrick Humphrey shall have entered into an Executive Lock-Up Agreement, each substantially in the form attached hereto as *Exhibit E*.

4.13 *Conduct of the Company Business*. The Company shall not willfully have taken any affirmative action or willfully omitted to have taken any affirmative action that would cause any of the representations and warranties contained in Section 2 hereof, applied as of the Closing Date, to be breached.

5. *Conditions of the Company's Obligations at Closing*. The obligations of the Company to the Investor under this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions by the Investor:

5.1 *Representations and Warranties*. The representations and warranties of the Investor contained in Section 3 shall have been true on and as of the date of this Agreement and, in all material respects, as of the Closing.

5.2 *Qualifications*. All authorizations, approvals, or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be duly obtained and effective as of the Closing.

5.3 *Investors' Rights Agreement*. The Company, the Investor and the requisite holders of Company capital stock necessary to amend and restate the "Prior Agreement" (as such term is defined in the Investors' Rights Agreement) shall have entered into the Investors' Rights Agreement.

5.4 *Restated Certificate*. The Company shall have obtained the requisite stockholder consent to file the Restated Certificate.

5.5 *Governance Agreement*. The Company and the Investor shall have entered into the Governance Agreement.

5.6 *Strategic Alliance Agreement*. The Strategic Alliance Agreement shall have become Effective (as such term is defined in the Strategic Alliance Agreement) as of the Closing.

5.7 *HSR Act*. The waiting period applicable to the consummation of the transactions contemplated hereby under the HSR Act shall have expired or been terminated and no action by the Department of Justice or Federal Trade Commission challenging or seeking to enjoin the consummation of such transactions shall have been instituted and be pending.

5.8 *Delivery of Common Stock*. GGL shall have delivered to the Company the certificates representing the shares of Common Stock held by GGL in connection with the exchange, as described in Section 1.3.

6. *Miscellaneous*.

6.1 *Survival of Warranties*. The warranties, representations and covenants of the Company and the Investor contained in or made pursuant to this Agreement shall survive the execution and delivery of this Agreement and the Closing and shall in no way be affected by any investigation of the subject matter thereof made by or on behalf of the Investor or the Company.

6.2 *Successors and Assigns*. Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties (including transferees of any Securities). Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

6.3 *Governing Law*. This Agreement shall be governed by and construed in accordance with and governed by the law of the State of Delaware, without regard to the conflicts of laws principles thereof. Any action brought, arising out of, or relating to this Agreement shall be brought in the Court of Chancery of the State of Delaware. Each party hereby irrevocably submits to the exclusive jurisdiction of said Court in respect of any claim relating to the validity, interpretation and enforcement of this Agreement, and hereby waives, and agrees not to assert, as a defense in any action, suit or proceeding in which any such claim is made that it is not subject thereto or that such action suit or proceeding may not be brought or is not maintainable in such courts, or that the venue thereof may not be appropriate or that this agreement may not be enforced in or by such courts. The parties hereby consent to and grant the Court of Chancery of the State of Delaware jurisdiction over such parties and over the subject matter of any such claim and agree that mailing of process or other papers in connection with any such action, suit or proceeding in the manner provided in Section 6.1, or in such other manner as may be permitted by law, shall be valid and sufficient thereof.

6.4 *Counterparts*. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.5 *Titles and Subtitles*. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

6.6 *Notices*. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, if not, then on the next business day or (c) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. Notwithstanding the foregoing or any provision to the contrary in the Investors' Rights Agreement or the Restated Certificate, the Company agrees that when any notice is given to the Investor, whether under this Agreement, the Investors' Rights Agreement or the Restated Certificate, such notice shall not be deemed to be effectively given until a copy of such notice is transmitted to the Investor via facsimile. All notices and certificates will be addressed to the Investor at the address set forth on the signature page hereto or at such other address as the Company or the Investor may designate by ten (10) days advance written notice to the other parties hereto.

6.7 *Finder's Fee*. The Investor agrees to indemnify and to hold harmless the Company from any liability for any commission or compensation in the nature of a finders' fee (and the costs and expenses of defending against such liability or asserted liability) for which the Investor or any of its officers, partners, employees, or representatives is responsible.

The Company agrees to indemnify and hold harmless the Investor from any liability for any commission or compensation in the nature of a finders' fee (and the costs and expenses of defending against such liability or asserted liability) for which the Company or any of its officers, employees or representatives is responsible.

6.8 *Expenses*. Irrespective of whether the Closing is effected, each party shall bear their own costs and expenses incurred with respect to the negotiation, execution, delivery and performance of this Agreement. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the Investors' Rights Agreement or the Restated Certificate, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

6.9 *Amendments and Waivers*. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Investor. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding, each future holder of all such securities, and the Company.

6.10 *Termination*. This Agreement may be terminated and the transactions contemplated by this Agreement may be abandoned at any time prior to the Closing, notwithstanding any requisite approval and adoption of this Agreement and the transactions contemplated by this Agreement, as follows:

(a) by mutual written consent of the Company and the Investor; or

(b) by either the Company or the Investor, if the Closing shall not have occurred on or before October 1, 2004; *provided*, *however*, that the right to terminate this Agreement under this Section 6.10 (b) shall not be available to any party whose failure to fulfill any obligation

under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur.

6.11 *Severability*. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

6.12 *Confidentiality*. Any confidential information obtained by the Investor pursuant to this Agreement which is labeled or otherwise identified as confidential or proprietary shall be treated as confidential and shall not be disclosed to a third party without the prior written consent of the Company and shall not be used by the Investor for any purpose other than monitoring the Investor's investment in the Company, except that the Investor may disclose such information (i) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company, (ii) to its affiliates, officers, directors, shareholders, members and/or partners in the ordinary course of business or pursuant to disclosure obligation to affiliates, shareholders, members and/or partners; provided that such information is provided to such persons and entities with notice that such information is confidential and should be treated as such, (iii) to any prospective purchaser of the Investor's shares of the Company, provided (in the case of disclosure in clause (iii)) the recipient agrees to keep such information confidential and to use such information solely for evaluation of such proposed purchase, or (iv) as may otherwise be required by law. Notwithstanding the foregoing, such information shall not be deemed confidential for the purpose of enforcement of this Agreement and said information shall not be deemed confidential after it becomes publicly known through no fault of the recipient. The provisions of this Section 6.12 shall be in addition to, and not in substitution for, the provisions of any separate confidentiality agreement executed by the parties hereto; provided that if there is any conflict between the provisions of this Section 6.12 and the more restrictive provisions of such separate confidentiality agreement, the provisions of such separate confidentiality agreement shall prevail.

6.13 *Publicity*. No party or any affiliate of a party shall make, or cause to be made, any publicity, news release or other such general public announcement or make any other disclosure to any third party in respect of this Agreement or the transactions contemplated hereby (including, without limitation, disclosure of Investor's ownership interest in the Company) without the prior written consent of the other party; *provided however*, that the foregoing provision is not intended to limit communications deemed reasonably necessary or appropriate by a party or its affiliates to its employees, stockholders, partners, directors, officers, potential investors, accountants and legal counsel who are under an obligation to preserve the confidentiality of the foregoing. Notwithstanding the foregoing provision, the parties and their respective affiliates shall not be prohibited from making any disclosure or release that is required by law, court order, or applicable regulation, or is considered necessary by legal counsel to fulfill an obligation under securities laws or the rules of a national stock exchange.

6.14 *Entire Agreement*. This Agreement and the documents referred to herein constitute the entire agreement among the parties and no party shall be liable or bound to any other party in any manner by any warranties, representations, or covenants except as specifically set forth herein or therein.

6.15 *Legends*. It is understood that the certificates evidencing the Securities may bear one or all of the following legends:

(a) "These securities have not been registered under the Securities Act of 1933, as amended. They may not be sold, offered for sale, pledged or hypothecated in the absence of a registration statement in effect with respect to the securities under such Act or an opinion of

counsel satisfactory to the Company that such registration is not required or unless sold pursuant to Rule 144 of such Act."

(b) Any legend required by the laws of any state.

6.16 *Conduct of Business of the Company*. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Closing, the Company agrees (except to the extent that GSK shall otherwise consent in writing) to carry on its business in the usual, regular and ordinary course in substantially the same manner as currently conducted, and, to the extent consistent with such business, to use all commercially reasonable efforts consistent with past practice and policies to preserve intact its present business organization and keep available the services of its present officers and key employees. Solely for the purposes of any post-Closing remedy for breaches of representations, warranties or covenants by the Company, the Company shall not take any affirmative action or omit to take any affirmative action that results in the breach of any of the representations and warranties contained in Section 2 hereof, applied as of the Closing Date.

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

THERAVANCE, INC.

By: /s/ RICK E WINNINGHAM

Rick E Winningham
President and Chief Executive Officer

INVESTOR:

SMITHKLINE BEECHAM CORPORATION

Name of Investor

By: /s/ JEAN-PIERRE GARNIER

Signature of Authorized Person

Name: Jean-Pierre Garnier

Title: Chief Executive Officer

Address: GlaxoSmithKline

One Franklin Plaza (FP2355)

Philadelphia, PA 19102

Fax No: 215-751-5349

EXHIBIT D
OPINION OF COUNSEL FOR THE COMPANY

EXHIBIT E
FORM OF EXECUTIVE LOCK-UP AGREEMENT

EXHIBIT F
SUMMARY OF TERMS OF THE OFFICER AND KEY EMPLOYEE INCENTIVE PLAN

Governance Agreement

GOVERNANCE AGREEMENT

This GOVERNANCE AGREEMENT (this "Agreement") is dated as of May 11, 2004 among SmithKline Beecham Corporation, a Pennsylvania corporation ("GSK"), Theravance, Inc., a Delaware corporation (the "Company"), solely with respect to Articles III, IV and VI hereof, GlaxoSmithKline plc, an English public limited company ("GlaxoSmithKline"), and, solely with respect to Articles II, IV and VI hereof, Glaxo Group Limited, a limited liability company organized under the laws of England and Wales ("GGL").

WHEREAS, GGL and the Company have entered into that certain Strategic Alliance Agreement dated as of March 30, 2004 (the "Alliance Agreement"), pursuant to which, among other things, the Company has granted GGL an option to develop and commercialize certain therapeutic compounds on an exclusive, worldwide basis;

WHEREAS, GSK and the Company have entered into that certain Class A Common Stock Purchase Agreement dated as of March 30, 2004 (the "Class A Stock Purchase Agreement"), pursuant to which GSK shall purchase shares of the Company's Class A Common Stock;

WHEREAS, as a condition to the stock purchase contemplated by the Class A Stock Purchase Agreement and to facilitate an eventual underwritten public offering of the Company's equity securities, all outstanding shares of the Company's Preferred Stock have been converted into shares of the Company's Common Stock (the "Common Stock");

WHEREAS, GGL through a previous stock purchase agreement owns shares of the Company's preferred stock that have been converted into common stock and will be exchanged for shares of the Company's Class A Common Stock pursuant to Section 1.3 of the Class A Common Stock Purchase Agreement;

WHEREAS, GSK and the Company have agreed to establish in this Agreement certain terms and conditions concerning the corporate governance of the Company;

WHEREAS, GSK, GGL and the Company also have agreed to establish in this Agreement certain terms and conditions concerning the acquisition, disposition and voting of securities of the Company beneficially owned by GSK and its Affiliates (as defined herein); and

WHEREAS, GSK and the Company have agreed to set forth in this Agreement the terms and conditions upon which the Company shall redeem the Common Stock.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and agreements contained herein, GSK and the Company hereby agree as follows:

ARTICLE I

BOARD OF DIRECTORS AND CERTAIN CORPORATE ACTIONS

SECTION 1.1. *Initial Composition of Board of Directors at the Effective Date*.

(a) The number of directors comprising the full Board of Directors of the Company (the "Board") immediately after the Effective Date shall be 12. The directors of the Company following the Effective Date shall be the directors of the Company immediately prior to the Effective Date, and shall serve until their successors have been duly elected or appointed and qualified or until the earlier death, resignation or removal in accordance with the Company's Restated Certificate of Incorporation (the "Certificate of Incorporation"), the Company's Bylaws and this Agreement. GSK shall have the right, but not the obligation, to nominate an individual to serve as a member of the Board (in which case the size of the Board will be increased by one) or alternatively to designate an individual to serve as an observer at Board meetings. Notwithstanding the foregoing, GSK shall have no right to nominate or designate any individual to serve as a member or observer of the Board under this Section 1.1 if, (i) GSK's Percentage Interest (as defined below) has fallen below 15% or (ii) directly as a result of any sale or other disposition by GSK of Voting Stock, GSK's Percentage Interest has fallen below 19.0%, and the term of any such existing member or observer shall automatically cease upon such reduction in GSK's Percentage Interest. In addition,

GSK's right to nominate or designate an individual to serve as a member or observer to the Board under this Section 1.1 shall be suspended for the duration of any period in which GSK is otherwise entitled to nominate directors pursuant to Section 1.2 or Section 1.3 below.

(b) Any individual designated by GSK pursuant to paragraph (a) of this Section 1.1 to be an observer to the Board shall have the right to attend all meetings of its Board in a nonvoting observer capacity and, in this respect, the Company shall give such observer copies of all notices, minutes, consents and other materials that it provides to its directors; provided, however, that such observer shall not be permitted to attend any meeting of the Board unless such individual signs an agreement to hold such materials in confidence and trust and to act in a fiduciary manner with respect to the Company with respect to all information so provided as if such individual was a GSK Director (as defined below); and, provided further, that the Company reserves the right to withhold any information and to exclude such observer from any meeting or portion thereof if access to such information or attendance at such meeting (i) could adversely affect the attorney-client privilege between the Company and its counsel or (ii) would result in the disclosure of competitive or other sensitive information to GSK or its observer in such a manner that any GSK Director would need to be recused to abide by their fiduciary duties to the Company and its stockholders.

SECTION 1.2. *Composition of the Board Following 50.1% or Greater Ownership by GSK*. (a) The Company agrees that after, and so long as, GSK's Percentage Interest is 50.1% or greater, the Board shall include (i) such number of nominees designated by GSK equal to one-third of the then aggregate number of directors comprising the Board (the "GSK Directors") and (ii) two officers of the Company nominated by the nominating committee of the Board. The remaining directors of the Board shall be composed of Independent Directors. For purposes of this Agreement, an "Independent Director" shall mean a director who complies with the independence requirements for directors with respect to the Company (without reference to any applicable exemptions from such requirements) for companies listed on the Nasdaq National Market and shall be individuals who have business or technical experience, stature and character as is commensurate with service on the board of a publicly traded enterprise. With respect to any GSK Independent Nominees (as defined below), each such nominee, in addition to meeting the independence requirements with respect to the Company as described in the immediately preceding sentence, shall also meet such independence requirements with respect to GlaxoSmithKline and any of its Affiliates as if such Independent Director was a director of GlaxoSmithKline or one of its Affiliates. So long as GSK's Percentage Interest is 50.1% or greater, the Board shall be comprised of nine members, or any greater number that is divisible by three.

