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

# FORM 10-Q

**(Mark One)**

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

**For the quarterly period ended June 30, 2012**

**OR**

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

**For the transition period from to**

**Commission File Number: 0-30319**

# THERAVANCE, INC.
(Exact Name of Registrant as Specified in its Charter)

| **Delaware** | **94-3265960** |
|---|---|
| (State or Other Jurisdiction of Incorporation or Organization) | (I.R.S. Employer Identification No.) |

**901 Gateway Boulevard**
**South San Francisco, CA 94080**
(Address of Principal Executive Offices including Zip Code)

**(650) 808-6000**
(Registrant's Telephone Number, Including Area Code)

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

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

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

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

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

The number of shares of registrant's common stock outstanding on July 25, 2012 was 96,899,828.

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## PART I — FINANCIAL INFORMATION

### Item 1. Financial Statements

**THERAVANCE, INC.**
**CONDENSED CONSOLIDATED BALANCE SHEETS**
(In thousands, except per share data)

| | June 30, 2012 (Unaudited) | December 31, 2011 * |
|---|---|---|
| **Assets** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 161,096 | $ 44,778 |
| Short-term investments | 134,393 | 196,137 |
| Receivable from related party | 94 | 223 |
| Notes receivable, current | 100 | 100 |
| Prepaid and other current assets | 3,398 | 3,525 |
| Inventory | 4,299 | — |
| Total current assets | 303,380 | 244,763 |
| Long-term marketable securities | 83,208 | — |
| Restricted cash | 833 | 893 |
| Property and equipment, net | 9,660 | 10,372 |
| Notes receivable, non-current | 240 | 240 |
| Other assets, non-current | 2,101 | 2,514 |
| Total assets | $ 399,422 | $ 258,782 |
| **Liabilities and stockholders' equity (net capital deficiency)** | | |
| Current liabilities: | | |
| Accounts payable | $ 4,989 | $ 5,813 |
| Accrued personnel related expenses | 5,669 | 9,643 |
| Accrued clinical and development expenses | 4,898 | 6,956 |
| Accrued interest on convertible subordinated notes | 2,372 | 2,372 |
| Other accrued liabilities | 2,077 | 1,946 |
| Note payable and capital lease, current | — | 69 |
| Deferred revenue, current | 5,771 | 18,697 |
| Total current liabilities | 25,776 | 45,496 |
| Convertible subordinated notes | 172,500 | 172,500 |
| Deferred rent | 5,477 | 5,821 |
| Deferred revenue, non-current | 6,413 | 122,017 |
| Commitments and contingencies (Notes 3 and 7) | | |
| Stockholders' equity (net capital deficiency): | | |
| Common stock, $0.01 par value; authorized: 200,000 shares; outstanding: 96,882 at June 30, 2012 and 85,543 at December 31, 2011 | 969 | 855 |
| Additional paid-in capital | 1,456,882 | 1,228,037 |
| Accumulated other comprehensive income (loss) | (109) | 16 |
| Accumulated deficit | (1,268,486) | (1,315,960) |
| Total stockholders' equity (net capital deficiency) | 189,256 | (87,052) |

| | | |
|---|---|---|
| Total liabilities and stockholders' equity (net capital deficiency) | $ 399,422 | $ 258,782 |

* Condensed consolidated balance sheet at December 31, 2011 has been derived from audited consolidated financial statements.

*See accompanying notes to condensed consolidated financial statements.*



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**THERAVANCE, INC.**
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**
(In thousands, except per share data)
(Unaudited)

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2012 | 2011 | 2012 | 2011 |
| Revenue (including amounts from a related party: three months —2012-$1,430; 2011-$2,456; six months—2012-$2,860; 2011-$4,913) | $ 1,430 | $ 6,389 | $ 128,529 | $ 12,719 |
| Operating expenses: | | | | |
| Research and development | 29,549 | 22,798 | 62,751 | 43,262 |
| General and administrative | 7,590 | 7,248 | 15,447 | 14,417 |
| Total operating expenses | 37,139 | 30,046 | 78,198 | 57,679 |
| Income (loss) from operations | (35,709) | (23,657) | 50,331 | (44,960) |
| Interest income | 90 | 118 | 145 | 263 |
| Interest expense | (1,501) | (1,506) | (3,002) | (3,015) |
| Net income (loss) | $ (37,120) | $ (25,045) | $ 47,474 | $ (47,712) |
| Net income (loss) per share: | | | | |
| Basic net income (loss) per share | $ (0.42) | $ (0.31) | $ 0.55 | $ (0.59) |
| Diluted net income (loss) per share | $ (0.42) | $ (0.31) | $ 0.53 | $ (0.59) |
| Shares used to compute basic earnings per share | 89,169 | 81,811 | 86,379 | 81,415 |
| Shares used to compute diluted earnings per share | 89,169 | 81,811 | 95,044 | 81,415 |

*See accompanying notes to condensed consolidated financial statements.*



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**THERAVANCE, INC.**
**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**
(In thousands, except per share data)
(Unaudited)

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2012 | 2011 | 2012 | 2011 |
| Net income (loss) | $ (37,120) | $ (25,045) | $ 47,474 | $ (47,712) |
| Other comprehensive income: | | | | |
| Net unrealized loss on available-for-sale securities, net of tax | (100) | (36) | (125) | (41) |
| Comprehensive income (loss) | $ (37,220) | $ (25,081) | $ 47,349 | $ (47,753) |

*See accompanying notes to condensed consolidated financial statements.*



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**THERAVANCE, INC.**
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**
(In thousands)

(Unaudited)

| | Six Months Ended June 30, | |
|---|---|---|
| | 2012 | 2011 |
| **Cash flows from operating activities** | | |
| Net income (loss) | $ 47,474 | $ (47,712) |
| Adjustments to reconcile net income (loss) to net cash used in operating activities: | | |
| Depreciation and amortization | 3,572 | 3,407 |
| Recognized gain on marketable securities | (2) | — |
| Stock-based compensation | 12,214 | 11,134 |
| Forgiveness of notes receivable | — | 1 |
| Changes in operating assets and liabilities: | | |
| Receivables | 129 | (53) |
| Prepaid expenses and other current assets | 127 | 1,717 |
| Inventory | (4,299) | — |
| Accounts payable | (81) | 813 |
| Accrued personnel-related expenses, accrued interest on convertible subordinated notes and other current liabilities | (5,956) | (3,488) |
| Deferred rent | (344) | 1,932 |
| Deferred revenue | (128,530) | (11,401) |
| Net cash used in operating activities | (75,696) | (43,650) |
| | | |
| **Cash flows from investing activities** | | |
| Purchases of property and equipment | (1,762) | (2,763) |
| Purchases of marketable securities | (185,456) | (176,322) |
| Sales of marketable securities | 8,520 | 8,750 |
| Maturities of marketable securities | 153,921 | 119,476 |
| Release of restricted cash | 60 | — |
| Additions to notes receivable | — | (140) |
| Payments received on notes receivable | — | 530 |
| Net cash used in investing activities | (24,717) | (50,469) |
| | | |
| **Cash flows from financing activities** | | |
| Payments on note payable and capital lease | (69) | (113) |
| Proceeds from issuances of common stock, net | 216,800 | 21,557 |
| Net cash provided by financing activities | 216,731 | 21,444 |
| | | |
| Net increase (decrease) in cash and cash equivalents | 116,318 | (72,675) |
| Cash and cash equivalents at beginning of period | 44,778 | 163,333 |
| Cash and cash equivalents at end of period | $ 161,096 | $ 90,658 |

*See accompanying notes to condensed consolidated financial statements.*



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**Theravance, Inc.**
**Notes to Condensed Consolidated Financial Statements**
**(Unaudited)**

## 1. Description of Operations and Summary of Significant Accounting Policies

*Description of Operations*

Theravance, Inc. (the Company or Theravance) is a biopharmaceutical company with a pipeline of internally discovered product candidates and strategic collaborations with pharmaceutical companies. Theravance is focused on the discovery, development and commercialization of small molecule medicines across a number of therapeutic areas including respiratory disease, bacterial infections, and central nervous system (CNS)/pain. By leveraging the Company's proprietary insight of multivalency to drug discovery, Theravance is pursuing a best-in-class strategy designed to discover superior medicines in areas of significant unmet medical need.

*Basis of Presentation*

The accompanying unaudited condensed consolidated financial statements of the Company have been prepared in accordance with U.S. generally accepted accounting principles (GAAP) for interim financial information and the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and notes required by GAAP for complete financial statements. In the opinion of the Company's management, the unaudited condensed consolidated financial statements have been prepared on the same basis as 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, comprehensive income (loss) and cash flows. The interim results are not necessarily indicative of the results of operations to be expected for the year ending December 31, 2012 or any other period.

The accompanying unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 2011 filed with the Securities and Exchange Commission (SEC) on February 27, 2012.

*Principles of Consolidation*

The condensed consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

*Use of Management's Estimates*

The preparation of condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the condensed consolidated financial statements and accompanying notes. Actual results could differ materially from those estimates.

*Segment Reporting*

The Company has determined that it operates in a single segment which is the research and development of human therapeutics. Revenues are generated primarily from the Company's collaborations with GlaxoSmithKline plc (GSK), located in the United Kingdom, and, through January 6, 2012, Astellas Pharma Inc. (Astellas), located in Japan. All long-lived assets are maintained in the United States.

*Marketable Securities*

The Company determines the appropriate classification of its marketable securities, which consist of debt securities, at the time of purchase and reevaluates such designation at each balance sheet date. All of the marketable securities are classified as available-for-sale and carried at estimated fair values and reported in either: cash equivalents, short-term investments or long-term marketable securities. Unrealized gains and losses on available-for-sale securities are reported in accumulated other comprehensive income (loss) as a separate component of stockholders' equity (net capital deficiency). Interest, amortization of purchase premiums and discounts, and realized gains and losses on sales of marketable securities are included in interest. The cost of securities sold is based on the specific identification method.



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The Company regularly reviews all of its investments for other-than-temporary declines in fair value. The Company's review includes the consideration of the cause of the impairment, including the creditworthiness of the security issuers, the number of securities in an unrealized loss position, the severity and duration of the unrealized losses, whether the Company has the intent to sell the securities, and whether it is more likely than not that the Company will be required to sell the securities before the recovery of their amortized cost basis. When the Company determines that the decline in fair value of an investment is below the amortized cost basis and the decline is other-than-temporary, the Company reduces the carrying value of the security and records a loss for the amount of such decline.

*Inventories*

Inventories are stated at the lower of cost or market value. Cost is determined using an average cost basis. Inventories include VIBATIV® active pharmaceutical ingredient and other raw materials of $4.3 million at June 30, 2012. VIBATIV® is a U.S. Food and Drug Administration (FDA) approved drug. If information becomes available that suggests the inventories may not be realizable, the Company may be required to expense a portion or all of the capitalized inventory costs.

In May 2012, the Company entered into a Technology Transfer and Supply Agreement with Hospira Worldwide, Inc. (Hospira) and technology transfer activities are in process. The Company must obtain regulatory approval for VIBATIV® drug product that will be manufactured at Hospira's facility before any such product may be sold, and this regulatory approval process could take up through mid-2013.

*Research and Development Costs*

Research and development costs are expensed in the period that services are rendered or goods are received. 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 research costs reimbursed by GSK and, through 2011, Astellas.

*Fair Value of Stock-Based Compensation Awards*

The Company uses the Black-Scholes-Merton option pricing model to estimate the fair value of options granted under its equity incentive plans and rights to acquire stock granted under its employee stock purchase plan. The Black-Scholes-Merton option valuation model requires the use of assumptions, including the expected term of the award and the expected stock price volatility. The Company used the "simplified" method as described in Staff Accounting Bulletin No. 107 for the expected option term because the usage of its historical exercise data is limited due to post-IPO exercise restrictions. Beginning April 1, 2011, the Company used its historical volatility to estimate expected stock price volatility. Prior to April 1, 2011, the Company used peer company price volatility to estimate expected stock price volatility due to the Company's limited historical common stock price volatility since its initial public offering in 2004.

Restricted Stock Units (RSUs) and Restricted Stock Awards (RSAs) are measured based on the fair market values of the underlying stock on the dates of grant.

Stock-based compensation expense was calculated based on awards ultimately expected to vest and has been reduced for estimated forfeitures at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. The Company's estimated annual forfeiture rates for stock options, RSUs and RSAs are based on its historical forfeiture experience.

The estimated fair value of stock options, RSUs and RSAs is expensed on a straight-line basis over the expected term of the grant and the fair value of performance-contingent RSUs and RSAs is expensed during the term of the award when the Company determines that it is probable that certain performance milestones will be achieved.

Compensation expense for purchases under the ESPP is recognized based on the estimated fair value of the common stock during each offering period and purchase discount percentage.

The Company has not recognized, and does not expect to recognize in the near future, any tax benefit related to employee stock-based compensation costs as a result of the full valuation allowance on the Company's deferred tax assets including deferred tax assets related to its net operating loss carryforwards.



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*New Accounting Updates*

On January 1, 2012, the Company adopted Accounting Standards Update (ASU) No. 2011-05, "Presentation of Comprehensive Income" an update to Accounting Standards Codification (ASC) Topic 220, "Comprehensive Income". This update requires that all nonowner changes in stockholders' equity (net capital deficiency) be presented either in a single continuous statement of comprehensive income (loss) or in two separate but consecutive statements. This update was effective for the Company January 1, 2012. The Company elected the two separate but consecutive statements approach.

**2. Net Income (Loss) per Share**

Basic net income (loss) per share amounts for each period presented were computed by dividing net income (loss) by the weighted-average number of shares of common stock outstanding, less RSAs subject to forfeiture.

For the six months ended June 30, 2012, diluted net income per share was computed by dividing net income plus interest on dilutive convertible notes by the weighted-average number of shares of common stock outstanding during the period, less RSAs subject to forfeiture, plus all additional common shares that would have been outstanding assuming dilutive potential common shares had been issued for dilutive convertible notes (see Note 6) and other dilutive securities.

Dilutive potential common shares for dilutive convertible notes were calculated based on the "if-converted" method. Under the "if-converted" method, when computing the dilutive effect of convertible notes, net income was adjusted to add back the amount of interest and debt issuance costs recognized in the period and the denominator was adjusted to add back the number of shares that would be issued if the entire obligation was settled in shares.

Dilutive potential common shares also include the dilutive effect of the common stock underlying in-the-money stock options and were calculated based on the average share price for each period using the treasury stock method. Under the treasury stock method, the exercise price of an option and the average amount of compensation cost, if any, for future service that the Company has not yet recognized when the option is exercised, are assumed to be used to repurchase shares in the current period. Dilutive potential common shares also reflect the dilutive effect of unvested restricted stock units.

For the three months ended June 30, 2012, and for the three and six months ended June 30, 2011, diluted net loss per share was identical to basic EPS since potential common shares were excluded from the calculation, as their effect was anti-dilutive.

The computations for basic and diluted net income (loss) per share were as follows:

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| (in thousands, except for per share amounts) | 2012 | 2011 | 2012 | 2011 |
| **Numerator:** | | | | |
| Net income (loss) — basic | $ (37,120) | $ (25,045) | $ 47,474 | $ (47,712) |
| Add: interest and issuance costs related to convertible notes | — | — | 3,002 | — |
| Net income (loss) — diluted | (37,120) | (25,045) | 50,476 | (47,712) |
| | | | | |
| **Denominator:** | | | | |
| Weighted-average common shares outstanding | 91,809 | 84,263 | 89,019 | 83,867 |
| Less: unvested RSAs | (2,640) | (2,452) | (2,640) | (2,452) |
| Weighted-average common shares outstanding — basic | 89,169 | 81,811 | 86,379 | 81,415 |
| Effect of dilutive equity incentive plans and ESPP | — | — | 1,997 | — |
| Effect of dilutive convertible subordinated notes | — | — | 6,668 | — |
| Weighted-average common shares outstanding — diluted | 89,169 | 81,811 | 95,044 | 81,415 |



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*Anti-Dilutive Securities*

The following common equivalent shares were not included in the computation of diluted net income (loss) per share because their effect was anti-dilutive:

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| (in thousands) | 2012 | 2011 | 2012 | 2011 |
| Shares issuable under Equity Incentive Plans and ESPP | 6,348 | 5,472 | 3,801 | 5,616 |
| Shares issuable upon the conversion of | 6,668 | 6,668 | — | 6,668 |

| | | | | |
|---|---|---|---|---|
| convertible debt | | | | |
| Total anti-dilutive securities | 13,016 | 12,140 | 3,801 | 12,284 |

**3. Collaboration Arrangements**

***GSK***

*LABA collaboration*

In November 2002, the Company entered into its long-acting beta$_2$ agonist (LABA) collaboration with GSK to develop and commercialize once-daily LABA products for the treatment of chronic obstructive pulmonary disease (COPD) and asthma. For the treatment of COPD, the collaboration is developing two combination products: Relvar™/Breo™ (FF/VI) and umeclidinium bromide/vilanterol (UMEC/VI). For the treatment of asthma, the collaboration is developing FF/VI. FF/VI is an investigational once-daily combination medicine consisting of a LABA, vilanterol (VI), and an inhaled corticosteroid (ICS), fluticasone furoate (FF). UMEC/VI is an investigational once-daily combination medicine consisting of the long-acting muscarinic antagonist (LAMA) umeclidinium bromide (UMEC) and a LABA, VI.

In the event that a product containing VI is successfully developed and commercialized, the Company will be obligated to make milestone payments to GSK which could total as much as $220.0 million if both a single-agent and a combination product or two different combination products are launched in multiple regions of the world. A portion of these potential milestone payments could be payable to GSK within the next two years. The Company is entitled to annual royalties from GSK of 15% on the first $3.0 billion of annual global net sales and 5% for all annual global net sales above $3.0 billion. Sales of single-agent LABA medicines and combination medicines would be combined for the purposes of this royalty calculation. For other products combined with a LABA from the LABA collaboration, such as UMEC/VI, royalties are upward tiering and range from the mid-single digits to 10%. However, if GSK is not selling a LABA/ICS combination product at the time that the first other LABA combination is launched, then the royalties described above for the LABA/ICS combination medicine would be applicable.

*2004 Strategic Alliance*

In March 2004, the Company entered into its strategic alliance with GSK. Under this alliance, GSK received an option to license exclusive development and commercialization rights to product candidates from certain of the Company's discovery programs on pre-determined terms and on an exclusive, worldwide basis.

Upon GSK's decision to license a program, GSK is responsible for funding 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 licenses. If the program is successfully advanced through development by GSK, the Company is entitled to receive clinical, regulatory and commercial milestone payments and royalties on any sales of medicines developed from the program. If GSK chooses not to license a program, the Company retains all rights to the program and may continue the program alone or with a third party.

In 2005, GSK licensed the Company's bifunctional muscarinic antagonist-beta$_2$ agonist (MABA) program for the treatment of COPD, and in October 2011, the Company and GSK expanded the MABA program by adding six additional Theravance discovered preclinical MABA compounds (the "Additional MABAs"). GSK's development, commercialization, milestone and royalty obligations under the strategic alliance remain the same with respect to '081, the lead compound in the MABA program. GSK is obligated to use diligent efforts to develop and commercialize at least one MABA within the MABA program, but may terminate progression of any or all Additional MABAs at any time and return them to the Company, at which point the Company may develop and commercialize such Additional MABAs alone or with a third party. Both GSK and the Company have agreed not to conduct any MABA clinical studies outside of the strategic alliance so long as GSK is in possession of the Additional MABAs. If a single-agent MABA medicine containing '081 is successfully developed and commercialized, the Company is entitled to receive royalties from GSK of between 10% and 20% of annual global net sales up to $3.5 billion, and 7.5% for all annual global net sales above $3.5 billion. If a MABA medicine containing '081 is commercialized only as a combination product, such as a MABA/ICS, the royalty rate is 70% of the rate applicable to sales of the single-agent MABA medicine. For single-agent MABA medicines containing an Additional MABA, the Company is entitled to receive royalties from GSK of between 10% and 15% of annual global net sales up to $3.5 billion, and 10% for all annual global net sales above $3.5 billion. For combination products containing an Additional MABA, such as a MABA/ICS, the royalty rate is 50% of the rate applicable to sales of the single-agent MABA medicine. If a MABA



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medicine containing '081 is successfully developed and commercialized in multiple regions of the world, the Company could earn total milestone payments up to $125.0 million for a single-agent medicine and up to $250.0 million for both a single-agent and a combination medicine. If a MABA medicine containing an Additional MABA is successfully developed and commercialized in multiple regions of the world, the Company could earn total milestone payments up to $129.0 million.

In connection with the expansion of the MABA program, GSK relinquished its option right on the Company's MonoAmine Reuptake Inhibitor (MARIN) program and Angiotensin Receptor-NEP Inhibitor (ARNI) program. GSK has no further option rights on any of the Company's research or development programs under the strategic alliance.

*Purchases of Common Stock under the Company's Governance Agreement and Common Stock Purchase Agreement with GSK; GSK Conversion of the Company's Class A Common Stock*

On April 2, 2012, the Company and Glaxo Group Limited, an affiliate of GSK, entered into a common stock purchase agreement, under which the Company issued and sold to Glaxo Group Limited 10,000,000 shares of the Company's common stock at a price of $21.2887 per share, for a total investment of $212,887,000. The stock purchase was completed May 16, 2012.

In addition, Glaxo Group Limited purchased shares of the Company's common stock pursuant to its periodic "top-up" rights under the Company's governance agreement with GSK dated June 4, 2004, as amended, as follows:

| | Through June 30, 2012 |
|---|---|

| | Common Stock Shares Purchased | Aggregate Amounts (in thousands) |
|---|---|---|
| *Purchase dates* | | |
| February 24, 2011 | 152,278 | $ 3,609 |
| May 3, 2011 | 261,299 | $ 6,689 |
| August 2, 2011 | 102,466 | $ 2,020 |
| November 1, 2011 | 58,411 | $ 1,298 |
| February 14, 2012 | 88,468 | $ 1,603 |

In July 2011, GSK converted all of the shares of the Company's Class A common stock held by its affiliates into 9,401,499 shares of the Company's common stock on a one share-for-one share basis in accordance with the terms of the Company's restated certificate of incorporation.

*GSK Upfront License Fees, Milestone Payments and Revenue*

Upfront license fees and milestone payments received from GSK under the LABA collaboration and strategic alliance agreements were as follows:

| | Through June 30, 2012 | | |
|---|---|---|---|
| (in thousands) | Upfront Fees | Milestone Payments | Total |
| *GSK Collaborations* | | | |
| LABA collaboration(1) | $ 10,000 | $ 50,000 | $ 60,000 |
| Strategic alliance agreement | 20,000 | — | 20,000 |
| Strategic alliance—LAMA license(2) | 5,000 | 3,000 | 8,000 |
| Strategic alliance—MABA program license | 6,000 | 16,000 | 22,000 |
| Total | $ 41,000 | $ 69,000 | $ 110,000 |

(1) The Company does not expect to be eligible for any additional milestones under this collaboration.

(2) In August 2004, GSK exercised its right to license the Company's LAMA program pursuant to the terms of the strategic alliance. In 2009, GSK returned the program to the Company.

The eligible potential contingent payments related to the MABA program, which includes the Additional MABAs, are not deemed substantive due to the fact that the achievement of the event underlying the payment predominantly relates to GSK's performance of future development, manufacturing and commercialization activities for product candidates after licensing the program.



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Revenue recognized from GSK under the LABA collaboration and strategic alliance agreements was as follows:

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| (in thousands) | 2012 | 2011 | 2012 | 2011 |
| *GSK Collaborations* | | | | |
| LABA collaboration | $ 907 | $ 1,270 | $ 1,814 | $ 2,540 |
| Strategic alliance agreement | — | 684 | — | 1,369 |
| Strategic alliance—MABA program license | 523 | 502 | 1,046 | 1,004 |
| Total revenue | $ 1,430 | $ 2,456 | $ 2,860 | $ 4,913 |

***Astellas***

*License, Development and Commercialization Agreement with Astellas*

In November 2005, the Company entered into a global collaboration arrangement with Astellas for the development and commercialization of VIBATIV®. On January 6, 2012, Astellas exercised its right to terminate this agreement. The rights previously granted to Astellas ceased upon termination of the agreement and Astellas stopped all promotional sales efforts. Pursuant to the terms of the agreement, Astellas is entitled to a ten-year, 2% royalty on future net sales of VIBATIV®. In March 2012, the Company entered into a series of purchase agreements with Astellas for the purchase of VIBATIV® active pharmaceutical ingredient and other raw materials of up to $6.2 million and VIBATIV® finished goods inventory of up to $4.2 million, which is subject to release by a third party manufacturer. As of June 30, 2012, the Company had purchased $4.3 million of active pharmaceutical ingredient and other raw materials pursuant to these purchase agreements.

In addition, beginning July 1, 2012, the Company is responsible to fund governmental rebate and governmental chargeback claims for Astellas-labeled product sales. As a result of the termination of the VIBATIV® collaboration agreement, the Company recorded a liability of $150,000 at June 30, 2012, which is included in the condensed consolidated balance sheets. The Company continues to evaluate global commercialization alternatives for VIBATIV® either with partners or alone.

Through January 6, 2012, the Company had received $191.0 million in upfront license, milestone and other fees from Astellas. The Company previously recorded these payments as deferred revenue and amortized them ratably over its estimated performance period (development and commercialization period). As a result of the termination of the VIBATIV® collaboration agreement, the development and commercialization period ended on January 6, 2012. As such, the Company recognized into revenue $125.8 million of deferred revenue related to Astellas in the first quarter of 2012, and the Company is no longer eligible to receive any further milestone payments from Astellas.

Net revenue recognized under this collaboration agreement was as follows:

| | Three Months Ended | Six Months Ended |
|---|---|---|

| (in thousands) | June 30, 2012 | June 30, 2011 | June 30, 2012 | June 30, 2011 |
|---|---|---|---|---|
| Recognition of deferred revenue | $ — | $ — | $ 125,819 | $ — |
| Amortization of deferred revenue | — | 3,244 | — | 6,488 |
| Royalties from net sales of VIBATIV® | — | 694 | — | 1,324 |
| Proceeds from VIBATIV® delivered to Astellas | — | 1,171 | — | 1,171 |
| Cost of VIBATIV® delivered to Astellas | — | (1,177) | — | (1,177) |
| Astellas-labeled product sales allowance | — | — | (150) | — |
| Total net revenue | $ — | $ 3,932 | $ 125,669 | $ 7,806 |



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**4. Available-for-Sale Securities**

The following table is a summary of available-for-sale debt securities recorded in cash and cash equivalents, short-term investments, long-term marketable securities, or restricted cash in the Company's condensed consolidated balance sheets. Estimated fair values of available-for-sale securities are generally based on prices obtained from commercial pricing services:

| (in thousands) | June 30, 2012 Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Estimated Fair Value | December 31, 2011 Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Estimated Fair Value |
|---|---|---|---|---|---|---|---|---|
| U.S. government securities | $ 30,270 | $ 1 | $ (16) | $ 30,255 | $ 66,150 | $ 24 | $ — | $ 66,174 |
| U.S. government agencies | 112,266 | 4 | (74) | 112,196 | 93,183 | 9 | (17) | 93,175 |
| U.S. corporate notes | 60,176 | 9 | (33) | 60,152 | 2,707 | — | (2) | 2,705 |
| U.S. commercial paper | 44,993 | — | — | 44,993 | 34,973 | 3 | — | 34,976 |
| Money market funds | 129,891 | — | — | 129,891 | 38,721 | — | — | 38,721 |
| Total | $ 377,596 | $ 14 | $ (123) | $ 377,487 | $ 235,734 | $ 36 | $ (19) | $ 235,751 |

The following table summarizes the classification of the available-for-sale debt securities on the Company's condensed consolidated balance sheets:

| (in thousands) | June 30, 2012 | December 31, 2011 |
|---|---|---|
| Cash and cash equivalents | $ 159,053 | $ 38,721 |
| Short-term investments | 134,393 | 196,137 |
| Long-term marketable securities | 83,208 | — |
| Restricted cash | 833 | 893 |
| Total | $ 377,487 | $ 235,751 |

At June 30, 2012, all of the marketable securities have contractual maturities within twenty-four months and the average duration of marketable securities was approximately eleven months. The Company does not intend to sell the investments which are in an unrealized loss position and it is unlikely that the Company will be required to sell the investments before recovery of their amortized cost basis, which may be maturity. The Company has determined that the gross unrealized losses on its marketable securities at June 30, 2012, were temporary in nature. All marketable securities with unrealized losses have been in a loss position for less than twelve months.