(b) With respect to the Independent Directors referred to above in paragraph (a) and so long as GSK's Percentage Interest is 50.1% or greater, GSK shall, upon its request, be entitled to designate nominees (the "GSK Independent Nominees") for one-half of the total number of Independent Directors. Subject to the approval of the majority of the members of the Board other than the GSK Directors and GSK Independent Nominees (the "Non-GSK Directors"), such approval not to be unreasonably withheld or delayed, the GSK Independent Nominees shall be included as nominees to be voted upon by the Company's stockholders. An equal number of Independent Directors shall be nominated by the Non-GSK Directors. Subject to the approval of the GSK Directors, such approval not to be unreasonably withheld or delayed, such nominees shall be included as nominees to be voted upon by the Company's stockholders. In the event that approval of any Independent Director nominee is properly withheld, the nominating directors (the GSK Directors or the Non-GSK Directors, as the case may be) shall be entitled to propose an alternate candidate for nomination as an Independent Director in accordance with this Section 1.2. For purposes of this Agreement, "GSK's Percentage Interest" shall mean the percentage of voting power, determined on the basis of the number of shares of Voting Stock actually outstanding, that is controlled directly or indirectly by GSK and its Affiliates and held prior to the date of this

Agreement or obtained in accordance with this Agreement, the Class A Stock Purchase Agreement and the Certificate of Incorporation. Notwithstanding the foregoing, GSK shall have no right to designate any nominees for directors under this Section 1.2 at any time after GSK's Percentage Interest has fallen below 50.1%, and the term of each then existing GSK Director and GSK Independent Nominees nominated pursuant to this Section 1.2 shall automatically cease upon such reduction in GSK's Percentage Interest. (For the avoidance of doubt, nothing in this section shall limit or affect GSK's rights pursuant to Section 1.1(a)).

SECTION 1.3. *Composition of the Board following 35.1% or Greater Ownership by GSK*. From and after the Call/Put Termination Date and until September 1, 2008 or, if on or after September 1, 2008, GSK commences an offer to purchase additional shares of Voting Stock as contemplated by Section 2.1(b)(viii), the expiration date of such offer (which shall not occur later than October 15, 2008) (the "Interim Period"), so long as, during the Interim Period, GSK's Percentage Interest is 35.1% or greater and less than 50.1%, the Board shall be comprised of no less than six members and shall include, (i) one nominee designated by GSK (who shall be deemed to be a "GSK Director") and (ii) two officers of the Company nominated by the nominating committee of the Board. The remaining members of the Board shall be Independent Directors. GSK, upon its request, shall be entitled to designate nominees (who shall be deemed to be "GSK Independent Nominees") for a number of Independent Directors equal to GSK's Percentage Interest at such time times the total number of such Independent Directors (with such number being rounded to the nearest whole number) and provided further, that such nominees shall meet the independence requirements for GSK Independent Nominees as set forth in Section 1.2 above. Such nominees shall be subject to the approval, not to be unreasonably withheld or delayed, of the majority of the then existing directors (other than any director nominated by GSK). In the event that approval of any Independent Director nominee proposed by GSK is properly withheld by the then existing directors, GSK shall be entitled to propose an alternate candidate for nomination as an Independent Director in accordance with this Section 1.3. The rights set forth in this Section 1.3 shall terminate upon the expiration of the Interim Period, and the term of each GSK Director and GSK Independent Nominee under this Section 1.3 shall automatically cease on such date; provided however, that the termination of such rights shall not affect GSK's right to immediately nominate one or more directors pursuant to Section 1.1 or 1.2.

SECTION 1.4. *Other Matters Related to the Board*.

(a) The Company agrees to increase or decrease, as the case may be, the size of the Board, and to fill the newly created directorships created by any such increase, as appropriate in order to achieve the composition required by Sections 1.1, 1.2 and 1.3. Any directors elected to fill a vacancy shall serve until the next annual meeting of stockholders. Whenever necessary pursuant to a decrease in the size of the Board, GSK will cause directors nominated by GSK to resign from the Board to maintain the composition required by Sections 1.2 and 1.3, and the Company shall cause such number of Non-GSK Directors to resign as necessary to maintain the composition required by Sections 1.2 and 1.3. To facilitate compliance with the provisions of this Article I, GSK shall cause each GSK Director and GSK Independent Nominee, and the Company shall cause each other director of the Board, to enter into an agreement with the Company that provides for the resignation of such director upon the occurrence of the events requiring such resignation as set forth in this Agreement; provided, however, that this sentence shall only come into effect two weeks prior to the Call/Put Termination Date.

(b) The Company shall always have the right to decrease the size of the Board without GSK's consent (and, if desired, and subject to the provisions of Section 1.2(a), to increase it again without GSK's consent to no more than 13 seats); provided, however, that in no event will GSK lose its right to designate or nominate the GSK Director(s) or GSK Independent Nominees pursuant to Sections 1.1, 1.2 or 1.3 of this Agreement.

(c) GSK and the Non-GSK Directors shall have the right to nominate any replacement for a director nominated by GSK or nominated by the Non-GSK Directors, respectively, at the termination of such director's term or upon death, resignation, retirement, disqualification, removal from office or other cause, subject to any rights of approval set forth in Sections 1.2 and 1.3. To the extent permitted by the Certificate of Incorporation or Bylaws of the Company, the Board shall appoint each person so designated or nominated.

(d) No individual nominated by GSK shall serve as a director unless such individual has such business or technical experience, stature and character as is commensurate with service on the board of a publicly held enterprise. No such individual who is an officer, director, partner or principal stockholder of any competitor of the Company and its subsidiaries (other than GSK and its Affiliates) shall serve as a director of the Company except by agreement of the Independent Directors in their sole discretion.

(e) So long as GSK's Percentage Interest is 50.1% or greater, each committee of the Board (other than any Common Stock committee or committee of Independent Directors constituted for the purposes of making any determination that is to be made under the terms of this Agreement or the Certificate of Incorporation or as expressly prohibited by applicable law, regulation or stock exchange or trading system listing requirement) shall at all times include at least one GSK Director and no action by any such committee shall be valid unless taken at a meeting for which adequate notice has been duly given to or waived by all of the members of such committee. Such notice shall include a description of the general nature of the business to be transacted at the meeting and no other business may be transacted at such committee meeting. Any committee member unable to attend any committee meeting in person shall be given the opportunity to participate by telephone. Prior to the Initial Public Offering, the GSK Director designated to serve on any such committee may designate as his/her alternate another GSK Director.

SECTION 1.5. *Director Approval Required for Certain Actions*. (a) After, and so long as GSK's Percentage Interest is 50.1% or greater, the approval of a majority of GSK Directors (for clarity, should there be an even number of GSK Directors, such approval shall mean that more GSK Directors voted for approval than against) shall be required to approve any of the following:

(i) the acquisition by the Company of any business or assets that would constitute a substantial portion of the business or assets of the Company, whether such acquisition be by merger or consolidation or the purchase of stock or assets or otherwise;

(ii) the sale, lease, license, transfer or other disposal of a substantial portion of the business or assets, tangible or intangible, of the Company; provided, however, that the approval of a majority of the GSK Directors shall not be required for the sale, license or transfer to another party, in the ordinary course of business, of any Company asset (regardless of its value or what portion of the Company's business or assets it may represent) over which GSK has no contractual rights in accordance with the provisions of the Alliance Agreement; or

(iii) the repurchase or redemption of any Equity Security or other capital stock of the Company, other than (A) redemptions required by the terms thereof, (B) purchases made at fair market value in connection with any deferred compensation plan maintained by the Company and (C) repurchases of unvested or restricted stock at or below cost pursuant to any employee, officer, director or consultant compensation plan. For purposes of this Agreement, "Equity Security" means any (i) Voting Stock of the Company, (ii) securities of the Company convertible into or exchangeable for Voting Stock and (iii) options, rights and warrants issued by the Company to acquire Voting Stock. "Voting Stock" shall mean the outstanding securities of the Company having the right to vote generally in any election of directors of the Board.

(b) During the Interim Period, any of the actions described in Section 1.5(a) or Section 1.6(b) shall require the approval of a majority of the Independent Directors.

SECTION 1.6. *GSK Approval for Certain Issuances of Equity Securities*.

(a) Prior to the Call/Put Termination Date, the Company shall not, without the prior written consent of GSK, issue any Equity Security other than (i) shares of Common Stock, (ii) options to acquire Common Stock and (iii) to the extent constituting an Equity Security, Permitted Indebtedness; provided, however, the Company shall only issue such Equity Securities if as a consequence of such issuance, the aggregate number of Callable/Puttable Shares (as defined in Section 6.10) would not exceed 84,000,000 (such amount to be adjusted for stock splits, stock dividends, combinations and other recapitalizations); provided further, that, in determining such aggregate number of Callable/Puttable Shares, the number of any Callable/Puttable Shares subject to Executive Lock-Up Agreements entered into pursuant to the Class A Purchase Agreement shall not be included.

(b) If GSK's Percentage Ownership is 35.1% or greater on the Call/Put Termination Date, following the Call/Put Termination Date and until the End of the Equity Limitation Period (as defined below), the Company shall not issue any Equity Security other than Permitted Equity Issuances. "Permitted Equity Issuances" shall mean (i) the issuance of Equity Securities pursuant to any employee, officer, director or consultant compensation plan that has been approved by the majority of the Board or (ii) issuances by the Company of Equity Securities to third parties (other than as contemplated by the preceding clause (i)), including pursuant to the exercise, conversion or exchange of Equity Securities other than Callable/Puttable Shares issued prior to the Call Date or the final day of the Put Period, as the case may be, provided that, the aggregate number of shares of any such Equity Securities issued to such third parties following the Call/Put Termination Date and until the End of the Equity Limitation Period shall in no event exceed the equivalent of 25,000,000 shares of Common Stock (on an as converted basis) (such amount to be adjusted for stock splits, stock dividends, combinations and other recapitalizations). The "End of the Equity Limitation Period" shall mean: (x) September 1, 2012, if GSK's Percentage Interest is 50.1% or greater on the Call/Put Termination Date or if GSK's Percentage Interest is less than 50.1% on the Call/Put Termination Date, but exceeds 50.1% at any time on or prior to December 31, 2008 and (y) in all other cases, December 31, 2008.

SECTION 1.7. *Limitation on Indebtedness Prior to Call/Put Termination Date*. Except with respect to Permitted Indebtedness (as defined in Section 6.10), prior to the Call/Put Termination Date, the Company shall not borrow money or otherwise incur Indebtedness to the extent that the Company on a consolidated basis has financial Indebtedness that exceeds cash and cash equivalents under US generally accepted accounting principles at any time prior to the Call/Put Termination Date.

SECTION 1.8. *Directors and Officers Liability Insurance*. From and after the date that GSK nominates one or more directors to serve on the Board, the Company shall maintain directors and officers liability insurance coverage to the extent and in the amounts common to comparable companies. To the extent that such insurance coverage is in place, the GSK nominees shall be named as designated insureds under such policy.

SECTION 1.9. *Consolidation with GlaxoSmithKline*. At such time as GlaxoSmithKline is required by applicable accounting standards to include the Company's results in the consolidated financial results for GlaxoSmithKline, the Company (i) shall provide such information based on or derived from the Company's U.S. GAAP financial reporting and (ii) shall provide such additional information and take such steps that are reasonably requested by GlaxoSmithKline to comply with applicable law or to prepare its consolidated financial statements on such time schedule as GlaxoSmithKline may reasonably request for purposes of preparation of GlaxoSmithKline's consolidated financial results; provided, however, that GSK or any of its affiliates shall be required to pay all incremental documented expenses

(personnel or otherwise) arising out of the Company's obligations pursuant to subsection (ii) of this Section 1.9. The Company shall take all such steps necessary in order to comply with its obligations (if any) under the Sarbanes-Oxley Act of 2002 and the rules and regulations adopted pursuant thereto.

ARTICLE II

LIMITATIONS RELATING TO COMPANY EQUITY SECURITIES

SECTION 2.1. *Acquisition of Company Equity Securities*.

(a) *Acquisition of Equity Securities.* Except as contemplated by this Agreement, as permitted by Section 2.1(b), (c) or (d) or as otherwise agreed in writing by the Company (following approval of a majority of the Independent Directors), GSK and its Affiliates will not (and will not assist or encourage others to) directly or indirectly in any manner:

(i) acquire, or agree to acquire, directly or indirectly, alone or in concert with others, by purchase, gift or otherwise, any direct or indirect beneficial ownership (within the meaning of Rule l3d-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) or interest in any securities or direct or indirect rights, warrants or options to acquire, or securities convertible into or exchangeable for, any Equity Securities;

(ii) make, or in any way participate in, directly or indirectly, alone or in concert with others, any "solicitation" of "proxies" to vote (as such terms are used in the proxy rules of the Securities and Exchange Commission (the "SEC") promulgated pursuant to Section 14 of the Exchange Act); provided, however, that the prohibition in this Section 2.1(a)(ii) shall not apply to solicitations exempted from the proxy solicitation rules by Rule 14a-2 under the Exchange Act or any successor provision;

(iii) form, join or in any way participate in a "group" within the meaning of Section 13(d)(3) of the Exchange Act with any person not bound by the terms of this Agreement (other than persons deemed to be a member of such group solely by virtue of being an Affiliate of GSK) with respect to any Voting Stock;

(iv) acquire or agree to acquire, directly or indirectly, alone or in concert with others, by purchase, exchange or otherwise, (A) any of the assets, tangible or intangible, of the Company or (B) direct or indirect rights, warrants or options to acquire any assets of the Company, except for (X) such assets as are then being offered for sale by the Company or (Y) acquisitions of assets of the Company pursuant to or as contemplated by the Alliance Agreement or the Collaboration Agreement between GSK and the Company dated as of November 14, 2002 (the "Collaboration Agreement");

(v) enter into any arrangement or understanding with others to do any of the actions restricted or prohibited under Sections 2.1 (a) (i), (ii), (iii) or (iv);

(vi) otherwise act in concert with others, to seek to offer to the Company or any of its stockholders any business combination, restructuring, recapitalization or similar transaction to or with the Company or otherwise seek in concert with others, to control, change or influence the management, board of directors or policies of the Company or nominate any person as a director of the Company who is not nominated by the then incumbent directors, or propose any matter to be voted upon by the stockholders of the Company; or

(vii) prior to August 31, 2007, request that the Company (or the Board) amend or waive any provisions of this Section 2.1.