**5. Fair Value Measurements**

The Company defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date.

The Company's valuation techniques are based on observable and unobservable inputs. Observable inputs reflect readily obtainable data from independent sources, while unobservable inputs reflect the Company's market assumptions. The Company classifies these inputs into the following hierarchy:

*Level 1 Inputs*—Quoted prices for identical instruments in active markets.

*Level 2 Inputs*—Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations whose inputs are observable or whose significant value drivers are observable.

*Level 3 Inputs*—Unobservable inputs and little, if any, market activity for the assets.



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The estimated fair values of the Company's financial assets were as follows:

| June 30, 2012 (in thousands) | Fair Value Measurements at Reporting Date Using: Quoted Prices in Active Markets for Identical Assets Level 1 | Significant Other Observable Inputs Level 2 | Significant Unobservable Inputs Level 3 | Total |
|---|---|---|---|---|
| U.S. government securities | $ 30,255 | $ — | $ — | $ 30,255 |
| U.S. government agency securities | 75,632 | 36,564 | — | 112,196 |
| U.S. corporate notes | 57,066 | 3,086 | — | 60,152 |

| | | | | |
|---|---|---|---|---|
| U.S. commercial paper | — | 44,993 | — | 44,993 |
| Money market funds | 129,891 | — | — | 129,891 |
| Total | $ 292,844 | $ 84,643 | $ — | $ 377,487 |

| | Fair Value Measurements at Reporting Date Using | | | |
|---|---|---|---|---|
| December 31, 2011 (in thousands) | Quoted Prices in Active Markets for Identical Assets Level 1 | Significant Other Observable Inputs Level 2 | Significant Unobservable Inputs Level 3 | Total |
| U.S. government securities | $ 66,174 | $ — | $ — | $ 66,174 |
| U.S. government agency securities | 55,901 | 37,274 | — | 93,175 |
| U.S. corporate notes | 2,705 | — | — | 2,705 |
| U.S. commercial paper | — | 34,976 | — | 34,976 |
| Money market funds | 38,721 | — | — | 38,721 |
| Total | $ 163,501 | $ 72,250 | $ — | $ 235,751 |

At June 30, 2012, securities with a total fair value of $11.2 million were measured using Level 1 inputs in comparison to December 31, 2011, at which time the securities had a fair value of $11.4 million and were measured using Level 2 inputs. The transfer to Level 1 from Level 2 was primarily the result of increased trading volume of the securities at and around June 30, 2012, compared to December 31, 2011.

There were no transfers from Level 1 to Level 2 for the six months ended June 30, 2012.

**6. Long-Term Debt**

The estimated fair value of debt was estimated based on the quoted price of the instrument as of June 30, 2012 and December 31, 2011. The carrying values and estimated fair values for the notes were as follows:

| | June 30, 2012 | | December 31, 2011 | |
|---|---|---|---|---|
| (in thousands) | Carrying Value | Estimated Fair Value (Level 2) | Carrying Value | Estimated Fair Value (Level 2) |
| Convertible subordinated notes | $ 172,500 | $ 183,549 | $ 172,500 | $ 189,588 |

*Convertible Subordinated Notes*

In January 2008, the Company closed an underwritten public offering of $172.5 million aggregate principal amount of unsecured convertible subordinated notes which will mature on January 15, 2015. The financing raised proceeds, net of issuance costs, of $166.7 million. The notes bear interest at the rate of 3.0% per year, that is payable semi-annually in arrears in cash on January 15 and July 15 of each year, beginning on July 15, 2008.

The notes are convertible, at the option of the holder, into shares of the Company's common stock at an initial conversion rate of 38.6548 shares per $1,000 principal amount of the notes, subject to adjustment in certain circumstances, which represents an initial conversion price of approximately $25.87 per share. The debt issuance costs, which are included in other long-term assets, are being amortized on a straight-line basis over the life of the notes. Unamortized debt issuance costs totaled $2.1 million as of June 30, 2012. Amortization expense was $0.2 million for both the three months ended June 30, 2012 and 2011 and $0.4 million for both the six months ended June 30, 2012 and 2011.



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Holders of the notes will be able to require the Company to repurchase some or all of their notes upon the occurrence of a fundamental change (as defined) at 100% of the principal amount of the notes being repurchased plus accrued and unpaid interest. The Company may not redeem the notes prior to January 15, 2012. On or after January 15, 2012 and prior to the maturity date, the Company, upon notice of redemption, may redeem for cash all or part of the notes if the last reported sale price of its common stock has been greater than or equal to 130% of the conversion price then in effect for at least 20 trading days during any 30 consecutive trading day period prior to the date on which it provides notice of redemption. The redemption price will equal 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest up to but excluding the redemption date. As of June 30, 2012, the Company did not provide notice of redemption or redeem any of the notes.

**7. Commitments and Contingencies**

*Guarantees and Indemnifications*

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, 2012.

*Purchase Obligation*

The Company entered into a series of purchase agreements for VIBATIV® active pharmaceutical ingredient and other raw materials of up to $6.2 million and VIBATIV® finished goods inventory of up to $4.2 million, which is subject to release by a third party manufacturer. As of June 30, 2012 the Company had purchased $4.3 million of active pharmaceutical ingredient and other raw materials pursuant to these purchase agreements.

**8. Stock-Based Compensation**

*Equity Incentive Plans*

In May 2012, the Company adopted the 2012 Equity Incentive Plan (2012 Plan). The number of shares of the Company's common stock available for issuance under the 2012 Plan is equal to 6,500,000 shares plus up to 12,667,411 additional shares that may be added to the 2012 Plan in connection with the forfeiture, repurchase, cash settlement or termination of awards outstanding under the 2004 Equity Incentive Plan (2004 Plan), the 2008 New Employee Equity Incentive Plan, the 1997 Stock Plan and the Long-Term Stock Option Plan (collectively, the "Prior Plans") as of December 31, 2011. While a maximum of 12,667,411 shares could be added to the 2012 Plan from the Prior Plans, since this assumes that all the awards outstanding on December 31, 2011 will be forfeited, repurchased, cash settled or terminated, the Company expects the actual number to be added to the 2012 Plan share reserve to be less. Upon adoption of the 2012 Plan the Company reserved 6,500,000 shares of common stock for issuance under the 2012 Plan. The 2012 Plan reserve was also reduced by the number of stock awards granted under the 2004 Plan on or after January 1, 2012. No additional awards have been or will be made after May 15, 2012 under the 2004 Plan. Stock options and SARS will reduce the 2012 Plan reserve by one share for every share granted, and stock awards other than options and SARs granted will reduce the 2012 Plan share reserve by 1.45 shares for every share granted. The 2012 Plan share reserve was also reduced by the number of stock awards granted under the 2004 Plan on or after January 1, 2012, using the same ratios described. As of June 30, 2012, total shares remaining available for issuance under the 2012 Plan were 5,037,262.

The 2012 Plan provides for the grant of incentive stock options, nonstatutory stock options, restricted stock awards, stock unit awards and stock appreciation rights ("SARs") to employees, non-employee directors and consultants of the Company. Stock options may be granted with an exercise price not less than the fair market value of the common stock on the grant date. Stock options granted to employees generally have a maximum term of 10 years and vest over a four year period from the date of grant; 25% vest at the end of one year, and 75% vest monthly over the remaining three years. The Company may grant options with different vesting terms from time to time. Unless an employee's termination of service is due to disability or death, upon termination of service, any unexercised vested options will be forfeited at the end of three months or the expiration of the option, whichever is earlier.

*Employee Stock Purchase Plan*

As of June 30, 2012, a total of 2,025,000 shares of common stock were approved and authorized for issuance under the ESPP. Through June 30, 2012, the Company issued 1,548,023 shares under the ESPP at an average price of $10.53 per share. As of June 30, 2012, total shares remaining available for issuance under the ESPP were 476,977.



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*Stock-Based Compensation Expense*

The allocation of stock-based compensation expense included in the condensed consolidated statements of operations was as follows:

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| (in thousands) | 2012 | 2011 | 2012 | 2011 |
| Research and development | $ 3,541 | $ 3,379 | $ 7,070 | $ 6,511 |
| General and administrative | 2,438 | 2,896 | 5,144 | 5,305 |
| Total stock-based compensation expense | $ 5,979 | $ 6,275 | $ 12,214 | $ 11,816 |

As of June 30, 2012, unrecognized compensation expense, net of expected forfeitures, was as follows: $6.8 million related to unvested stock options; $19.8 million related to unvested RSUs; and $27.1 million related to unvested RSAs (excludes performance-contingent RSAs).

*Compensation Awards*

The Company granted the following compensation awards:

| | Six Months Ended June 30, 2012 | | Six Months Ended June 30, 2011 | |
|---|---|---|---|---|
| | Number of Compensation Awards Granted | Weighted-Average Exercise Price/Fair Value | Number of Compensation Awards Granted | Weighted-Average Exercise Price/Fair Value |
| 2004 and 2012 Plans | | | | |
| Stock options | 198,000 | $ 20.01 | 307,500 | $ 24.56 |
| RSUs time-based | 528,381 | 18.45 | 465,000 | 25.03 |
| RSAs time-based | 402,500 | 18.11 | 1,148,000 | 24.70 |
| RSAs performance-contingent(1) | 44,500 | 18.11 | 1,290,000 | 24.73 |

(1) In 2011, the Compensation Committee of the Company's Board of Directors approved the grant of 1,290,000 performance-contingent RSAs to senior management. These grants have dual triggers of vesting based upon the achievement of certain performance conditions over a six-year timeframe from 2011-2016 and continued employment, both of which must be satisfied in order for the RSAs to vest. Expense associated with these RSAs would be recognized, if at all, during these years depending on the probability of meeting the performance conditions. The maximum potential expense associated with the RSAs could be up to approximately $31.9 million (allocated as $6.3 million for research and development expense and $25.6 million for general and administrative expense) if all of the performance conditions are achieved on time. As of June 30, 2012, the Company had determined that the achievement of the requisite performance conditions was not probable and, as a result, no compensation expense has been recognized. As the RSAs are dependent upon the achievement of certain performance conditions, the expense associated with the RSAs may vary significantly from period to period.

In February 2012, the Compensation Committee of the Company's Board of Directors approved the grant of 44,500 performance-contingent RSAs to senior management. These grants are subject to forfeiture unless one of three possible performance goals is achieved by December 31, 2013. As of June 30, 2012, the Company had determined that the achievement of one of three possible performance conditions was not probable and, as a result, no compensation expense has been recognized.

*Valuation Assumptions*

The range of weighted-average assumptions used to estimate the fair value of stock options granted was as follows:

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2012 | 2011 | 2012 | 2011 |
| ***Employee stock options*** | | | | |
| Risk-free interest rate | 0.74%-1.10% | 1.94%-2.57% | 0.74%-1.17% | 1.94%-2.57% |
| Expected term (in years) | 5-6 | 5-6 | 5-6 | 5-6 |
| Volatility | 55%-60% | 53%-55% | 55%-60% | 49%-55% |
| Dividend yield | —% | —% | —% | —% |
| Weighted-average estimated fair value of stock options granted | $ 11.11 | $ 13.09 | $ 10.37 | $ 12.41 |



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The range of weighted-average assumptions used to estimate the fair value of employee stock purchase plan awards was as follows:

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| ***Employee stock purchase plan issuances*** | | | | |
| Risk-free interest rate | 0.15%-0.29% | 0.07%-0.54% | 0.15%-0.29% | 0.07%-0.54% |
| Expected term (in years) | 0.5-2.0 | 0.5-2.0 | 0.5-2.0 | 0.5-2.0 |
| Volatility | 55%-64% | 48%-50% | 55%-64% | 48%-50% |
| Dividend yield | —% | —% | —% | —% |
| Weighted-average estimated fair value of ESPP issuances | $ 9.00 | $ 9.25 | $ 9.00 | $ 9.25 |

*Stockholders' Equity*

For the six months ended June 30, 2012, approximately 349,538 shares were exercised at a weighted-average exercise price of $7.99 per share, for total cash proceeds of approximately $2,792,007.

**9. Income Taxes**

The Company did not record a provision for income taxes for the three and six months ended June 30, 2012, because it is expected to generate a taxable net operating loss for the fiscal year ending December 31, 2012. In addition, the deferred tax assets continue to be treated as having no current value and remain fully reserved.



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**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

**Forward-Looking Statements**

The information in this discussion contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (Securities Act), and Section 21E of the Securities Exchange Act of 1934, as amended. Such forward-looking statements involve substantial risks, uncertainties and assumptions. All statements contained herein that are not of historical fact, including, without limitation, statements regarding our strategy, future operations, future financial position, future revenues, projected costs, prospects, plans, intentions, expectations, goals and objectives, may be forward-looking statements. The words "anticipates," "believes," "designed," "estimates," "expects," "intends," "may," "objective," "plans," "projects," "pursue," "will," "would" and similar expressions (including the negatives thereof) 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, expectations or objectives disclosed in our forward-looking statements and the assumptions underlying our forward-looking statements may prove incorrect. Therefore, you should not place undue reliance on our forward-looking statements. Actual results or events could materially differ from the plans, intentions, expectations and objectives disclosed in the forward-looking statements that we make. Factors that we believe could cause actual results or events to differ materially from our forward-looking statements include, but are not limited to those discussed below in "Risk Factors" in Item 1A of Part II and in "Management's Discussion and Analysis of Financial Condition and Results of Operations" in this Item 2 of Part I. All forward-looking statements in this document are based on information available to us as of the date hereof and we assume no obligation to update any such forward-looking statements.

**OVERVIEW**

**Executive Summary**

Theravance is a biopharmaceutical company with a pipeline of internally discovered product candidates and strategic collaborations with pharmaceutical companies. We are focused on the discovery, development and commercialization of small molecule medicines across a number of therapeutic areas including respiratory disease, bacterial infections, and central nervous system (CNS)/pain. Our key programs include: Relvar™ or Breo™ (FF/VI), umeclidinium bromide/vilanterol (UMEC/VI) and MABA (Bifunctional Muscarinic Antagonist-Beta$_2$ Agonist), each partnered with GlaxoSmithKline plc (GSK), and our oral Peripheral Mu Opioid Receptor Antagonist program. By leveraging our proprietary insight of multivalency to drug discovery, we are pursuing a best-in-class strategy designed to discover superior medicines in areas of significant unmet medical need.

In the second quarter of 2012, our net loss was $37.1 million, an increase of 48% from $25.0 million in the second quarter of 2011. In the first six months of 2012, our net income was $47.5 million, an increase of 200% from a net loss of $47.7 million in the first six months of 2011. Net income in the six

months ended June 30, 2012 reflects the recognition of deferred revenue of $125.7 million from our global collaboration arrangement with Astellas Pharma Inc. (Astellas) for the development and commercialization of VIBATIV®. This recognition resulted from Astellas' January 6, 2012 termination of our agreement with them. In the second quarter of 2012, our research and development expenses were $29.5 million, an increase of 29% from $22.8 million in the second quarter of 2011. In the first six months of 2012, our research and development expenses were $62.8 million, an increase of 45% from $43.3 million in the first six months of 2011. Cash, cash equivalents, short-term investments, and long-term marketable securities totaled $378.7 million at June 30, 2012, an increase of $137.8 million from December 31, 2011. The increase was due primarily to $212.5 million, net of issuance costs, received from the sale of our common stock to an affiliate of GSK and $2.8 million received from exercises of employee stock options, partially offset by cash used in operations of $75.7 million.

On April 2, 2012, we and Glaxo Group Limited, an affiliate of GSK, entered into a common stock purchase agreement, under which we issued and sold to Glaxo Group Limited 10,000,000 shares of our common stock at a price of $21.2887 per share, for a total investment of $212,887,000. This stock purchase was completed May 16, 2012.

**Programs**

***Respiratory Programs with GSK***

Fluticasone Furoate/Vilanterol (FF/VI)

FF/VI is an investigational once-daily inhaled corticosteroid (ICS)/long-acting beta$_2$ agonist (LABA) combination treatment, comprising fluticasone furoate and vilanterol, for the maintenance treatment of patients with chronic obstructive pulmonary disease (COPD) and patients with asthma. FF/VI is administered by a new dry powder inhaler called Ellipta™. Relvar™ (FF/VI for the European Union (EU)), Breo™ (FF/VI for the US), and Ellipta™ (for both the EU and the US) are proposed brand names and use of these brand names has not yet been approved by any regulatory authority.



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In July 2012, GSK and Theravance announced the submission of regulatory applications for FF/VI (100/25mcg) in both the EU and the US for patients with COPD and for FF/VI (100/25mcg and 200/25mcg) in the EU for patients with asthma. GSK and Theravance are reviewing the strategy for a future US filing for asthma.

*Umeclidinium Bromide/Vilanterol (UMEC/VI)*

UMEC/VI is a once-daily investigational medicine, combining a long-acting muscarinic antagonist (LAMA) umeclidinium bromide (UMEC), and a LABA, VI, for the maintenance treatment of patients with COPD. UMEC/VI is administered by the Ellipta™ dry powder inhaler.

In July 2012, GSK and Theravance announced positive results from four pivotal Phase 3a studies of UMEC/VI involving over 4,000 patients with COPD. These four studies include two 24-week efficacy studies that compared the combination UMEC/VI, its components and placebo and two 24-week active comparator studies that compared the combination with tiotropium, a widely prescribed maintenance bronchodilator for COPD.

The ongoing registration program includes a 52-week safety study and two replicate 12-week crossover exercise studies. Subject to successful completion of these additional studies, GSK plans to commence global regulatory submissions for UMEC/VI from the end of 2012.

*Inhaled Bifunctional Muscarinic Antagonist-Beta$_2$ Agonist (MABA)*

GSK961081 ('081) is a single molecule bifunctional bronchodilator with both muscarinic antagonist and beta$_2$ receptor agonist activities. The results from the Phase 2b study and a number of non-clinical enabling studies will inform the selection of the most appropriate dose and dosing interval for '081 and progression to Phase 3 will be dependent upon successful completion of these enabling studies.

***Central Nervous System (CNS)/Pain Program***

*Oral Peripheral Mu Opioid Receptor Antagonist — TD-1211*

TD 1211 is an investigational once-daily, orally administered, peripherally selective, multivalent inhibitor of the mu opioid receptor designed with a goal of alleviating gastrointestinal side effects of opioid therapy without affecting analgesia. In July 2012, Theravance announced positive topline results from the Phase 2b Study 0084, the key study in the Phase 2b program evaluating TD-1211 as potential treatment for chronic, non-cancer pain patients with opioid-induced constipation. These results support progression into Phase 3 development. The Phase 2b program consists of three studies (0074, 0076 and 0084) designed to evaluate doses and dosing regimens for Phase 3. Detailed results from all three studies will be presented at future medical conferences.

**Collaboration Arrangements**

***GSK***

*LABA collaboration*

In November 2002, we entered into our LABA collaboration with GSK to develop and commercialize once-daily LABA products for the treatment of COPD and asthma. For the treatment of COPD, the collaboration is developing two combination products: FF/VI, an investigational once-daily combination medicine consisting of a LABA, VI, and an ICS, fluticasone furoate (FF) and umeclidinium bromide/vilanterol (UMEC/VI), a once-daily investigational medicine combining a LAMA, UMEC, with a LABA, VI. For the treatment of asthma, the collaboration is developing FF/VI. The FF/VI program is aimed at developing a once-daily combination LABA/ICS to succeed GSK's Advair®/Seretide™ (salmeterol and fluticasone as a combination) franchise, which had reported 2011 sales of approximately $8.1 billion, and to compete with Symbicort® (formoterol and budesonide as a combination), which had reported 2011 sales of approximately $3.1 billion. UMEC/VI, which is also a combination product, is targeted as an alternative treatment option to Spiriva® (tiotropium), a once-daily, single-mechanism bronchodilator, which had reported 2011 sales of approximately $4.2 billion.

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In the event that a product containing VI is successfully developed and commercialized, we will be obligated to make milestone payments to GSK which could total as much as $220.0 million if both a single-agent and a combination product or two different combination products are launched in multiple regions of the world. A portion of these potential milestone payments could be payable to GSK within the next two years. We are entitled to annual royalties from GSK of 15% on the first $3.0 billion of annual global net sales and 5% for all annual global net sales above $3.0 billion. Sales of single-agent LABA medicines and combination medicines would be combined for the purposes of this royalty calculation. For other products combined with a LABA from the LABA collaboration, such as UMEC/VI, royalties are upward tiering and range from the mid-single digits to 10%. However, if GSK is not selling a LABA/ICS combination product at the time that the first other LABA combination is launched, then the royalties described above for the LABA/ICS combination medicine would be applicable.

*2004 Strategic Alliance*

In March 2004, we entered into our strategic alliance with GSK. Under this alliance, GSK received an option to license exclusive development and commercialization rights to product candidates from certain of our discovery programs on pre-determined terms and on an exclusive, worldwide basis. Upon GSK's decision to license a program, GSK is responsible for funding 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 licenses. If the program is successfully advanced through development by GSK, we are entitled to receive clinical, regulatory and commercial milestone payments and royalties on any sales of medicines developed from the program. If GSK chooses not to license a program, we retain all rights to the program and may continue the program alone or with a third party.

In 2005, GSK licensed our MABA program for the treatment of COPD, and in October 2011, we and GSK expanded the MABA program by adding six additional Theravance-discovered preclinical MABA compounds (the "Additional MABAs"). GSK's development, commercialization, milestone and royalty obligations under the strategic alliance remain the same with respect to '081, the lead compound in the MABA program. GSK is obligated to use diligent efforts to develop and commercialize at least one MABA within the MABA program, but may terminate progression of any or all Additional MABAs at any time and return them to us, at which point we may develop and commercialize such Additional MABAs alone or with a third party. Both GSK and we have agreed not to conduct any MABA clinical studies outside of the strategic alliance so long as GSK is in possession of the Additional MABAs. If a single-agent MABA medicine containing '081 is successfully developed and commercialized, we are entitled to receive royalties from GSK of between 10% and 20% of annual global net sales up to $3.5 billion, and 7.5% for all annual global net sales above $3.5 billion. If a MABA medicine containing '081 is commercialized only as a combination product, such as a MABA/ICS, the royalty rate is 70% of the rate applicable to sales of the single-agent MABA medicine. For single-agent MABA medicines containing an Additional MABA, we are entitled to receive royalties from GSK of between 10% and 15% of annual global net sales up to $3.5 billion, and 10% for all annual global net sales above $3.5 billion. For combination products containing an Additional MABA, such as a MABA/ICS, the royalty rate is 50% of the rate applicable to sales of the single-agent MABA medicine. If a MABA medicine containing '081 is successfully developed and commercialized in multiple regions of the world, we could earn total milestone payments up to $125.0 million for a single-agent medicine and up to $250.0 million for both a single-agent and a combination medicine. If a MABA medicine containing an Additional MABA is successfully developed and commercialized in multiple regions of the world, we could earn total milestone payments up to $129.0 million.

In connection with the expansion of the MABA program, GSK relinquished its option right on our MonoAmine Reuptake Inhibitor (MARIN) program and Angiotensin Receptor-NEP Inhibitor (ARNI) program. GSK has no further option rights on any of our research or development programs under the strategic alliance.

*Purchases of Common Stock under our Governance Agreement and Common Stock Purchase Agreement with GSK*

On April 2, 2012, we and Glaxo Group Limited, an affiliate of GSK, entered into a common stock purchase agreement, under which we issued and sold to Glaxo Group Limited 10,000,000 shares of our common stock at a price of $21.2887 per share, for a total investment of $212,887,000. This stock purchase was completed May 16, 2012.

In addition, Glaxo Group Limited, pursuant to its periodic "top-up" rights under our governance agreement with GSK dated June 4, 2004, as amended, purchased 88,468 shares of our common stock on February 24, 2012 at a price of $18.12 per share.

*GSK Upfront License Fees, Milestone Payments and Revenue*

Revenue recognized from GSK under the LABA collaboration and strategic alliance agreements was as follows:

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| **(in millions)** | **2012** | **2011** | **2012** | **2011** |
| *GSK Collaborations* | | | | |
| LABA collaboration | $ 0.9 | $ 1.3 | $ 1.8 | $ 2.5 |
| Strategic alliance agreement | — | 0.7 | — | 1.4 |
| Strategic alliance—MABA program license | 0.5 | 0.5 | 1.1 | 1.0 |
| Total revenue | $ 1.4 | $ 2.5 | $ 2.9 | $ 4.9 |



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***Astellas***

*License, Development and Commercialization Agreement with Astellas*

In November 2005, we entered into a global collaboration arrangement with Astellas for the development and commercialization of VIBATIV®. On January 6, 2012, Astellas exercised its right to terminate this agreement. The rights previously granted to Astellas ceased upon termination of the agreement and Astellas stopped all promotional sales efforts. Pursuant to the terms of the agreement, Astellas is entitled to a ten-year, 2% royalty on future net sales of VIBATIV®. In March 2012, we entered into a series of purchase agreements with Astellas for the purchase of VIBATIV® active pharmaceutical ingredient and other raw materials of up to $6.2 million and VIBATIV® finished goods inventory of up to $4.2 million, which is subject to release by a third party manufacturer. As of June 30, 2012, we had purchased $4.3 million of active pharmaceutical ingredient and other raw materials pursuant to these purchase agreements.

In addition, beginning July 1, 2012, we are responsible to fund governmental rebate and governmental chargeback claims for Astellas-labeled product sales. As a result of the termination of the VIBATIV® collaboration agreement, we recorded a liability of $150,000 at June 30, 2012, which is included in the condensed consolidated balance sheets.

Through January 6, 2012, we had received $191.0 million in upfront license, milestone and other fees from Astellas. We previously recorded these payments as deferred revenue and amortized them ratably over the estimated performance period (development and commercialization period). As a result of the termination of the VIBATIV® collaboration agreement, the development and commercialization period ended on January 6, 2012. As such, we recognized into revenue $125.8 million of deferred revenue related to Astellas in the first quarter of 2012, and we are no longer eligible to receive any further milestone payments from Astellas.

Net revenue recognized under this collaboration agreement was as follows:

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| (in millions) | 2012 | 2011 | 2012 | 2011 |
| Recognition of deferred revenue | $ — | $ — | $ 125.8 | $ — |
| Amortization of deferred revenue | — | 3.2 | — | 6.5 |
| Royalties from net sales of VIBATIV® | — | 0.7 | — | 1.3 |
| Proceeds from VIBATIV® delivered to Astellas | — | 1.2 | — | 1.2 |
| Cost of VIBATIV® delivered to Astellas | — | (1.2) | — | (1.2) |
| Astellas-labeled product sales allowance | — | — | (0.1) | — |
| Total net revenue | $ — | $ 3.9 | $ 125.7 | $ 7.8 |

**VIBATIV®**

VIBATIV® (telavancin) is a bactericidal, once-daily injectable antibiotic developed by us for the treatment of Gram-positive infections. The FDA has approved VIBATIV® for the treatment of complicated skin and skin structure infections (cSSSI) caused by susceptible Gram-positive bacteria including both methicillin-resistant (MRSA) and methicillin-susceptible strains of *Staphylococcus aureus* in adult patients. VIBATIV® is also approved in Canada for the treatment of cSSSI in adult patients. In September 2011, the European Commission granted marketing authorization for VIBATIV® for the treatment of adults with nosocomial pneumonia, including ventilator-associated pneumonia, known or suspected to be caused by MRSA when other alternatives are not suitable. However, in May 2012, the European Commission suspended this marketing authorization because the single-source drug product supplier does not meet the Good Manufacturing Practice (GMP) requirements to allow the manufacture of VIBATIV®.

We are evaluating global commercialization alternatives for VIBATIV® either with partners or alone.