(b) *Exceptions for Certain Acquisitions of Equity Securities of the Company*. Nothing herein shall prevent GSK or its Affiliates (or in the case of Section 2.1(b)(v), their employees) from:

(i) purchasing the Class A Stock of the Company on the Effective Date;

(ii) purchasing additional Equity Securities of the Company pursuant to the provisions of Article III of this Agreement and Article IV of the Certificate of Incorporation;

(iii) purchasing additional Equity Securities of the Company after the Effective Date to maintain GSK's Percentage Interest in accordance with Section 2.1(d) hereof;

(iv) acquiring securities of the Company issued in connection with stock splits or recapitalizations or pursuant to Section 2.5 of that certain Investors' Rights Agreement dated as of May 11, 2004 (the "Investors' Rights Agreement");

(v) following the Company's initial public offering of Voting Stock (the "Initial Offering"), purchasing securities of the Company for (A) a pension plan established for the benefit of GSK's employees, (B) any employee benefit plan of GSK, (C) any stock portfolios not controlled by GSK or any of its Affiliates that invest in the Company among other companies, or (D) any account of a GSK employee in such employee's personal capacity;

(vi) acquiring securities of another biotechnology or pharmaceutical company that beneficially owns any of the Equity Securities, provided that any Equity Securities so acquired shall be subject to the provisions of Sections 2.1(a), 2.2 and 2.3 of this Agreement on the same basis as the Class A Common Stock purchased pursuant to the Class A Stock Purchase Agreement;

(vii) in the event that GSK's Percentage Interest is 50.1% or greater at any time on or after the Call/Put Termination Date, on or after September 1, 2012, GSK and/or its Affiliates may make an offer that does not include any condition as to financing to the Company's stockholders to merge the Company or otherwise to acquire outstanding Voting Stock that would bring GSK's Percentage Interest to 100%, provided that such offer is approved by a majority of the Independent Directors and includes a condition to consummation of the transaction that a majority of the shares of the then outstanding Voting Stock not owned by GSK or any of its Affiliates shall have accepted the offer by tendering such shares or voting such shares in favor thereof;

(viii) in the event that GSK's Percentage Interest is less than 50.1% on the Call/Put Termination Date, on or after September 1, 2008, GSK and/or its Affiliates may make an offer that does not include any condition as to financing to the Company's stockholders to acquire outstanding Voting Stock that would bring GSK's Percentage Interest to no greater than 60%, provided that such offer is approved by a majority of the Independent Directors and includes a condition to consummation of the transaction that a majority of the shares of the then outstanding Voting Stock not owned by GSK or any of its Affiliates shall have accepted the offer by tendering such shares in the offer; provided, further, that, any Equity Securities so acquired shall be subject to the provisions of Sections 2.1(a), 2.2 and 2.3 of this Agreement on the same basis as the Class A Common Stock purchased pursuant to the Class A Stock Purchase Agreement (for the avoidance of doubt, the parties acknowledge that, if the GSK Percentage Interest is less than 50.1% on the Call/Put Termination Date, GSK shall not, prior to September 1, 2012, be permitted to make an offer to acquire additional outstanding Equity Securities of the Company except as expressly permitted in this Section 2.1(b) or Sections 2.1(c) or (d));

(ix) at any time following the Call/Put Termination Date and prior to September 1, 2012 that the GSK Percentage Interest is 50.1% or greater, GSK and/or its Affiliates may make an offer that does not include any condition as to financing to acquire outstanding Voting Stock that would bring GSK's Percentage Interest to 100%; provided that, any such offer shall be approved by a majority of the Independent Directors and includes a condition to consummation of the transaction that a majority of the shares of the then outstanding Voting

Stock not owned by GSK or any of its Affiliates shall have accepted the offer by tendering such shares or voting such shares in favor thereof and that such offer be for not less than the greater of (i) the Fair Market Value Per Share (as defined in Section 6.10) on the date immediately preceding the date of the first public announcement of such offer or (ii) $105 per share of Common Stock or Common Stock equivalent (appropriately adjusted to take into account stock dividends, stock splits, recapitalizations and the like);

(x) only after, and so long as, GSK's Percentage Interest is 50.1% or greater, with such Voting Stock acquired in accordance with the terms of this Agreement and the Certificate of Incorporation, purchasing additional Equity Securities of the Company if the Company has otherwise determined to sell Equity Securities to pay all or any portion of the milestones that it may owe to GSK pursuant to Section 6.2.3 of the Collaboration Agreement. In this event, GSK shall have the first right to purchase such additional Equity Securities on the terms under which the Company intends to sell such Equity Securities.

(c) *Third Party Offers*. Nothing herein shall prevent GSK or its Affiliates from, in the event that (A) the Board formally acts to cause the Company to (i) enter into a written agreement pursuant to which a Change in Control transaction with a third party is provided for, (ii) amend the Rights Plan (as defined in Section 6.10) in order to render the Rights Plan inapplicable with respect to any third party or (iii) render inapplicable to any third party the restrictions contained in Section 203 of the DGCL or any similar anti-takeover provision or (B) a person or group (within the meaning of 13(d)(3) of the Exchange Act and not including and underwriter in connection with a public offering) (each, a "Third Party Acquiror") acquires 20% or more of the then outstanding Voting Stock (a "Significant Third Party Acquisition"), making an offer to acquire, and acquiring, Equity Securities pursuant to the terms of GSK's offer; provided that GSK's offer must be an offer for 100% of the Voting Stock of the Company that does not include any condition as to financing and includes a condition to consummation of the transaction that a majority of the shares of the then outstanding Voting Stock not owned by GSK or any of its Affiliates or by any such Third Party Acquiror (or its or their Affiliates) shall have accepted the offer by tendering such shares or voting such shares in favor of thereof.

(d) *Exceptions for Acquisitions to Maintain GSK's Percentage Interest*.

(i) In the event that the Company issues Equity Securities (other than pursuant to exercise of options or vesting of restricted shares issued as compensation to directors, officers, employees or consultants of the Company) GSK shall have the right to purchase such Equity Securities at the same price (where the consideration does not consist solely of cash, the fair market value of the non-cash consideration as determined in good faith by the Independent Directors) up to such amount as required to maintain GSK's Percentage Interest at the same level as immediately prior to such issuance to the third party.

(ii) With respect to exercise of stock options or vesting of restricted stock, on a quarterly basis, GSK shall be afforded the opportunity by the Company to purchase comparable Equity Securities sufficient to maintain GSK's Percentage Interest at the same level as prior to the exercises and vestings during such quarter. GSK or its Affiliates shall acquire such Equity Securities referred to in the immediately preceding sentence either from the Company at the then Fair Market Value Per Share or, at the discretion of the Company, through open market purchases.

(iii) If GSK's Percentage Interest is 50.1% or greater on the Call/Put Termination Date solely as a result of the exercise of the Put, if at any time following the Call/Put Termination Date and until September 1, 2012, the Company issues Equity Securities (other than pursuant to exercise of options or vesting of restricted shares issued as compensation to directors, officers, employees or consultants of the Company) and GSK declines to purchase additional

Equity Securities in such offering, GSK, for a period of six months following such issuance of Equity Securities by the Company, shall, nonetheless, have the right to cause the Company to issue Equity Securities to GSK in such amount as required to maintain GSK's Percentage Interest at the same level as GSK's Percentage Interest on the Call/Put Termination Date and at a price equal to the greater of (i) the Fair Market Value Per Share of Equity Securities at the time of purchase by GSK or (ii) the price per share of the Equity Securities issued by the Company in the transaction that resulted in GSK's rights pursuant to this subsection (iii).

(iv) If GSK's Percentage Interest is 50.1% or greater on the Call/Put Termination Date solely as a result of the exercise of the Call, if at any time following the Call/Put Termination Date and until September 1, 2012, the Company issues Equity Securities (other than pursuant to exercise of options or vesting of restricted shares issued as compensation to directors, officers, employees or consultants of the Company) GSK, for so long as the GSK Percentage Interest is 50.1% or greater, shall have the right to purchase such Equity Securities at the same price (where the consideration does not consist solely of cash, the fair market value of the non-cash consideration as determined in good faith by the Independent Directors) in such amount as required to maintain GSK's Percentage Interest at the same level as GSK's Percentage Interest on the Call/Put Termination Date.

(v) Notwithstanding anything contained in this Section 2.1(d)(i), (ii), (iii) and (iv), if the Company shall issue Permitted Indebtedness consisting of securities exchangeable or convertible into Voting Stock, the Company shall provide written notice to GSK of the conversion or exchange of any such Permitted Indebtedness within ten days following any such conversion or exchange. GSK shall notify the Company promptly following the receipt of such notice if it intends to purchase that number of Equity Securities from the Company required to maintain GSK's Percentage Interest as measured immediately prior to the date of such conversion or exchange of Permitted Indebtedness at a price per Equity Security equal to the greater of (x) the conversion or exchange price of such Permitted Indebtedness or (y) the Fair Market Value Per Share on the date of such purchase by GSK. If GSK notifies the Company of such intention, the Company shall issue such number of Equity Securities upon payment of such price.

(vi) In the event that GSK's Percentage Interest falls below 50.1% (or, in the case of Sections 1.3, 1.6 and 2.3, 35.1%, or in the case of Section 1.1(a), 19.0%) solely as a consequence of any issuance of Equity Securities with respect to which GSK has the right to acquire further Equity Securities under this Section 2.1(d), GSK's Percentage Interest shall be deemed to be greater than 50.1% for purposes of Articles I and II, 35.1% for purposes of Sections 1.3, 1.6 and 2.3, and 19.0% for purposes of Section 1.1(a), unless and until GSK declines to purchase the Equity Securities it is entitled to purchase under this Section 2.1(d) (GSK shall respond within a reasonable time with respect to its decision to accept or decline its opportunity to purchase additional Equity Securities).

(e) *Rights Plan*. The Company will, subject to the Board's exercise of its fiduciary duties, implement a Rights Plan on or before the Initial Offering. The Company shall take all necessary action to render inapplicable to GSK the Rights Plan, Section 203 of the Delaware General Corporation Law (the "DGCL") and any other applicable similar anti-takeover provision.

SECTION 2.2. *Disposition of Equity Securities*.

(a) *Prior to the Call/Put Termination Date*. Prior to the Call/Put Termination Date (as defined in Section 6.10), neither GSK nor any of its Affiliates shall dispose of beneficial ownership of any Voting Stock held by them without the prior approval of a majority of the Board other than any director nominated by GSK, except: (A) to any other Affiliate of GSK who agrees in writing to be bound hereunder; or (B) pursuant to a Change in Control transaction of the Company approved

by a majority of the Board other than any director nominated by GSK and consummated prior to August 1, 2007.

(b) *Following the Call/Put Termination Date*.

(i) Following the Call/Put Termination Date, neither GSK nor any of its Affiliates shall dispose of beneficial ownership of Voting Stock without the prior approval of a majority of the Independent Directors prior to (A) September 1, 2008 if GSK's Percentage Interest is less than 50.1% on the Call/Put Termination Date, or (B) September 1, 2012 if GSK's Percentage Interest is 50.1% or more on the Call/Put Termination Date. If GSK's Percentage Interest is less than 50.1% on the Call/Put Termination Date but is increased to 50.1% or more at any time prior to September 1, 2012 neither GSK nor any of its Affiliates shall dispose of any beneficial ownership of Voting Stock from and after the date GSK's Percentage Interest first equals or exceeds 50.1% until September 1, 2012. In the event that GSK's Percentage Interest is 50.1% or greater and GSK breaches its obligation not to dispose of beneficial ownership of Voting Stock prior to September 1, 2012 pursuant to Section 2.2(b)(i)(B), the "Research Term" under the Alliance Agreement shall lapse simultaneously with such breach and in accordance with Section 3.1.1 of the Alliance Agreement, GSK's future opt-in rights to the Company's Discovery Programs on or after the date of such breach shall terminate.

(ii) In the event that the prohibition on disposition of Voting Stock set forth in Subsection 2.2(b)(i) expires on September 1, 2008, neither GSK nor any of its Affiliates shall dispose of beneficial ownership of Voting Stock prior to September 1, 2012 except (A) pursuant to a public offering registered under the Securities Act of 1933, as amended (the "Securities Act") of either Company Voting Stock or securities exchangeable or exercisable for Voting Stock (in which public offering the securities are broadly distributed and neither GSK nor any of its Affiliates selects the purchasers); or (B) pursuant to Rule 144 under the Securities Act (provided that if Rule 144(k) is available, such disposition nevertheless is within the volume limits and manner of sale requirements applicable to non-144(k) transfers under Rule 144).

(iii) In the event that the prohibition on disposition of Voting Stock set forth in Section 2.2(b)(i) expires on September 1, 2012, if GSK or any of its Affiliates disposes of Voting Stock after that date, neither GSK nor any of its Affiliates may purchase any Voting Securities without the prior approval of a majority of Independent Directors for one year after the date of any such disposition.

(iv) Neither GSK nor any of its Affiliates may make any public disclosure of any holdings of or disposition of beneficial ownership of the Voting Stock unless such disclosure is approved in advance in writing by the Company, such approval not to be unreasonably withheld or delayed. Notwithstanding the foregoing, no consent of the Company shall be required for any filing that GSK or any of its Affiliates is required to make under applicable Law in any jurisdiction, including without limitation any Form 144 under the Securities Act, any Form 4 under the Exchange Act, or any Schedule 13D or 13G or any amendments thereto under the Exchange Act; provided that, prior to making any such filings, GSK shall use reasonable efforts to (A) to provide the Company notice and a copy of such proposed filings and (B) consult with the Company on the content of such filings.

(v) Notwithstanding the foregoing, GSK shall be permitted to dispose of beneficial ownership of any Voting Stock pursuant to a Change in Control transaction of the Company approved by a majority of Independent Directors.

(c) *Required Dispositions*. Notwithstanding anything to the contrary contained herein, GSK shall be permitted to dispose of beneficial ownership of Voting Stock as and to the extent (but

only to the extent) GSK reasonably determines such disposition to be necessary in order for it to comply with its obligations under Section 3.5.

SECTION 2.3. *Voting*. (a) Except as set forth in Sections 2.3(b) and 2.3(c), prior to the Initial Offering, GSK shall ensure that all Voting Stock beneficially owned by GSK and/or any GSK Affiliate is voted (i) for Company nominees to the Board in accordance with Article I and (ii) on all other matters to be voted on by stockholders, in accordance with the recommendation of a majority of the Board other than any GSK Director. Except as set forth in Sections 2.3(b) and 2.3(c), following the Initial Offering, GSK shall ensure that all Voting Stock beneficially owned by GSK and/or any GSK Affiliate shall be voted on all matters, at the election of GSK, either (i) in accordance with the recommendation of the Independent Directors of the Board or (ii) in proportion to the votes cast by the other holders of the Company's Voting Stock.

(b) Subject to paragraph (c) below with respect to the Interim Period, so long as GSK's Percentage Interest is less than 50.1%, GSK shall ensure that all Voting Stock beneficially owned by GSK and/or any GSK Affiliate is voted as set forth in Section 2.3(a), *unless* the matter being voted upon involves any of the following:

(i) any proposal to amend the provisions in the Certificate of Incorporation related to the Put and Call;

(ii) any proposal to issue Equity Securities to one or more parties in one transaction or a series of transactions that result in any person or group (within the meaning Section 13(d)(3) of the Exchange Act) owning or having the right to acquire or intent to acquire beneficial ownership of Equity Securities with aggregate voting power of greater than 20% or more of the aggregate voting power of all outstanding Equity Securities (for the avoidance of doubt, in no event shall any such proposed issuance covered by this clause (ii) include a sale of the Company's securities in a public offering); or

(iii) any Change in Control.

(c) (A) After, and so long as, GSK's Percentage Interest is 50.1% or greater and (B) during the Interim Period so long as the GSK Percentage Interest is 35.1% or greater, GSK shall ensure that all Voting Stock beneficially owned by GSK and/or any GSK Affiliate is voted as set forth in this Section 2.3(a), *unless* the matter being voted upon involves any of the following:

(i) any Change in Control;

(ii) the acquisition by the Company of any business or assets that would constitute a substantial portion of the business or assets of the Company, whether such acquisition be by merger or consolidation or the purchase of stock or assets or otherwise;

(iii) the sale, lease, license, transfer or other disposal of all or a substantial portion of the business or assets of the Company; provided, however that the sale, license or transfer to another party, in the ordinary course of business, of any Company asset (regardless of its value or what portion of the Company's business or assets it may represent) over which GSK has no contractual rights in accordance with the provisions of the Alliance Agreement shall be considered an ordinary matter pursuant to which GSK must vote its shares in accordance with the recommendation of the Independent Directors of the Board;

(iv) any proposal to issue Equity Securities to one or more parties in one transaction or a series of transactions that result in any person or group (within the meaning Section 13(d)(3) of the Exchange Act) owning or having the right to acquire or intent to acquire beneficial ownership of Equity Securities with aggregate voting power of greater than 20% or more of the aggregate voting power of all outstanding Equity Securities (for the avoidance of doubt, in

no event shall any such proposed issuance covered by this clause (iv) include a sale of the Company's securities in a public offering); or

(v) any proposal to amend the provisions in the Certificate of Incorporation related to the Put and Call.

(d) Notwithstanding anything to the contrary herein, following a Significant Third Party Acquisition, GSK shall be entitled to vote its Voting Stock without any restrictions.

(e) GSK hereby grants to the Board, and appoints the Board as, its irrevocable proxy to vote, or execute and deliver written consents or otherwise act with respect to all Voting Stock now owned or hereafter acquired by GSK in the manner in which GSK is obligated to vote, consent or act pursuant to this Section 2.3. Such proxy shall be irrevocable until this Agreement terminates pursuant to its terms or this Section 2.3 is amended to remove such grant of proxy in accordance with Section 6.2 hereof, and is coupled with an interest in all voting stock owned by GSK. This Agreement shall constitute the proxy granted pursuant hereto.