Due to manufacturing issues at the single-source supplier of VIBATIV® drug product, VIBATIV® is currently subject to critical product shortages and regional supply outages in the U.S. In May 2012, we entered into a Technology Transfer and Supply Agreement with Hospira Worldwide, Inc. (Hospira) and technology transfer activities are in process. We must obtain regulatory approval for VIBATIV® drug product that will be manufactured at Hospira's facility before any such product may be sold, and this regulatory approval process could take up through mid-2013.



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**Critical Accounting Policies and the Use of Estimates**

As of the date of the filing of this quarterly report, we believe there have been no material changes or additions to our critical accounting policies and estimates during the six months ended June 30, 2012 compared to those discussed in our 2011 Annual Report on Form 10-K filed on February 27, 2012.

**RESULTS OF OPERATIONS**

***Revenue***

Revenue, as compared to the prior year periods, was as follows:

| | Three months Ended June 30, | | Change | | Six months Ended June 30, | | Change | |
|---|---|---|---|---|---|---|---|---|
| (in millions, except percentages) | 2012 | 2011 | $ | % | 2012 | 2011 | $ | % |
| Revenue | $ 1.4 | $ 6.4 | $ (5.0) | (78)% | $ 128.5 | $ 12.7 | $ 115.8 | 912% |

We recognized revenue from the amortization of upfront license fees and milestone payments related to our GSK LABA collaboration and strategic alliance agreements and our Astellas telavancin collaboration, which was terminated on January 6, 2012. In addition, we recognized revenue related to our Astellas telavancin collaboration from royalties from net sales of VIBATIV® and from the impact of VIBATIV® inventory transfers or dispositions.

Revenue decreased 78% to $1.4 million in the second quarter of 2012 from the comparable period in 2011. Revenue increased 912% to $128.5 million in the first six months of 2012 from the comparable period in 2011. The increase in the first six months of 2012 reflects the accelerated recognition of deferred revenue of $125.7 million from our global collaboration arrangement with Astellas for the development and commercialization of VIBATIV®. This

recognition resulted from Astellas' January 6, 2012 termination of our agreement with them. This increase was partially offset by a decrease in revenue related to our GSK strategic alliance agreement of $1.4 million resulting from the deferred revenue being fully amortized in the third quarter of 2011.

Upfront license fees and milestone payments received from GSK under the LABA collaboration and strategic alliance agreements and from Astellas under the telavancin collaboration were as follows:

| | Through June 30, 2012 | | |
|---|---|---|---|
| (in millions) | Upfront License and Other Fees | Milestone Payments | Total |
| *GSK Collaborations* | | | |
| LABA collaboration(1) | $ 10.0 | $ 50.0 | $ 60.0 |
| Strategic alliance agreement | 20.0 | — | 20.0 |
| Strategic alliance—LAMA license(2) | 5.0 | 3.0 | 8.0 |
| Strategic alliance—MABA program license | 6.0 | 16.0 | 22.0 |
| *Astellas License agreement*(3) | 70.0 | 121.0 | 191.0 |
| Total | $ 111.0 | $ 190.0 | $ 301.0 |

(1) We do not expect to be eligible for any additional milestones under this collaboration.

(2) In August 2004, GSK exercised its right to license our LAMA program pursuant to the terms of the strategic alliance. In 2009, GSK returned the program to us.

(3) This agreement was terminated on January 6, 2012.

Upfront fees and certain milestone payments received from GSK have been deferred and are being amortized ratably into revenue over the estimated performance period. Future revenue will include the ongoing amortization of upfront and milestone payments earned. We periodically review and, if necessary, revise the estimated periods of our performance pursuant to these contracts.



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***Research & Development***

Research and development expenses, as compared to the prior year periods, were as follows:

| | Three months Ended June 30, | | Change | | Six months Ended June 30, | | Change | |
|---|---|---|---|---|---|---|---|---|
| (in millions, except percentages) | 2012 | 2011 | $ | % | 2012 | 2011 | $ | % |
| Employee-related | $ 9.4 | $ 8.5 | $ 0.9 | 11% | $ 19.6 | $ 16.7 | $ 2.9 | 17% |
| External-related | 11.0 | 5.2 | 5.8 | 112% | 24.1 | 8.4 | 15.7 | 187% |
| Stock-based compensation | 3.5 | 3.4 | 0.1 | 3% | 7.1 | 6.5 | 0.6 | 9% |
| Facilities, depreciation and other allocated | 5.6 | 5.7 | (0.1) | (2)% | 12.0 | 11.7 | 0.3 | 3% |
| Total expenses | $ 29.5 | $ 22.8 | $ 6.7 | 29% | $ 62.8 | $ 43.3 | $ 19.5 | 45% |

R&D expenses increased 29% to $29.5 million in the second quarter and 45% to $62.8 million in the first six months of 2012 from the comparable periods in 2011. These increases in 2012 were due primarily to Phase 2 clinical costs related to our program for opioid-induced constipation with TD-1211, costs associated with our preclinical and late-stage discovery programs, and higher employee-related expenses, including stock-based compensation expense.

We anticipate R&D expenses for 2012 to increase relative to 2011. R&D expenses in 2012 will be driven largely by higher employee-related expenses, costs associated with our continued development efforts in our program for opioid-induced constipation with TD-1211, our MARIN program with TD-9855, and costs associated with our earlier stage clinical programs, preclinical studies and late-stage discovery. We have not provided program costs in detail because we do not track, and have not tracked, all of the individual components (specifically the internal cost components) of our research and development expenses on a program basis. We do not have the systems and processes in place to accurately capture these costs on a program basis.

***General and administrative***

General and administrative expenses, as compared to the prior year periods, were as follows:

| | Three months Ended June 30, | | Change | | Six months Ended June 30, | | Change | |
|---|---|---|---|---|---|---|---|---|
| (in millions, except percentages) | 2012 | 2011 | $ | % | 2012 | 2011 | $ | % |
| General and administrative expense | $ 7.6 | $ 7.2 | $ 0.4 | 6% | $ 15.4 | $ 14.4 | 1.0 | 7% |

G&A expenses increased 6% to $7.6 million in the second quarter and 7% to $15.4 million in the first six months of 2012 from the comparable periods in 2011. These increases in 2012 were due primarily to an increase in external legal fees and professional services costs in connection with the evaluation of global commercialization alternatives related to VIBATIV® and higher employee-related expenses, partially offset by decreases in facilities-related costs and stock-based compensation expense. Stock-based compensation expense was $2.4 million in the second quarter of 2012, compared to $2.9 million in the same period of 2011 and $5.1 million in the six months ended June 30, 2012, compared to $5.3 million in the same period of 2011.

We anticipate G&A expenses for 2012 to increase slightly relative to 2011, due to the transfer of certain ongoing VIBATIV® related activities following the termination by Astellas of the collaboration agreement in January 2012.

***Interest income***

Interest income, as compared to the prior year periods, was as follows:

| (in millions, except percentages) | Three months Ended June 30, 2012 | 2011 | Change $ | % | Six months Ended June 30, 2012 | 2011 | Change $ | % |
|---|---|---|---|---|---|---|---|---|
| Interest income | $ 0.1 | $ 0.1 | $ — | —% | $ 0.1 | $ 0.3 | $ (0.2) | (67)% |

Interest income remained relatively flat in the second quarter and first six months of 2012, compared to the same periods in 2011.

***Interest expense***

Interest expense, as compared to the prior year periods, was as follows:

| (in millions, except percentages) | Three months Ended June 30, 2012 | 2011 | Change $ | % | Six months Ended June 30, 2012 | 2011 | Change $ | % |
|---|---|---|---|---|---|---|---|---|
| Interest expense | $ 1.5 | $ 1.5 | $ — | —% | $ 3.0 | $ 3.0 | $ — | —% |

Interest expense is primarily comprised of interest expense and amortization of debt issuance costs from our convertible subordinated notes issued in January 2008.



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## LIQUIDITY AND CAPITAL RESOURCES

***Liquidity***

Since our inception, we have financed our operations primarily through private placements and public offerings of equity and debt securities and payments received under corporate collaboration arrangements. As of June 30, 2012, we had $378.7 million in cash, cash equivalents and marketable securities, excluding $0.8 million in restricted cash that was pledged as collateral for certain of our leases. On April 2, 2012, we and Glaxo Group Limited, an affiliate of GSK, entered into a stock purchase agreement, under which we issued 10,000,000 shares of our common stock at a price of $21.2887 per share, for net proceeds of $212.5 million. This stock purchase was complete on May 16, 2012.

We expect to incur substantial expenses as we continue our discovery and development efforts; particularly to the extent we advance our product candidates into clinical studies, which are very expensive. In July 2012, we announced positive results from the key study in our Phase 2b program with TD-1211 in our program for opioid-induced constipation. Though we seek to partner this program, we may choose to progress TD-1211 into Phase 3 studies by ourselves, which would increase our operating expenses substantially. In addition, we initiated a Phase 2 study with TD-9855 in the MARIN program in late 2011 and we are planning a second Phase 2 study with TD-9855. We also intend to invest in other assets in our pipeline, including programs in earlier-stage clinical development and late-stage discovery. On January 6, 2012, Astellas exercised its right to terminate our collaboration agreement for VIBATIV®. In March 2012, we entered into a series of purchase agreements for VIBATIV® active pharmaceutical ingredient and other raw materials of up to $6.2 million and VIBATIV® finished goods inventory of up to $4.2 million, which is subject to release of the inventory by a third party manufacturer. As of June 30, 2012, we had purchased $4.3 million of active pharmaceutical ingredient and other raw materials.

We believe that our cash, cash equivalents and marketable securities will be sufficient to meet our anticipated operating needs for at least the next twelve months based upon current operating plans, milestone and royalty forecasts and spending assumptions. If our current operating plans, milestone and royalty forecasts or spending assumptions change, we may require additional funding sooner in the form of public or private equity offerings or debt financings. Furthermore, if in our view favorable financing opportunities arise, we may seek additional funding at any time. However, future financing may not be available in amounts or on terms acceptable to us, if at all. This could leave us without adequate financial resources to fund our operations as presently conducted. In addition, we regularly explore debt restructuring and/or reduction alternatives, including through tender offers, redemptions, repurchases or otherwise, all consistent with the terms of our debt agreements.

*Cash Flows*

Cash flows, as compared to the prior year period, were as follows:

| (in millions) | Six Months Ended June 30, 2012 | 2011 |
|---|---|---|
| Net cash used in operating activities | $ (75.7) | $ (43.7) |
| Net cash used in investing activities | $ (24.7) | $ (50.5) |
| Net cash provided by financing activities | $ 216.7 | $ 21.4 |

Cash used in operations increased $32.0 million for the six months ended June 30, 2012, compared to the same period in 2011, due primarily to higher uses of cash for operating liabilities resulting from an increase in R&D activity and purchase of inventory.

Cash used in investing activities decreased $25.8 million for the six months ended June 30, 2012, compared to the same period in 2011, resulting primarily from lower cash balances being invested in short-term investments.

Cash provided by financing activities increased $195.3 million for the six months ended June 30, 2012, compared to the same period in 2011, due primarily to $212.5, net of issuance costs, received from the sale of our common stock to an affiliate of GSK.

***Off Balance-Sheet Arrangements***

We lease various real properties under an operating lease that generally requires us to pay taxes, insurance, maintenance, and minimum lease payments. This lease has options to renew.



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We have not entered into any off-balance sheet financial arrangements and have not established any structured finance or special purpose entities. We have not guaranteed any debts or commitments of other entities or entered into any options on non-financial assets.

**Contractual Obligations and Commercial Commitments**

During the first six months of 2012, there have been no significant changes in our payments due under contractual obligations, compared to those disclosed in our Annual Report on Form 10-K for the year ended December 31, 2011, except that we entered into a series of purchase agreements with Astellas for the purchase of VIBATIV® active pharmaceutical ingredient and other raw materials of up to $6.2 million and VIBATIV® finished goods inventory of up to $4.2 million, which is subject to release by a third party manufacturer. As of June 30, 2012, we had purchased $4.3 million of active pharmaceutical ingredient and other raw materials pursuant to these purchase agreements.

We indemnify our officers and directors for certain events or occurrences, subject to certain limits. We may be subject to contingencies that may arise from matters such as product liability claims, legal proceedings, shareholder suits and tax matters, as such, we are unable to estimate the potential exposure related to these indemnification agreements. We have not recognized any liabilities relating to these agreements as of June 30, 2012.

Pursuant to our LABA collaboration with GSK, we will be obligated to make milestone payments to GSK which could total as much as $220.0 million if both a single-agent and a combination product or two different combination products containing the LABA VI are launched in multiple regions of the world. A portion of these potential milestone payments could be payable to GSK within the next two years. We have not recognized any liabilities relating to this agreement as of June 30, 2012.

**Item 3. Quantitative and Qualitative Disclosure About Market Risk**

During the first six months of 2012, there have been no significant changes in our market risk or how our market risk is managed, compared to those disclosed in our Annual Report on Form 10-K for the year ended December 31, 2011.

**Item 4. Controls and Procedures**

*Evaluation of Disclosure Controls and Procedures.*

We conducted an evaluation as of June 30, 2012, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures, which are defined under SEC rules as controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files under the Securities Exchange Act of 1934 (Exchange Act) is recorded, processed, summarized and reported within required time periods. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of such date, our disclosure controls and procedures were effective.

*Limitations on the Effectiveness of Controls*

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefit of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within Theravance have been detected. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

*Changes in Internal Control over Financial Reporting*

There was no change in our internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) identified in connection with the evaluation required by paragraph (d) of Rule 13a-15 of the Exchange Act, which occurred during our most recent fiscal quarter which has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.



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**PART II. OTHER INFORMATION**

**Risks Related to our Business**

**Item 1A. Risk Factors**

In addition to the other information in this Quarterly Report on Form 10-Q, the following risk factors should be considered carefully in evaluating our business and us.

**Risks Related to our Business**

***If regulatory authorities determine that the Phase 3 programs for FF/VI in asthma and/or chronic obstructive pulmonary disease (COPD) do not demonstrate adequate safety and efficacy, the continued development of FF/VI may be significantly delayed, it may not be approved by regulatory authorities, and even if approved it may be subject to restrictive labeling, any of which will harm our business, and the price of our securities could fall.***

During the first quarter of 2012, we announced the completion of, and reported certain top-line data from, the Phase 3 registrational program for FF/VI in COPD and asthma. In July 2012, GSK submitted regulatory applications for FF/VI (proposed brand name Relvar™) in Europe for both COPD and asthma, and for FF/VI (proposed brand name Breo™) in the U.S. for COPD. GSK and we are reviewing the strategy for a future U.S. regulatory submission for asthma. The Phase 3b program for FF/VI in COPD commenced in February 2011. Any adverse developments or results or perceived adverse developments or results with respect to the FF/VI regulatory submissions or Phase 3b program will significantly harm our business and could cause the price of our securities to fall. Examples of such adverse developments include, but are not limited to:

- not every study in the Phase 3 programs for FF/VI achieved its primary endpoint, and the FDA and/or other regulatory authorities may determine that additional clinical studies are required;
- inability to gain, or delay in gaining, regulatory approval for the new Ellipta™ delivery device used in these programs;
- safety or other concerns arising from clinical or non-clinical studies in these programs. For example, GSK is investigating reports of fatal pneumonia with FF/VI primarily at the highest dose, and the large Phase 3b program in COPD is ongoing;
- safety or other concerns arising from clinical or non-clinical studies with umeclidinium bromide/vilanterol (UMEC/VI) having to do with the LABA VI, which is also a component of FF/VI;
- regulatory authorities determining that the Phase 3 program in asthma or COPD raises safety concerns or does not demonstrate adequate efficacy; or
- any change in FDA policy or guidance regarding the use of LABAs to treat asthma.

On February 18, 2010, the FDA announced that LABAs should not be used alone in the treatment of asthma and will require manufacturers to include this warning in the product labels of these drugs, along with taking other steps to reduce the overall use of these medicines. The FDA now requires that the product labels for LABA medicines reflect, among other things, that the use of LABAs is contraindicated without the use of an asthma controller medication such as an inhaled corticosteroid, that LABAs should only be used long-term in patients whose asthma cannot be adequately controlled on asthma controller medications, and that LABAs should be used for the shortest duration of time required to achieve control of asthma symptoms and discontinued, if possible, once asthma control is achieved. In addition, on March 10 and 11, 2010, the FDA held an Advisory Committee to discuss the design of medical research studies (known as “clinical trial design”) to evaluate serious asthma outcomes (such as hospitalizations, a procedure using a breathing tube known as intubation, or death) with the use of LABAs in the treatment of asthma in adults, adolescents, and children. Further, in April 2011, the FDA announced that to further evaluate the safety of LABAs, it is requiring the manufacturers of currently marketed LABAs to conduct additional randomized, double-blind, controlled clinical trials comparing the addition of LABAs to inhaled corticosteroids versus inhaled corticosteroids alone. Results from these post-marketing studies are expected in 2017. It is unknown at this time what, if any, effect these or future FDA actions will have on the prospects for FF/VI. The current uncertainty regarding the FDA’s position on LABAs for the treatment of asthma and the lack of consensus expressed at the March 2010 Advisory Committee may result in the FDA requiring additional asthma clinical trials in the United States for FF/VI and increase the overall risk for FF/VI for the treatment of asthma in the United States.



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***If regulatory authorities determine that the Phase 3 program for UMEC/VI for the treatment of COPD does not demonstrate adequate safety and efficacy, UMEC/VI will be significantly delayed or terminated, our business will be harmed, and the price of our securities could fall.***

The Phase 3 program for UMEC/VI with the combination of a LAMA umeclidinium bromide (UMEC), and a LABA, VI, for the treatment of COPD commenced in February 2011. In July 2012, GSK and we reported top-line results from four pivotal studies in this Phase 3 program. Subject to successful completion of the remaining studies in the registrational program, GSK plans to commence global regulatory submissions for UMEC/VI from the end of 2012. Any adverse developments or results or perceived adverse developments or results with respect to the UMEC/VI program will significantly harm our business and could cause the price of our securities to fall. Examples of such adverse developments include, but are not limited to:

- the FDA and/or other regulatory authorities determining that additional clinical studies are required with respect to the Phase 3 program in COPD;
- inability to gain, or delay in gaining, regulatory approval for the new delivery device used in the program;
- safety or other concerns arising from ongoing clinical or non-clinical studies in this program;
- safety or other concerns arising from clinical or non-clinical studies with FF/VI having to do with the LABA, VI, which is also a component of UMEC/VI;
- regulatory authorities determining that the Phase 3 program in COPD raises safety concerns or does not demonstrate adequate efficacy; or
- any change in FDA policy or guidance regarding the use of LABAs combined with a LAMA to treat COPD.

***If the MABA program for the treatment of COPD does not demonstrate safety and efficacy, the MABA program will be significantly delayed or terminated, our business will be harmed, and the price of our securities could fall.***

The lead compound, GSK961081 (‘081), in the bifunctional muscarinic antagonist-beta$_2$ agonist (MABA) program with GSK has completed a Phase 2b study and a Phase 1 study in combination with fluticasone propionate (FP), an inhaled corticosteroid (ICS), and there are a number of Phase 3-enabling non-clinical studies. We announced topline results from the Phase 2b COPD study in February 2012 and progression into Phase 3 is dependent upon

successful completion of the Phase 3-enabling studies. Any adverse developments or results or perceived adverse developments or results with respect to these studies will harm our business and could cause the price of our securities to fall. Examples of such adverse developments include, but are not limited to:

- the FDA and/or other regulatory authorities determining that any of these studies do not demonstrate adequate safety or efficacy, or that additional non-clinical or clinical studies are required with respect to the MABA program;
- inability to gain, or delay in gaining, regulatory approval for the delivery device used in the program;
- safety or other concerns arising from the Phase 3-enabling non-clinical studies; or
- any change in FDA policy or guidance regarding the use of MABAs to treat COPD.

***Our collaboration agreement for VIBATIV® was terminated in early 2012, VIBATIV® was returned to us, and 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 market, sell and distribute our products. We may not be able to establish these sales and distribution relationships on acceptable terms, or at all. With VIBATIV®, which was returned to us by Astellas in January 2012, and any of our product candidates that receive regulatory approval in the future and are not covered by our current agreements with GSK, we will need a partner in order to commercialize such products unless we establish a sales and marketing organization with appropriate technical expertise and supporting infrastructure and distribution capability. At present, we have no sales personnel and a limited number of marketing personnel. Factors that may inhibit our efforts to commercialize our products without strategic partners or licensees include:



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- significant costs and expenses associated with creating an independent sales and marketing organization with appropriate technical expertise and supporting infrastructure and distribution capability;
- our unproven ability to recruit and retain adequate numbers of effective sales and marketing personnel;
- the unproven ability of sales personnel to obtain access to or persuade adequate numbers of physicians to prescribe our products; and
- 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.

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 organization with appropriate technical expertise and supporting infrastructure and distribution capability, we will have difficulty commercializing VIBATIV® and other product candidates, which would adversely affect our business and financial condition and which could cause the price of our securities to fall.

***With regard to all of our programs, any delay in commencing or completing clinical studies for product candidates and any adverse results from clinical or non-clinical studies or regulatory obstacles product candidates may face, would harm our business and could cause the price of our securities to fall.***

Each of our product candidates must undergo extensive non-clinical and clinical studies as a condition to regulatory approval. Non-clinical and clinical studies are expensive, take many years to complete and study results may lead to delays in further studies or decisions to terminate programs. For example, we had planned to commence the Phase 2b study in our MABA program with GSK in 2009, but the program was delayed until late 2010.

The commencement and completion of clinical studies for our product candidates may be delayed and programs may be terminated due to many factors, including, but not limited to:

- lack of effectiveness of product candidates during clinical studies;
- adverse events, safety issues or side effects relating to the product candidates or their formulation into medicines;
- inability to raise additional capital in sufficient amounts to continue our development programs, which are very expensive;
- the need to sequence clinical studies as opposed to conducting them concomitantly in order to conserve resources;
- our inability to enter into partnering arrangements relating to the development and commercialization of our programs and product candidates;
- our inability or the inability of our collaborators or licensees to manufacture or obtain from third parties materials sufficient for use in non-clinical and clinical studies;
- governmental or regulatory delays and changes in regulatory requirements, policy and guidelines;
- failure of our partners to advance our product candidates through clinical development;
- delays in patient enrollment and variability in the number and types of patients available for clinical studies;
- difficulty in maintaining contact with patients after treatment, resulting in incomplete data;
- varying regulatory requirements or interpretations of data among the FDA and foreign regulatory authorities; and

- a regional disturbance where we or our collaborative partners are enrolling patients in clinical trials, such as a pandemic, terrorist activities or war, political unrest or a natural disaster.

***If our product candidates that we develop on our own or through collaborative partners are not approved by regulatory authorities, including the FDA, we will be unable to commercialize them.***



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The 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 and clinical studies 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 NDA. The processes by which regulatory approvals are obtained from the FDA to market and sell a new product are complex, require a number of years and involve the expenditure of substantial resources. In order to market our medicines in 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. Conversely, failure to obtain approval in one or more jurisdictions may make approval in other jurisdictions more difficult.

Clinical studies involving our product candidates may reveal that those candidates are ineffective, inferior to existing approved medicines, unacceptably toxic, or that they have other unacceptable side effects. In addition, the results of preclinical studies do not necessarily predict clinical success, and larger and later-stage clinical studies may not produce the same results as earlier-stage clinical studies.

Frequently, product candidates that have shown promising results in early preclinical or clinical studies have subsequently suffered significant setbacks or failed in later clinical or non-clinical studies. In addition, clinical and non-clinical studies of potential products often reveal that it is not possible or practical to continue development efforts for these product candidates. If these studies are substantially delayed or fail to prove the safety and effectiveness of our product candidates in development, we may not receive regulatory approval of any of these product candidates and our business and financial condition will be materially harmed and the price of our securities may fall.

***If telavancin is not approved for nosocomial pneumonia (NP) in the United States, the commercialization of VIBATIV® in the U.S. will continue to be adversely affected and the price of our securities could fall.***

Our first New Drug Application (NDA), for VIBATIV® (telavancin) for the treatment of complicated skin and skin structure infections (cSSSI) caused by susceptible Gram-positive bacteria in adult patients, was approved by the FDA in September 2009. In January 2009, we submitted a second telavancin NDA to the FDA for the NP indication based on data from our two Phase 3 studies referred to as the ATTAIN studies. These studies were conducted in accordance with the then current draft FDA guidelines and met their primary efficacy endpoint of clinical cure. During the fourth quarter of 2010 the FDA issued new draft guidance for antibacterial clinical trial design for the treatment of NP with a focus on mortality as the primary efficacy endpoint. In late 2010, we received a Complete Response Letter from the FDA indicating that the ATTAIN studies do not meet the new draft guidance and that additional clinical studies will be required for approval. We do not plan to conduct additional clinical studies for NP, but we do intend to continue to engage with FDA concerning the NP NDA. Lack of FDA approval for use of telavancin to treat NP has adversely affected and may continue to adversely affect commercialization of this medicine in the United States.

***If any product candidates, in particular those in any respiratory program with GSK, are determined to be unsafe or ineffective in humans, our business will be adversely affected and the price of our securities could fall.***

Although our first product, VIBATIV®, is approved in the U.S. and Canada, none of our other product candidates have been approved by regulatory authorities. We are uncertain whether any of our other product candidates and our collaborative partner's 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 may not result in the creation of successful medicines. The risk of failure for our product candidates is high. For example, in late 2005, we discontinued our overactive bladder program based upon the results of our Phase 1 studies with compound TD-6301, and GSK discontinued development of TD-5742, the first LAMA compound licensed from us, after completing a single-dose Phase 1 study. The data supporting our drug discovery and development programs is derived solely from laboratory experiments, non-clinical studies and clinical studies. A number of other compounds remain in the lead identification, lead optimization, preclinical testing or early clinical testing stages.

Several well-publicized Complete Response letters issued by the FDA and safety-related product withdrawals, suspensions, post-approval labeling revisions to include boxed warnings and changes in approved indications over the last several years, as well as growing public and governmental scrutiny of safety issues, have created an increasingly conservative regulatory environment. The implementation of new laws and regulations, and revisions to FDA clinical trial design guidance, have increased uncertainty regarding the approvability of a new drug. Further, there are additional requirements for approval of new drugs, including advisory committee meetings for new chemical entities, and formal risk evaluation and mitigation strategy (REMS) at the FDA's discretion. These laws, regulations, additional requirements and changes in interpretation could cause non-approval or further delays in the FDA's review and approval of our and our collaborative partner's product candidates.



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***There currently is no reliable manufacturer for VIBATIV® drug product supply and we rely on a single source of supply for a number of our product candidates; accordingly, our business will be harmed if a reliable alternate source of VIBATIV® drug product is not qualified and engaged on a timely basis or the single-source manufacturers are not able to satisfy demand and alternative sources are not available.***

During the fourth quarter of 2011, the third party manufacturer of VIBATIV® drug product notified the FDA of an ongoing investigation related to its production equipment and processes. The notification included all products manufactured at the third party manufacturer's facility which remain within expiry, including batches of manufactured but unreleased VIBATIV®. In November 2011, Astellas (our former VIBATIV® collaboration partner) voluntarily

placed a hold on distribution of VIBATIV® to wholesalers, and cancelled pending orders for VIBATIV® with this manufacturer. VIBATIV® drug product previously manufactured by this manufacturer will not become available for sale in the U.S. unless and until the batches are released. Similarly, our purchase orders for this inventory cannot be fulfilled unless and until the batches are released. We cannot predict when or if the manufactured batches of VIBATIV® will be released. In addition, in August 2011 the third party manufacturer of VIBATIV® drug product announced its intention to transition out of the contract manufacturing services business over the next several years. Additional VIBATIV® drug product will need to be manufactured to meet longer-term U.S. demand as well as demand from the E.U. and Canada. In May 2012 the European Commission suspended marketing authorization for VIBATIV® because the single-source VIBATIV® drug product supplier does not meet the good manufacturing practice (GMP) requirements to allow the manufacture of VIBATIV®. No VIBATIV® drug product intended to meet E.U. specifications has as yet been manufactured.