SECTION 2.4. *Prior Agreement*. The provisions of this Article II shall apply to all Equity Securities beneficially owned by GSK and/or its Affiliates and supersedes in its entirety Article 15 of the Collaboration Agreement.

ARTICLE III

REDEMPTION AND REPURCHASE OF COMMON STOCK

SECTION 3.1. *Redemption and Repurchase of Common Stock*.

(a) GSK shall, in the period between June 1, 2007 and July 1, 2007, inform the Company in writing whether or not it desires to request the redemption of certain Common Stock pursuant to Section C.4 of Article IV of the Certificate of Incorporation. If GSK does request the redemption, it shall provide the desired date for redemption of such Common Stock (the "Call Date") in such notice. Subject to Section 3.1(c), the Company shall, promptly upon receipt of such written request from GSK for the redemption of certain Common Stock, designate a depositary (the "Depositary") for such redemption in accordance with Section C.6(a) of Article IV of the Certificate of Incorporation and notify GSK of such designation. The Company shall give, or cause to be given, the Call Notification (as defined in Section C.4(b) of Article IV of the Certificate of Incorporation) in accordance with such Section C.4(b) of Article IV of the Certificate of Incorporation. The Company shall set as the date of redemption the Call Date; provided that such date shall be consistent with the notice requirements of such paragraph (b). The calculation of the Call Price per share of Common Stock, which shall be made in accordance with paragraphs (a) and (c) of Section C.4 of Article IV of the Certificate of Incorporation, shall be verified with GSK prior to the mailing of such notice. GSK or GlaxoSmithKline shall deposit with the Company at least one business day prior to the Call Price Deposit Date (as defined in Section C.6(a)(i) of Article IV of the Certificate of Incorporation) sufficient funds to pay the Call Amount (as defined in Section C.4(d) of Article IV of the Certificate of Incorporation) and the Company shall deposit those funds with the Depositary in accordance with Section C.6(a)(i) of Article IV of the Certificate of Incorporation. The Company shall only use the funds received from GSK, Glaxo or their Affiliates to fund the Depositary for the purposes of effecting the Call pursuant to this Article III. In exchange for such payment, the Company will issue to GSK (or to its designated Affiliate), on the Call Date as specified in the Call Notification, a number of duly authorized and validly issued shares of Class A Common Stock equal to the number of shares of Common Stock acquired thereby by the Company upon cancellation of the Common Stock subject to the Call pursuant to Section C.6(a) of Article IV of the Certificate of Incorporation.

(b) At least ten, but not more than thirty, days prior to the commencement of the Put Period (as defined in Section C.11(e) of Article IV of the Certificate of Incorporation), or, in the event of an acceleration of the Put in accordance with the terms of Section C.7 of Article IV of the Certificate of Incorporation, as soon as practicable following the date of the occurrence of the Insolvency Event (as defined in Section C.7 of Article IV of the Certificate of Incorporation) giving rise to such acceleration (but in no event later than the tenth day following such date), the Company shall (i) designate the Depositary for making payments to, and receiving shares from, holders of Common Stock in connection with exercises of the Put (as defined in Section C.5 of Article IV of the Certificate of Incorporation) in accordance with Section C.5 of Article IV of the Certificate of Incorporation and notify GSK and GlaxoSmithKline of such designation and (ii) give, or cause to be given, the Put Notification (as defined in Section C.11 of Article IV of the Certificate of Incorporation) in accordance with Section C.5(b) of Article IV of the Certificate of Incorporation or Section C.7 thereof, as the case may be. The Company shall set as the Put Period the period required to be set pursuant such Section C.5 or Section C.7, as the case may be.

(c) The Company's obligations under Sections 3.1(a) and 3.1(b) hereof shall be suspended during any period when, in the good faith judgment of the majority of the Company's Independent Directors, the redemption of the Common Stock would be prohibited under the DGCL or other applicable Laws.

(d) Subject to the provisions of Section 3.1(c), the Company hereby irrevocably appoints GSK and GlaxoSmithKline its attorneys-in-fact for purposes of redeeming the Common Stock in accordance with the terms of Sections 3.1(a) and 3.1(b) hereof and the Certificate of Incorporation.

(e) Any Depositary selected by the Company shall have at the time of its selection short-term credit ratings of not less than A-1 from Standard & Poor's Rating Services ("S&P") and not less than P-1 from Moody's Investors Service, Inc. ("Moody's"), and shall have at the time of its selection long-term credit ratings of not less than AA from S&P and not less than Aa2 from Moody's.

SECTION 3.2. *Indemnification*. GSK and GlaxoSmithKline shall indemnify the Company and its directors, officers, employees and agents against all losses, claims, damages, liabilities and expenses (including attorneys' fees) arising out of the redemption (pursuant to the Call or the Put (each as defined in the Certificate of Incorporation) of the Common Stock in accordance with the provisions of this Agreement (including, without limitation, in the event of the Company's consummation of the redemption of Common Stock in contravention of Section 160 of the DGCL or any other law for the protection of creditors), other than any such losses, claims, damages, liabilities and expenses that result primarily from actions taken or omitted in bad faith by the indemnified person or from the indemnified person's gross negligence or willful misconduct.

SECTION 3.3. *Options, Warrants and Other Convertible Securities*. GSK and the Company will make appropriate provisions to assure that any options, warrants, rights or securities issued by the Company, convertible into or exercisable or exchangeable for shares of Common Stock that constitute Callable/Puttable Shares, become convertible into or exercisable or exchangeable for consideration of the same type and amount as the holders thereof would have received had they converted, exercised or exchanged such options, warrants, rights or securities prior to the Call Date. If the Call is exercised by GSK, the consideration payable to a holder of options, warrants, rights or securities issued by the Company, convertible into or exercisable or exchangeable for shares of Common Stock that constitute Callable/Puttable Shares shall be paid upon the date of conversion, exercise or exchange of such option, warrant, right or security. Nothing herein shall be deemed or construed as a waiver of any other rights that a holder of any such securities may have.

SECTION 3.4. *Capital Contribution and Assumption of Put Obligations*.

(a) GSK or GlaxoSmithKline agree to, or to cause one or more of their Affiliates to, contribute to the Company, immediately prior to the time that any amounts become due and payable to the holders of Common Stock pursuant to Section C.5 of Article IV of the Certificate of Incorporation, (i) funds in an amount equal to the product of the number of Callable/Puttable Shares with respect to which the Put has been properly exercised multiplied by the Put Price (as defined in Section C.5 of Article IV of the Certificate of Incorporation) plus (ii) such additional funds, if any, sufficient to permit the Company to redeem the Callable/Puttable Shares with respect to which the Put has been properly exercised without violating Section 160 of the DGCL, any bankruptcy or insolvency law or other law or regulation for the protection of creditors. In exchange for such payment, the Company will issue to GSK (or to its designated Affiliate), within five business days following the end of the Put Period, a number of duly authorized and validly issued shares of Class A Common Stock equal to the number of shares of Common Stock acquired thereby by the Company. Notwithstanding the foregoing, in the event that GSK or GlaxoSmithKline is required to make any contributions under clause (ii) of the first sentence of this paragraph (a), GSK's or GlaxoSmithKline's obligation to make any such payment to the Company under this Section 3.4 shall be void and of no further force and effect if, in lieu thereof, GSK or GlaxoSmithKline shall (or shall cause one of its Affiliates to) elect to purchase, and make all arrangements necessary (including compliance by GSK or GlaxoSmithKline, or any such Affiliate or Affiliates, with the Exchange Act, the Securities Act (each as hereinafter defined) and any other applicable Federal or state securities laws) to purchase, at the expiration of the Put Period, directly from each holder of Common Stock, the Callable/Puttable Shares which such holders elect to have purchased (up to 50% of all Callable/Puttable Shares owned by such holder) at a price per share equal to the Put Price. Notwithstanding anything to the contrary contained herein or in the Certificate of Incorporation, unless otherwise agreed to in writing by GSK, in no event shall the amount required to be paid by GSK or GlaxoSmithKline to the Company and/or to holders of Common Stock in connection with the Put exceed $525,000,000.

(b) Notwithstanding any other term or provision hereof or of the Alliance Agreement, Section C of Article IV of the Certificate of Incorporation or any other agreement, GSK or GlaxoSmithKline agree that they shall either (i) make (or cause one or more of its Affiliates to make) the aggregate payments required to be made under the first sentence of Section 3.4(a) hereof or (ii) if such payments are not made for any reason, make (or cause one of its Affiliates to make) the election to purchase referred to in the third sentence of Section 3.4(a) hereof and comply (or cause one of its Affiliates to comply) fully with such sentence; provided, however, that if an Insolvency Event (as defined in Section C.7 of Article IV of the Certificate of Incorporation) occurs, GSK or GlaxoSmithKline shall, within 10 days after the occurrence of such Insolvency Event, either (x) contribute (or cause one or more of its Affiliates to contribute) to the Company an amount equal to the aggregate amount that would be required to be contributed to the Company under the first sentence of Section 3.4(a) hereof assuming (for purposes of clause (i) of such sentence) that the holders of all Callable/Puttable Shares were to exercise the Put with respect to 50% of the Callable/Puttable Shares owned by such holder or (y) elect (or cause one of its Affiliates to elect) to purchase, and make all arrangements necessary (including compliance by GSK or GlaxoSmithKline, or any such Affiliate, with the Exchange Act, the Securities Act and any other Federal or state securities laws) to purchase, at the expiration of the Put Period, directly from the holders of Common Stock at the Put Price the shares of Callable/Puttable Shares which such stockholders elect to have purchased (up to 50% of all Callable/Puttable Shares owned by such holder). In exchange for the payment by GSK or GlaxoSmithKline of the amount specified in clause (x) of the immediately preceding sentence (which amount shall be invested by the Company in a money market fund which holds primarily U.S. government obligations until such time as any amounts are paid to creditors or stockholders (it being specified that the returns on such

investment shall be paid to GSK or GlaxoSmithKline upon demand)), the Company will issue to GSK (or its designated Affiliate) a number of duly authorized and validly issued shares of Class A Common Stock equal to 50% the number of Callable/Puttable Shares. Immediately following the expiration of the Put Period, if the Put has not been exercised with respect to 50% of the then Callable/Puttable Shares and if GSK or GlaxoSmithKline shall have complied with clause (x) of the first sentence of this Section 3.4(b), (1) the Company shall refund to GSK or GlaxoSmithKline, as the case may be, (or their designated Affiliate) an amount (together with any interest actually earned thereon) equal to the product of the Put Price times the number of Callable/Puttable Shares with respect to which the Put has not been exercised and (2) GSK (or by its designated Affiliate) shall, in exchange for such payment by the Company, contribute to the Company a number of shares of Class A Common Stock equal to the number of Callable/Puttable Shares with respect to which the Put has not been exercised. In the event that GSK or GlaxoSmithKline pays the amount specified in clause (x) of the first sentence of this Section 3.4(b), GSK or GlaxoSmithKline and any of their Affiliates shall not be entitled to any payments or other distributions on or in respect of any Equity Security unless and until the Company has redeemed all of the shares of Common Stock with respect to which the Put has been properly exercised.

(c) It is understood and agreed that, if GSK so elects, the obligation of GSK or GlaxoSmithKline to purchase shares of Common Stock pursuant to any of the provisions in this Section 3.4 may, at the election of GSK, be assigned by GSK to any Affiliate of GSK (other than the Company). No assignment pursuant to this Section 3.4(c) shall relieve GSK or GlaxoSmithKline of any of its obligations under this Section 3.4 or otherwise.

(d) The Company shall take (and shall have no corporate power or capacity to refuse to take) such actions as may be necessary to enforce the obligations of GSK and GlaxoSmithKline under this Section 3.4 directly against GSK and GlaxoSmithKline, or in the event of assignment by GSK, against GSK and any Affiliate of GSK to which any assignment is made.

(e) The Company shall only use the funds received from GSK, Glaxo or their Affiliates to fund the Depositary for the purposes of effecting the Put pursuant to this Article III.

SECTION 3.5. *Required Regulatory Filings*. GSK, GlaxoSmithKline and the Company agree to take all actions necessary to make all required filings and thereafter make any other required submissions with respect to the transactions contemplated under this Agreement under any applicable law, including, without limitation, any applicable federal or state securities Law, the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act") and foreign antitrust regulations. With respect to the transactions contemplated by the Put and Call, in furtherance of the foregoing, GSK, GlaxoSmithKline and the Company agree to take all necessary actions to make any required filings under the HSR Act and any applicable foreign antitrust regulations prior to February 1, 2007. GSK, GlaxoSmithKline and the Company shall respond as promptly as practicable to all inquiries or requests received from any such antitrust regulator. The parties shall cooperate with each other in connection with the making of all such filings or requests. GSK, GlaxoSmithKline and the Company shall take all required action to cause any waiting period (and any extension thereof) applicable to the transactions contemplated hereunder to expire or be terminated under the HSR Act and any waiting period (and any extension thereof) applicable to the transactions contemplated hereunder under any foreign antitrust Law (or any approval thereunder) to expire or be terminated or be obtained prior to June 1, 2007.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

SECTION 4.1. *Representations of the Company*.

(a) The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby are within the Company's corporate powers and have been duly authorized by all necessary corporate action. This Agreement constitutes a valid and binding agreement of the Company.

(b) The execution, delivery and performance by the Company of this Agreement require no action by or in respect of, or filing with, any governmental body, agency, official or authority.

(c) The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby do not and will not (i) contravene or conflict with the Certificate of Incorporation or Bylaws of the Company, and (ii) contravene or conflict with or constitute a violation of any provision of any law, regulation, judgment, injunction, order or decree binding upon or applicable to the Company.

SECTION 4.2. *Representations of GSK, GlaxoSmithKline and GGL*.

Each of GSK, GlaxoSmithKline and GGL represent that:

(a) The execution, delivery and performance by it of this Agreement and the consummation by it of the transactions contemplated hereby are within its corporate powers and have been duly authorized by all necessary corporate action. This Agreement constitutes its valid and binding agreement.

(b) The execution, delivery and performance by it of this Agreement require no action by or in respect of, or filing with, any governmental body, agency, official or authority.

(c) The execution, delivery and performance by it of this Agreement and the consummation by it of the transactions contemplated hereby do not and will not (i) contravene or conflict with its charter or Bylaws, and (ii) contravene or conflict with or constitute a violation of any provision of any law, regulation, judgment, injunction, order or decree binding upon or applicable to it.

ARTICLE V

SEVERANCE ARRANGEMENTS

SECTION 5.1. *Severance Arrangements*. The Company will not and will not permit any of its subsidiaries to, (i) enter into any contract, agreement, plan or arrangement covering any director, officer or employee of the Company or any subsidiary that provides for the making of any payments, the acceleration of vesting of any benefit or right or any other entitlement contingent upon (A) the stock purchase by GSK pursuant to the Class A Stock Purchase Agreement or the exercise by GSK of any of its rights under this Agreement to representation on the Board (and its committees) or any acquisition by GSK of securities of the Company (whether by merger, tender offer, private or market purchases or otherwise) not prohibited by this Agreement or (B) the termination of employment after the occurrence of any such contingency if such payment, acceleration or entitlement would not otherwise have been provided but for such contingency or (ii) amend any existing contract, agreement, plan or arrangement to so provide.