If the VIBATIV® drug product manufactured by this third party manufacturer is not released in the near future, the commercialization of VIBATIV® in the U.S. will continue to be adversely affected, and if supplemental or alternative commercial manufacture of VIBATIV® drug product cannot be arranged on a timely basis, the commercial introduction of VIBATIV® in the E.U. and Canada will be materially delayed. In each such case, our business will be harmed and the price of our securities could fall. In May 2012, we entered into a Technology Transfer and Supply Agreement with Hospira Worldwide, Inc. (Hospira) and technology transfer activities are in process. We must obtain regulatory approval for VIBATIV® drug product that will be manufactured at Hospira's facility before any such product may be sold, and this regulatory approval process could take up through mid-2013.

We have a single source of supply of telavancin API. If, for any reason, the single-source third party manufacturer of telavancin API is unable or unwilling to perform, or if its performance does not meet regulatory requirements, including maintaining GMP compliance, we may not be able to locate alternative manufacturers, enter into acceptable agreements with them or obtain sufficient quantities of API in a timely manner. Any inability to acquire sufficient quantities of API in a timely manner from current or future sources could further adversely affect the commercialization of VIBATIV® and could cause the price of our securities to fall.

With respect to our programs other than VIBATIV®, we have limited in-house production capabilities for non-clinical and early clinical study purposes, and depend primarily on a number of third-party API and drug product manufacturers. We may not have long-term agreements with these third parties and our agreements with these parties may be terminable at will by either party at any time. If, for any reason, these third parties are unable or unwilling to perform, or if their performance does not meet regulatory requirements, we may not be able to locate alternative manufacturers or enter into acceptable agreements with them. Any inability to acquire sufficient quantities of API and drug product in a timely manner from these third parties could delay clinical studies, prevent us from developing our product candidates in a cost-effective manner or on a timely basis. In addition, manufacturers of our API and drug product are subject to the FDA's cGMP 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 APIs and/or drug products in a cost effective and/or timely manner and changing manufacturers for our APIs or drug products could involve lengthy technology transfer, validation and regulatory qualification activities for the new manufacturer;

- the processes required to manufacture certain of our APIs and drug products are specialized and available only from a limited number of third-party manufacturers;

- some of the manufacturing processes for our APIs and drug products have not been scaled to quantities needed for continued clinical studies or commercial sales, and delays in scale-up to commercial quantities could delay clinical studies, regulatory submissions and commercialization of our product candidates; and

- because some of the third-party manufacturers are located outside of the U.S., there may be difficulties in importing our APIs and drug products 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.



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***Even if our product candidates receive regulatory approval, as VIBATIV® has, commercialization of such products may be adversely affected by regulatory actions and oversight.***

Even if we receive regulatory approval for our product candidates, this approval may include limitations on the indicated uses for which we can market our medicines or the patient population that may utilize our medicines, which may limit the market for our medicines or put us at a competitive disadvantage relative to alternative therapies. For example, VIBATIV®'s U.S. labeling contains a boxed warning regarding the risks of use of VIBATIV® during pregnancy. Products with boxed warnings are subject to more restrictive advertising regulations than products without such warnings. In addition, the VIBATIV® labeling that was approved for the E.U. in 2011 specifies that VIBATIV® should be used only in situations where it is known or suspected that other alternatives are not suitable. These restrictions could make it more difficult to market VIBATIV®. In May 2012 the European Commission suspended marketing authorization for VIBATIV® because the single-source VIBATIV® drug product supplier does not meet the GMP requirements to allow the manufacture of VIBATIV®. With VIBATIV® approved in certain countries, we are subject to continuing regulatory obligations, such as safety reporting requirements and additional post-marketing obligations, including regulatory oversight of promotion and marketing.

In addition, the manufacturing, labeling, packaging, adverse event reporting, advertising, promotion and recordkeeping for the approved product remain subject to extensive and ongoing regulatory requirements. If we become aware of previously unknown problems with an approved product in the U.S. or overseas or at contract manufacturers' facilities, a regulatory authority may impose restrictions on the product, the contract manufacturers or on us, including requiring us to reformulate the product, conduct additional clinical studies, change the labeling of the product, withdraw the product from the market or require the contract manufacturer to implement changes to its facilities. For example, during the fourth quarter of 2011, the third party manufacturer of VIBATIV® drug product notified the FDA of an ongoing investigation related to its production equipment and processes. The notification included all products manufactured at the third party manufacturer's facility which remain within expiry, including batches of manufactured but unreleased VIBATIV®. Astellas (our former VIBATIV® collaboration partner) subsequently placed a voluntary hold on distribution of VIBATIV® to wholesalers and cancelled pending orders for VIBATIV® with this manufacturer. With this supply interruption and the termination of our VIBATIV® collaboration agreement with

Astellas, commercialization of VIBATIV® has essentially stopped, we have experienced a significant drop in the sales of the product and the reputation of VIBATIV® in the marketplace may suffer.

We are also subject to regulation by regional, national, state and local agencies, including the Department of Justice, the Federal Trade Commission, the Office of Inspector General of the U.S. Department of Health and Human Services and other regulatory bodies with respect to VIBATIV®, as well as governmental authorities in those foreign countries in which any of our product candidates are approved for commercialization. The Federal Food, Drug, and Cosmetic Act, the Public Health Service Act and other federal and state statutes and regulations govern to varying degrees the research, development, manufacturing and commercial activities relating to prescription pharmaceutical products, including non-clinical and clinical testing, approval, production, labeling, sale, distribution, import, export, post-market surveillance, advertising, dissemination of information and promotion. If we or any third parties that provide these services for us are unable to comply, we may be subject to regulatory or civil actions or penalties that could significantly and adversely affect our business. 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, which may cause our stock price to decline.

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

We have been engaged in discovering and developing compounds and product candidates since mid-1997. Our first approved product, VIBATIV®, was launched by our partner Astellas in the U.S. in November 2009, and to date we have received only modest revenues from VIBATIV® sales. We may never generate sufficient revenue from the sale of medicines or royalties on sales by our partners to achieve profitability. As of June 30, 2012, we had an accumulated deficit of approximately $1.3 billion.

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 and through clinical studies, which are very expensive. For example, in July 2012, we announced positive results from the key study in our Phase 2b program with TD-1211 in our Peripheral Mu Opioid Receptor Antagonist program for opioid-induced constipation. Though we seek to partner this program, we may choose to progress TD-1211 into Phase 3 studies by ourselves, which would increase our operating expenses substantially. As a result, we expect to continue to incur substantial 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 securities and our ability to raise capital and continue operations.



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***If we fail to obtain the capital necessary to fund our operations, we may be unable to develop our product candidates or commercialize VIBATIV® 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, milestone and royalty forecasts and spending assumptions, we believe that our cash and cash equivalents and marketable securities will be sufficient to meet our anticipated operating needs for at least the next twelve months. If our current operating plans, milestone and royalty forecasts or spending assumptions change, we may require additional funding sooner in the form of public or private equity offerings or debt financings. Although we have no current intention to do so, if we were to conduct additional studies to support the telavancin NP NDA, or if we were to build the sales and marketing, distribution and compliance infrastructure to commercialize VIBATIV® without a partner, our capital needs would increase substantially. We intend to continue development of our pipeline. For example, in July 2012, we announced positive results from the key study in our Phase 2b program with TD-1211 in our Peripheral Mu Opioid Receptor Antagonist program for opioid-induced constipation. Though we seek to partner this program, we may choose to progress TD-1211 into Phase 3 studies by ourselves, which would increase our operating expenses substantially. In addition, we initiated a Phase 2 study with TD-9855 in the MARIN program in late 2011 and we are planning a second Phase 2 study with TD-9855. We also intend to invest in other assets in our pipeline, including programs in earlier-stage clinical development and late-stage discovery. Further, in connection with the January 2012 termination of our collaboration agreement with Astellas, we entered into purchase agreements for VIBATIV® active pharmaceutical ingredient and raw materials of up to $6.2 million and VIBATIV® finished goods inventory of up to $4.2 million, which is subject to release of the inventory by a third party manufacturer. As of June 30, 2012, we had purchased $4.3 million of active pharmaceutical ingredient and raw materials pursuant to these purchase agreements. In addition, under our LABA collaboration with GSK, in the event that a product containing vilanterol (VI), which is the LABA product candidate in FF/VI and UMEC/VI and which was discovered by GSK, is approved and launched in multiple regions of the world as both a single-agent and a combination product or two different combination products, we will be obligated to pay GSK milestone payments that could total as much as $220.0 million and we will not be entitled to receive any further milestone payments from GSK. Future financing to meet our capital needs may not be available in sufficient amounts or on terms acceptable to us, if at all. Even if we are able to raise additional capital, such financing may result in significant dilution to existing security holders. If we are unable to raise additional capital in sufficient amounts or on terms acceptable to us, we may have to make reductions in our workforce and may be prevented from continuing our discovery and development efforts and exploiting other corporate opportunities. This could harm our business, prospects and financial condition and cause the price of our securities to fall.

***VIBATIV® may not be accepted by physicians, patients, third party payors, or the medical community in general, and this risk is aggravated by the current critical product shortages and regional supply outages and the suspension of marketing authorization in the European Union.***

The commercial success of VIBATIV® depends upon its acceptance by physicians, patients, third party payors and the medical community in general. We cannot be sure that VIBATIV® will be accepted by these parties. VIBATIV® competes with vancomycin, a relatively inexpensive generic drug that is manufactured by a variety of companies, and a number of existing antibacterials manufactured and marketed by major pharmaceutical companies and others, and may compete against new antibacterials that are not yet on the market. Even if the medical community accepts that VIBATIV® is safe and efficacious for its indicated use, physicians may restrict the use of VIBATIV® due to the current product shortages stemming from the manufacturing issues at the drug product supplier, the January 2012 termination of our VIBATIV® collaboration agreement with Astellas, or otherwise. If we are unable to demonstrate to physicians that, based on experience, clinical data, side-effect profiles and other factors, VIBATIV® is preferable to vancomycin and other antibacterial drugs, we may never generate meaningful revenue from VIBATIV® which could cause the price of our securities to fall. The degree of market acceptance of VIBATIV® depends on a number of factors, including, but not limited to:

- the demonstration of the clinical efficacy and safety of VIBATIV®;
- the experiences of physicians, patients and payors with the use of VIBATIV® in the U.S.;

- potential negative perceptions of physicians related to our inability to obtain FDA approval of our NP NDA, the product shortages stemming from the manufacturing issues at the drug product supplier or the termination of our VIBATIV® collaboration agreement with Astellas in January 2012;



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- potential negative perceptions of physicians related to the European Commission's recent suspension of marketing authorization for VIBATIV® because the single-source VIBATIV® drug product supplier does not meet the GMP requirements to allow the manufacture of VIBATIV®;
- the advantages and disadvantages of VIBATIV® compared to alternative therapies;
- our ability to educate the medical community about the safety and effectiveness of VIBATIV®;
- the reimbursement policies of government and third party payors; and
- the market price of VIBATIV® relative to competing therapies.

***If our partners do not satisfy their obligations under our agreements with them, or if they terminate our partnerships with them, as Astellas did with our VIBATIV® collaboration agreement in January 2012, we may not be able to develop or commercialize our partnered product candidates as planned.***

We entered into our LABA collaboration agreement with GSK in November 2002, our strategic alliance agreement with GSK in March 2004, and our VIBATIV® collaboration agreement with Astellas in November 2005. In connection with these agreements, we have granted to these parties certain rights regarding the use of our patents and technology with respect to compounds in our development programs, including development and marketing rights. Under our GSK agreements, GSK has full responsibility for development and commercialization of FF/VI, UMEC/VI and any product candidates in the MABA 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, if approved, commercialization. Astellas terminated the VIBATIV® agreement in January 2012.

Our partners might not fulfill all of their obligations under these agreements, and, in certain circumstances, they may terminate our partnership with them, as Astellas did in January 2012. In either event, we may be unable to assume the development and commercialization of the product candidates covered by the agreements or enter into alternative arrangements with a third party to develop and commercialize such product candidates. In addition, with the exception of product candidates in our LABA collaboration and the MABA program under the strategic alliance, our partners generally are not restricted from developing and commercializing their own products and product candidates that compete with those licensed from us. If a partner elected to promote its own products and product candidates in preference to those licensed from us, future payments to us could be reduced 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 the partner. We could also become involved in disputes with a partner, which could lead to delays in or termination of our development and commercialization programs and time-consuming and expensive litigation or arbitration.

If a partner 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 product candidates under the collaboration could be materially and adversely affected. For example, Astellas terminated the VIBATIV® collaboration agreement in January 2012, and due to the termination, current product shortages, regional supply outages and suspension of marketing authorization in the European Union stemming from the manufacturing issues at the third party VIBATIV® drug product supplier, the commercialization of VIBATIV® in the U.S. has essentially stopped and the commercial introduction of VIBATIV® in the E.U. and Canada has been delayed.

***If we are unable to enter into future collaboration arrangements or if any such collaborations with third parties are unsuccessful, we will be unable to fully develop and commercialize VIBATIV® and our product candidates and our business will be adversely affected.***

We have active collaborations with GSK for FF/VI, UMEC/VI and the MABA program and we have licensed our anesthesia compound to AstraZeneca AB (AstraZeneca). Additional collaborations will be needed to fund later-stage development of our product candidates that have not been licensed to a collaborator, and to commercialize these product candidates if approved by the necessary regulatory authorities. Each of TD-5108, our lead compound in the 5-$HT_4$ program, TD-1792, our investigational antibiotic and TD-4208, our LAMA compound, has successfully completed a Phase 2 proof-of-concept study, and we recently reported positive results from a Phase 2b study with TD-1211, the lead compound in our Peripheral Mu Opioid Receptor Antagonist program for opioid-induced constipation. In addition, in connection with the expansion of the MABA program under the strategic alliance with GSK in October 2011, GSK relinquished its right to option our MARIN and ARNI programs. Also, we now have full rights to VIBATIV® as a result of the termination of our collaboration agreement with Astellas in January 2012. We currently intend to seek third parties with which to pursue collaboration arrangements for the development and commercialization of our development programs and for the future commercialization of VIBATIV®. Collaborations with third parties regarding these programs or our other programs may require



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us to relinquish material rights, including revenue from commercialization of our medicines, on terms that are less attractive than our current arrangements or to assume material ongoing development obligations that we would have to fund. These collaboration arrangements are complex and time-consuming to negotiate, and if we are unable to reach agreements with third-party collaborators, we may fail to meet our business objectives and our financial condition may be adversely affected. We face significant competition in seeking third-party collaborators, especially in the current uncertain economy, which is driving many biotechnology and biopharmaceutical companies to seek to sell or license their assets. We may be unable to find third parties to pursue product collaborations on a timely basis or on acceptable terms. Furthermore, for any collaboration, we may not be able to control the amount of time and resources that our partners devote to our product candidates and our partners may choose to pursue alternative products. Our inability to successfully collaborate with third parties would increase our development costs and would limit the likelihood of successful commercialization of our product candidates which may cause our stock price to decline.

***We depend on third parties in the conduct of our clinical studies for our product candidates.***

We depend on independent clinical investigators, contract research organizations and other third-party service providers in the conduct of our non-clinical and clinical studies for our product candidates. We rely heavily on these parties for execution of our non-clinical and clinical studies, and control only certain aspects of their activities. Nevertheless, we are responsible for ensuring that our clinical studies are conducted in accordance with good clinical practices (GCPs) and other regulations as required by the FDA and foreign regulatory authorities, and the applicable protocol. Failure by these parties to comply with applicable regulations, GCPs and protocols in conducting studies of our product candidates can result in a delay in our development programs or non-approval of our product candidates by regulatory authorities.

The FDA enforces good clinical practices and other regulations through periodic inspections of trial sponsors, clinical research organizations (CROs), principal investigators and trial sites. For example, in connection with the FDA's review of our telavancin NDAs, the FDA conducted inspections of Theravance and certain of our study sites, clinical investigators and CROs. If we or any of the third parties on which we have relied to conduct our clinical studies are determined to have failed to comply with GCPs, the study protocol or applicable regulations, the clinical data generated in our studies may be deemed unreliable. This could result in non-approval of our product candidates by the FDA, or we or the FDA may decide to conduct additional audits or require additional clinical studies, which would delay our development programs, could result in significant additional costs and could cause the price of our securities to fall.

***We face substantial competition from companies with more resources and experience than we have, which may result in others discovering, developing, receiving approval for 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 small molecule medicines with superior efficacy, convenience, tolerability and/or safety. We expect that any medicines that we commercialize with our collaborative partners will compete with existing or future 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 and retain qualified 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 or in-license 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. Other companies are engaged in the discovery of medicines that would compete with the product candidates that we are developing.



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Any new medicine that competes with a generic or proprietary market leading medicine must demonstrate compelling advantages in efficacy, convenience, tolerability and/or safety in order to overcome severe price competition and be commercially successful. VIBATIV® must demonstrate these advantages, as it competes with vancomycin, a relatively inexpensive generic drug that is manufactured by a number of companies, and a number of existing antibacterial drugs marketed by major and other pharmaceutical companies. If we are not able to compete effectively against our current and future competitors, our business will not grow, our financial condition and operations will suffer and the price of our securities could fall.

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.

***If we lose key management or scientific personnel, or if we fail to retain our key employees, our ability to discover and develop our product candidates will be impaired.***

We are highly dependent on principal members of our management team and scientific staff to operate our business. Our company is located in northern California, which is headquarters to many other biotechnology and biopharmaceutical companies and many academic and research institutions. As a result, competition for certain skilled personnel in our market remains intense. None of our employees have employment commitments for any fixed period of time and they all may leave our employment at will. If we fail to retain our qualified personnel or replace them when they leave, we may be unable to continue our development and commercialization activities, which may cause our stock price to decline.

***Our business and operations would suffer in the event of system failures.***

Although we have security measures in place, our internal computer systems and those of our CROs and other service providers are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. Any material system failure, accident or security breach could result in a material disruption to our business. For example, the loss of clinical trial data from completed or ongoing clinical trials of our product candidates could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. If a disruption or security breach results in a loss of or damage to our data or regulatory applications, or inadvertent disclosure of confidential or proprietary information, we could incur liability, the further development of our product candidates could be delayed and the price of our securities could fall

***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 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, which could cause the price of our securities to fall.

**Risks Related to our Alliance with GSK**

***GSK's ownership of a significant percentage of our stock and its ability to acquire additional shares of our stock 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.***

As of July 25, 2012, GSK beneficially owned approximately 26.6% of our outstanding capital stock, and GSK has the right to acquire stock from us to maintain its percentage ownership of our capital stock. 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 certain changes in our business.



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In addition, GSK may 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%, provided that:

- the offer includes no condition as to financing;
- the offer is approved by a majority of our independent directors;
- 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
- the shares purchased will be subject to the same provisions of the governance agreement as are the shares of voting stock currently held by GSK.

If pursuant to the provision described above GSK's ownership of us becomes greater than 50.1%, then *on or prior* to September 1, 2012 GSK is allowed to 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%, provided that;

- the offer includes no condition as to financing;
- the offer is approved by a majority of our independent directors;
- 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
- 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).

Furthermore, if pursuant to the provision described above GSK's ownership of us is greater than 50.1%, then *after* September 1, 2012, GSK is allowed to make an offer to our stockholders to acquire outstanding voting stock that would bring GSK's percentage ownership of our voting stock to 100%, provided that;

- the offer includes no condition as to financing;
- the offer is approved by a majority of our independent directors; and
- 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.

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 constitutes 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.

***GSK's significant ownership position and its rights under the governance agreement may deter or prevent efforts by other companies to acquire us, which could prevent our stockholders from realizing a control premium.***

As of July 25, 2012, GSK beneficially owned approximately 26.6% of our outstanding capital stock. GSK may vote at its sole discretion on any proposal to effect a chance of control of us or for us to issue equity securities to one or more parties that would result in that party or parties beneficially owning more than 20% of our outstanding capital stock. 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. As a result of GSK's significant ownership and its rights under the governance agreement, other companies may be less inclined to pursue an acquisition of us and therefore 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.

***GSK could sell or transfer a substantial number of shares of our common stock, which could depress the price of our securities or result in a change in control of our company.***



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Under our governance agreement with GSK, GSK currently may sell or transfer our common stock only pursuant to a public offering registered under the Securities Act or pursuant to Rule 144 of the Securities Act. Beginning in September 2012, GSK will have no contractual restrictions on its ability to sell or transfer our common stock on the open market, in privately negotiated transactions or otherwise, and these sales or transfers could create substantial declines in the price of our securities or, if these sales or transfers were made to a single buyer or group of buyers, could contribute to a transfer of control of our company to a third party.

**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. The status of patents in the biotechnology and pharmaceutical field involves complex legal and scientific questions and is very uncertain. As of June 30, 2012, we owned 297 issued United States patents and 951 granted foreign patents, as well as additional pending United States and foreign patent applications. Our patent applications may be challenged or fail to result in issued patents and our existing or future patents may be invalidated or 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. Further, if we encounter delays in our clinical trials or in obtaining regulatory approval of our product candidates, the patent lives of the related product candidates would be reduced.

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 and development processes that involve proprietary know-how, information and technology that is not covered by patent applications. Although we require 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, which could cause the price of our securities to fall.

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

Our commercial success depends in part on us and our partners not infringing the patents and proprietary rights of third parties. Third parties may assert that we or our partners are using their proprietary rights without authorization. There are third party patents that may cover materials or methods for treatment related to our product candidates. At present, we are not aware of any patent claims with merit that would adversely and materially affect our ability to develop our product candidates, but nevertheless the possibility of third party allegations cannot be ruled out. 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 or our partners 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 would 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, which may cause our stock price to decline.

***If the efforts of our partner, GSK, to protect the proprietary nature of the intellectual property related to the assets in the LABA collaboration, including FF/VI and UMEC/VI, are not adequate, the future commercialization of any medicines resulting from the LABA collaboration could be delayed or prevented, which would materially harm our business and could cause the price of our securities to fall.***



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The risks identified in the two preceding risk factors also apply to the intellectual property protection efforts of our partner, GSK. To the extent the intellectual property protection of any of the assets in the LABA collaboration are successfully challenged or encounter problems with the United States Patent and Trademark Office or other comparable agencies throughout the world, the future commercialization of these potential medicines could be delayed or prevented. Any challenge to the intellectual property protection of a late-stage development asset arising from the LABA collaboration could harm our business and cause the price of our securities to fall.

***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 and commercialization of pharmaceutical products. Side effects of, or manufacturing defects in, products that we or our partners develop or commercialize could result in the deterioration of a patient's condition, injury or even death. Once a product is approved for sale and commercialized, the likelihood of product liability lawsuits tends to increase. Claims may be brought by individuals seeking relief for themselves or by individuals or groups seeking to represent a class. 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 the applicable 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. Product liability claims could also harm our reputation, which may adversely affect our and our partners' ability to commercialize our products successfully, which could cause the price of our securities to fall.

***Government restrictions on pricing and reimbursement, as well as other healthcare payor cost-containment initiatives, may negatively impact our ability to generate revenues.***

The continuing efforts of the government, insurance companies, managed care organizations and other payors of health care costs to contain or reduce costs of health care may adversely affect one or more of the following:

- our or our collaborators' ability to set a price we believe is fair for our products, if approved;
- our ability to generate revenues and achieve profitability; and
- the availability of capital.

The Patient Protection and Affordable Care Act and other potential legislative or regulatory action regarding healthcare and insurance matters, along with the trend toward managed healthcare in the United States, could influence the purchase of healthcare products and reduce demand and prices for our products, if approved. This could harm our or our collaborators' ability to market our potential medicines and generate revenues. Cost containment measures that health care payors and providers are instituting and the effect of the Patient Protection and Affordable Care Act and further agency regulations that are likely to emerge in connection with the passage of this act could significantly reduce potential revenues from the sale of any product candidates approved in the future. In addition, in certain foreign markets, the pricing of prescription drugs is subject to government control and reimbursement may in some cases be unavailable. We believe that pricing pressures at the state and federal level, as well as internationally, will continue and may increase, which may make it difficult for us to sell our potential medicines that may be approved in the future at a price acceptable to us or our collaborators, which may cause our stock price to decline.

***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. We may incur significant additional costs to comply with these and other applicable laws in the future. Also, even if we are in compliance with applicable laws, 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



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liability could exceed our resources. We do not have any insurance for liabilities arising from 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, which could cause the price of our securities to fall.

**Risks Related to Ownership of our Common Stock**

***The price of our securities has been extremely volatile and may continue to be so, and purchasers of our securities could incur substantial losses.***

The price of our securities has been extremely volatile and may continue to be so. The stock market in general and the market for biotechnology and biopharmaceutical companies in particular have experienced extreme volatility that has often been unrelated to the companies' operating performance, in particular during the last several years. 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 securities:

- any adverse developments or results or perceived adverse developments or results with respect to the development of FF/VI with GSK, including, without limitation, any difficulties or delays encountered with regard to the regulatory path for FF/VI or any indication from clinical or non-clinical studies, including the large Phase 3b program, that FF/VI is not safe or efficacious (for example, the negative investor reaction to the topline results from the Phase 3 registrational programs for FF/VI announced in early 2012);

- any adverse developments or results or perceived adverse developments or results with respect to the development of UMEC/VI with GSK, including, without limitation, any difficulties or delays encountered with regard to the regulatory path for UMEC/VI, delays in completing the Phase 3 program, or any indication from clinical or non-clinical studies that UMEC/VI is not safe or efficacious;

- any adverse developments or results or perceived adverse developments or results with respect to the MABA program with GSK, including, without limitation, any difficulties or delays encountered with regard to the regulatory path for '081 or any indication from non-clinical studies of '081 that the compound is not safe or efficacious;

- any further adverse developments with respect to the commercialization of VIBATIV®, including, without limitation, the uncertainties surrounding drug product manufacture and supply, difficulties that may be encountered by Hospira in technology transfer activities, and how, when and where VIBATIV® will be commercialized;

- any further adverse developments or perceived adverse developments with respect to our telavancin NP NDA, which the FDA has determined cannot be approved without data from additional clinical studies;

- any adverse developments or perceived adverse developments in the field of LABAs, including any change in FDA policy or guidance (such as the pronouncement in February 2010 warning that LABAs should not be used alone in the treatment of asthma and related labeling requirements, the impact of the March 2010 FDA Advisory Committee discussing LABA clinical trial design to evaluate serious asthma outcomes or the FDA's April 2011 announcement that manufacturers of currently marketed LABAs conduct additional clinical studies comparing the addition of LABAs to inhaled corticosteroids versus inhaled corticosteroids alone);

- GSK's decisions whether or not to purchase from us, on a quarterly basis, sufficient shares of common stock to maintain its ownership percentage taking into account our preceding quarter's option exercise and equity vesting activity;

- any announcements of developments with, or comments by, the FDA or other regulatory authorities with respect to products we or our partners have under development or have commercialized, such as the cGMP compliance issues that the single-source VIBATIV® drug product supplier is facing with U.S. and foreign regulatory authorities;

- our incurrence of expenses in any particular quarter that are different than market expectations;

- the extent to which GSK advances (or does not advance) FF/VI, UMEC/VI and the MABA program through development into commercialization in all indications in all major markets;

- any adverse developments or perceived adverse developments with respect to our relationship with GSK, including, without limitation, disagreements that may arise between us and GSK;



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- any adverse developments or perceived adverse developments with respect to our partnering efforts with VIBATIV®, our 5-HT$_4$, Peripheral Mu Opioid Receptor Antagonist, MARIN and ARNI programs, TD-1792 or TD-4208;

- 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 undertake with companies other than GSK;

- publicity regarding actual or potential study results or the outcome of regulatory review relating to products under development by us, our partners or our competitors;

- regulatory developments in the United States and foreign countries;

- economic and other external factors beyond our control;

- sales of stock by us or by our stockholders, including sales by certain of our employees and directors whether or not pursuant to selling plans under Rule 10b5-1 of the Securities Exchange Act of 1934;

- relative illiquidity in the public market for our common stock (our six largest stockholders other than GSK collectively owned approximately 45.2% of our outstanding capital stock as of July 25, 2012 based on our review of publicly available filings); and

- potential sales or purchases of our capital stock by GSK.

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

As of July 25, 2012, GSK beneficially owned approximately 26.6% of our outstanding capital stock and our directors, executive officers and investors affiliated with these individuals beneficially owned approximately 5.8% of our outstanding capital stock. Based on our review of publicly available filings as of July 25, 2012, our six largest stockholders other than GSK collectively owned approximately 45.2% of our outstanding capital stock. These stockholders could control the outcome of actions taken by us that require stockholder approval, including a transaction in which stockholders might receive a premium over the prevailing market price for their shares.

***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.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.**

On May 16, 2012, we completed the sale of 10,000,000 shares of our common stock to Glaxo Group Limited, an affiliate of GSK, at a price of $21.2887 per share, resulting in aggregate gross proceeds of $212.9 million before deducting transaction expenses. Neither we nor the affiliate of GSK engaged any investment advisors with respect to the sale and no finders' fees were paid or will be paid to any party in connection with the sale. We issued and sold the shares in reliance upon an exemption from registration pursuant to Section 4(2) of the Securities Act of 1933, as amended.



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**Item 6. Exhibits**

(a) **Index to Exhibits**

| Exhibit Number | Description | Form | Incorporated by Reference Filing Date/Period End Date |
|---|---|---|---|
| 3.3 | Amended and Restated Certificate of Incorporation | S-1 | 7/26/04 |
| 3.4 | Certificate of Amendment of Restated Certificate of Incorporation | 10-Q | 3/31/07 |
| 3.5 | Amended and Restated Bylaws (as amended by the board of directors April 25, 2007) | 10-Q | 9/30/08 |
| 4.1 | Specimen certificate representing the common stock of the registrant | 10-K | 12/31/06 |
| 4.2 | Amended and Restated Rights Agreement between Theravance, Inc. and The Bank of New York, as Rights Agent, dated as of June 22, 2007 | 10-Q | 6/30/07 |
| 4.3 | Indenture dated as of January 23, 2008 by and between Theravance, Inc. and The Bank of New York Trust Company, N.A., as trustee | 8-K | 1/23/08 |
| 4.4 | Form of 3.0% Convertible Subordinated Note Due 2015 (included in Exhibit 4.3) | | |
| 4.5 | Amendment to Amended and Restated Rights Agreement between the registrant and The Bank of New York Mellon Corporation, as Rights Agent, dated November 21, 2008 | 8-K | 11/25/08 |
| 10.35 | Common Stock Purchase Agreement, dated April 2, 2012, by and among Registrant, Glaxo Group Limited and GlaxoSmithKline LLC | 8-K | 4/2/12 |
| 10.38 | 2012 Equity Incentive Plan, as approved by the board of directors February 8, 2012 and approved by stockholders May 15, 2012 and forms of equity award | | |
| 10.39(+) | Technology Transfer and Supply Agreement, dated as of May 22, 2012 between Theravance, Inc. and Hospira Worldwide, Inc. | | |
| 31.1 | Certification of Chief Executive Officer pursuant to Rules 13a-14(a) and 15d-14(a) promulgated pursuant to the Securities Exchange Act of 1934, as amended | | |
| 31.2 | Certification of Chief Financial Officer pursuant to Rules 13a-14(a) and 15d-14(a) promulgated pursuant to the Securities Exchange Act of 1934, as amended | | |
| 32 | Certifications Pursuant to 18 U.S.C. Section 1350 | | |
| 101* | The following from the registrant's Quarterly Report on Form 10-Q for the period ended March 30, 2012, formatted in Extensible Business Reporting Language (XBRL) includes: (i) the Condensed Consolidated Statements of Operations for the three months ended March 30, 2012 and 2011, (ii) the Condensed Consolidated Balance Sheets as of March 30, 2012 and December 31, 2011, (iii) the | | |

Condensed Consolidated Statements of Cash Flows for the three months ended March 30, 2012 and 2011, and (iv) Notes to Condensed Consolidated Financial Statements.

+ 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.

* XBRL information is furnished and not filed or a part of a registration statement or prospectus for purposes of sections 11 or 12 of the Securities Exchange Act of 1933, as amended, is deemed not filed for purposes of section 18 of the Securities Exchange Act of 1934, as amended, and otherwise is not subject to liability under these sections.



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**SIGNATURES**

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

Theravance, Inc.
(Registrant)

| | |
|---|---|
| August 1, 2012 | /s/ Rick E Winningham |
| Date | Rick E Winningham<br>Chief Executive Officer |
| August 1, 2012 | /s/ Michael W. Aguiar |
| Date | Michael W. Aguiar<br>Senior Vice President, Finance<br>and Chief Financial Officer |

**Exhibit 10.38**

**THERAVANCE, INC.**

**2012 EQUITY INCENTIVE PLAN**

**(AS ADOPTED EFFECTIVE MAY 16, 2012)**

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**THERAVANCE, INC.**
**2012 EQUITY INCENTIVE PLAN**

## ARTICLE I. INTRODUCTION.

The Plan was adopted by the Board on February 8, 2012 to be effective on the day after the Corporation's 2012 Annual Meeting of Stockholders assuming the Plan is approved by the Corporation's stockholders at such meeting. The purpose of the Plan is to promote the long-term success of the Corporation and the creation of stockholder value by (a) encouraging Employees, Outside Directors and Consultants to focus on critical long-range objectives, (b) encouraging the attraction and retention of Employees, Outside Directors and Consultants with exceptional qualifications, and (c) linking Employees, Outside Directors and Consultants directly to stockholder interests through increased stock ownership. The Plan seeks to achieve this purpose by providing for the following Awards: (i) Options (which may constitute incentive stock options or nonstatutory stock options), (ii) stock appreciation rights, (iii) Restricted Shares, (iv) Stock Units and (v) Performance Cash Awards.

The Plan shall be governed by, and construed in accordance with, the laws of the State of Delaware (except their choice-of-law provisions).

## ARTICLE II. ADMINISTRATION.

2.1 **Committee Composition**. The Committee shall administer the Plan. The Committee shall consist exclusively of two or more directors of the Corporation, who shall be appointed by the Board. In addition, each member of the Committee shall meet the following requirements:

(a) Any listing standards prescribed by the principal securities market on which the Corporation's equity securities are traded;

(b) Such requirements as the Internal Revenue Service may establish for outside directors acting under plans intended to qualify for exemption under section 162(m)(4)(C) of the Code;

(c) Such requirements as the Securities and Exchange Commission may establish for administrators acting under plans intended to qualify for exemption under Rule 16b-3 (or its successor) under the Exchange Act; and

(d) Any other requirements imposed by applicable law, regulations or rules.

2.2 **Committee Responsibilities**. The Committee shall (a) select the Employees, Outside Directors and Consultants who are to receive Awards under the Plan, (b) determine the type, number, vesting requirements and other features and conditions of such Awards, (c) interpret the Plan, (d) make all other decisions relating to the operation of the Plan and (e) carry out any other duties delegated to it by the Board. The Committee may adopt such rules

or guidelines as it deems appropriate to implement the Plan. The Committee's determinations under the Plan shall be final and binding on all persons.

2.3 **Committee for Non-Officer Grants**. The Board or the Committee may also appoint a secondary committee of the Board or the Committee, which shall be composed of one or more directors of the Corporation who need not satisfy the requirements of Section 2.1. Such secondary committee may administer the Plan with respect to Employees and Consultants who are not Outside Directors and are not considered executive officers of the Corporation under section 16 of the Exchange Act, may grant Awards under the Plan to such Employees and Consultants and may determine all features and conditions of such Awards. Within the limitations of this Section 2.3, any reference in the Plan to the Committee shall include such secondary committee.

**ARTICLE III. SHARES AVAILABLE FOR GRANTS**.

3.1 **Basic Limitation**. Shares of Common Stock issued pursuant to the Plan may be authorized but unissued shares or treasury shares. The aggregate number of shares of Common Stock that may be issued pursuant to Stock Awards granted under the Plan shall not exceed (a) 6,500,000 shares and (b) the additional shares of Common Stock described in Sections 3.2 and 3.3(1). The number of shares of Common Stock that may be issued pursuant to ISOs granted under the Plan shall not exceed 6,500,000 shares. The number of shares of Common Stock that may be issued under the Plan shall be reduced by (a) one share for every option and stock appreciation right granted under the Plan or granted under the Corporation's 2004 Equity Incentive Plan on or after January 1, 2012 and (b) 1.45 shares for every stock award other than an option or stock appreciation right granted under the Plan or granted under the Corporation's 2004 Equity Incentive Plan on or after January 1, 2012. The limitations of this Section 3.1 shall be subject to adjustment pursuant to Article 11. The number of shares of Common Stock that are subject to Options or other rights outstanding at any time under the Plan shall not exceed the number of shares of Common Stock that then remain available for issuance under the Plan. No further awards shall be granted under the Corporation's 2004 Equity Incentive Plan after the date specified in Section 17.1.

3.2 **Additional Shares**. If (i) restricted shares or shares of Common Stock issued upon the exercise of options under this Plan are forfeited or repurchased or (ii) on or after January 1, 2012 restricted shares or shares of Common Stock issued upon the exercise of options under the Predecessor Plans are forfeited or repurchased, then such shares of Common Stock shall again become available for issuance under this Plan. If (i) stock units, options or stock appreciation rights under this Plan are forfeited, settled in cash (in whole or in part) or terminate for any other reason before being exercised or (ii) on or after January 1, 2012 stock units, options or stock appreciation rights granted under the Predecessor Plans are forfeited, settled in cash (in whole or in part) or terminate for any other reason before being exercised, then the corresponding shares of Common Stock shall again become available for issuance under this Plan. Notwithstanding anything to the contrary contained herein, the following shares of

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(1) Up to 12,667,411 additional shares (applying the ratios set forth in Section 3.2) subject to stock awards outstanding under the Predecessor Plans on December 31, 2011 could be added to the Plan's share reserve pursuant to Section 3.2.

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Common Stock shall not be added back to the number of shares available for issuance under Section 3.1: (i) shares tendered by a Participant or withheld by the Corporation in payment of the exercise price of an option granted under this Plan or the Predecessor Plans, or to satisfy any tax withholding obligation with respect to a stock award granted under this Plan or the Predecessor Plans, (ii) shares subject to a stock appreciation right issued under this Plan or the Predecessor Plans that are not issued in connection with the stock settlement of the stock appreciation right on exercise thereof and (iii) shares reacquired by the Corporation on the open market or otherwise using cash proceeds from the exercise of an option granted under this Plan or the Predecessor Plans. Any shares that again become available for issuance under this Section 3.2 shall be added back as (i) one share if such shares were subject to options or stock appreciation rights granted under this Plan or the Predecessor Plans and (ii) 1.45 shares if such shares were subject to stock awards other than options or stock appreciation rights that were granted under this Plan or the Predecessor Plans.

3.3 **Shares Subject to Substituted Awards**. The number of shares of Common Stock subject to Substitute Awards granted by the Corporation shall not reduce the number of shares of Common Stock that may be issued under Section 3.1, nor shall shares subject to Substitute Awards again be available for Awards under the Plan to the extent of any forfeiture, expiration or cash settlement as provided under Section 3.2. Additionally, to the extent permitted by Nasdaq Marketplace Rule 5635(c) or any successor thereto, in the event that a company acquired by the Corporation or any Affiliate or with which the Corporation or any Affiliate combines has shares available for awards or grants under one or more pre-existing plans not adopted in contemplation of such acquisition or combination and previously approved by the acquired entity's shareholders, then, to the extent determined by the Board of Directors or Committee, the shares available for award or grant pursuant to the terms of such pre-existing plan(s) (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to holders of the securities of the entities that are parties to such acquisition or combination) may be used for Stock Awards under the Plan and shall not reduce the number of shares of Common Stock that may be issued under Section 3.1; provided however, that Stock Awards using such shares shall not be made after the date awards or grants could have been made under the terms of such pre-existing plan(s), absent the acquisition or combination, and shall only be made to individuals who were not employed by or providing service to the Corporation or its Affiliates immediately prior to such acquisition or combination.

**ARTICLE IV. ELIGIBILITY**.

4.1 **Incentive Stock Options**. Only Employees who are common-law employees of the Corporation, a Parent or a Subsidiary shall be eligible for the grant of ISOs. In addition, an Employee who owns more than 10% of the total combined voting power of all classes of outstanding stock of the Corporation or any of its Parents or Subsidiaries shall not be eligible for the grant of an ISO unless the requirements set forth in section 422(c)(5) of the Code are satisfied.

4.2 **Other Grants**. Awards other than ISOs may only be granted to Employees, Outside Directors and Consultants.

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**ARTICLE V. OPTIONS**.

5.1 **Stock Option Agreement**. Each grant of an Option under the Plan shall be evidenced by a Stock Option Agreement between the Optionee and the Corporation. Such Option shall be subject to all applicable terms of the Plan and may be subject to any other terms that are not inconsistent with the Plan. The Stock Option Agreement shall specify whether the Option is an ISO or an NSO. The provisions of the various Stock Option Agreements entered into under the Plan need not be identical. Options may be granted in consideration of a reduction in the Optionee's other compensation.

5.2 **Number of Shares**. Each Stock Option Agreement shall specify the number of shares of Common Stock subject to the Option and shall provide for the adjustment of such number in accordance with Article 11. Options granted to any Optionee in a single fiscal year of the Corporation shall not cover more than 1,500,000 shares of Common Stock, except that Options granted to a new Employee in the fiscal year of the Corporation in which his or her service as an Employee first commences shall not cover more than 2,000,000 shares of Common Stock. The limitations set forth in the preceding sentence shall be subject to adjustment in accordance with Article 11.

5.3 **Exercise Price**. Each Stock Option Agreement shall specify the Exercise Price; provided that the Exercise Price shall in no event be less than 100% of the Fair Market Value of a share of Common Stock on the date of grant. This Section 5.3 shall not apply to an Option that is a Substitute Award granted in a manner that would satisfy the requirements of Section 409A of the Code and, if applicable, Section 424(a) of the Code.

5.4 **Exercisability and Term**. Each Stock Option Agreement shall specify the date or event when all or any installment of the Option is to become exercisable. A Stock Option Agreement may provide for the automatic exercise of the Option. The Stock Option Agreement shall also specify the term of the Option; provided that the term of an Option shall in no event exceed 10 years from the date of grant. A Stock Option Agreement may provide for accelerated exercisability in the event of a Change in Control, the Optionee's death, disability or retirement or other events and may provide for expiration prior to the end of its term in the event of the termination of the Optionee's service. Options may be awarded in combination with SARs, and such an Award may provide that the Options will not be exercisable unless the related SARs are forfeited.

5.5 **Modification or Assumption of Options**. Within the limitations of the Plan, the Committee may modify, extend, or assume outstanding options. The foregoing notwithstanding, no modification of an Option shall, without the consent of the Optionee, alter or impair his or her rights or obligations under such Option. Notwithstanding anything in this Plan to the contrary, and except for the adjustments provided in Articles 10 and 11, neither the Committee nor any other person may (a) decrease the exercise price for any outstanding Option after the date of grant, (b) cancel or allow an optionee to surrender an outstanding Option to the Corporation in exchange for cash or as consideration for the grant of a new Option with a lower exercise price or the grant of another type of Award the effect of which is to reduce the exercise price of any outstanding Option or (c) take any other action with respect to an Option that would be treated as a repricing under the rules and regulations of the NASDAQ Stock Market (or such other

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principal U.S. national securities exchange on which the Corporation's Common Stock is traded).

5.6 **Buyout Provisions**. Except to the extent prohibited by Section 5.5, the Committee may at any time (a) offer to buy out for a payment in cash or cash equivalents an Option previously granted or (b) authorize an Optionee to elect to cash out an Option previously granted, in either case at such time and based upon such terms and conditions as the Committee shall establish. In no event will such payment be greater than the difference between (i) the Fair Market Value of the shares of Common Stock subject to such Option as of the date of such event over (ii) their Exercise Price.

**ARTICLE VI. PAYMENT FOR OPTION SHARES.**

6.1 **General Rule**. The entire Exercise Price of shares of Common Stock issued upon exercise of Options shall be payable in cash or cash equivalents at the time such shares of Common Stock are purchased, except that the Committee at its sole discretion may accept payment of the Exercise Price in any other form(s) described in this Article 6. However, if the Optionee is an Outside Director or executive officer of the Corporation, he or she may pay the Exercise Price in a form other than cash or cash equivalents only to the extent permitted by section 13(k) of the Exchange Act.

6.2 **Surrender of Stock**. With the Committee's consent, all or any part of the Exercise Price may be paid by surrendering, or attesting to the ownership of, shares of Common Stock that are already owned by the Optionee. Such shares of Common Stock shall be valued at their Fair Market Value on the date the new shares of Common Stock are purchased under the Plan. The Optionee shall not surrender, or attest to the ownership of, shares of Common Stock in payment of the Exercise Price if such action would cause the Corporation to recognize compensation expense (or additional compensation expense) with respect to the Option for financial reporting purposes.

6.3 **Exercise/Sale**. With the Committee's consent, all or any part of the Exercise Price and any withholding taxes may be paid by delivering (on a form prescribed by the Corporation) an irrevocable direction to a securities broker approved by the Corporation to sell all or part of the shares of Common Stock being purchased under the Plan and to deliver all or part of the sales proceeds to the Corporation.

6.4 **Exercise/Pledge**. With the Committee's consent, all or any part of the Exercise Price and any withholding taxes may be paid by delivering (on a form prescribed by the Corporation) an irrevocable direction to pledge all or part of the shares of Common Stock being purchased under the Plan to a securities broker or lender approved by the Corporation, as security for a loan, and to deliver all or part of the loan proceeds to the Corporation.

6.5 **Promissory Note**. To the extent permitted by Section 13(k) of the Exchange Act, with the Committee's consent, all or any part of the Exercise Price and any withholding taxes may be paid by delivering (on a form prescribed by the Corporation) a full-recourse promissory note.

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6.6 **Other Forms of Payment**. With the Committee's consent, all or any part of the Exercise Price and any withholding taxes may be paid in any other form that is consistent with applicable laws, regulations and rules.

**ARTICLE VII. STOCK APPRECIATION RIGHTS**.

7.1 **SAR Agreement**. Each grant of an SAR under the Plan shall be evidenced by an SAR Agreement between the Optionee and the Corporation. Such SAR shall be subject to all applicable terms of the Plan and may be subject to any other terms that are not inconsistent with the Plan. The provisions of the various SAR Agreements entered into under the Plan need not be identical. SARs may be granted in consideration of a reduction in the Optionee's other compensation.

7.2 **Number of Shares**. Each SAR Agreement shall specify the number of shares of Common Stock to which the SAR pertains and shall provide for the adjustment of such number in accordance with Article 11. SARs granted to any Optionee in a single fiscal year shall in no event pertain to more than 1,500,000 shares of Common Stock, except that SARs granted to a new Employee in the fiscal year of the Corporation in which his or her service

as an Employee first commences shall not pertain to more than 2,000,000 shares of Common Stock. The limitations set forth in the preceding sentence shall be subject to adjustment in accordance with Article 11.

7.3 **Exercise Price**. Each SAR Agreement shall specify the Exercise Price which shall not be less than 100% of the Fair Market Value of a share of Common Stock on the date of grant. The preceding sentence shall not apply to an SAR that is a Substitute Award granted in a manner that would satisfy the requirements of Section 409A of the Code. An SAR Agreement may specify an Exercise Price that varies in accordance with a predetermined formula while the SAR is outstanding.

7.4 **Exercisability and Term**. Each SAR Agreement shall specify the date all or any installment of the SAR is to become exercisable. The SAR Agreement shall also specify the term of the SAR; provided that the term of a SAR shall in no event exceed 10 years from the date of grant. An SAR Agreement may provide for accelerated exercisability in the event of a Change in Control, the Optionee's death, disability or retirement or other events and may provide for expiration prior to the end of its term in the event of the termination of the Optionee's service. SARs may be awarded in combination with Options, and such an Award may provide that the SARs will not be exercisable unless the related Options are forfeited. An SAR may be included in an ISO only at the time of grant but may be included in an NSO at the time of grant or thereafter. An SAR granted under the Plan may provide that it will be exercisable only in the event of a Change in Control.

7.5 **Exercise of SARs**. Upon exercise of an SAR, the Optionee (or any person having the right to exercise the SAR after his or her death) shall receive from the Corporation (a) shares of Common Stock, (b) cash or (c) a combination of shares of Common Stock and cash, as the Committee shall determine. The amount of cash and/or the Fair Market Value of shares of Common Stock received upon exercise of SARs shall, in the aggregate, be equal to the amount by which the Fair Market Value (on the date of surrender) of the shares of Common Stock

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subject to the SARs exceeds the Exercise Price. If, on the date an SAR expires, the Exercise Price under such SAR is less than the Fair Market Value on such date but any portion of such SAR has not been exercised or surrendered, then such SAR shall automatically be deemed to be exercised as of such date with respect to such portion.

7.6 **Modification or Assumption of SARs**. Within the limitations of the Plan, the Committee may modify, extend or assume outstanding SARs. The foregoing notwithstanding, no modification of an SAR shall, without the consent of the Optionee, alter or impair his or her rights or obligations under such SAR. Notwithstanding anything in this Plan to the contrary, and except for the adjustments provided in Articles 10 and 11, neither the Committee nor any other person may (a) decrease the exercise price for any outstanding SAR after the date of grant, (b) cancel or allow an Optionee to surrender an outstanding SAR to the Corporation in exchange for cash or as consideration for the grant of a new SAR with a lower exercise price or the grant of another type of Award the effect of which is to reduce the exercise price of any outstanding SAR or (c) take any other action with respect to a SAR that would be treated as a repricing under the rules and regulations of the NASDAQ Stock Market (or such other principal U.S. national securities exchange on which the Corporation's Common Stock is traded).

7.7 **Buyout Provisions**. Except to the extent prohibited by Section 7.6, the Committee may at any time (a) offer to buy out for a payment in cash or cash equivalents an SAR previously granted or (b) authorize an Optionee to elect to cash out an SAR previously granted, in either case at such time and based upon such terms and conditions as the Committee shall establish. In no event will such payment be greater than the difference between (i) the Fair Market Value of the shares of Common Stock to which such SAR pertains as of the date of such event over (ii) their Exercise Price.

**ARTICLE VIII. RESTRICTED SHARES**.

8.1 **Restricted Stock Agreement**. Each grant of Restricted Shares under the Plan shall be evidenced by a Restricted Stock Agreement between the recipient and the Corporation. Such Restricted Shares shall be subject to all applicable terms of the Plan and may be subject to any other terms that are not inconsistent with the Plan. The provisions of the various Restricted Stock Agreements entered into under the Plan need not be identical.

8.2 **Payment for Awards**. Subject to the following sentence, Restricted Shares may be sold or awarded under the Plan for such consideration as the Committee may determine, including (without limitation) cash, cash equivalents, property, full-recourse promissory notes, past services, future services and such other methods of payment as are permitted by applicable laws, regulations and rules. If the Participant is an Outside Director or executive officer of the Corporation, he or she may pay for Restricted Shares with a promissory note only to the extent permitted by section 13(k) of the Exchange Act. Within the limitations of the Plan, the Committee may accept the cancellation of outstanding options in return for the grant of Restricted Shares.

8.3 **Vesting Conditions**. Each Award of Restricted Shares may or may not be subject to vesting. Vesting shall occur, in full or in installments, upon satisfaction of the conditions specified in the Restricted Stock Agreement. The Committee may include among such

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conditions the requirement that the performance of the Corporation or a business unit of the Corporation for a specified period of one or more fiscal years equal or exceed a target determined in advance by the Committee. The Committee shall determine such performance. Such target shall be based on one or more of the criteria set forth in Appendix A or, to the extent an Award is not intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Code, such other criteria selected by the Committee. To the extent an Award is intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Code, the Committee shall identify such target not later than the 90$^{th}$ day of such period. Subject to adjustment in accordance with Article 11, in no event shall more than 1,500,000 Restricted Shares that are subject to performance-based vesting conditions be granted to any Participant in a single fiscal year of the Corporation, except that 2,000,000 Restricted Shares that are subject to performance-based vesting conditions may be granted to a new Employee in the fiscal year of the Corporation in which his or her service as an Employee first commences. A Restricted Stock Agreement may provide for accelerated vesting in the event of a Change in Control, the Participant's death, disability or retirement or other events.

8.4 **Voting and Dividend Rights**. The holders of Restricted Shares awarded under the Plan shall have the same voting, dividend and other rights as the Corporation's other stockholders. A Restricted Stock Agreement, however, may require that the holders of Restricted Shares invest any cash dividends received in additional Restricted Shares. Such additional Restricted Shares shall be subject to the same conditions and restrictions as the Award with respect to which the dividends were paid. Cash dividends with respect to any Restricted Shares and any other property (other than cash) distributed as a dividend or otherwise with respect to Restricted Shares that vest based on the achievement of performance goals shall be accumulated, shall be subject to

restrictions and risk of forfeiture to the same extent as the Restricted Shares with respect to which such cash, shares or other property has been distributed and shall be paid at the time such restrictions and risk of forfeiture lapse.

**ARTICLE IX. STOCK UNITS AND PERFORMANCE CASH AWARDS**.

9.1 **Stock Unit Agreement**. Each grant of Stock Units under the Plan shall be evidenced by a Stock Unit Agreement between the recipient and the Corporation. Such Stock Units shall be subject to all applicable terms of the Plan and may be subject to any other terms that are not inconsistent with the Plan. The provisions of the various Stock Unit Agreements entered into under the Plan need not be identical. Stock Units may be granted in consideration of a reduction in the recipient's other compensation.

9.2 **Payment for Awards**. To the extent that an Award is granted in the form of Stock Units, no cash consideration shall be required of the Award recipients.

9.3 **Vesting Conditions**. Each Award of Stock Units may or may not be subject to vesting. Vesting shall occur, in full or in installments, upon satisfaction of the conditions specified in the Stock Unit Agreement. The Committee may include among such conditions the requirement that the performance of the Corporation or a business unit of the Corporation for a specified period of one or more fiscal years equal or exceed a target determined in advance by the Committee. The Committee shall determine such performance. Such target shall be based on one or more of the criteria set forth in Appendix A or, to the extent an Award is not intended

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to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Code, such other criteria selected by the Committee. To the extent an Award is intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Code, the Committee shall identify such target not later than the 90th day of such period. Subject to adjustment in accordance with Article 11, in no event shall more than 1,500,000 Stock Units that are subject to performance-based vesting conditions be granted to any Participant in a single fiscal year of the Corporation, except that 2,000,000 Stock Units that are subject to performance-based vesting conditions may be granted to a new Employee in the fiscal year of the Corporation in which his or her service as an Employee first commences. A Stock Unit Agreement may provide for accelerated vesting in the event of a Change in Control, the Participant's death, disability or retirement or other events.

9.4 **Voting and Dividend Rights**. The holders of Stock Units shall have no voting rights. Prior to settlement or forfeiture, any Stock Unit awarded under the Plan may, at the Committee's discretion, carry with it a right to dividend equivalents. Such right entitles the holder to be credited with an amount equal to all cash dividends paid on one share of Common Stock while the Stock Unit is outstanding. Dividend equivalents may be converted into additional Stock Units. Settlement of dividend equivalents may be made in the form of cash, in the form of shares of Common Stock, or in a combination of both. Prior to distribution, any dividend equivalents which are not paid shall be subject to the same conditions and restrictions as the Stock Units to which they attach. Notwithstanding the foregoing, dividend equivalents with respect to any Stock Units that vest based on the achievement of performance goals shall be subject to the same conditions and restrictions as the Stock Units to which they attach.

9.5 **Form and Time of Settlement of Stock Units**. Settlement of vested Stock Units may be made in the form of (a) cash, (b) shares of Common Stock or (c) any combination of both, as determined by the Committee. The actual number of Stock Units eligible for settlement may be larger or smaller than the number included in the original Award, based on predetermined performance factors. Methods of converting Stock Units into cash may include (without limitation) a method based on the average Fair Market Value of shares of Common Stock over a series of trading days. Vested Stock Units may be settled in a lump sum or in installments. The distribution may occur or commence when all vesting conditions applicable to the Stock Units have been satisfied or have lapsed, or it may be deferred to any later date. The amount of a deferred distribution may be increased by an interest factor or by dividend equivalents. Until an Award of Stock Units is settled, the number of such Stock Units shall be subject to adjustment pursuant to Article 11.