ARTICLE VI

MISCELLANEOUS

SECTION 6.1. *Notices*. All notices, requests and other communications to any party hereunder shall be in writing (including facsimile or similar writing) and shall be given:

If to the Company:

Theravance, Inc.
901 Gateway Boulevard
South San Francisco, CA 94080
Facsimile: 650-808-6095
Attn: General Counsel

With a copy to:

Gunderson Dettmer et al.
155 Contitution Drive
Menlo Park, CA 94025
Facsimile: 650-321-2800
Attn: Christopher D. Dillon
Jay K. Hachigian

If to GSK:

SmithKline Beecham Corporation
One Franklin Plaza (FP2355)
200 N. 16th Street
Philadelphia, PA 19102
Attn: Company Secretary
Facsimile: 215-751-5349

With a copy to:

GlaxoSmithKline
One Franklin Plaza (FP2355)
200 N. 16th Street
Philadelphia, PA 19102
Facsimile: 215-751-5349
Attn: Corporate Law

and with a copy to:

GlaxoSmithKline
Greenford Road
Greenford
Middlesex
UB6 0HE
United Kingdom
Attn: Vice President, Worldwide Business Development
Facsimile: 011 44 208-966-5371

and with a copy to:

Glaxo Group Limited
Glaxo Wellcome House
Berkeley Avenue
Greenford
Middlesex UB6 0NN
United Kingdom
Attn: Company Secretary
Facsimile: 011 44 208-047-6904

or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. Each such notice, request or other communication shall be effective (i) if given by facsimile when such facsimile is transmitted to the facsimile number specified in this Section and the appropriate answerback is received or (ii) if given by any other means, when delivered at the address specified in this Section 6.1.

SECTION 6.2. *Amendments; Waivers*.

(a) Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by GSK and the Company, or in the case of a waiver, by the party against whom the waiver is to be effective; provided that, in the case of the Company, no such amendment or waiver shall be effective without the approval of a majority of the Independent Directors.

(b) No failure or delay by any 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 6.3. *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; provided that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the written consent of the other party hereto.

SECTION 6.4. *Governing Law*. This Agreement shall be governed by and construed in accordance with and governed by the law of the State of Delaware, without regard to the conflicts of laws principles thereof. Any action brought, arising out of, or relating to this Agreement shall be brought in the Court of Chancery of the State of Delaware. Each party hereby irrevocably submits to the exclusive jurisdiction of said Court in respect of any claim relating to the validity, interpretation and enforcement of this Agreement, and hereby waives, and agrees not to assert, as a defense in any action, suit or proceeding in which any such claim is made that it is not subject thereto or that such action suit or proceeding may not be brought or is not maintainable in such courts, or that the venue thereof may not be appropriate or that this agreement may not be enforced in or by such courts. The parties hereby consent to and grant the Court of Chancery of the State of Delaware jurisdiction over such parties and over the subject matter of any such claim and agree that mailing of process or other papers in connection with any such action, suit or proceeding in the manner provided in Section 6.1, or in such other manner as may be permitted by law, shall be valid and sufficient thereof.

SECTION 6.5. *Counterparts; Effectiveness*. This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original and which together shall constitute one and the same document.

SECTION 6.6. *Specific Performance*. Each party acknowledges and agrees that their respective remedies at law for a breach or threatened breach of any of the provisions of this Agreement would be inadequate and, in recognition of that fact, agrees that, in the event of a breach or threatened breach by the Company, on the one hand, or GSK, GGL and GlaxoSmithKline (the "Glaxo Parties"), on the other hand, of the provisions of this Agreement, in addition to any remedies at law, the Glaxo Parties and the Company, respectively, without posting any bond shall be entitled to obtain equitable relief in the form of specific performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy which may then be available.

SECTION 6.7. *Termination*. This Agreement (other than Sections 3.2 and 3.3 hereof) shall terminate at the earliest of (i) such time as GSK and its Affiliates beneficially own 100% of the outstanding Voting Stock, (ii) the effective time of a Change in Control, and (iii) September 1, 2015.

SECTION 6.8. *Severability*. In the event of the invalidity of any provisions of this Agreement or if this Agreement contains any gaps, the parties agree that such invalidity or gap shall not affect the validity of the remaining provisions of this Agreement. The parties will replace an invalid provision or fill any gap with valid provisions which most closely approximate the purpose and economic effect of the invalid provision or, in case of a gap, the parties' presumed intentions. In the event that the terms and conditions of this Agreement are materially altered as a result of the preceding sentences, the parties shall renegotiate the terms and conditions of this Agreement in order to resolve any inequities. Nothing in this Agreement shall be interpreted so as to require either party to violate any applicable laws, rules or regulations.

SECTION 6.9. *Registration and Filing of This Agreement*. To the extent, if any, that either the Company or the Glaxo Parties concludes in good faith that such party or the other party is required to file or register this Agreement or a notification thereof with any governmental authority, including without limitation the Securities and Exchange Commission, the Competition Directorate of the Commission of the European Communities or the U.S. Federal Trade Commission, in accordance with Law, such party shall inform the other party thereof. Should the Company and the Glaxo Parties jointly agree that either of them is required to submit or obtain any such filing, registration or notification, they shall cooperate, each at its own expense, in such filing, registration or notification and shall execute all documents reasonably required in connection therewith. In such filing, registration or notification, the parties shall request confidential treatment of sensitive provisions of this Agreement, to the extent permitted by Law. The parties shall promptly inform each other as to the activities or inquiries of any such Governmental Authority relating to this Agreement, and shall reasonably cooperate to respond to any request for further information therefrom on a timely basis.

SECTION 6.10. *Certain Definitions.*

(a) As used in this Agreement, the following terms shall have the following meanings:

(i) "Affiliate" of a party means any Person, whether de jure or de facto, which directly or indirectly controls, is controlled by, or is under common control with such Person for so long as such control exists, where "control" means the decision-making authority as to such Person and, further, where such control shall be presumed to exist where a Person owns more than fifty percent (50%) of the equity (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) having the power to vote on or direct the affairs of the entity; it being specified that for purposes of this Agreement, the Company and its direct and indirect subsidiaries, if any, shall not be deemed to be Affiliates of GSK.

(ii) "Call" shall have the meaning set forth in Section 4 of Article IV of the Certificate of Incorporation.

(iii) "Callable/Puttable Shares" means (i) all outstanding shares of Common Stock that are not subject to repurchase by the Company pursuant to any employee, officer, director or consultant compensation plan as of the Call Date or the final day of the Put Period, as the case may be, (ii) all shares of Common Stock subject to issuance upon the exercise of options to acquire Common Stock granted pursuant to any employee, officer, director or consultant compensation plan that are or will be fully vested as of the Call Date or the final day of the Put Period, as the case may be, (iii) all shares of Common Stock subject to issuance upon the exercise, exchange or conversion of warrants, exchangeable or convertible securities (other than any such options described in clause (ii)) that are by their terms exercisable, exchangeable or convertible as of the Call Date or the final day of the Put Period, as the case may be.

(iv) "Call/Put Termination Date" shall have the meaning set forth in Section C.8 of Article IV of the Certificate of Incorporation.

(v) "Change in Control" means, with respect to (A) the Company, any transaction or series of related transactions (including mergers, consolidations and other forms of business consolidations) following which continuing stockholders of the Company hold less than 50% of the outstanding voting securities of either the Company, the entity surviving such transaction or any direct or indirect parent entity of such continuing or surviving entity or (B) the sale, lease, license, transfer or other disposal of all or substantially all of the business or assets of the Company (provided, however, that the sale, license or transfer to another party, in the ordinary course of business, of any Company asset (regardless of its value or what portion of the Company's business or assets it may represent) over which GSK has no contractual rights in accordance with the provisions of the Alliance Agreement shall not be considered a Change in Control transaction); it being understood that GSK's exercise of its rights or performance of its obligations pursuant to the Put or Call shall not be deemed a Change in Control.

(vi) "Effective Date" means the first business day following the date on which the last of the conditions contained in Section 15.14 of the Alliance Agreement has been satisfied.

(vii) "Fair Market Value Per Share" means, with respect to an Equity Security as of a particular date, (a) if the Equity Security is traded on a securities exchange or through the Nasdaq National Market, the closing price of the Equity Security on such exchange or system on such date or (b) if the Equity Security is not traded on a securities exchange or through the Nasdaq National Market, the value on such date as determined in good faith after consultation with a nationally recognized financial advisor by a majority of the Independent Directors.

(viii) "Indebtedness" of any Person means, without duplication, the following, (a) all Obligations of such Person for borrowed money, (b) all Obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all Obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable or accruals arising in the ordinary course of business, (d) all Obligations of such Person in respect of any capital lease, (e) all Obligations of such Person to repurchase or redeem equity securities, whether or not pursuant to the terms thereof, other than the Put and except to the extent such Obligations are payable solely in the form of other equity securities, and (f) all Obligations of such Person with respect to any financial hedging arrangements. For purposes of this definition, "Obligations" shall mean any principal, interest, penalties, fees, guarantees, reimbursements, damages, costs of unwinding and other liabilities payable under the documentation governing any Indebtedness.

(ix) "Initial Offering" means the closing of the Company's sale of its securities pursuant to a bona fide, firmly underwritten public offering of shares of Common Stock, registered under the Securities Act.

(x) "Law" means any law, statute, rule, regulation, ordinance and other pronouncement having the binding effect of any court, tribunal, arbitrator, agency, legislative body, commission, official or other instrumentality of (x) any government of any country, (y) a federal, state, province, county, city or other political subdivision thereof or (z) any supranational body.

(xi) "Permitted Indebtedness" means any Indebtedness of the Company that is issued prior to the Call/Put Termination Date and in an amount equal to or less than $100 million; *provided*, *however*, if such indebtedness may be convertible or exchangeable into Voting Stock, the terms of such indebtedness shall provide that any such conversion or exchange may not occur prior to the Call/Put Termination Date.

(xii) "Person" means any natural person, corporation, general partnership, limited partnership, limited liability company, joint venture, proprietorship or other business organization.

(xiii) "Put" shall have the meaning set forth in Section 5 of Article IV of the Certificate of Incorporation.

(xiv) "Rights Plan" means any rights plan adopted by the Company that has the effect (or similar effect) of providing, upon the acquisition of a specified percentage of Voting Stock by a third party without the approval of the Board, stockholders (other than such acquiring party) the right to acquire Voting Stock of the Company in a manner designed to significantly dilute the ownership stake of such acquiring party.

(b) The following terms shall have the meanings defined for such terms in the Sections of this Agreement set forth below:

Term	Section
Agreement	Preamble
Alliance Agreement	Recitals
Board	1.1(a)
Certificate of Incorporation	1.1(a)
Common Stock	Recitals
Class A Stock Purchase Agreement	Recitals
Collaboration Agreement	2.1(a)(iv)
Company	Preamble
DGCL	2.1(e)
Depositary	3.1(a)
End of the Equity Limitation Period	1.6(b)
Equity Security	1.5(a)(iii)
Exchange Act	2.1(a)(i)
Glaxo Parties	6.6
GSK	Preamble
GSK Directors	1.2(a)
GSK Independent Nominees	1.2(b)
GSK's Percentage Interest	1.2(b)
HSR Act	3.5
Independent Directors	1.2(a)
Initial Offering	2.1(b)(v)
Investors' Rights Agreement	2.1(b)(iv)
Non-GSK Directors	1.2(b)
Call Date	3.1(a)
SEC	2.1(a)(ii)
Securities Act	2.2(b)(ii)
Third Party Acquiror	2.1(c)
Voting Stock	1.5(a)(iii)

SECTION 6.11. *Captions*. The captions, headings and arrangements used in this Agreement are for convenience only and do not in any way limit or amplify the terms and provisions hereof.

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

THERAVANCE, INC.

By: /s/ RICK E WINNINGHAM

Name: Rick E Winningham

Title: Chief Executive Officer

SMITHKLINE BEECHAM CORPORATION

By: /s/ DONALD F. PARMAN

Name: Donald F. Parman

Title: Vice President & Secretary

GLAXOSMITHKLINE plc
[solely with respect to Articles III, IV and VI]

By: /s/ GLAXOSMITHKLINE PLC

Name:

Title:

GLAXO GROUP LIMITED
[solely with respect to Articles II, IV and VI]

By: /s/ GLAXO GROUP LIMITED

Name:

Title:

[*]=CERTAIN INFORMATION HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

QuickLinks

[*]=CERTAIN INFORMATION IN THIS EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

Exhibit 10.16

License Agreement

executed as of the date last below written (hereinafter referred to as "Effective Date") by and between

JANSSEN PHARMACEUTICA, Naamloze Vennootschap, a business corporation organized under the laws of Belgium, entered in the Trade Register of Turnhout under Nr. 4203, having its principal office at B-2340 Beerse (Belgium), Turnhoutseweg 30, facsimile: +32 14 602 443 (hereinafter referred to as "JANSSEN")

and

Theravance, INC., a businesses corporation organized under the laws of Delaware, United States of America, and having its principal office at South San Francisco, CA 94080, 901 Gateway Boulevard, facsimile: +1650-808-6095 (hereinafter referred to as "THERAVANCE")

WITNESSETH

WHEREAS, JANSSEN has developed through its research a drug delivery system on the basis of cyclodextrin derivatives for the administration of therapeutic compounds with low aqueous solubility or chemical stability; and

WHEREAS, JANSSEN has accumulated and is the owner of certain proprietary information in connection with the use of hydroxypropyl-beta-cyclodextrin ("HPBCD") in pharmaceutical applications; and

WHEREAS, JANSSEN owns or controls certain patent and/or patent applications in connection with the use of HPBCD in pharmaceutical applications; and

WHEREAS, THERAVANCE intends [*], and has requested a license from JANSSEN under the above-mentioned patents and proprietary information for said purpose; and

WHEREAS, JANSSEN is willing to grant such a license under the terms and conditions set forth hereinafter.

NOW, THEREFORE, in consideration of the premises, mutual covenants and obligations herein contained, it is agreed by and between the parties hereto as follows

Article 1: Definitions

Each term defined below shall, for the purpose of this Agreement, have the following meaning unless the context clearly requires otherwise and the singular shall include the plural and vice versa:

1.1 "Affiliate" of a party to this Agreement shall mean any company which owns or controls at least forty per cent (40%) of the voting stock of such party or any other company at least forty per cent (40%) of whose voting stock is owned by or controlled by such owning or controlling company or by a party to this Agreement.

1.2 "Field" shall mean [*].

1.3 "HPBCD" shall mean [*] as covered by the Patents, [*] and the toxicological and pharmacokinetic profile of which is specified in the Know How.

[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

1.4 "Know-How" shall mean [*]. Know-How shall include but shall not be limited to [*], all as indicated in Exhibit II hereto and made a part hereof.

1.5 "Major Countries" shall mean any or all of the following: United States, UK, France, Germany, Spain and Italy.

1.6 "Net Sales" shall mean the amount billed, invoiced or received (whichever is first) on [*], less:

(a) Customary trade, quantity, or cash discounts and non-affiliated brokers' or agents' commissions actually allowed and taken, discounts, refunds, chargebacks, retroactive price adjustments, rebates, including but not limited to government mandated rebates, and any other allowances which effectively reduce the net selling price;

(b) Amounts repaid or credited by reason of rejections or return; and/or

(c) Any freight or other transportation costs, insurance charges, duties, tariffs and all sales and excise taxes based directly on sales or turnover or delivery or use of material produced under this Agreement and/or

(d) Any other similar and customary deductions (as defined and accepted by generally accepted accounting principles ("GAAP")), actually incurred.

Net Sales shall not include sales of Product by THERAVANCE to its sub-licensees.

1.7 "Patents" shall mean the patents and patent applications owned or controlled (including patents that can be sublicensed) by JANSSEN or by any JANSSEN Affiliate claiming the use of HPBCD in pharmaceutical applications, including any continuations, continuations-in-part, divisions, reissues, renewals or extensions thereof or any supplementary protection certificate granted on the basis of the marketing authorisations obtained by THERAVANCE for the Product. An updated list of the Patents is attached hereto as Exhibit 1.

1.8 "Process Patents" shall mean the patent owned, or licensed by JANSSEN, as specifically listed in Exhibit B, that claims a process for preparing HPBCD, including any extensions thereof or any supplementary protection certificate relating thereto or any other patent or patent application hereafter acquired by JANSSEN under which JANSSEN is licensed with the right to sub-license and [*].

1.9 "Product" shall mean any pharmaceutical product in finished dosage form containing [*] the manufacture, use or sale of which infringes a Valid Claim of a Patent, and/or utilises the proprietary information encompassed in the Know-How.

1.10 "Specifications" shall mean the basic specifications of HPBCD described in Exhibit III hereto and made a part hereof.

1.11 "Territory" shall mean the world.

1.12 "Valid Claim" shall mean a claim in a Patent which has not lapsed or become abandoned and which claim has not been declared invalid or that has not been finally rejected by a court of competent jurisdiction or a patent authority such as the European Patent Office or which has not been admitted to be invalid or unenforceable through reissue or disclaimer.

Article 2: Grant

2.1 Subject to the terms and conditions of this Agreement, JANSSEN hereby grants THERAVANCE a world-wide sole license in the Field under the Patents (i.e. "sole license" means JANSSEN solely retains the right to practice under the Patents in the Field without the right to transfer, other than to an Affiliate, any rights under the Patents in the Field and THERAVANCE has an exclusive license under the Patents in the Field subject only to JANSSEN's retained right) and a world-wide sole license in the Field under the Know-How for the sole purpose of developing, registering, making, having made, using and selling the Products and a non-exclusive license under the Process Patents for the sole purpose of making or having HPBCD made for the benefit of THERAVANCE, THERAVANCE's Affiliates or THERAVANCE's sublicensees for the Product in accordance with Article 5 below.

2.2 Promptly following the Effective Date, and thereafter during the term of this Agreement, JANSSEN shall disclose the Know-How to THERAVANCE or to regulatory agencies as THERAVANCE deems necessary for the exercise of its rights hereunder.

2.3 All rights herein granted, are personal to THERAVANCE and are indivisible and non-transferable, subject to Article 2.4 below, except that the rights granted to THERAVANCE may be exercised by any of THERAVANCE's Affiliates.

2.4 THERAVANCE will be entitled to grant sublicenses for the Product to third parties. THERAVANCE will notify JANSSEN of any third party so sublicensed by THERAVANCE. THERAVANCE shall procure that any such third party so sublicensed will abide by the obligations of this Agreement. In the event such a sublicense pertains to one or more Major Countries, THERAVANCE shall require Janssen's prior written approval, such approval not to be unreasonably withheld.

2.5 THERAVANCE acknowledges JANSSEN's representation that, depending on the nature and scope of the responsibilities sublicensed to such a third party in the United States, it may be necessary for JANSSEN to consult with the Public Health Services Office of Technology ("OTT") further to an agreement entered into between Janssen and OTT on March 26, 1998 ("OTT Agreement").

Article 3: Royalties—Milestone payments

3.1 In consideration of the rights and licenses granted by JANSSEN to THERAVANCE, THERAVANCE agrees to pay a royalty of [*].

3.2 THERAVANCE's obligation to pay Patent royalties hereunder will remain in effect on a country-by-country basis until expiration of the last Patent in the subject country having a Valid Claim covering the Product.

THERAVANCE's obligation to pay Know-How royalties shall remain in effect for a period of ten years following the first commercial sale of Product in any country of the Territory. No further Know-How royalties shall be payable after the expiry of the above ten-year period.

Notwithstanding the above, it is understood that the combined Patent and Know-How royalties payable by THERAVANCE shall amount to no less than [*] notwithstanding the prior expiry of the last Patent in the subject country having a Valid Claim covering the Product.

3.3 In consideration of the rights and licenses granted hereunder, THERAVANCE agrees to pay milestone payments to JANSSEN in accordance with the following schedule:

— [*] shall be paid within thirty (30) days following the execution of this Agreement;

— [*] shall be paid within thirty (30) days following [*];

— [*] shall be paid within thirty (30) days following [*];

— [*] shall be paid within thirty (30) days following [*].

The foregoing milestone payments are non-refundable and not creditable against future royalties. In the event that the Product fails at any stage prior to any of the above milestone payments becoming due, such remaining milestone payments shall be payable if the failed Product is replaced by THERAVANCE with a back-up compound in the Field which requires HPBCD for its development and/or commercialisation.

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Article 4: Sales and Royalty Reports—Royalty Payments

4.1 Ninety (90) days following each calendar quarter, THERAVANCE shall submit to JANSSEN a sales report showing its total sales of Product in Territory in units and Net Sales value. Such sales report shall also include a royalty report containing a calculation of the royalty due and payable to JANSSEN.

4.2 Together with such royalty report, THERAVANCE shall pay the royalty due and payable. All royalty payments to be made by THERAVANCE to JANSSEN shall be converted into US Dollars at the average rate of exchange for the calendar quarter for which royalty payments are being remitted according to THERAVANCE's normal procedures, as consistently applied by THERAVANCE for its other products.

All payments shall be made by wire transfer to a designated JANSSEN account within ninety (90) days following the end of each calendar quarter. In the event that royalties are payable with respect to Net Sales in a country whose currency cannot be freely converted, such currency shall be converted in accordance with the normal procedures consistently applied by THERAVANCE

4.3 Any income or other taxes which THERAVANCE is required by law to pay or withhold on behalf of JANSSEN with respect to milestones or royalties payable to JANSSEN under this Agreement shall be deducted from the amount due. THERAVANCE shall furnish JANSSEN with proof of such payments. Any such tax required to be paid or withheld shall be an expense of and borne solely by JANSSEN. THERAVANCE shall provide JANSSEN with a certificate or other documentary evidence to enable JANSSEN to support a claim for a refund or a foreign tax credit with respect to any such tax so withheld or deducted by THERAVANCE.

4.4 THERAVANCE shall keep true and accurate books clearly specifying its sales per country of Territory in Net Sales value as well as in units sold for the purpose of making such reports.

JANSSEN shall have the right to nominate an independent certified public accountant acceptable to and approved by THERAVANCE who shall have access, on reasonable notice, to THERAVANCE and its Affiliates' records during reasonable business hours for the purpose of verifying the royalties payable as provided in this Agreement for the two preceding years. This right may not be exercised more than once in any calendar year, and once a calendar year is audited it may not be re-audited. The said accountant shall disclose to JANSSEN only information for the purpose of verifying the accuracy of the royalty report and the royalty payments made according to this Agreement.

Any adjustment required by such audit shall be made within thirty (30) days of the determination by the accountants. If the adjustment payable to JANSSEN is greater than [*], then the cost to JANSSEN for the audit shall be paid by THERAVANCE.

Article 5: Supply of HPBCD

5.1 In order to be assured of a source being able to supply constant standard quality of pharmaceutical grade HPBCD complying with the Specifications and the toxicological and pharmacokinetic data contained in JANSSEN's Know-How, JANSSEN has entered into an agreement with ROQUETTE FRERES a manufacturer of cyclodextrins which agreement provides that HPBCD produced by ROQUETTE FRERES shall comply with the Specifications. The data contained within the JANSSEN Know-How have been validated utilising HPBCD supplied by the said supplier.

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5.2 It will be the responsibility of THERAVANCE to procure supplies of HPBCD either from ROQUETTE FRERES or from an alternative supplier under terms and conditions to be agreed separately with such supplier, provided that, at THERAVANCE's request, JANSSEN shall assist THERAVANCE in its negotiations with ROQUETTE FRERES regarding the terms and conditions of supply of HPBCD. If despite good faith efforts ROQUETTES FRERES and THERAVANCE would be unable to enter into a supply agreement, THERAVANCE and JANSSEN will meet following THERAVANCE's request to discuss in good faith potential course of action, including the use of alternative suppliers. It is understood by THERAVANCE that to the extent it wants to utilise an alternative supplier, JANSSEN can not provide a guarantee that such supplier is capable of supplying pharmaceutical grade HPBCD nor that the specifications of such alternative supplier would comply with the data contained within the JANSSEN Know-How.

Article 6: Warranties

6.1 JANSSEN represents and warrants to the best of its knowledge, that as of the date hereof it has title to and ownership of the Patents and Know-How.

6.2 JANSSEN makes no representation or warranty, express or implied, that the use of HPBCD shall eventually result in marketable Product. No further statement of warranty covering HPBCD shall be binding on JANSSEN without the written consent of an authorised officer of JANSSEN.

6.3 Each party further warrants that it has the right to enter into this Agreement and that it is under no obligation to any third party, express or implied, conflicting with the terms and conditions of this Agreement.

6.4 Nothing in this Agreement shall be considered as a warranty, either express or implied, that the use of HPBCD in Products will not infringe any third party's patent rights.

Article 7: Product liability

7.1 THERAVANCE agrees to indemnify and hold JANSSEN harmless from and against all claims, actions, direct damages, losses, costs and expenses of any kind resulting from or arising out of claims by third parties based on product liability or similar theories relating to the development, manufacturing, transportation, storage, promotion or sale of the Product, except to the extent such losses arose or resulted from faulty conduct or negligence by JANSSEN in supplying the Know-How and so long as (i) JANSSEN allows THERAVANCE to participate in or, at THERAVANCE's sole option but without any obligation, to conduct at THERAVANCE's expense the defense of a claim or action for which indemnification is sought under this Article, and (ii) JANSSEN does not compromise or settle such claim or action without THERAVANCE's prior written consent, which shall not be unreasonably withheld.

7.2 In no event shall THERAVANCE be liable for any consequential or indirect damage of JANSSEN whatsoever.

Article 8: Patent Infringement

8.1 If either party learns of an infringement of a Patent by a third party, using HPBCD in the promotion or sale of a product substantially similar to a Product, the party learning of the alleged infringement shall promptly inform the other party.

8.1.1 In case of such an infringement, JANSSEN shall have the right (but not the obligation), in its own name and at its own cost, to either bring an enforcement action to stop the alleged infringement or settle with the alleged infringer; provided, however, that no such settlement shall diminish or otherwise affect THERAVANCE's rights hereunder, unless THERAVANCE gives its prior written consent. THERAVANCE will give reasonable assistance to JANSSEN in such action against a third

party, including making available to JANSSEN records, information and evidence relevant to the infringement and, if necessary, being named a party in such action.

All sums awarded or received in settlement of such suit shall be equally divided between JANSSEN and THERAVANCE, after having reimbursed both parties for all reasonable out of pocket expenses incurred in bringing or assisting in such action.

8.1.2 Whenever JANSSEN elects not to take action against such infringement within a reasonable period of time not to exceed three (3) months THERAVANCE will have the right but not the obligation to take action in its own name, at its own expense and by counsel of its own choice.

JANSSEN will give all reasonable assistance in taking such action, including being a named party and making available to THERAVANCE records, information and evidence relevant to the infringement. THERAVANCE will be entitled to all recovery monies awarded or received in settlement of such suit. Any out of pocket expenses incurred by JANSSEN in assisting THERAVANCE in such action will be reimbursed by THERAVANCE out of the recovery monies awarded or received.

Whenever THERAVANCE so elects to take action JANSSEN will at any time be entitled to be represented in such action at its own cost and by counsel of its own choice.

THERAVANCE will in no event settle or consent to a judgement or other final disposition of a suit without the prior written approval of JANSSEN, which shall not unreasonably be withheld. Furthermore, whenever during such action, the infringing party would invoke a declaration of invalidity of the Patents, JANSSEN will be entitled to take over the direction of the suit.

8.1.3 In the event that all of the claims included within the Patents under which THERAVANCE is developing, registering, or selling the Product shall be held invalid or not infringed by a court of competent jurisdiction, whether or not there is a conflicting decision by another court of jurisdiction, THERAVANCE may pay the royalties which would have otherwise been due under the Patent on sales covered by such claims into an escrow account until such judgement shall be finally reversed by an unappealed or unappealable decree of a court of competent jurisdiction of higher authority, in which event royalty payments shall be resumed and the full amount in escrow shall become due and payable. In the event the judgement is upheld, the full escrow amount will revert to THERAVANCE and no further royalties under the Patents will be due.

8.2 THERAVANCE shall be responsible at its own cost and responsibility to defend against any claim or allegation that the development, manufacturing or commercialisation of the Product infringes a third party patent.

Article 9: Regulatory Matters

9.1 THERAVANCE shall be responsible at its own cost to file and maintain the marketing authorisation applications in connection with Product and in general to procure any license, registration or approval required to use HPBCD in the import, manufacture and sale of the Product in any country of Territory where THERAVANCE decides to commercialise Product.

All scientific and technical data, information and knowledge developed by THERAVANCE with respect to the Product, including the registration file shall be exclusively owned by THERAVANCE and JANSSEN shall have no right to use such THERAVANCE's information.

9.2 JANSSEN shall reasonably assist THERAVANCE whenever the regulatory authorities in any country of the Territory have questions in relation to HPBCD and the use thereof in pharmaceutical applications. Any request for additional information specifically related to HPBCD shall be referred to JANSSEN and JANSSEN shall use reasonable efforts to address the same in

due time in consultation with THERAVANCE. To the extent necessary representatives of both parties will meet to discuss any such requests.

Article 10: Adverse Drug Reporting

Each party will notify the other in writing of any adverse drug reaction or other unusual physiochemical, pharmacologic, toxicological or pharmacokinetic finding in relation to the use of HPBCD in the Product including, without limitation, any experimental or clinical use. The parties will establish a standard operating procedure in relation to ADE-reporting.

Article 11: Commercialisation

All business decisions, including but not limited to the selection of the trademark(s) for Product, pricing, reimbursement, package design, sales and promotional activities and the decision to launch or continue to market a Product in a particular country in the Territory, shall be within the sole discretion and responsibility of THERAVANCE.

Notwithstanding the above it is agreed that THERAVANCE shall otherwise use reasonable efforts consistent with its normal business practices to market and promote Product. In doing so it will use the same level of effort as with its other, similar products of similar sales potential. Failure to use reasonable efforts as qualified herein can be considered a material breach in accordance with the provisions of Article 14.1.

Article 12: Confidentiality—Limitations on Use

12.1 Neither party shall disclose proprietary or confidential information of the other party to any third party without prior written consent of the other party, except and to the extent as required by law, including without limitation to governmental regulatory agencies, and is thereafter publicly disclosed or made available to the public by operation of law, or except that any of such confidential and proprietary information can be shown by the receiving party's written records:

(i) to be in its possession or in the possession of its employees prior to such disclosure to the receiving party; or

(ii) is now or hereafter becomes available as public knowledge or literature through no fault of the receiving party; or

(iii) is received by such party from an independent third party who did not receive the information directly or indirectly from the other party.

Such proprietary and confidential information shall be disclosed to each party's personnel only on a strict need-to-know basis.

The obligation of confidentiality contained in this Article, shall survive the expiration and/or termination of this Agreement for [*].

12.2 In the event that THERAVANCE licenses the Product to third parties or otherwise involves third parties in the manufacturing and/or commercialisation of Product and such third party needs to receive certain Know-How, THERAVANCE shall, prior to disclosing any such Know-How enter into a confidentiality undertaking that is essentially similar to the one contained herein and shall in any event provide such Know-How on a strict need-to-know basis.

[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

Article 13: Term

Unless sooner terminated in accordance with the provisions of Article 14, this Agreement shall remain in full force and effect from the Effective Date until the date THERAVANCE has no further royalty obligation towards JANSSEN under the provisions of Article 3.

Upon termination of THERAVANCE'S royalty obligations for Know-How, THERAVANCE will have a royalty-free right to use the Know-How in the manufacture, use and sale of Product.

Article 14: Termination

14.1 In the event JANSSEN or THERAVANCE or their respective Affiliates (or licensees or distributors in case of THERAVANCE) are in breach of any of the respective obligations and conditions contained in this Agreement the other party shall be entitled to give the party in breach notice requiring it to make good such breach. If such breach constitutes a material breach and is not cured or there is no commencement of cure within sixty (60) days after receipt of such notice, including good faith efforts by senior management of both parties to overcome the issue, the notifying party shall be entitled (without prejudice to any of its other rights conferred on it by this Agreement) to terminate this Agreement by giving a notice to take effect immediately. The right of either party to terminate this Agreement in accordance with this Article 14.1 shall not be affected in any way by its waiver of, or failure to take action with respect to any previous breach.