9.6 **Death of Recipient**. Any Stock Units Award that becomes payable after the recipient's death shall be distributed to the recipient's beneficiary or beneficiaries. Each recipient of a Stock Units Award under the Plan shall designate one or more beneficiaries for this purpose by filing the prescribed form with the Corporation. A beneficiary designation may be changed by filing the prescribed form with the Corporation at any time before the Award recipient's death. If no beneficiary was designated or if no designated beneficiary survives the Award recipient, then any Stock Units Award that becomes payable after the recipient's death shall be distributed to the recipient's estate.

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9.7 **Modification or Assumption of Stock Units**. Within the limitations of the Plan, the Administrator may modify or assume outstanding stock units or may accept the cancellation of outstanding stock units (whether granted by the Company or by another issuer) in return for the grant of new stock units for the same or a different number of shares or in return for the grant of a different type of Award. The foregoing notwithstanding, no modification of a Stock Unit shall, without the consent of the Participant, impair his or her rights or obligations under such Stock Unit.

9.8 **Creditors' Rights**. A holder of Stock Units shall have no rights other than those of a general creditor of the Corporation. Stock Units represent an unfunded and unsecured obligation of the Corporation, subject to the terms and conditions of the applicable Stock Unit Agreement.

9.9 **Performance Cash Awards**. A Performance Cash Award is a cash award that may be granted upon the attainment of certain performance goals for a specified performance period of one or more fiscal years. The Committee shall determine such performance. The goals applicable to a Performance Cash Award shall be based on one or more of the criteria set forth in Appendix A or, to the extent a Performance Cash Award is not intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Code, such other criteria selected by the Committee. To the extent a Performance Cash Award is intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Code, the Committee shall determine such goals no later than the 90th day of such period. Each Performance Cash Award shall be set forth in a written agreement or in a resolution duly adopted by the Committee which shall contain provisions determined by the Committee and not inconsistent with the Plan. The terms of various Performance Cash Awards need not be identical. The maximum amount that may be paid to any Participant for each fiscal year of the Corporation in a performance period attributable to Performance Cash Awards shall not exceed $2,000,000. The Committee may determine, at the time of granting a Performance Cash Award or thereafter, that all or part of such Performance Cash Award shall become earned and payable in the event that the Corporation is subject to a Change in Control before the Participant's service terminates or as otherwise determined by the Committee in special circumstances.

**ARTICLE X. CHANGE IN CONTROL**.

10.1 **Effect of Change in Control**. Unless the Committee provides otherwise in a Stock Option Agreement, SAR Agreement, Restricted Stock Agreement or Stock Unit Agreement, in the event of any Change in Control, each outstanding Stock Award shall automatically accelerate so that each such Stock Award shall, immediately prior to the effective date of the Change in Control, become fully exercisable for all of the shares of Common Stock at the time subject to such Stock Award and may be exercised for any or all of those shares as fully-vested shares of Common Stock. ***However, an outstanding Stock Award shall not so accelerate if and to the extent such Stock Award is, in connection with the Change in Control, either to be assumed by the successor corporation (or parent thereof) or to be replaced with a comparable Stock Award for shares of the capital stock of the successor corporation (or parent thereof). The determination of award comparability shall be made by the Committee, and its determination shall be final, binding and conclusive.***

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10.2 **Acceleration**. The Committee shall have the discretion, exercisable either at the time the Stock Award is granted or at any time while the Stock Award remains outstanding, to provide for the automatic acceleration of vesting upon the occurrence of a Change in Control, whether or not the Stock Award is to be assumed or replaced in the Change in Control.

**ARTICLE XI. PROTECTION AGAINST DILUTION**.

11.1 **Adjustments**. In the event of a subdivision of the outstanding shares of Common Stock, a declaration of a dividend payable in shares of Common Stock, a declaration of a dividend payable in a form other than shares of Common Stock in an amount that has a material effect on the price of shares of Common Stock, a combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise) into a lesser number of shares of Common Stock, a recapitalization, a spin-off or a similar occurrence, corresponding adjustments shall automatically be made in each of the following:

(a) The number of shares of Common Stock available for issuance under Article 3, including the limitation on the number of ISOs in Section 3.1;

(b) The limitations set forth in Sections 5.2, 7.2, 8.3 and 9.3;

(c) The number of shares of Common Stock covered by each outstanding Option and SAR;

(d) The Exercise Price under each outstanding Option and SAR; or

(e) The number of Stock Units included in any prior Award which has not yet been settled.

Except as provided in this Article 11, a Participant shall have no rights by reason of any issue by the Corporation of stock of any class or securities convertible into stock of any class, any subdivision or consolidation of shares of stock of any class, the payment of any stock dividend or any other increase or decrease in the number of shares of stock of any class.

11.2 **Dissolution or Liquidation**. To the extent not previously exercised or settled, Options, SARs and Stock Units shall terminate immediately prior to the dissolution or liquidation of the Corporation.

11.3 **Reorganizations**. In the event that the Corporation is a party to a merger or consolidation, all outstanding Stock Awards shall be subject to the agreement of merger or consolidation. Such agreement shall provide for one or more of the following:

(a) The continuation of such outstanding Stock Awards by the Corporation (if the Corporation is the surviving corporation).

(b) The assumption of such outstanding Stock Awards by the surviving corporation or its parent (with respect to Options and SARs, in a manner that complies with applicable tax requirements).

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(c) The substitution by the surviving corporation or its parent of new awards for such outstanding Stock Awards (with respect to Options and SARs, in a manner that complies with applicable tax requirements).

(d) Full exercisability of such outstanding Stock Awards and full vesting of the shares of Common Stock subject to such Stock Awards, followed by the cancellation of such Stock Awards. The full exercisability of such Stock Awards and full vesting of the shares of Common Stock subject to such Stock Awards may be contingent on the closing of such merger or consolidation. The Participants shall be able to exercise such Stock Awards during a period of not less than five full business days preceding the closing date of such merger or consolidation, unless (i) a shorter period is required to permit a timely closing of such merger or consolidation and (ii) such shorter period still offers the Participants a reasonable opportunity to exercise such Stock Awards. Any exercise of such Stock Awards during such period may be contingent on the closing of such merger or consolidation.

(e) The cancellation of such outstanding Stock Awards and a payment to the Participants equal to the excess of (i) the Fair Market Value of the shares of Common Stock subject to such Stock Awards (whether or not such Stock Awards are then exercisable or such shares of Common Stock are then vested) as of the closing date of such merger or consolidation over (ii) their Exercise Price. Such payment shall be made in the form of cash, cash equivalents, or securities of the surviving corporation or its parent with a Fair Market Value equal to the required amount. Such payment may be made in installments and may be deferred until the date or dates when such Stock Awards would have become exercisable or such shares of Common Stock would have vested. Such payment may be subject to vesting based on the Optionee's continuing service, provided that the vesting schedule shall not be less favorable to the Participants than the schedule under which such Stock Awards would have become exercisable or such shares of Common Stock would have vested. If the Exercise Price of the shares of Common Stock subject to such Stock Awards exceeds the Fair Market Value of such shares of Common Stock, then such Stock Awards may be cancelled without making a payment to the Participants. For purposes of this Subsection (e), the Fair Market Value of any security shall be determined without regard to any vesting conditions that may apply to such security.

**ARTICLE XII. DEFERRAL OF AWARDS**.

The Committee (in its sole discretion) may permit or require a Participant to:

(a) Have cash that otherwise would be paid to such Participant as a result of the exercise of an SAR or the settlement of Stock Units credited to a deferred compensation account established for such Participant by the Committee as an entry on the Corporation's books;

(b) Have shares of Common Stock that otherwise would be delivered to such Participant as a result of the exercise of an Option or SAR converted into an equal number of Stock Units; or

(c) Have shares of Common Stock that otherwise would be delivered to such Participant as a result of the exercise of an Option or SAR or the settlement of Stock Units

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converted into amounts credited to a deferred compensation account established for such Participant by the Committee as an entry on the Corporation's books. Such amounts shall be determined by reference to the Fair Market Value of such shares of Common Stock as of the date they otherwise would have been delivered to such Participant.

A deferred compensation account established under this Article 12 may be credited with interest or other forms of investment return, as determined by the Committee. A Participant for whom such an account is established shall have no rights other than those of a general creditor of the Corporation. Such an account shall represent an unfunded and unsecured obligation of the Corporation and shall be subject to the terms and conditions of the applicable agreement between such Participant and the Corporation. If the deferral or conversion of Awards is permitted or required, the Committee (in its sole discretion) may establish rules, procedures and forms pertaining to such Awards, including (without limitation) the settlement of deferred compensation accounts established under this Article 12.

**ARTICLE XIII. AWARDS UNDER OTHER PLANS**.

The Corporation may grant awards under other plans or programs. Such awards may be settled in the form of shares of Common Stock issued under this Plan. Such shares of Common Stock shall be treated for all purposes under the Plan like shares of Common Stock issued in settlement of Stock Units and shall, when issued, reduce the number of shares of Common Stock available under Article 3.

**ARTICLE XIV. PAYMENT OF FEES IN SECURITIES**.

14.1 **Effective Date**. No provision of this Article 14 shall be effective unless and until the Board has determined to implement such provision.

14.2 **Elections to Receive NSOs, Restricted Shares or Stock Units**. An Outside Director may elect to receive his or her annual retainer payments or meeting fees from the Corporation in the form of cash, NSOs, Restricted Shares or Stock Units, or a combination thereof, as determined by the Board. Such NSOs, Restricted Shares and Stock Units shall be issued under the Plan. An election under this Article 14 shall be filed with the Corporation on the prescribed form.

14.3 **Number and Terms of NSOs, Restricted Shares or Stock Units**. The number of NSOs, Restricted Shares or Stock Units to be granted to Outside Directors in lieu of annual retainers or meeting fees that would otherwise be paid in cash shall be calculated in a manner determined by the Board. The Board shall also determine the terms of such NSOs, Restricted Shares or Stock Units.

**ARTICLE XV. LIMITATION ON RIGHTS**.

15.1 **No Retention Rights**. Neither the Plan nor any Award granted under the Plan shall be deemed to give any individual a right to remain an Employee, Outside Director or Consultant. The Corporation and its Parents, Subsidiaries and Affiliates reserve the right to terminate the service of any Employee, Outside Director or Consultant at any time, with or

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without cause, subject to applicable laws, the Corporation's certificate of incorporation and by-laws and a written employment agreement (if any).

15.2 **Stockholders' Rights**. A Participant shall have no dividend rights, voting rights or other rights as a stockholder with respect to any shares of Common Stock covered by his or her Award prior to the time a stock certificate for such shares of Common Stock is issued or, if applicable, the time he or she becomes entitled to receive such shares of Common Stock by filing any required notice of exercise and paying any required Exercise Price. No adjustment shall be made for cash dividends or other rights for which the record date is prior to such time, except as expressly provided in the Plan.

15.3 **Regulatory Requirements**. Any other provision of the Plan notwithstanding, the obligation of the Corporation to issue shares of Common Stock under the Plan shall be subject to all applicable laws, rules and regulations and such approval by any regulatory body as may be required. The Corporation reserves the right to restrict, in whole or in part, the delivery of shares of Common Stock pursuant to any Award prior to the satisfaction of all legal requirements relating to the issuance of such shares of Common Stock, to their registration, qualification or listing or to an exemption from registration, qualification or listing.

15.4 **Transferability of Awards**. Except as provided below, no Award and no shares subject to Awards that have not been issued or as to which any applicable restriction, performance or deferral period has not lapsed, may be sold, assigned, transferred, pledged or otherwise encumbered, other than by a beneficiary designation, will or the laws of descent and distribution, and such Award may be exercised during the life of a Participant only by the Participant or the Participant's guardian or legal representative. To the extent and under such terms and conditions as determined by the Committee, a Participant may assign or transfer an Award (each transferee there, a "Permitted Assignee") other than an ISO to a "family member" as such term is defined in the General Instructions to Form S-8 (whether by gift or a domestic relations order); provided that such Permitted Assignee shall be bound by and subject to all of the terms and conditions of the Plan and the Award Agreement relating to the transferred Award and shall execute an agreement satisfactory to the Corporation evidencing such obligations; and provided further that such Participant shall remain bound by the terms and conditions of the Plan.

15.5 **Recoupment of Awards**. All Awards granted under the Plan, all amounts paid under the Plan and all shares of Common Stock issued under the Plan shall be subject to recoupment in accordance with The Dodd—Frank Wall Street Reform and Consumer Protection Act and any implementing regulations and/or listing standards thereunder, any compensation recovery policy adopted by the Corporation or as otherwise required by applicable law.

**ARTICLE XVI. WITHHOLDING TAXES.**

16.1 **General**. To the extent required by applicable federal, state, local or foreign law, a Participant or his or her successor shall make arrangements satisfactory to the Corporation for the satisfaction of any withholding tax obligations that arise in connection with the Plan. The Corporation shall not be required to issue any shares of Common Stock or make any cash payment under the Plan until such obligations are satisfied.

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16.2 **Share Withholding**. To the extent that applicable law subjects a Participant to tax withholding obligations, the Committee may permit a Participant to satisfy all or part of his or her withholding or income tax obligations by having the Corporation withhold all or a portion of any shares of Common Stock that otherwise would be issued to him or her or by surrendering all or a portion of any shares of Common Stock that he or she previously acquired. Such shares of Common Stock shall be valued at their Fair Market Value on the date they are withheld or surrendered.

**ARTICLE XVII. FUTURE OF THE PLAN**.

17.1 **Term of the Plan**. The Plan shall remain in effect until it is terminated under Section 17.2, except that no ISOs shall be granted on or after the 10th anniversary of the later of (a) the date the Board adopted the Plan or (b) the date the Board adopted the most recent increase in the number of shares of Common Stock available under Article 3 which was approved by the Corporation's stockholders. No further awards shall be made under the Corporation's 2004 Equity Incentive Plan after the date of the Corporation's 2012 Annual Meeting of Stockholders, assuming this Plan is approved by the stockholders at such meeting. All awards outstanding under the 2004 Equity Incentive Plan as of such date shall, immediately upon effectiveness of the Plan, remain outstanding in accordance with their terms. Each outstanding award under the 2004 Equity Incentive Plan shall continue to be governed solely by the terms of the documents evidencing such award, and no provision of the Plan shall be deemed to affect or otherwise modify the rights or obligations of the holders of such awards with respect to their acquisition of shares of Common Stock.

17.2 **Amendment or Termination**. The Board may, at any time and for any reason, amend or terminate the Plan. No Awards shall be granted under the Plan after the termination thereof. The termination of the Plan, or any amendment thereof, shall not affect any Award previously granted under the Plan without such holder's consent.

17.3 **Stockholder Approval**. An amendment of the Plan shall be subject to the approval of the Corporation's stockholders only to the extent required by applicable laws, regulations or rules. However, an amendment of the last sentence of Section 5.5 or 7.6 is subject to the approval of the Corporation's stockholders and section 162(m) of the Code may require that the Corporation's stockholders approve the performance criteria set forth on Appendix A not later than the first meeting of stockholders that occurs in the fifth year following the year in which the Corporation's stockholders previously approved such criteria.

**ARTICLE XVIII. DEFINITIONS**.

18.1 "**Affiliate**" means any entity other than a Subsidiary, if the Corporation and/or one or more Subsidiaries own not less than 50% of such entity.

18.2 "**Award**" means any award of a Stock Award or a Performance Cash Award under the Plan.

18.3 "**Board**" means the Corporation's Board of Directors, as constituted from time to time.

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18.4 "**Change in Control**" shall mean:

(a) The consummation of a merger or consolidation of the Corporation with or into another entity or any other corporate reorganization, if persons who were not stockholders of the Corporation immediately prior to such merger, consolidation or other reorganization own immediately after such merger, consolidation or other reorganization 50% or more of the voting power of the outstanding securities of each of (i) the continuing or surviving entity and (ii) any direct or indirect parent corporation of such continuing or surviving entity;

(b) The sale, transfer or other disposition of all or substantially all of the Corporation's assets;

(c) A change in the composition of the Board, as a result of which fewer than 50% of the incumbent directors are directors who either:

(i) Had been directors of the Corporation on the date 24 months prior to the date of such change in the composition of the Board (the "Original Directors") or

(ii) Were appointed to the Board, or nominated for election to the Board, with the affirmative votes of at least a majority of the aggregate of (A) the Original Directors who were in office at the time of their appointment or nomination and (B) the directors whose appointment or nomination was previously approved in a manner consistent with this Paragraph (ii); or

(d) Any transaction as a result of which any person is the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Corporation representing at least 50% of the total voting power represented by the Corporation's then outstanding voting securities. For purposes of this Paragraph (d), the term "person" shall have the same meaning as when used in sections 13(d) and 14(d) of the Exchange Act but shall exclude (i) a trustee or other fiduciary holding securities under an employee benefit plan of the Corporation or of a Parent or Subsidiary and (ii) a corporation owned directly or indirectly by the stockholders of the Corporation in substantially the same proportions as their ownership of the common stock of the Corporation.

Except with respect to a GSK Change In Control (defined below), (i) any stock purchase by SmithKline Beecham Corporation, a Pennsylvania corporation ("GSK"), pursuant to the Class A Common Stock Purchase Agreement dated as of March 30, 2004 or (ii) the exercise by GSK of any of its rights under the Amended and Restated Governance Agreement dated as of June 4, 2004 among the Corporation, GSK, GlaxoSmithKline plc and Glaxo Group Limited, as amended (the "Governance Agreement") to representation on the Board (and its committees) or (iii) any acquisition by GSK of securities of the Corporation (whether by merger, tender offer, private or market purchases or otherwise) not prohibited by the Governance Agreement shall not constitute a Change in Control. A transaction shall not constitute a Change in Control if its sole purpose is to change the state of the Corporation's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Corporation's securities immediately before such transaction. A "GSK Change In Control" shall mean the acquisition by GSK of the Corporation's Voting Stock (as defined in the Governance Agreement) that would

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bring GSK's Percentage Interest (as defined in the Governance Agreement) to 100% in compliance with the provisions of the Governance Agreement.

18.5 "**Code**" means the Internal Revenue Code of 1986, as amended.

18.6 "**Committee**" means a committee of the Board, as described in Article 2.

18.7 "**Common Stock**" means the common stock of the Corporation.

18.8 "**Corporation**" means Theravance, Inc., a Delaware corporation.

18.9 "**Consultant**" means a consultant or adviser who provides bona fide services to the Corporation, a Parent, a Subsidiary or an Affiliate as an independent contractor. Service as a Consultant shall be considered employment for all purposes of the Plan, except as provided in Section 4.1.

18.10 "**Employee**" means a common-law employee of the Corporation, a Parent, a Subsidiary or an Affiliate.

18.11 "**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

18.12 "**Exercise Price**," in the case of an Option, means the amount for which one share of Common Stock may be purchased upon exercise of such Option, as specified in the applicable Stock Option Agreement. "Exercise Price," in the case of an SAR, means an amount, as specified in the applicable SAR Agreement, which is subtracted from the Fair Market Value of one share of Common Stock in determining the amount payable upon exercise of such SAR.

18.13 "**Fair Market Value**" means the closing selling price of one share of Common Stock as reported on Nasdaq, and if not available, then it shall be determined by the Committee in good faith on such basis as it deems appropriate. Whenever possible, the determination of Fair Market Value by the Committee shall be based on the prices reported in The Wall Street Journal. Such determination shall be conclusive and binding on all persons.

18.14 "**ISO**" means an incentive stock option described in section 422(b) of the Code.

18.15 "**NSO**" means a stock option not described in sections 422 or 423 of the Code.

18.16 "**Option**" means an ISO or NSO granted under the Plan and entitling the holder to purchase shares of Common Stock.

18.17 "**Optionee**" means an individual who or estate that holds an Option or SAR.

18.18 "**Outside Director**" shall mean a member of the Board who is not an Employee. Service as an Outside Director shall be considered employment for all purposes of the Plan, except as provided in Section 4.1.

18.19 "**Parent**" means any corporation (other than the Corporation) in an unbroken chain of corporations ending with the Corporation, if each of the corporations other than the

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Corporation owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Parent on a date after the adoption of the Plan shall be considered a Parent commencing as of such date.

18.20 "**Participant**" means an individual who or estate that holds an Award.

18.21 "**Performance Cash Award**" means an award of cash granted under Section 9.8 of the Plan.

18.22 "**Plan**" means this Theravance, Inc. 2012 Equity Incentive Plan, as amended from time to time.

18.23 **"Predecessor Plans"** means the Corporation's 1997 Stock Plan, Long-Term Stock Option Plan, 2004 Equity Incentive Plan and 2008 New Employee Equity Incentive Plan.

18.24 "**Restricted Share**" means a share of Common Stock awarded under Article 8 of the Plan.

18.25 "**Restricted Stock Agreement**" means the agreement between the Corporation and the recipient of a Restricted Share that contains the terms, conditions and restrictions pertaining to such Restricted Share.

18.26 "**SAR**" means a stock appreciation right granted under the Plan.

18.27 "**SAR Agreement**" means the agreement between the Corporation and an Optionee which contains the terms, conditions and restrictions pertaining to his or her SAR.

18.28 "**Stock Award**" means any award of an Option, an SAR, a Restricted Share or a Stock Unit under the Plan.

18.29 "**Stock Option Agreement**" means the agreement between the Corporation and an Optionee that contains the terms, conditions and restrictions pertaining to his or her Option.

18.30 "**Stock Unit**" means a bookkeeping entry representing the equivalent of one share of Common Stock, as awarded under the Plan.

18.31 "**Stock Unit Agreement**" means the agreement between the Corporation and the recipient of a Stock Unit which contains the terms, conditions and restrictions pertaining to such Stock Unit.

18.32 "**Subsidiary**" means any corporation (other than the Corporation) in an unbroken chain of corporations beginning with the Corporation, if each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Subsidiary on a date after the adoption of the Plan shall be considered a Subsidiary commencing as of such date.

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18.33 "**Substitute Awards**" means Awards or shares of Common Stock issued by the Corporation in assumption of, or substitution or exchange for, Awards previously granted, or the right or obligation to make future awards, in each case by a corporation acquired by the Corporation or any Affiliate or with which the Corporation or any Affiliates combines to the extent permitted by NASDAQ Marketplace Rule 5635 or any successor thereto.

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**Appendix A**

**PERFORMANCE CRITERIA**
**FOR RESTRICTED SHARES, STOCK UNITS AND PERFORMANCE CASH AWARDS**

The performance goals that may be used by the Committee for such awards shall consist of: stock price; net sales; revenue; revenue growth or product revenue growth; operating income (before or after taxes); pre- or after-tax income or loss (before or after allocation of corporate overhead and bonus); earnings or loss per share; net income or loss (before or after taxes); return on equity; total stockholder return; return on assets or net assets; appreciation in and/or maintenance of the price of the Shares or any other publicly-traded securities of the Corporation; market share; gross profits; net profits; earnings or losses (including earnings or losses before taxes, before interest and taxes, or before interest, taxes, depreciation and amortization); economic value-added models or equivalent metrics; comparisons with various stock market indices; reductions in costs; cash flow or cash flow per share (before or after dividends); return on capital (including return on total capital or return on invested capital); cash flow return on investment; improvement in or attainment of expense levels or working capital levels, including cash, inventory and accounts receivable; operating margin; gross margin; year-end cash; cash margin; debt reduction; stockholders equity; operating efficiencies; market share; customer satisfaction; customer growth; employee satisfaction; drug development milestones; regulatory achievements (including submitting or filing applications or other documents with regulatory authorities, successfully executing an advisory committee meeting, or receiving approval of any such applications or other documents and passing pre-approval inspections (whether of the Corporation or the Corporation's third-party manufacturer) and validation of manufacturing processes (whether the Corporation's or the Corporation's third-party manufacturer's); initiation or completion of pre-clinical studies; clinical achievements (including initiating clinical studies; initiating enrollment, completing enrollment or enrolling particular numbers of subjects in clinical studies; completing phases of a clinical study (including the treatment phase); or announcing or presenting preliminary or final data from clinical studies; in each case, whether on particular timelines or generally); strategic partnerships or transactions (including in-licensing and out-licensing of intellectual property; establishing relationships with commercial entities with respect to the marketing, distribution and sale of the Corporation's products or development candidates (including with group purchasing organizations, distributors and other vendors)); supply chain achievements (including establishing relationships with manufacturers or suppliers of component materials and manufacturers of the Corporation's products or development candidates); co-development, co-marketing, profit sharing, joint venture or other similar arrangements; financial ratios, including those measuring liquidity, activity, profitability or leverage; cost of capital or assets under management; financing and other capital raising transactions (including sales of the Corporation's equity or debt securities; factoring transactions; sales or licenses of the Corporation's assets, including its intellectual property, whether in a particular jurisdiction or territory or globally; or through partnering transactions); implementation, completion or attainment of measurable objectives with respect to research (including nominating a development candidate or initiating a new full discovery program), development, manufacturing (including initiating formulation or device development work or finalizing API or drug product processes), commercialization, development candidates, products or projects, safety, production volume levels, acquisitions and divestitures; factoring

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transactions; and recruiting and maintaining personnel. In the areas of development, regulatory progress and commercialization, the achievements described above performed by a third party with which the Corporation has a licensing or collaborative agreement (a "Partner") shall apply to the Corporation. For example, if a Partner accomplishes development milestones, regulatory achievements, commercialization or sales targets with an asset within a program that is a subject of the licensing or collaboration agreement between the Corporation and the Partner, then such Partner's accomplishments shall constitute achievements of the Corporation. Such performance goals also may be based solely by reference to the Corporation's performance or the performance of a Subsidiary, division, business segment or business unit of the Corporation, or based upon the relative performance of other companies or upon comparisons of any of the indicators of performance relative to other companies. The Committee may adjust the results under any performance criterion to exclude any of the following events that occurs during a performance measurement period: (a) asset write-downs, (b) litigation, claims, judgments or settlements, (c) the effect of changes in tax law, accounting principles or other such laws or provisions affecting reported results, (d) accruals for reorganization and restructuring programs and (e) any extraordinary, unusual or non-recurring items, provided, however that if an Award is intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Code, such adjustment(s) shall only be made to the extent consistent with Section 162(m) of the Code.

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**Form of Notice of Stock Option Grant and Stock Option Agreement under 2012 Equity Incentive Plan**

**THERAVANCE, INC. 2012 EQUITY INCENTIVE PLAN**

**NOTICE OF STOCK OPTION GRANT**

You have been granted the following option to purchase shares of the Common Stock of Theravance, Inc. (the "Company"):

| | |
|---|---|
| Name of Optionee: | «First» «Last» |
| ID Number: | «ID» |
| Total Number of Shares: | «Shares» |
| Type of Option: | Nonstatutory Stock Option |
| Grant Number: | «Number» |
| Exercise Price Per Share: | «Price» |
| Date of Grant: | «Grant_Date» |
| Vesting Schedule: | This option shall vest and become exercisable with respect to the first «InitalVestPercentage»% of the Shares subject to this option when you complete 12 months of continuous service as an Employee or Consultant ("Service") following the Date of Grant. This option shall vest and become exercisable with respect to an additional «Fraction» of the Shares subject to this option when you complete each month of continuous Service thereafter. The option shall be fully vested and exercisable on the «#»-year anniversary of the Date of Grant provided you have remained in continuous Service through such date. |
| Expiration Date: | «Expiration_Date». This option expires earlier if your Service terminates earlier, as described in the Stock Option Agreement, and may be terminated sooner in connection with certain corporate transactions as provided in Article XI of the Plan. |

You and the Company agree that this option is granted under and governed by the terms and conditions of the Stock Option Agreement, which is attached to and made a part of this document, and the 2012 Equity Incentive Plan (the "Plan"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

You further agree that the Company may deliver by email all documents relating to the Plan or this option (including, without limitation, prospectuses required by the Securities and Exchange Commission) and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements). You also agree that the Company may deliver these documents by posting them on a web site maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a web site, it will notify you by email.

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**THERAVANCE, INC. 2012 EQUITY INCENTIVE PLAN**

**STOCK OPTION AGREEMENT**

**Tax Treatment**

This option is intended to be a nonstatutory stock option, as provided in the Notice of Stock Option Grant.

**Vesting**

This option vests and becomes exercisable as shown in the Notice of Stock Option Grant.