14.2 In the event that one of the parties hereto shall go into liquidation, a receiver or a trustee be appointed over a significant and/or material property or estate of that party and said receiver or trustee is not removed within sixty (60) days, or the party makes an assignment for the benefit of creditors, and whether any of the aforesaid events be the outcome of the voluntary act of that party, or otherwise, the other party shall be entitled to terminate this Agreement forthwith by giving a written notice to the first party.

14.3 THERAVANCE may terminate this Agreement in its entirety upon one (1) month written notice to JANSSEN.

Article 15: Effects of Termination

In case of termination of this Agreement in accordance with Article 14 and if there is no good faith dispute between the parties, THERAVANCE shall immediately refrain from formulating and selling or offering for sale Product in Territory and return all proprietary and confidential Know-How and information relative to HPBCD together with all physical embodiments thereof shall be returned to JANSSEN. Furthermore THERAVANCE shall make all payments accrued under this Agreement prior to the effective termination date

Notwithstanding the above, THERAVANCE may reasonably sell out its remaining stock of Product which THERAVANCE has in stock at the moment of termination of this Agreement, provided it shall pay the royalties due and payable on such sales.

Article 16: Force Majeure

Neither party hereto shall be liable to the other party for failure or delay in meeting any obligation hereunder due to circumstances beyond such party's reasonable control such as, but not limited to, strikes, lockouts, acts of God, riots, war, fire, flood, embargoes, failure of power, acts of government or of any agency, provided that the party affected shall immediately inform the other party about the cause of such delay. The party so affected shall use its reasonable efforts to eliminate, cure and overcome any such causes and resume performance of its covenants with all possible speed.

Article 17: Severability

If any clause or provision of this Agreement or the application of any such clause or provision in a particular context or to a particular situation or circumstance should be held unenforceable or otherwise in conflict with or in violation of any applicable law, by, or as a result of determination of any court, tribunal or authority acting in a judicial capacity of competent jurisdiction, the decision of which is binding upon the parties, the parties agree that such determination shall not affect the validity and application of such clause or provision in contexts, situations or circumstances other than that in or to which it is held unenforceable and shall only apply for those countries of the Territory amenable under the law applied by such tribunal, court or authority.

Parties further agree to replace any clause or provision so held unenforceable in a lawful manner, reflecting to the extent possible, the economic, business and other purposes of the clause or provision held void or unenforceable in such specific contexts, situations or circumstances.

Article 18: General provisions

18.1 No damages shall be owed by either party to the other if this Agreement or any part of it is held invalid or void at any time by virtue of future acts of legislation.

18.2 Neither party shall assign or otherwise dispose of the whole or any part of its rights under this Agreement without the prior written consent of the other party, except that either party may assign this Agreement to one of its Affiliates and except as provided in 18.5.

18.3 Neither party nor its employees or representatives are under any circumstances to be considered as employees or agents or representatives of the other party. Neither party nor its employees have the authority or power to bind the other party or contract in the other party's name.

18.4 Save as required by law, no announcement or circular in connection with the subject matter of this Agreement shall be made by or on behalf of JANSSEN or THERAVANCE without the prior approval of the other party, such approval not to be unreasonably withheld. This Agreement may be filed with regulatory authorities as required by law.

18.5 A change of control of THERAVANCE through a merger, acquisition or sale of substantially all assets (including the assets relating to the development of the Product) shall not by and of itself give rise to the right for JANSSEN to terminate the License, provided always that prior to the closing of any such transaction the acquiring party has agreed in writing to abide by the terms and conditions of the License Agreement.

18.6 No rights are granted by either party to the other except those expressly set forth in this Agreement.

Article 19: Dispute Resolution—Applicable Law

The Parties hereto shall attempt to settle any dispute arising out of or relating to this Agreement in an amicable way. In the event that such attempts should fail, then the Parties can take such actions as are available at law under the laws of the State of New York, United States of America, with venue for any such dispute being New York City, New York.

Article 20: Notices

Any notice required or permitted under this Agreement shall be made in writing either by registered mail or facsimile to the parties at their respective addresses first above written or as subsequently changed by notice duly given.

Notices by registered mail are deemed to be given after three (3) days of mailing. Notices by facsimile shall be deemed to be given one day after the date on which such notice has been given.

Article 21: Headings

The section headings in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, JANSSEN and THERAVANCE have caused this instrument to be executed in duplicate by their respective duly authorised officers.

THERAVANCE, INC.
This 14th day of May, 2002

/s/ BRAD SHAFER

(title) Brad Shafer
Senior Vice President
General Counsel

By /s/ DAVID BRINKLEY

(title) David Brinkley
Senior Vice President
Commercial Development

JANSSEN PHARMACEUTICA N.V.
This 14th day of May 2002

/s/ RIK CARLIER

Rik Carlier
Licensing Director

/s/ GUY VERCAUTEREN

Guy Vercauteren
International Vice President,
Business Development

EXHIBIT I

PATENTS

SCHEDULE A

Hydroxypropyl-ß-cyclodextrin patents (Müller)

[*]

Country	Type	Application Number	Filing Date	Patent Number	Grant Date	Expiry Date	Abandonment Date
[*]	[*]	[*]	[*]	[*]	[*]	[*]	
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[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

Schedule B

Patents re the manufacture of hydroxypropyl-ß-cyclodextrin

[*]

Country	Type	Application Number	Filing Date	Patent Number	Grant Date	Expiry Date	Abandonment Date
[*]	[*]	[*]	[*]	[*]	[*]	[*]	
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EXHIBIT II

KNOW-HOW TO BE PROVIDED UPON THE EFFECTIVE DATE

- **Pharmaceutical data**

— Physical, chemical and microbiological specifications + analysis methodology and validation

— Reference substance sample

— Production method with specification of solvents used

— Quality of the starting materials used for the production and controls during production

— Evidence of Chemical Structure:

— Physical and chemical data (solubility,...)

— Impurities (related impurities—residual solvents—inorganic impurities...):

  - Nature
  - Control method and validation
  - Limits

- **Summary of [*].**
- **Summary of [*].**
- **Access to the Drug Master File and/or similar regulatory documents on a need-to-know basis in connection with [*].**

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EXHIBIT III

SPECIFICATIONS

Test description	Specifications	Method
Appearance	[*]	[*]
Identity by IR spectroscopy	[*]	[*]
Identity by Fehling's reagent tests: Determination 1 Determination 2	[*]	[*]
Assay ß-cyclodextrin	[*]	[*]
Relative complexation capacity	[*]	[*]
Molar substitution degree	[*]	[*]
Light absorbing impurities	[*]	[*]
Appearance of solution [*]	[*]	[*]
pH	[*]	[*]
Loss on drying	[*]	[*]
Sulphated ash	[*]	[*]
Reducing Substances	[*]	[*]
Heavy metals	[*]	[*]
Specific optical rotation	[*]	[*]
Total viable aerobic count: Bacteria Fungi and yeasts	[*]	[*]
Pathogens: [*]	[*]	[*]
Bacterial endotoxins	[*]	[*]
Residual solvent: [*]	[*]	[*]
Propylene oxide (if tested)	[*]	[*]

[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

QuickLinks

Exhibit 10.16

Exhibit 10.28

THERAVANCE, INC.

CLASS A COMMON

STOCK PURCHASE AGREEMENT

September , 2004

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THERAVANCE, INC.

CLASS A COMMON STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (the "Agreement") is made as of the day of September, 2004, by and among Theravance, Inc., a Delaware corporation (the "Company"), and SmithKline Beecham Corporation, a Pennsylvania corporation (the "Investor").

WHEREAS, pursuant to Section 2.1(d)(i) of that certain Amended and Restated Governance Agreement, dated June 4, 2004 by and among the Company and the Investor and its affiliates (the "Governance Agreement"), the Investor has certain rights to purchase equity securities of the Company in connection with issuances of equity securities by the Company;

WHEREAS, the Company intends to effect an initial public offering of its Common Stock (the "Initial Public Offering") pursuant to its registration statement on Form S-1 filed with the Securities and Exchange Commission (the "SEC") on June 10, 2004, as amended (the "Registration Statement") and pursuant to a purchase agreement by and among the Company and the various underwriters named in the Company's final prospectus for the Initial Public Offering (the "Underwriters");

WHEREAS, pursuant to the Initial Public Offering, the Underwriters have agreed to purchase shares of the Company's Common Stock and the Company has granted the Underwriters an option to purchase (the "Over-allotment Option") an additional shares of the Company's Common Stock (the "Over-allotment Shares"); and

WHEREAS, in connection with the Initial Public Offering, the Investor desires to partially exercise its rights under Section 2.1(d)(i) of the Governance Agreement to purchase shares of the Company's Class A Common Stock.

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. *Purchase and Sale of Stock.*

1.1 *Sale and Issuance of Class A Common Stock.*

(a) On or prior to the Closing (as defined below), the Company shall adopt and file with the Secretary of State Delaware the Restated Certificate of Incorporation (the "Restated Certificate") in the form attached as Exhibit 3.3 to the Registration Statement.

(b) On or prior to the Closing (as defined below), the Company shall have authorized the sale and issuance pursuant to this Agreement of at least shares of its Class A Common Stock at a price equal to the public offering price per share of shares of Common Stock initially sold to the public pursuant to the Registration Statement. The Class A Common Stock shall have the rights, preferences, privileges and restrictions set forth in the Restated Certificate.

(c) Subject to the terms and conditions of this Agreement, the Investor agrees to purchase at the Closing and the Company agrees to sell and issue to the Investor at the Closing, shares of the Company's Class A Common Stock for an aggregate purchase price of $.

1.2 *Closing.* The purchase and sale of the Class A Common Stock shall take place at the offices of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, 155 Constitution Drive, Menlo Park, CA 94025, immediately after the closing of the Initial Public Offering (the "IPO Closing"), which is expected to occur at 6:00 A.M. on October , 2004, or at such other time and place as the Company and Investor mutually agree upon orally or in writing (which time and place are designated as the "Closing"). At the Closing the Company shall deliver to the Investor a certificate representing the Class A Common Stock that the Investor is purchasing against payment of the purchase price therefor by check or wire transfer, or any combination thereof.

1.3 *Additional Closing.* If the Underwriters exercise the Over-allotment Option, Investor agrees that it shall purchase an additional number of shares of the Company's Class A Common Stock equal to 6.133% of the number of Over-allotment Shares with respect to which the Underwriters exercise their option to purchase rounded up to the nearest full share (the "Additional Shares") for an aggregate purchase price equal to the product of the number of Additional Shares multiplied by the public offering price per share of shares of Common Stock initially sold to the public pursuant to the Registration Statement. The purchase and sale of the Additional Shares shall take place at the offices of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, 155 Constitution Drive, Menlo Park, CA 94025, immediately after the closing of the Underwriters' purchase of the Over-allotment Shares, or at such other time and place as the Company and Investor mutually agree upon orally or in writing (which time and place are designated as the "Additional Closing"). At the Additional Closing the Company shall deliver to the Investor a certificate representing the Class A Common Stock that the Investor is purchasing against payment of the purchase price therefor by check or wire transfer, or any combination thereof.

2. *Representations and Warranties of the Company.* The Company hereby represents and warrants to the Investor that, as of the date hereof, and except as set forth in the Company's prospectus dated [September] , 2004 which is part of the Registration Statement and which has been furnished to the Investor (the "Prospectus"), which exceptions shall be deemed to be representations and warranties as if made hereunder:

2.1 *Organization, Good Standing and Qualification.* The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to (i) execute, deliver and perform its obligations under this Agreement, (ii) to issue and sell the Class A Common Stock hereunder, (iii) to perform its obligations under the Restated Certificate, and (iv) to carry on its business as now conducted and as proposed to be conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect on its business or properties.

2.2 *Capitalization and Voting Rights.*

(a) As of June 30, 2004, the authorized capital of the Company is as set forth in the Prospectus under the caption "Capitalization."

2.3 *Subsidiaries.* The Company does not presently own or control, directly or indirectly, any interest in any other corporation, association or other business entity, other than Theravance East, Inc., a Delaware corporation and a direct wholly-owned subsidiary of the Company. The Company is not a participant in any joint venture, partnership, or similar arrangement.

2.4 *Authorization.* All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement, the performance of all obligations of the Company hereunder, and the authorization, issuance (or reservation for issuance), sale and delivery of the Class A Common Stock being sold hereunder has been taken or will be taken prior to the Closing, and this Agreement constitutes a valid and legally binding obligation of the Company, enforceable in accordance with its terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

2.5 *Valid Issuance of Preferred and Common Stock.* The Class A Common Stock that is being purchased by the Investor hereunder, when issued, sold and delivered in accordance with the terms of this Agreement for the consideration expressed herein, will be duly and validly issued, fully paid, and nonassessable, and will be free of restrictions on transfer other than restrictions on transfer under this

Agreement, the Amended and Restated Investors' Rights Agreement dated May 11, 2004 by and among the Company and the investors who are parties thereto (the "Investors' Rights Agreement"), the Governance Agreement and under applicable state and federal securities laws. The Class A Common Stock that is being purchased by the Investor hereunder will not be subject to preemptive rights or rights of first refusal that have not been waived or complied with.

2.6 *Governmental Consents.* No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority on the part of the Company is required in connection with the consummation of the transactions contemplated by this Agreement, except (i) the filing of the Restated Certificate with the Secretary of State of Delaware and (ii) certain post-closing filings as may be required pursuant to federal securities laws and under the "Blue Sky" laws of the various states.

2.7 *Offering.* Subject in part to the truth and accuracy of the Investor's representations set forth in Section 3 of this Agreement, the offer, sale and issuance of the Class A Common Stock as contemplated by this Agreement are exempt from the registration requirements of any applicable state and federal securities laws, and neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemption.

2.8 *Litigation.* There is no action, suit, proceeding or investigation pending or, to the Company's knowledge, currently threatened against the Company that questions the validity of this Agreement, or the right of the Company to enter into this Agreement, or to consummate the transactions contemplated hereby, or if determined adversely, might result, either individually or in the aggregate, in (i) any material adverse changes in the assets, business or prospects of the Company, financially or otherwise or (ii) any change in the current equity ownership of the Company, nor is the Company aware that there is any basis for the foregoing. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit, proceeding or investigation by the Company currently pending or that the Company intends to initiate.

2.9 *Patents and Trademarks.* The Company owns, or has rights to use pursuant to a valid license, all patents, trademarks, service marks, trade names, copyrights, trade secrets, information, proprietary rights and processes necessary for its business as now conducted. The use, modification, licensing, sublicensing, sale, or any other exercise of rights involving such intellectual property does not infringe any copyright, trade secret, trademark, service mark, trade name, firm name, logo, trade dress, mask work, moral right, other intellectual property right, right of privacy or right in personal data, or to the knowledge of the Company, any patent, of any person. No claims (i) challenging the validity, effectiveness, or ownership by the Company of any of the Company's intellectual property, or (ii) to the effect that the use, reproduction, modification, manufacturing, distribution, licensing, sublicensing, sale or any other exercise of rights in any product, work, technology, service or process as used, provided or offered at any time, or as proposed for use, reproduction, modification, distribution, licensing, sublicensing, sale or any other exercise of rights, by the Company infringes or will infringe on any intellectual property or other proprietary or personal right of any person have been asserted or, to the knowledge of the Company, (A) are threatened by any person nor (B) are there any valid grounds for any bona fide claim of any such kind. To the knowledge of the Company, there is no unauthorized use, infringement or misappropriation of any of the Company's intellectual property by any third party, employee or former employee. The Company's employees are not obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of his or her best efforts to promote the interests of the Company or that would conflict with the Company's business as proposed to be conducted. Neither the execution nor delivery of this Agreement, nor the carrying on of the Company's business by the employees of the Company, nor the conduct of the Company's business as proposed, will, to the best of the Company's knowledge, conflict

with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated. The Company does not believe it is or will be necessary to utilize any inventions of any of its employees made prior to their employment by the Company unless such inventions are properly assigned to the Company.

2.10 *Compliance with Other Instruments.* The Company is not in violation or default in any material respect of any provision of its Restated Certificate or Bylaws, or in any material respect of any instrument, judgment, order, writ, decree or contract to which it is a party or by which it is bound, or, to the best of its knowledge, of any provision of any statute, rule or regulation applicable to the Company. The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby and thereby will not result in any such violation or be in conflict with or constitute, with or without the passage of time and giving of notice, either a default under any such provision, instrument, judgment, order, writ, decree or contract or an event that results in the creation of any lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, impairment, forfeiture, or nonrenewal of any material permit, license, authorization, or approval applicable to the Company, its business or operations or any of its assets or properties.

2.11 *Agreements; Action.*

The Company's material agreements that are required by the rules and regulations of the SEC to be disclosed as exhibits to the Registration Statement are set forth as exhibits to the Registration Statement.

2.12 *Related-Party Transactions.* No executive officer or director of the Company or member of his or her immediate family is indebted to the Company, nor is the Company indebted (or committed to make loans or extend or guarantee credit) to any of them. To the Company's knowledge, none of such persons has any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated or with which the Company has a business relationship, or any firm or corporation that competes with the Company, except that executive officers or directors of the Company and members of their immediate families may own stock in publicly traded companies that may compete with the Company. No member of the immediate family of any executive officer or director of the Company is directly or indirectly interested in any material contract with the Company.

2.13 *Permits.* The Company has all material franchises, permits, licenses, and any similar authority necessary for the conduct of its business as now being conducted by it, and the Company believes it can obtain, without undue burden or expense, any similar authority for the conduct of its business as planned to be conducted. The Company is not in default in any material respect under any of its franchises, permits, licenses, or other similar authority.

2.14 *Disclosure.* The Company has provided the Investor with all information requested by the Investor in connection with their decision to purchase the Class A Common Stock, including all information the Company believes is reasonably necessary to make such investment decision. To the Company's knowledge, neither this Agreement, nor any other statements or certificates made or delivered in connection herewith or therewith contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements herein or therein not misleading.

2.15 *Corporate Documents.* The Restated Certificate and Bylaws of the Company are in the form as set forth as exhibits 3.3 and 3.5, respectively, to the Registration Statement.

2.16 *Title to Property and Assets.* The Company owns its property and assets free and clear of all mortgages, liens, loans and encumbrances, except such encumbrances and liens that arise in the ordinary course of business and do not materially impair the Company's ownership or use of such property or assets, and has good and marketable title to such property. With respect to the property and assets it leases, the Company is in compliance with such leases and holds a valid leasehold interest free of any liens, claims or encumbrances.

2.17 *Tax Returns, Payments and Elections.* The Company has timely filed all tax returns and reports as required by law. These returns and reports are true and correct in all material respects. The Company has paid all taxes and assessments due, except those contested by it in good faith, if any. The Company has not been advised (a) that any of its federal, state or local returns are being audited as of the date hereof, or (b) of any deficiency in assessment or proposed judgment to its federal, state or other taxes. The Company has no knowledge of any tax liabilities due with respect to the Company or its properties or assets as of the date of this Agreement that are not adequately provided for.

2.18 *Environmental Law.* To the Company's knowledge, the Company is not in violation of and has no liability or potential liability under any applicable statute, law, or regulation relating to the environment, and to the best of its knowledge, no material expenditures are or will be required in order to comply with any such existing statute, law, or regulation.

2.19 *Proprietary Information and Employment Agreements.* Each current and former employee, officer and consultant of the Company has executed a standard Proprietary Information and Inventions Agreement. The Company is not aware that any of its employees, officers or consultants are in violation thereof, and the Company will use its best efforts to prevent any such violation. The Company has not entered into any employment agreements with any executive officers of the Company.

2.20 *Financial Statements.* The Company's audited financial statements as of December 31, 2002 and December 31, 2003 and its unaudited financials as of and for the six-month period ended June 30, 2004 (the "Financial Statements") are as set forth in the Prospectus. The Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods indicated and with each other except that the unaudited Financial Statements may not contain all footnotes required by generally accepted accounting principles. The Financial Statements fairly present the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein, subject in the case of the unaudited Financial Statements to normal year-end audit adjustments. Except as set forth in the Financial Statements, the Company has no material liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to the date of the Financial Statements and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under generally accepted accounting principles to be reflected in the Financial Statements, which, in both cases, individually or in the aggregate, are not material to the financial condition or operating results of the Company. Except as disclosed in the Financial Statements, the Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with generally accepted accounting principles.

2.21 *Registration Rights.* Except as required pursuant to the Investors' Rights Agreement, the Company is not presently under any obligation, and has not granted, any rights to register any of the Company's presently outstanding securities or any of its securities that may hereafter be issued.

2.22 *Real Property Holding Corporation.* The Company is not a real property holding corporation within the meaning of Section 897(c)(2) of the Internal Revenue Code of 1986 (the "Code"), as amended, and any regulations promulgated thereunder.

2.23 *Labor Agreements.* The Company is not bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any labor union, and no labor union has requested or, to the Company's knowledge, has sought to represent any of the employees, representatives or agents of the Company. There is no strike or other labor dispute involving the Company pending, or to the Company's knowledge, threatened, that could have a material adverse effect on its business or properties, nor is the Company aware of any labor organization activity involving its employees.

2.24 *Insurance.* The Company maintains in full force and effect such types and amounts of insurance issued by insurers of recognized responsibility insuring the Company with respect to its business and properties, in such amounts and against such losses and risks which are usual and customary in the Company's business as to amount and scope.

3. *Representations and Warranties of the Investor.* The Investor hereby represents and warrants that:

3.1 *Authorization.* The Investor has full power and authority to enter into this Agreement, and this Agreement constitutes its valid and legally binding obligation, enforceable in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

3.2 *Purchase Entirely for Own Account.* This Agreement is made with the Investor in reliance upon the Investor's representation to the Company, which by the Investor's execution of this Agreement the Investor hereby confirms, that the Class A Common Stock to be received by the Investor (the "Securities") will be acquired for investment for the Investor's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same in violation of applicable securities laws. By executing this Agreement, the Investor further represents that the Investor does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Securities.

3.3 *Disclosure of Information.* The Investor further represents that it has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Class A Common Stock and the business, properties, prospects and financial condition of the Company. The foregoing, however, does not limit or modify the representations and warranties of the Company in Section 2 of this Agreement or the right of the Investor to rely thereon.

3.4 *Investment Experience.* The Investor is an investor in securities of companies in the development stage and acknowledges that it is able to fend for itself, can bear the economic risk of its investment, and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Class A Common Stock. The Investor also represents that it has not been organized for the purpose of acquiring the Class A Common Stock.

3.5 *Accredited Investor.* The Investor is an "accredited investor" within the meaning of Rule 501 of Regulation D adopted pursuant to the Act, as presently in effect.

3.6 *Restricted Securities.* The Investor understands that the Securities it is purchasing are characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the Act, only in certain limited circumstances. In this connection, the Investor represents that it is familiar with Rule 144 adopted pursuant to the Act, as presently in effect, and understands the resale limitations imposed thereby and by the Act.

4. *Conditions of Investor's Obligations at Closing.* The obligations of the Investor under subsection 1.1(c) of this Agreement are subject to the fulfillment on or before the Closing of each of

the following conditions, the waiver of which shall not be effective against the Investor if it does not consent thereto:

4.1 *Performance.* The Company shall have performed and complied with all agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing.

4.2 *Compliance Certificate.* The Chief Executive Officer of the Company shall deliver to the Investor at the Closing a certificate stating that the conditions specified in Sections 4.1 have been fulfilled.

4.3 *Qualifications.* All authorizations, approvals, or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be duly obtained and effective as of the Closing.

4.4 *Proceedings and Documents.* All corporate and other proceedings in connection with the transactions contemplated at the Closing and all documents incident thereto shall be reasonably satisfactory in form and substance to the Investor, and they shall have received all such counterpart original and certified or other copies of such documents as they may reasonably request.

4.5 *Closing of Initial Public Offering.* The IPO Closing shall have occurred.

5. *Conditions of the Company's Obligations at Closing.* The obligations of the Company to the Investor under this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions by the Investor:

5.1 *Representations and Warranties.* The representations and warranties of the Investor contained in Section 3 shall have been true on and as of the Closing.

5.2 *Qualifications.* All authorizations, approvals, or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be duly obtained and effective as of the Closing.

5.3 *Closing of Initial Public Offering.* The IPO Closing shall have occurred.

6. *Miscellaneous.*

6.1 *Survival of Warranties.* The warranties, representations and covenants of the Company and the Investor contained in or made pursuant to this Agreement shall survive the execution and delivery of this Agreement and the Closing and shall in no way be affected by any investigation of the subject matter thereof made by or on behalf of the Investor or the Company.

6.2 *Successors and Assigns.* Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties (including transferees of any Securities). Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

6.3 *Governing Law.* This Agreement shall be governed by and construed in accordance with and governed by the law of the State of Delaware, without regard to the conflicts of laws principles thereof. Any action brought, arising out of, or relating to this Agreement shall be brought in the Court of Chancery of the State of Delaware. Each party hereby irrevocably submits to the exclusive jurisdiction of said Court in respect of any claim relating to the validity, interpretation and enforcement of this Agreement, and hereby waives, and agrees not to assert, as a defense in any action, suit or proceeding

in which any such claim is made that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in such courts, or that the venue thereof may not be appropriate or that this agreement may not be enforced in or by such courts. The parties hereby consent to and grant the Court of Chancery of the State of Delaware jurisdiction over such parties and over the subject matter of any such claim and agree that mailing of process or other papers in connection with any such action, suit or proceeding in the manner provided in Section 6.6, or in such other manner as may be permitted by law, shall be valid and sufficient thereof.

6.4 *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.5 *Titles and Subtitles.* The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

6.6 *Notices.* All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, if not, then on the next business day or (c) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. Notwithstanding the foregoing or any provision to the contrary in the Investors' Rights Agreement or the Restated Certificate, the Company agrees that when any notice is given to the Investor, whether under this Agreement, the Investors' Rights Agreement or the Restated Certificate, such notice shall not be deemed to be effectively given until a copy of such notice is transmitted to the Investor via facsimile. All notices and certificates will be addressed to the Investor at the address set forth on the signature page hereto or at such other address as the Company or the Investor may designate by ten (10) days advance written notice to the other parties hereto.

6.7 *Finder's Fee.* The Investor agrees to indemnify and to hold harmless the Company from any liability for any commission or compensation in the nature of a finders' fee (and the costs and expenses of defending against such liability or asserted liability) for which the Investor or any of its officers, partners, employees, or representatives is responsible.

The Company agrees to indemnify and hold harmless the Investor from any liability for any commission or compensation in the nature of a finders' fee (and the costs and expenses of defending against such liability or asserted liability) for which the Company or any of its officers, employees or representatives is responsible.

6.8 *Expenses.* Irrespective of whether the Closing is effected, each party shall bear their own costs and expenses incurred with respect to the negotiation, execution, delivery and performance of this Agreement. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement or the Restated Certificate, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

6.9 *Amendments and Waivers.* Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Investor. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding, each future holder of all such securities, and the Company.

6.10 *Severability.* If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

6.11 *Confidentiality.* Any confidential information obtained by the Investor pursuant to this Agreement which is labeled or otherwise identified as confidential or proprietary shall be treated as confidential and shall not be disclosed to a third party without the prior written consent of the Company and shall not be used by the Investor for any purpose other than monitoring the Investor's investment in the Company, except that the Investor may disclose such information (i) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company, (ii) to its affiliates, officers, directors, shareholders, members and/or partners in the ordinary course of business or pursuant to disclosure obligation to affiliates, shareholders, members and/or partners; provided that such information is provided to such persons and entities with notice that such information is confidential and should be treated as such, (iii) to any prospective purchaser of the Investor's shares of the Company, provided (in the case of disclosure in clause (iii)) the recipient agrees to keep such information confidential and to use such information solely for evaluation of such proposed purchase, or (iv) as may otherwise be required by law. Notwithstanding the foregoing, such information shall not be deemed confidential for the purpose of enforcement of this Agreement and said information shall not be deemed confidential after it becomes publicly known through no fault of the recipient. The provisions of this Section 6.11 shall be in addition to, and not in substitution for, the provisions of any separate confidentiality agreement executed by the parties hereto; provided that if there is any conflict between the provisions of this Section 6.11 and the more restrictive provisions of such separate confidentiality agreement, the provisions of such separate confidentiality agreement shall prevail.

6.12 *Publicity.* No party or any affiliate of a party shall make, or cause to be made, any publicity, news release or other such general public announcement or make any other disclosure to any third party in respect of this Agreement or the transactions contemplated hereby (including, without limitation, disclosure of Investor's ownership interest in the Company) without the prior written consent of the other party; provided however, that the foregoing provision is not intended to limit communications deemed reasonably necessary or appropriate by a party or its affiliates to its employees, stockholders, partners, directors, officers, potential investors, accountants and legal counsel who are under an obligation to preserve the confidentiality of the foregoing. Notwithstanding the foregoing provision, the parties and their respective affiliates shall not be prohibited from making any disclosure or release that is required by law, court order, or applicable regulation, or is considered necessary by legal counsel to fulfill an obligation under securities laws or the rules of a national stock exchange or the NASDAQ National Market.

6.13 *Entire Agreement.* This Agreement and the documents referred to herein constitute the entire agreement among the parties and no party shall be liable or bound to any other party in any manner by any warranties, representations, or covenants except as specifically set forth herein or therein.

6.14 *Legends.* It is understood that the certificates evidencing the Securities may bear one or all of the following legends:

(a) "These securities have not been registered under the Securities Act of 1933, as amended. They may not be sold, offered for sale, pledged or hypothecated in the absence of a registration statement in effect with respect to the securities under such Act or an opinion of counsel satisfactory to the Company that such registration is not required or unless sold pursuant to Rule 144 of such Act."

(b) Any legend required by the laws of any state.

6.15 *Acknowledgement of Notice and Partial Exercise of Rights.* Investor acknowledges that (a) in connection with the Initial Public Offering that it has received notices required by Section 2.1(d)(i) of Governance Agreement, and (b) its purchase of Class A Common Stock pursuant to this Agreement is only a partial exercise of its rights pursuant to Section 2.1(d)(i) of Governance Agreement.

6.16 *Registrable Securities.* The Class A Common Stock purchased by GSK pursuant to this Agreement shall constitute Registrable Securities as defined in, and in accordance with the limitations set forth in, the Investors' Rights Agreement.

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

THERAVANCE, INC.

By: _____

Rick E Winningham
President and Chief Executive Officer

SIGNATURE PAGE TO FALL 2004 CLASS A COMMON STOCK PURCHASE AGREEMENT

INVESTOR:

SMITHKLINE BEECHAM CORPORATION

Name of Investor

By:

Signature of Authorized Person
Name:
Title:

Address:

Fax No:

SIGNATURE PAGE TO FALL 2004 CLASS A COMMON STOCK PURCHASE AGREEMENT

QuickLinks

Exhibit 23.2

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated May 21, 2004 (except for Note 14 and paragraph 39 of Note 2 as to which the dates are May 27, 2004 and September 27, 2004, respectively) in Amendment No. 4 to the Registration Statement (Form S-1 No. 333-116384) and related Prospectus of Theravance, Inc. for the registration of shares of its common stock.

/s/ ERNST & YOUNG LLP

Palo Alto, California
September 27, 2004

QuickLinks