This option shall vest and become exercisable in full if the Company is subject to a "**Change in Control**" (as defined in the Plan) before your Service terminates and this option is not assumed or replaced with a new award as set forth in Section 10.1 of the Plan. In addition, this option shall vest and become exercisable in full if the Company is subject to a Change in Control before your Service terminates, and you are subject to an Involuntary Termination (as defined below) within 24 months after the Change in Control.

For purposes of this Agreement, **"Cause"** shall mean (i) the unauthorized use or disclosure of the confidential information or trade secrets of the Company, a Parent, a Subsidiary or an Affiliate, which use causes material harm to the Company, a Parent, a Subsidiary or an Affiliate, (ii) conviction of a felony under the laws of the United States or any state thereof, (iii) gross negligence or (iv) repeated failure to perform lawful assigned duties for thirty days after receiving written notification from the Board of Directors.

For purposes of this Agreement, "**Involuntary Termination**" means the termination of your Service by reason of:

(a) an involuntary dismissal or discharge by the Company (or Parent, Subsidiary or Affiliate employing you) for reasons other than for Cause; or

(b) your voluntary resignation following one of the following that is effected by the Company (or the Parent, Subsidiary or Affiliate employing you) without your consent (i) a change in your position with the Company (or Parent, Subsidiary or Affiliate employing you) which materially reduces your level of

responsibility, (ii) a material reduction in your base compensation or (iii) a relocation of your workplace by more than fifty miles from your workplace immediately prior to the Change in Control that also materially increases your one-way commute. In order for your resignation under clause (b) to constitute an "Involuntary Termination," all of the following requirements must be satisfied: (1) you must provide notice to

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the Company of your intent to resign and assert an Involuntary Termination pursuant to clause (b) within 90 days of the initial existence of one or more of the conditions set forth in subclauses (i) through (iii), (2) the Company (or the Parent, Subsidiary or Affiliate employing you) will have 30 days from the date of such notice to remedy the condition and, if it does so, you may withdraw your resignation or resign without any vesting acceleration, and (3) any termination of Service under clause (b) must occur within two years of the initial existence of one or more of the conditions set forth in subclauses (i) through (iii). Should the Company (or the Parent, Subsidiary or Affiliate employing you) remedy the condition as set forth above and then one or more of the conditions arises again within two years following the occurrence of a Change in Control, you may assert clause (b) again subject to all of the conditions set forth herein.

For purposes of this Agreement, "**Service**" means your service as an Employee or Consultant.

If the option is eligible for vesting acceleration under the Company's Change in Control Severance Plan or the Company's 2009 Change in Control Severance Plan (each, a "**Severance Plan**"), then the vesting acceleration provisions in the applicable Severance Plan shall apply instead of those contained herein.

No additional shares will vest or become exercisable after your Service has terminated for any reason, except as set forth in the applicable Severance Plan to the extent you are eligible for benefits thereunder.

**Term**

This option expires in any event at the close of business at Company headquarters on the day before the 10th anniversary of the Date of Grant, as shown in the Notice of Stock Option Grant. (This option will expire earlier if your Service terminates, as described below, and this option may be terminated sooner as provided in Article XI of the Plan.)

You may exercise this option, to the extent vested and exercisable, at any time before its expiration or termination pursuant to this Agreement or the Plan.

**Termination of Service**

If your Service terminates for any reason, this option will expire to the extent it is unvested as of your termination date and does not vest as a result of your termination of Service. The Company determines when your Service terminates for all purposes of this option.

**Regular Termination**

If your Service terminates for any reason except death or total and permanent disability, then this option, to the extent vested as of your termination date, will expire at the close of business at Company headquarters on the date three months after your termination date.



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**Death/Disability**

If your Service terminates because of your death or due to your total and permanent disability, then this option, to the extent vested as of your termination date, will expire at the close of business at Company headquarters on the date 12 months after your termination date.

For all purposes under this Agreement, "total and permanent disability" means that you are unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted, or can be expected to last, for a continuous period of not less than one year.

**Leaves of Absence and Part-Time Work**

For purposes of this option, your Service does not terminate when you go on a military leave, a sick leave or another *bona fide* leave of absence, if the leave was approved by the Company (or Parent, Subsidiary or Affiliate employing you) in writing. But your Service terminates when the approved leave ends, unless you immediately return to active work.

If you go on a leave of absence, then the vesting schedule specified in the Notice of Stock Option Grant may be adjusted in accordance with the Company's leave of absence policy or the terms of your leave. If you and the Company (or Parent, Subsidiary or Affiliate employing you) agree to a reduction in your scheduled work hours, then the Company reserves the right to modify the rate at which this option vests, so that the rate of vesting is commensurate with your reduced work schedule.

The Company shall not be required to adjust any vesting schedule pursuant to this subsection.

**Restrictions on Exercise**

The Company will not permit you to exercise this option if the issuance of shares at that time would violate any law or regulation.

**Notice of Exercise**

When you wish to exercise this option, you must notify the Company by filing the proper "Notice of Exercise" form at the address given on the form. Your notice must specify how many shares you wish to purchase. Your notice must also

specify how your shares should be registered. The notice will be effective when the Company receives it.

However, if you wish to exercise this option by executing a same-day sale (as described below), you must follow the instructions of the Company and the broker who will execute the sale.

If someone else wants to exercise this option after your death, that person must prove to the Company's satisfaction that he or she is entitled to do so.

In no event may this option be exercised for any fractional shares.

**Form of Payment**

When you submit your notice of exercise, you must include payment of the option exercise price for the shares that you are purchasing. To the extent permitted by applicable law, payment may be made in one (or a combination of two or more) of the following forms:



- Your personal check, a cashier's check, a money order or by wire transfer.

- Shares of Company stock that you own, along with any forms needed to effect a transfer of those shares to the Company. The value of the shares, determined as of the effective date of the option exercise, will be applied to the option exercise price. Instead of surrendering shares of Company stock, you may attest to the ownership of those shares on a form provided by the Company and have the same number of shares subtracted from the option shares issued to you. However, you may not surrender, or attest to the ownership of, shares of Company stock in payment of the exercise price if your action would cause the Company to recognize compensation expense (or additional compensation expense) with respect to this option for financial reporting purposes.

- Irrevocable directions to a securities broker approved by the Company to sell all or part of your option shares and to deliver to the Company from the sale proceeds an amount sufficient to pay the option exercise price and any withholding taxes. (The balance of the sale proceeds, if any, will be delivered to you.) The directions must be given in accordance with the instructions of the Company and the broker. This exercise method is sometimes called a "same-day sale."

- With the Company's consent (which may be granted by the Company's Securities Compliance Officer), irrevocable directions to a securities broker or lender approved by the Company to pledge option shares as security for a loan and to deliver to the Company from the loan proceeds an amount sufficient to pay the option exercise price and any withholding taxes. The directions must be given in accordance with the instructions of the Company and the broker or lender.

- With the Company's consent (which may be granted by the Compensation Committee of the Board of Directors or, if applicable, by the Stock Option Committee of the Board of Directors), by having the Company withhold shares of Common Stock that would otherwise be issued on exercise of the option. The value of the withheld shares, determined as of the effective date of the option exercise, will be applied to the option exercise price. This exercise method is sometimes referred to as a "net exercise".

**Withholding Taxes and Stock Withholding**

You will not be allowed to exercise this option unless you make arrangements acceptable to the Company (and/or the Parent, Subsidiary or Affiliate employing you) to pay any withholding taxes that may be due as a result of the option exercise. With the Company's consent (which may be granted by the Compensation Committee of the Board of Directors or, if applicable, by the Stock Option Committee of the Board of Directors), these arrangements may include withholding shares of Company stock



that otherwise would be issued to you when you exercise this option. The value of these shares, determined as of the effective date of the option exercise, will be applied to the withholding taxes.

**Restrictions on Resale**

You agree not to sell any option shares at a time when applicable laws, Company policies (including the Company's Insider Trading Policy, a copy of which can be found on the Company's intranet) or an agreement between the Company and its underwriters prohibit a sale. This restriction will apply as long as your Service continues and for such period of time after the termination of your Service as the Company may specify.

**Transfer of Option**

Prior to your death, only you may exercise this option. You cannot transfer or assign this option. For instance, you may not sell this option or use it as security for a loan. If you attempt to do any of these things, this option will immediately become invalid. You may, however, dispose of this option in your will or a beneficiary designation. A beneficiary designation must be filed with the Company on the proper form.

Regardless of any marital property settlement agreement, the Company is not obligated to honor a notice of exercise from your former spouse, nor is the Company obligated to recognize your former spouse's interest in your option in any other way.

**No Retention Rights**

Your option or this Agreement does not give you the right to be retained by the Company, a Parent, Subsidiary or Affiliate in any capacity. The Company and its Parents, Subsidiaries and Affiliates reserve the right to terminate your Service at any time, with or without cause.

| | |
|---|---|
| **Stockholder Rights** | You, or your estate or heirs, have no rights as a stockholder of the Company until this option has been exercised by giving the required notice to the Company and paying the exercise price. No adjustments are made for dividends or other rights if the applicable record date occurs before exercise of this option, except as described in the Plan. |
| **Recoupment Policy** | This option, and the shares acquired upon exercise of this option, shall be subject to any Company recoupment policy in effect from time to time. |
| **Adjustments** | In the event of a stock split, a stock dividend or a similar change in Common Stock, the number of shares covered by this option and the exercise price per share may be adjusted pursuant to the Plan. |
| **Applicable Law** | This Agreement will be interpreted and enforced under the laws of the State of Delaware (without regard to its choice-of-law provisions). |
| **The Plan and Other Agreements** | The text of the Plan is incorporated in this Agreement by reference. A copy of the Plan is available on the Company's intranet or by request to the Finance Department. Capitalized terms not otherwise defined herein |



shall have the meanings ascribed to such terms in the Plan.

This Agreement, the Notice of Stock Option Grant, and the Plan constitute the entire understanding between you and the Company regarding this option. Any prior agreements, commitments or negotiations concerning this option are superseded. This Agreement may be amended only by another written agreement between the parties.

**BY ACCEPTING THIS STOCK OPTION GRANT, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED ABOVE AND IN THE PLAN.**



**Form of Notice of Restricted Stock Unit Award and Restricted Stock Unit Agreement under 2012 Equity Incentive Plan**

**THERAVANCE, INC. 2012 EQUITY INCENTIVE PLAN**

**NOTICE OF RESTRICTED STOCK UNIT AWARD**

You have been granted the number of restricted stock units indicated below by Theravance, Inc. (the "**Company**") on the following terms:

Name: «Name»

**Restricted Stock Unit Award Details**:

| | |
|---|---|
| Date of Grant: | «DateGrant» |
| Restricted Stock Units: | «TotalShares» |

Each restricted stock unit (the "**restricted stock unit**") represents the right to receive one share of the Company's Common Stock subject to the terms and conditions contained in the Restricted Stock Unit Agreement (the "**Agreement**").

**Vesting Schedule**:

Vesting is dependent upon continuous service as an Employee or Consultant ("**Service**") throughout the vesting period. The restricted stock units will vest as follows: «InitialVestPercentage»% on «InitialVestDate»; «SubsequentVestPercentage»% on «SecondVestDate»; and an additional «SubsequentVestPercentage»% on the final day of each 3-month period thereafter, provided that you remain in continuous Service through each such date.

You and the Company agree that your right to receive the restricted stock units is granted under and governed by the terms and conditions of the Plan and of the Agreement that is attached to and made a part of this document. Capitalized terms not defined herein have the meaning ascribed to such terms in the Plan.

You agree that the Company may deliver by email all documents relating to the Plan or this award (including, without limitation, prospectuses required by the Securities and Exchange Commission) and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements). You also agree that the Company may deliver these documents by posting them on a web site maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a web site, it will notify you by email.

You agree to cover the applicable withholding taxes as set forth more fully herein. In connection with your receipt of the restricted stock units, you are simultaneously entering into a trading arrangement that complies with the requirements of Rule 10b5-1(c)(1) under the Securities Exchange Act of 1934 (a "10b5-1 Plan"). As of the date of the Agreement, you are not aware of any material nonpublic information concerning the Company or its securities, or, as of the date any sales are effected pursuant to the 10b5-1 Plan, you will not effect such sales on the basis of material nonpublic information about the securities or the Company of which you were aware at the time you entered into the Agreement.

**Payment for Units**

No payment is required for the restricted stock units you are receiving.

**Nature of Units**

Your restricted stock units are bookkeeping entries. They represent only the Company's unfunded and unsecured promise to issue shares of Common Stock on a future date. As a holder of restricted stock units, you have no rights other than the rights of a general creditor of the Company.

**Settlement of Units**

Each of your restricted stock units will be settled when it vests (unless you and the Company have agreed to a later settlement date pursuant to procedures that the Company may prescribe at its discretion).

At the time of settlement, you will receive one share of the Company's Common Stock for each vested restricted stock unit.

**Vesting**

The restricted stock units that you are receiving will vest as shown in the Notice of Restricted Stock Unit Award.

In addition, the restricted stock units will vest in full if the Company is subject to a Change in Control (as defined in the Plan) before your Service terminates and you are subject to an Involuntary Termination (as defined below) within 24 months after the Change in Control.

For purposes of this Agreement, "Service" means your continuous service as an Employee or Consultant.

"Involuntary Termination" means a termination of your Service by reason of (i) an involuntary dismissal or discharge by the Company (or Parent, Subsidiary or Affiliate employing you) for reasons other than Cause or (ii) your voluntary resignation following one of the following that is effected by the Company (or the Parent, Subsidiary or Affiliate employing you) without your consent (A) a change in your position with the Company (or the Parent, Subsidiary or Affiliate employing you) which materially reduces your level of responsibility, (B) a material reduction in your base compensation, or (C) a relocation of your workplace by more than fifty miles from your workplace immediately prior to the Change in Control that also materially increases your one-way commute, provided that in either case a "separation from service" (as defined in the regulations under Code Section 409A) occurs. In order for your resignation under clause (ii) to constitute an "Involuntary Termination," all of the following requirements must be satisfied: (1) you must provide notice to the Company of your intent to resign and assert an Involuntary Termination pursuant to clause (ii) within 90 days of the initial

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existence of one or more of the conditions set forth in subclauses (A) through (C), (2) the Company (or the Parent, Subsidiary or Affiliate employing you) will have 30 days from the date of such notice to remedy the condition and, if it does so, you may withdraw your resignation or resign without any vesting acceleration, and (3) any termination of Service under clause (ii) must occur within two years of the initial existence of one or more of the conditions set forth in subclauses (A) through (C). Should the Company remedy the condition as set forth above and then one or more of the conditions arises again within two years following the occurrence of a Change in Control, you may assert clause (ii) again subject to all of the conditions set forth herein.

"Cause" means (i) the unauthorized use or disclosure of the confidential information or trade secrets of the Company, a Parent, a Subsidiary or an Affiliate, which use causes material harm to the Company, a Parent, a Subsidiary or an Affiliate, (ii) conviction of a felony under the laws of the United States or any state thereof, (iii) gross negligence or (iv) repeated failure to perform lawful assigned duties for thirty days after receiving written notification from the Board of Directors.

Nothwithstanding the foregoing, if you become eligible to participate in the Company's 2009 Change in Control Severance Plan (the "2009 Severance Plan"), the vesting acceleration provisions in the 2009 Severance Plan shall apply instead of those contained herein. In addition, the restricted stock units shall be treated as "shares" for purposes of acceleration of vesting under the 2009 Severance Plan.

If the Company is subject to a Change in Control before your Service terminates, the restricted stock units will vest in full if not assumed or replaced with a new award as set forth in Section 10.1 of the Plan.

No additional restricted stock units vest after your Service has terminated for any reason, except as set forth in the 2009 Severance Plan to the extent you are eligible for benefits thereunder. It is intended that vesting in the restricted stock units is commensurate with a full-time work schedule. For possible adjustments that may be made by the Company, see the Section below entitled "Leaves of Absence and Part-Time Work."

**Forfeiture**

If your Service terminates for any reason, then your restricted stock units that have not vested before the termination date and do not vest as a result of the termination pursuant to this Agreement or as set forth on the Notice of Restricted Stock Unit Award will be forfeited. This means that the restricted stock units will revert to the Company. You receive no payment for restricted stock units that are forfeited. The Company determines when your Service terminates for all purposes of your restricted stock units.

**Leaves of Absence and Part-Time Work**

For purposes of this award, your Service does not terminate when you go on a military leave, a sick leave or another *bona fide* leave of absence, if the leave was approved by the Company (or the Parent, Subsidiary or Affiliate employing you) in writing. If your leave of absence (other than a military leave) lasts for more than 6 months, then vesting will be suspended on the day that is 6 months and 1 day after the leave of absence began. Vesting will resume effective as of the second vesting date after you return from leave of absence provided you have worked at least one day during that vesting period.

In the case of all leaves, your Service terminates when the approved leave ends, unless you immediately return to active work.

If you and the Company (or the Parent, Subsidiary or Affiliate employing you) agree to a reduction in your scheduled work hours, then the Company reserves the right to modify the rate at which the restricted stock units vest, so that the rate of vesting is commensurate with your reduced work schedule.

The Company shall not be required to adjust any vesting schedule pursuant to this subsection.

**Stock Certificates**

No shares of Common Stock shall be issued to you prior to the date on which the restricted stock units vest. After any restricted stock units vest pursuant to this Agreement, the Company shall promptly cause to be issued in book-entry form, registered in your name or in the name of your legal representatives, beneficiaries or heirs, as the case may be, the number of shares of Common Stock representing your vested restricted stock units. No fractional shares shall be issued.

**Section 409A**

Unless you and the Company have agreed to a deferred settlement date (pursuant to procedures that the Company may prescribe at its discretion), settlement of these restricted stock units is intended to be exempt from the application of Code Section 409A pursuant to the "short-term deferral exemption" in Treasury Regulation 1.409A-1(b)(4) and shall be administrated and interpreted in a manner that complies with such exemption.

Notwithstanding the foregoing, to the extent it is determined that settlement of these restricted stock units is not exempt from Code Section 409A as a short-term deferral or otherwise and the Company determines that you are a "specified employee," as defined in the regulations under Code Section 409A, at the time of your "separation from service," as defined in those regulations, then any restricted stock units that otherwise would have been settled during the first six months following your separation from service will instead be settled on the first business day following the earlier of the six-month anniversary of your separation from service or your death, unless the event triggering vesting is an event other than your separation from



service.

**No Stockholder Rights**

The restricted stock units do not entitle you to any of the rights of a stockholder of Common Stock. Upon settlement of the restricted stock units into shares of Common Stock, you will obtain full voting and other rights as a stockholder of the Company.

**Units Restricted**

You may not sell, transfer, pledge or otherwise dispose of any restricted stock units or rights under this Agreement other than by will or by the laws of descent and distribution. Notwithstanding the foregoing, you may designate a beneficiary or beneficiaries to receive any property distributable with respect to the restricted stock units upon your death. A beneficiary designation must be filed with the Company on the proper form.

**Withholding Taxes**

No shares will be distributed to you unless you have made arrangements acceptable to the Company (and/or the Parent, Subsidiary or Affiliate employing you) to pay any withholding taxes that may be due as a result of the vesting and/or settlement of this award. Prior to the relevant taxable event, you shall pay or make adequate arrangements satisfactory to the Company (and/or the Parent, Subsidiary or Affiliate employing you) to satisfy all withholding obligations for applicable taxes.

You authorize the Company to instruct the broker whom it has selected for this purpose to sell a number of shares of Common Stock to be issued upon the vesting of your restricted stock units or a lesser number necessary to meet tax withholding obligations. Such sales shall be effected at a market price following the date that the restricted stock units vest (unless you and the Company have agreed to a later settlement date pursuant to procedures that the Company may prescribe at its discretion).

You acknowledge that the proceeds of any such sale may not be sufficient to satisfy your withholding obligations. To the extent the proceeds from such sale are insufficient to cover the taxes due, the Company (or the Parent, Subsidiary or Affiliate employing you) may in its discretion (a) withhold the balance of all applicable taxes legally payable by you from your wages or other cash compensation paid to you by the Company (or the Parent, Subsidiary or Affiliate employing you) and/or (b) withhold in shares of Common Stock, provided that the Company only withholds an amount of shares not in excess of the amount necessary to satisfy the minimum withholding amount. The fair market value of withheld shares, determined as of the date taxes otherwise would have been withheld in cash, will be applied against the withholding taxes. If the Company satisfies the obligation for taxes by withholding a number of shares of Common Stock as described above, you are deemed to have been issued the full number of shares subject to the award of restricted stock units.

**Rule 10b5-1 Plan**

You acknowledge that the instruction to the broker to sell in the foregoing section is intended to comply with the requirements of Rule 10b5-1(c)(1)(i)(B) under the Securities Exchange Act of 1934 (the "Exchange Act"), and to be interpreted to comply with the requirements of Rule 10b5-1(c)(1) under the Exchange Act (a "10b5-1 Plan"). This 10b5-1 Plan is adopted to be effective as of the first date on which the restricted stock units vest. This 10b5-1 Plan is being adopted to permit you to sell a number of shares awarded upon the vesting of restricted stock units sufficient to pay withholding taxes that become due as a result of this award or the vesting of the restricted stock units or, if you elect within thirty days following notification via the broker whom the Company has selected for this purpose of your restricted stock unit award, to permit you to sell all of the vested restricted stock units. You hereby appoint the Company as your agent and attorney-in-fact to instruct the broker with respect to the number of shares to be sold under this 10b5-1 Plan.

You hereby authorize the broker to sell the number of shares of Common Stock determined as set forth above and acknowledge that the broker is under no obligation to arrange for such sale at any particular price. You acknowledge that the broker may aggregate your sales with sales occurring on the same day that are effected on behalf of other Company employees pursuant to sales of shares vesting under Company options or restricted stock unit awards and your proceeds will be based on a blended price for all such sales. You acknowledge that you will be responsible for all brokerage fees and other costs of sale, and you agree to indemnify and hold the Company harmless from any losses, costs, damages, or expenses relating to any such sale. You acknowledge that it may not be possible to sell Common Stock during the term of this 10b5-1 Plan due to (a) a legal or contractual restriction applicable to you or to the broker, (b) a market disruption, (c) rules governing order execution priority on the Nasdaq Global Market, (d) a sale effected pursuant to this 10b5-1 Plan that fails to comply (or in the reasonable opinion of the broker's counsel is likely not to comply) with Rule 144 under the Securities Act of 1933, if applicable, or (e) if the Company determines that sales may not be effected under this 10b5-1 Plan. You acknowledge that this 10b5-1 Plan is subject to the terms of any policy adopted now or hereafter by the Company governing the adoption of 10b5-1 plans.

**Restrictions on Issuance**

The Company will not issue shares to you if the issuance of shares at that time would violate any law or regulation.

**Restrictions on Resale**

You agree not to sell any shares of Common Stock you receive under this Agreement at a time when applicable laws, regulations, Company trading policies (including the Company's Insider Trading Policy, a copy of which can be found on the Company's intranet) or an



agreement between the Company and its underwriters prohibit a sale. This restriction will apply as long as your Service continues and for such period of time after the termination of your Service as the Company may specify.

**No Retention Rights**

Your award or this Agreement does not give you the right to be employed or retained by the Company (or a Parent, Subsidiary or Affiliate) in any capacity. The Company and its Parents, Subsidiaries and Affiliates reserve the right to terminate your Service at any time, with or without cause.

**Recoupment Policy**

This award, and the shares acquired upon settlement of this award, shall be subject to any Company recoupment policy in effect from time to time.

**Adjustments**

In the event of a stock split, a stock dividend or a similar change in Common Stock, the number of restricted stock units may be adjusted pursuant to the Plan.

**Applicable Law**

This Agreement will be interpreted and enforced with respect to issues of contract law under the laws of the State of Delaware (without regard to its choice-of-law provisions).

**The Plan and Other Agreements**

The text of the Plan is incorporated in this Agreement by reference. A copy of the Plan is available on the Company's intranet or by request to the Finance Department. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

This Agreement, the Notice of Restricted Stock Unit Award, and the Plan constitute the entire understanding between you and the Company regarding this award. Any prior agreements, commitments or negotiations concerning this award are superseded. This Agreement may be amended only by another written agreement between the parties.

**BY ACCEPTING THIS RESTRICTED STOCK UNIT AWARD, YOU AGREE TO**

**ALL OF THE TERMS AND CONDITIONS DESCRIBED ABOVE AND IN THE PLAN.**



**Form of Notice of Restricted Stock Award and Restricted Stock Agreement under 2012 Equity Incentive Plan (Executive Officers)**

**THERAVANCE, INC. 2012 EQUITY INCENTIVE PLAN**
**NOTICE OF RESTRICTED STOCK AWARD**

You have been granted restricted shares of Common Stock of Theravance, Inc. (the "Company") on the following terms:

| | |
|---|---|
| Name of Recipient: | «Name» |
| Total Number of Shares Granted: | «TotalShares» |
| Date of Grant: | «DateGrant» |

Vesting Schedule:

Vesting of the shares is dependent upon continuous service as an Employee or Consultant ("**Service**") throughout the vesting period. The shares will vest as follows: «InitialVestPercentage»% on «InitialVestDate»; «SubsequentVestPercentage»% on «SecondVestDate»; and an additional «SubsequentVest Percentage»% on the final day of each 3-month period thereafter, provided that you remain in continuous Service through such date.

You and the Company agree that these shares are granted under and governed by the terms and conditions of the Theravance, Inc. 2012 Equity Incentive Plan (the "Plan") and of the Agreement that is attached to and made a part of this document. Capitalized terms not defined herein have the meaning ascribed to such terms in the Plan.

You further agree that the Company may deliver by email all documents relating to the Plan or this award (including, without limitation, prospectuses required by the Securities and Exchange Commission) and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements). You also agree that the Company may deliver these documents by posting them on a web site maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a web site, it will notify you by email.

You agree to cover the applicable withholding taxes as set forth more fully herein.

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**THERAVANCE, INC. 2012 EQUITY INCENTIVE PLAN:**
**RESTRICTED STOCK AGREEMENT**

| | |
|---|---|
| **Payment for Shares** | The shares have been awarded to you in consideration of your past service to the Company and no payment is required for the shares that you are receiving, except for satisfying any withholding taxes that may be due as a result of the grant of this award or the vesting or transfer of the shares. |
| **Transfer** | On the terms and conditions set forth in the Notice of Restricted Stock Award and this Agreement, the Company agrees to transfer to you the number of shares of its Common Stock set forth in the Notice of Restricted Stock Award. |
| **Vesting** | The shares will vest as shown in the Notice of Restricted Stock Award.<br><br>The shares are eligible for vesting acceleration under the Company's Change in Control Severance Plan and 2009 Change in Control Severance Plan (each, a "Severance Plan") to the extent you are eligible to participate in either such Severance Plan.<br><br>No additional shares vest after your Service has terminated for any reason, except as set forth in the Notice of Restricted Stock Award, in this Agreement or, to the extent you are eligible to participate in a Severance Plan, in a Severance Plan.<br><br>It is intended that vesting in the shares is commensurate with a full-time work schedule. For possible adjustments that may be made by the Company, see the Section below entitled "Leaves of Absence and Part-Time Work." |
| **Shares Restricted** | Unvested shares will be considered "**Restricted Shares**."<br><br>You may not sell, transfer, pledge or otherwise dispose of any Restricted Shares without the written consent of the Company, except as provided in the next sentence. You may transfer Restricted Shares to your spouse, children or grandchildren or to a trust established by you for the benefit of yourself or your spouse, children or grandchildren. However, a transferee of Restricted Shares must agree in writing on a form prescribed by the Company to be bound by all provisions of this Agreement. |
| **Forfeiture** | If your Service terminates for any reason, then your shares will be forfeited to the extent that they have not vested before the termination date and do not vest as a result of the termination. This means that the |

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| | |
|---|---|
| | Restricted Shares will revert to the Company. You receive no payment for Restricted Shares that are forfeited. The Company determines when your Service terminates for all purposes of this award. |
| **Leaves of Absence and Part-Time Work** | For purposes of this award, your Service does not terminate when you go on a military leave, a sick leave or another *bona fide* leave of absence, if the leave was approved by the Company (or the Parent, Subsidiary or Affiliate employing you) in writing. If your leave of absence (other than a military leave) lasts for more than 6 months, then vesting will be suspended on the day that is 6 months and 1 day after the leave of absence began. Vesting will resume effective as of the second vesting date after you return from leave of absence provided you have worked at least one day during that vesting period. |

In the case of all leaves, your Service terminates when the approved leave ends, unless you immediately return to active work.

If you and the Company (or the Parent, Subsidiary or Affiliate employing you) agree to a reduction in your scheduled work hours, then the Company reserves the right to modify the rate at which the shares vest, so that the rate of vesting is commensurate with your reduced work schedule.

The Company shall not be required to adjust any vesting schedule pursuant to this subsection.

**Stock Certificates**

The Restricted Shares are issued in book-entry form, registered in your name, and held in escrow at the Company's designated brokerage pending the date on which shares vest. After shares vest, the Company will release from escrow the number of shares of Common Stock representing your vested shares, registered in your name or in the name of your legal representatives, beneficiaries or heirs, as the case may be.

**Voting Rights**

You may vote your shares even before they vest.

**Dividend Rights**

Any cash dividends distributed with respect to Restricted Shares shall be subject to the same terms and conditions as apply to the Restricted Shares to which they relate and shall be paid to you (less all applicable withholding taxes) promptly upon vesting.

**Withholding Taxes**

No shares will be released to you unless you have made arrangements acceptable to the Company (and/or the Parent, Subsidiary or Affiliate employing you) to pay any withholding taxes that may be due as a result of this award or the vesting of the shares. Prior to the relevant taxable event, you shall pay or make adequate arrangements satisfactory to the Company (and/or the Parent, Subsidiary or Affiliate



employing you) to satisfy all withholding obligations for applicable taxes.

At your discretion, these arrangements may include (a) payment in cash, (b) payment from the proceeds of the sale of shares through a Company-approved broker or (c) withholding shares of Company stock that otherwise would be released to you upon vesting with a fair market value not in excess of the amount necessary to satisfy the minimum withholding amount, provided that the Company, acting through the Board of Directors or Compensation Committee, may provide prospectively that it no longer authorizes (c) withholding of shares.

If the Company satisfies the obligation for taxes by withholding a number of shares of Common Stock as described above, you will be deemed to have received the full number of shares released from restrictions, including the number of shares withheld to satisfy tax withholding obligations, and the fair market value of these shares, determined as of the date when taxes otherwise would have been withheld in cash, will be applied to the withholding taxes.

You acknowledge that the proceeds of a sale pursuant to (b) above or withholding pursuant to (c) above may not be sufficient to satisfy your withholding obligations. To the extent the proceeds from such sale are insufficient to cover the taxes due, the Company may in its discretion withhold the balance of all applicable taxes legally payable by you from your wages or other cash compensation paid to you by the Company.

**Restrictions on Resale**

You agree not to sell any shares at a time when applicable laws, regulations, Company policies (including the Company's Insider Trading Policy, a copy of which can be found on the Company's intranet) or an agreement between the Company and its underwriters prohibit a sale. This restriction will apply as long as your Service continues and for such period of time after the termination of your Service as the Company may specify.

**No Retention Rights**

Your award or this Agreement does not give you the right to be employed or retained by the Company, a Parent, a Subsidiary or an Affiliate in any capacity. The Company and its Parent, Subsidiaries and Affiliates reserve the right to terminate your Service at any time, with or without cause.

**Additional or Exchanged Securities and Property**

In the event of a merger or consolidation of the Company with or into another entity, any other corporate reorganization, a stock split, the declaration of a stock dividend, the declaration of an extraordinary dividend payable in a form other than stock, a spin-off, a recapitalization or a similar transaction affecting the Company's outstanding Common Stock, any securities or other property (including cash or cash equivalents) that are by reason of such



transaction exchanged for, or distributed with respect to, any Restricted Shares shall be subject to the same terms and conditions (including, without limitation, vesting and forfeiture) as are applicable to the Restricted Shares under this Agreement and the Plan. Appropriate adjustments to reflect the exchange or distribution of such securities or property shall be made to the number and/or class of the Restricted Shares.

**Recoupment Policy**

The shares issued pursuant to this award shall be subject to any Company recoupment policy in effect from time to time.

**Applicable Law**

This Agreement will be interpreted and enforced under the laws of the State of Delaware (without regard to their choice-of-law provisions).

**The Plan and Other Agreements** The text of the Plan is incorporated in this Agreement by reference.

This Agreement and the Plan constitute the entire understanding between you and the Company regarding this award. Any prior agreements, commitments or negotiations concerning this award are superseded. This Agreement may be amended only by another written agreement between the parties.

**BY ACCEPTING THIS RESTRICTED STOCK AWARD, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED ABOVE AND IN THE PLAN.**



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**Form of Notice of Restricted Stock Award and Restricted Stock Agreement under 2012 Equity Incentive Plan (Officers, other than Executive Officers)**

**THERAVANCE, INC. 2012 EQUITY INCENTIVE PLAN**
**NOTICE OF RESTRICTED STOCK AWARD**

You have been granted restricted shares of Common Stock of Theravance, Inc. (the "Company") on the following terms:

| | |
|---|---|
| Name of Recipient: | «Name» |
| Total Number of Shares Granted: | «TotalShares» |
| Date of Grant: | «DateGrant» |

Vesting Schedule:

Vesting of the shares is dependent upon continuous service as an Employee or Consultant ("**Service**") throughout the vesting period. The shares will vest as follows: «InitialVestPercentage»% on «InitialVestDate»; «SubsequentVestPercentage»% on «SecondVestDate»; and an additional «SubsequentVestPercentage »% on the final day of each 3-month period thereafter, provided that you remain in continuous Service through such date.

You and the Company agree that these shares are granted under and governed by the terms and conditions of the Theravance, Inc. 2012 Equity Incentive Plan (the "**Plan**") and of the Agreement that is attached to and made a part of this document. Capitalized terms not defined herein have the meaning ascribed to such terms in the Plan.

You further agree that the Company may deliver by email all documents relating to the Plan or this award (including, without limitation, prospectuses required by the Securities and Exchange Commission) and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements). You also agree that the Company may deliver these documents by posting them on a web site maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a web site, it will notify you by email.

You agree to cover the applicable withholding taxes as set forth more fully herein. In connection with your receipt of these shares, you are simultaneously entering into a trading arrangement that complies with the requirements of Rule 10b5-1(c)(1) under the Securities Exchange Act of 1934 (a "10b5-1 Plan"). As of the date of the Agreement, you are not aware of any material nonpublic information concerning the Company or its securities, or, as of the date any sales are effected pursuant to the 10b5-1 Plan, you will not effect such sales on the basis of material nonpublic information about the securities or the Company of which you were aware at the time you entered into the Agreement.

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**THERAVANCE, INC. 2012 EQUITY INCENTIVE PLAN:**
**RESTRICTED STOCK AGREEMENT**

**Payment for Shares** The shares have been awarded to you in consideration of your past service to the Company and no payment is required for the shares that you are receiving, except for satisfying any withholding taxes that may be due as a result of the grant of this award or the vesting or transfer of the shares.

**Transfer** On the terms and conditions set forth in the Notice of Restricted Stock Award and this Agreement, the Company agrees to transfer to you the number of shares of its Common Stock set forth in the Notice of Restricted Stock Award.

**Vesting** The shares will vest as shown in the Notice of Restricted Stock Award.

The shares are eligible for vesting acceleration under the Company's Change in Control Severance Plan and 2009 Change in Control Severance Plan (each, a "Severance Plan") to the extent you are eligible to participate in either such Severance Plan.

No additional shares vest after your Service has terminated for any reason, except as set forth in the Notice of Restricted Stock Award, in this Agreement or, to the extent you are eligible to participate in a Severance Plan, in a Severance Plan.

It is intended that vesting in the shares is commensurate with a full-time work schedule. For possible adjustments that may be made by the Company, see the Section below entitled "Leaves of Absence and Part-Time Work."

**Shares Restricted** Unvested shares will be considered "**Restricted Shares**."

You may not sell, transfer, pledge or otherwise dispose of any Restricted Shares without the written consent of the Company, except as provided in the next sentence. You may transfer Restricted Shares to your spouse, children or grandchildren or to a trust established by you for the benefit of yourself or your spouse, children or grandchildren. However, a transferee of Restricted Shares must agree in writing on a form prescribed by the Company to be bound by all provisions of this Agreement.

**Forfeiture**

If your Service terminates for any reason, then your shares will be forfeited to the extent that they have not vested before the termination date and do not vest as a result of the termination. This means that the Restricted Shares will revert to the Company. You receive no

payment for Restricted Shares that are forfeited. The Company determines when your Service terminates for all purposes of this award.

**Leaves of Absence and Part-Time Work**

For purposes of this award, your Service does not terminate when you go on a military leave, a sick leave or another *bona fide* leave of absence, if the leave was approved by the Company (or the Parent, Subsidiary or Affiliate employing you) in writing. If your leave of absence (other than a military leave) lasts for more than 6 months, then vesting will be suspended on the day that is 6 months and 1 day after the leave of absence began. Vesting will resume effective as of the second vesting date after you return from leave of absence provided you have worked at least one day during that vesting period.

In the case of all leaves, your Service terminates when the approved leave ends, unless you immediately return to active work.

If you and the Company (or the Parent, Subsidiary or Affiliate employing you) agree to a reduction in your scheduled work hours, then the Company reserves the right to modify the rate at which the shares vest, so that the rate of vesting is commensurate with your reduced work schedule.

The Company shall not be required to adjust any vesting schedule pursuant to this subsection.

**Stock Certificates**

The Restricted Shares are issued in book-entry form, registered in your name, and held in escrow at the Company's designated brokerage pending the date on which shares vest. After shares vest, the Company will release from escrow the number of shares of Common Stock representing your vested shares, registered in your name or in the name of your legal representatives, beneficiaries or heirs, as the case may be.

**Voting Rights**

You may vote your shares even before they vest.

**Dividend Rights**

Any cash dividends distributed with respect to Restricted Shares shall be subject to the same terms and conditions as apply to the Restricted Shares to which they relate and shall be paid to you (less all applicable withholding taxes) promptly upon vesting.

**Withholding Taxes**

No shares will be released to you unless you have made arrangements acceptable to the Company (and/or the Parent, Subsidiary or Affiliate employing you) to pay any withholding taxes that may be due as a result of this award or the vesting of the shares. Prior to the relevant taxable event, you shall pay or make adequate arrangements satisfactory to the Company (and/or the Parent, Subsidiary or Affiliate employing you) to satisfy all withholding obligations for applicable



taxes.

You authorize the Company to instruct the broker whom it has selected for this purpose to sell a number of shares of Common Stock to be released to you upon the vesting of your Restricted Shares or a lesser number necessary to meet tax withholding obligations. Such sales shall be effected at a market price following the date that the Restricted Shares vest.

You acknowledge that the proceeds of any such sale may not be sufficient to satisfy your withholding obligations. To the extent the proceeds from such sale are insufficient to cover the taxes due, the Company (or the Parent, Subsidiary or Affiliate employing you) may in its discretion (a) withhold the balance of all applicable taxes legally payable by you from your wages or other cash compensation paid to you by the Company (or the Parent, Subsidiary or Affiliate employing you) and/or (b) withhold in shares of Common Stock, provided that the Company only withholds an amount of shares not in excess of the amount necessary to satisfy the minimum withholding amount. The fair market value of withheld shares, determined as of the date taxes otherwise would have been withheld in cash, will be applied against the withholding taxes. Even if the Company satisfies the obligation for taxes by withholding a number of shares of Common Stock as described above, you will be deemed to have received the full number of shares released from restrictions, including the number of shares sold or withheld to satisfy tax withholding obligations.

**Rule 10b5-1 Plan**

You acknowledge that the instruction to the broker to sell in the foregoing section is intended to comply with the requirements of Rule 10b5-1(c)(1)(i)(B) under the Securities Exchange Act of 1934 (the "Exchange Act"), and to be interpreted to comply with the requirements of Rule 10b5-1(c)(1) under the Exchange Act (a "10b5-1 Plan"). This 10b5-1 Plan is adopted to be effective as of the first date on which Restricted Shares vest. This 10b5-1 Plan is being adopted to permit you to sell a number of shares to be released to you upon the vesting of Restricted Shares sufficient to pay withholding taxes that become due as a result of this award or the vesting of the Restricted Shares or, if you elect within thirty days following notification via the broker whom the Company has selected for this purpose of your restricted stock award, to permit you to sell all of the vested Restricted Shares. You hereby appoint the Company as your agent and attorney-in-fact to instruct the broker with respect to the number of shares to be sold under this 10b5-1 Plan.

You hereby authorize the broker to sell the number of shares of Common Stock determined as set forth above and acknowledge that the broker is under no obligation to arrange for such sale at any particular price. You acknowledge that the broker may aggregate your sales with sales occurring on the same day that are effected on behalf of other Company employees pursuant to sales of shares vesting under Company options, restricted stock awards or restricted stock unit awards and your proceeds will be based on a blended price for all such sales. You acknowledge that you will be responsible for all brokerage fees and other costs of sale, and you agree to indemnify and hold the Company harmless from any losses, costs, damages, or expenses relating to any such sale. You acknowledge that it may not be possible to sell Common Stock during the term of this 10b5-1 Plan due to (a) a legal or contractual restriction applicable to you or to the broker, (b) a market disruption, (c) rules governing order execution priority on the Nasdaq Global Market, (d) a sale effected pursuant to this 10b5-1 Plan that fails to comply (or in the reasonable opinion of the broker's counsel is likely not to comply) with Rule 144 under the Securities Act of 1933, if applicable, or (e) if the Company determines that sales may not be effected under this 10b5-1 Plan. You acknowledge that this 10b5-1 Plan is subject to the terms of any policy adopted now or hereafter by the Company governing the adoption or administration of 10b5-1 plans.



**Restrictions on Resale**

You agree not to sell any shares at a time when applicable laws, regulations, Company policies (including the Company's Insider Trading Policy, a copy of which can be found on the Company's intranet) or an agreement between the Company and its underwriters prohibit a sale. This restriction will apply as long as your Service continues and for such period of time after the termination of your Service as the Company may specify.

**No Retention Rights**

Your award or this Agreement does not give you the right to be employed or retained by the Company, a Parent, a Subsidiary or an Affiliate in any capacity. The Company and its Parent, Subsidiaries and Affiliates reserve the right to terminate your Service at any time, with or without cause.

**Additional or Exchanged Securities and Property**

In the event of a merger or consolidation of the Company with or into another entity, any other corporate reorganization, a stock split, the declaration of a stock dividend, the declaration of an extraordinary dividend payable in a form other than stock, a spin-off, a recapitalization or a similar transaction affecting the Company's outstanding Common Stock, any securities or other property (including cash or cash equivalents) that are by reason of such transaction exchanged for, or distributed with respect to, any Restricted Shares shall be subject to the same terms and conditions (including, without limitation, vesting and forfeiture) as are applicable to the Restricted Shares under this Agreement and the Plan. Appropriate adjustments to reflect the exchange or distribution of such securities or property shall be made to the number and/or class of the Restricted Shares.

**Recoupment Policy**

The shares issued pursuant to this award shall be subject to any Company recoupment policy in effect from time to time.

**Applicable Law**

This Agreement will be interpreted and enforced under the laws of the State of Delaware (without regard to their choice-of-law provisions).

**The Plan and Other Agreements**

The text of the Plan is incorporated in this Agreement by reference.

This Agreement and the Plan constitute the entire understanding between you and the Company regarding this award. Any prior agreements, commitments or negotiations concerning this award are superseded. This Agreement may be amended only by another written agreement between the parties.

**BY ACCEPTING THIS RESTRICTED STOCK AWARD, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED ABOVE AND IN THE PLAN.**



**Form of Notice of Stock Option Grant and Stock Option Agreement under 2012 Equity Incentive Plan (Director Auto Grant)**

**THERAVANCE, INC. 2012 EQUITY INCENTIVE PLAN**
**NOTICE OF STOCK OPTION GRANT**

You have been granted the following option to purchase shares of the Common Stock of Theravance, Inc. (the "Company"):

| | |
|---|---|
| Name of Optionee: | «FirstName» «LastName» |
| Total Number of Shares: | «Shares» |
| Type of Option: | Nonstatutory Stock Option |
| Exercise Price Per Share: | $«Price» |
| Date of Grant: | «GrantDate» |
| Vesting Schedule: | This option shall vest and become exercisable as to <<*fraction*>> of the Shares subject to this option when you complete each month of continuous service as an Outside Director ("Service") following the Grant Date. In addition, this option shall vest and become exercisable in full on the date of the Company's 20 Annual Meeting of Stockholders, provided you remain in continuous Service through such date. |
| Expiration Date: | «ExpirationDate». This option expires earlier if your Service terminates earlier, as described in the Stock Option Agreement, and may be terminated sooner in connection with certain corporate transactions as provided in Article XI of the Plan. |

You and the Company agree that this option is granted under and governed by the terms and conditions of the 2012 Equity Incentive Plan (the "Plan") and the Stock Option Agreement, both of which are attached to and made a part of this document. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

You further agree that the Company may deliver by email all documents relating to the Plan or this option (including, without limitation, prospectuses required by the Securities and Exchange Commission) and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements). You also agree that the Company may deliver these documents by posting them on a web site maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a web site, it will notify you by email.

**OPTIONEE:**

«FirstName» «LastName»

**THERAVANCE, INC.**

By: _____

Title: _____

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**THERAVANCE, INC. 2012 EQUITY INCENTIVE PLAN**

**STOCK OPTION AGREEMENT**

**Tax Treatment**

This option is intended to be a nonstatutory stock option, as provided in the Notice of Stock Option Grant.

**Vesting**

This option vests and becomes exercisable as shown in the Notice of Stock Option Grant.

This option shall vest and become exercisable in full if the Company is subject to a "**Change in Control**" (as defined in the Plan) before your Service terminates or upon your death.

For purposes of this Agreement, "**Service**" means your service as an Outside Director.

This option will in no event become exercisable for additional shares after your Service has terminated for any reason except as set forth above.

**Term**

This option expires in any event at the close of business at Company headquarters on the day before the 10th anniversary of the Date of Grant, as shown in the Notice of Stock Option Grant. (This option will expire earlier if your Service terminates, as described below, and this option may be terminated sooner as provided in Article XI of the Plan.)

You may exercise this option, to the extent vested and exercisable, at any time before its expiration or termination pursuant to this Agreement or the Plan.

**Termination of Service**

If your Service terminates for any reason, this option will expire immediately to the extent it is unvested as of your termination date and does not vest as a result of your termination of Service. The Company determines when your Service terminates for all purposes of this option.

If your Service terminates for any reason except a termination for Cause, then this option, to the extent vested as of your termination date, will expire at the close of business at Company headquarters on the date 36 months after your termination date. If your Service terminates for Cause, then this option will expire on your termination date.

For purposes of this Agreement, **"Cause"** shall mean (i) the unauthorized use or disclosure of the confidential information or trade secrets of the Company, a Parent, a Subsidiary or an Affiliate, which use causes material harm to the Company, a Parent, a Subsidiary or an Affiliate, (ii)

conviction of a felony under the laws of the United States or any state thereof, (iii) gross negligence or (iv) repeated failure to perform lawful assigned duties for thirty days after receiving written notification from the Board.

**Restrictions on Exercise**

The Company will not permit you to exercise this option if the issuance of shares at that time would violate any law or regulation.

**Notice of Exercise**

When you wish to exercise this option, you must notify the Company by filing the proper "Notice of Exercise" form at the address given on the form. Your notice must specify how many shares you wish to purchase. Your notice must also specify how your shares should be registered. The notice will be effective when the Company receives it.

However, if you wish to exercise this option by executing a same-day sale (as described below), you must follow the instructions of the Company and the broker who will execute the sale.

If someone else wants to exercise this option after your death, that person must prove to the Company's satisfaction that he or she is entitled to do so.

In no event may this option be exercised for any fractional shares.

**Form of Payment**

When you submit your notice of exercise, you must include payment of the option exercise price for the shares that you are purchasing. To the extent permitted by applicable law, payment may be made in one (or a combination of two or more) of the following forms:

- Your personal check, a cashier's check, a money order, or by wire transfer.
- Shares of Company stock that you own, along with any forms needed to effect a transfer of those shares to the Company. The value of the shares, determined as of the effective date of the option exercise, will be applied to the option exercise price. Instead of surrendering shares of Company stock, you may attest to the ownership of those shares on a form provided by the Company and have the same number of shares subtracted from the option shares issued to you. However, you may not surrender, or attest to the ownership of, shares of Company stock in payment of the exercise price if your action would cause the Company to recognize compensation expense (or additional compensation expense) with respect to this option for financial reporting purposes.
- Irrevocable directions to a securities broker approved by the Company



to sell all or part of your option shares and to deliver to the Company from the sale proceeds an amount sufficient to pay the option exercise price and any withholding taxes. (The balance of the sale proceeds, if any, will be delivered to you.) The directions must be given in accordance with the instructions of the Company and the broker. This exercise method is sometimes called a "same-day sale."

- With the Company's consent (which may be granted by the Board of Directors or the Compensation Committee of the Board of Directors), by having the Company withhold shares of Common Stock that would otherwise be issued on exercise of the option. The value of the withheld shares, determined as of the effective date of the option exercise, will be applied to the option exercise price. This exercise method is sometimes referred to as a "net exercise".

**Withholding Taxes and Stock Withholding**

You will not be allowed to exercise this option unless you make arrangements acceptable to the Company to pay any withholding taxes that may be due as a result of the option exercise.

**Restrictions on Resale**

You agree not to sell any option shares at a time when applicable laws, Company policies (including the Company's Insider Trading Policy, a copy of which can be found on the Company's Intranet) or an agreement between the Company and its underwriters prohibit a sale. This restriction will apply as long as your Service continues and for such period of time after the termination of your Service as the Company may specify.

**Transfer of Option**

Prior to your death, only you may exercise this option. You cannot transfer or assign this option. For instance, you may not sell this option or use it as security for a loan. If you attempt to do any of these things, this option will immediately become invalid. You may, however, dispose of this option in your will or a beneficiary designation. A beneficiary designation must be filed with the Company on the proper form.

Regardless of any marital property settlement agreement, the Company is not obligated to honor a notice of exercise from your former spouse, nor is the Company obligated to recognize your former spouse's interest in your option in any other way.

**No Retention Rights**

Your option or this Agreement does not give you the right to be retained by the Company, a Parent, a Subsidiary or an Affiliate in any capacity. The Company and its Parents, Subsidiaries and Affiliates reserve the right to terminate your Service at any time, with or without cause. Nor shall this Agreement in any way be construed or interpreted so as to affect adversely or otherwise impair the right of the Company or the stockholders to remove you from the Board at any time in accordance

with the provisions of applicable law.

**Stockholder Rights** — You, or your estate or heirs, have no rights as a stockholder of the Company until this option has been exercised by giving the required notice to the Company and paying the exercise price. No adjustments are made for dividends or other rights if the applicable record date occurs before exercise of this option, except as described in the Plan.

**Recoupment Policy** — This option, and the shares acquired upon exercise of this option, shall be subject to any Company recoupment policy in effect from time to time.

**Adjustments** — In the event of a stock split, a stock dividend or a similar change in Common Stock, the number of shares covered by this option and the exercise price per share may be adjusted pursuant to the Plan.

**Applicable Law** — This Agreement will be interpreted and enforced under the laws of the State of Delaware (without regard to its choice-of-law provisions).

**The Plan and Other Agreements** — The text of the Plan is incorporated in this Agreement by reference. A copy of the Plan is available on the Company's intranet or by request to the Finance Department. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

This Agreement, the Notice of Stock Option Grant and the Plan constitute the entire understanding between you and the Company regarding this option. Any prior agreements, commitments or negotiations concerning this option are superseded. This Agreement may be amended only by another written agreement between the parties.

**BY SIGNING THE COVER SHEET OF THIS AGREEMENT, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED ABOVE AND IN THE PLAN.**



**Form of Notice of Restricted Stock Unit Award and Restricted Stock Unit Agreement under 2012 Equity Incentive Plan (Director Auto Grant)**

**THERAVANCE, INC. 2012 EQUITY INCENTIVE PLAN**

**NOTICE OF RESTRICTED STOCK UNIT AWARD**

You have been granted the number of restricted stock units indicated below by Theravance, Inc. (the "**Company**") on the following terms:

Name: «Name»

**Restricted Stock Unit Award Details**:

| | |
|---|---|
| Date of Grant: | «DateGrant» |
| Restricted Stock Units: | 6,000 |

Each restricted stock unit (the "**restricted stock unit**") represents the right to receive one share of the Company's Common Stock subject to the terms and conditions contained in the Restricted Stock Unit Agreement.

**Vesting Schedule**:

Vesting is dependent upon continuous service as an Outside Director ("**Service**") throughout the vesting period. The restricted stock units will vest in twelve (12) equal monthly installments following the Date of Grant, provided that you remain in continuous Service through each such date. In addition, all of the restricted stock units subject to this award will vest immediately if the Company is subject to a Change in Control (as defined in the Plan) before your continuous Service terminates and upon your death. Finally, any remaining unvested units will vest on the date of the Company's 20 Annual Meeting of Stockholders, provided you remain in continuous Service through such date.

You and the Company agree that your right to receive the restricted stock units is granted under and governed by the terms and conditions of the Plan and of the Restricted Stock Unit Agreement that is attached to and made a part of this document. Capitalized terms not defined herein have the meaning ascribed to such terms in the Plan.

You agree that the Company may deliver by email all documents relating to the Plan or this award (including, without limitation, prospectuses required by the Securities and Exchange Commission) and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements). You also agree that the Company may deliver these documents by posting them on a web site maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a web site, it will notify you by email.

**RECIPIENT:** **THERAVANCE, INC.**

_____ By: _____

Title:

Print Name

**THERAVANCE, INC. 2012 EQUITY INCENTIVE PLAN:**
**RESTRICTED STOCK UNIT AGREEMENT**

**Payment for Units** No payment is required for the restricted stock units you are receiving.

**Nature of Units** Your restricted stock units are bookkeeping entries. They represent only the Company's unfunded and unsecured promise to issue shares of Common Stock on a future date. As a holder of restricted stock units, you have no rights other than the rights of a general creditor of the Company.

**Vesting** The restricted stock units that you are receiving will vest as shown in the Notice of Restricted Stock Unit Award.

No additional restricted stock units vest after your Service has terminated for any reason, except as set forth on the Notice of Restricted Stock Unit Award.

For purposes of this Agreement, "Service" means your continuous service as an Outside Director.

Regardless of when the restricted stock units vest, settlement of the units will only occur at the time specified below under "Time of Settlement".

**Time of Settlement** A vested restricted stock unit will be settled on the fourth anniversary of the Date of Grant or, if earlier, 60 days following your "separation from service" (within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code")) or your death.

In the event of a Change in Control that also constitutes a "change in control event" under Treasury Regulation 1.409A-3(a)(5) (a "409A CiC"), all vested restricted stock units will be settled immediately prior to the closing of the transaction that constitutes a Change in Control. In the event of a Change in Control that is not a 409A CiC, the vested restricted stock units will be settled as described in the rest of this section or, if sooner, immediately prior to a 409A CiC after such Change in Control.

Notwithstanding anything to the contrary in the Plan, the Notice of Restricted Stock Unit Award or any other section of this Agreement, the Company may accelerate settlement of these restricted stock units from the time specified in this section only in accordance with Treasury Regulation 1.409A-3(j)(4).

**Form of Settlement** At the time of settlement, you will receive one share of the Company's



Common Stock for each vested restricted stock unit.

**Forfeiture** If your Service terminates for any reason, then your restricted stock units that have not vested before the termination date and do not vest as a result of the termination pursuant to this Agreement or as set forth on the Notice of Restricted Stock Unit Award will be forfeited immediately. This means that the restricted stock units will immediately revert to the Company. You receive no payment for restricted stock units that are forfeited. The Company determines when your Service terminates for all purposes of your restricted stock units.

**Stock Certificates** No shares of Common Stock shall be issued to you prior to the date on which the restricted stock units are settled. At the time of settlement, a stock certificate for the shares representing your vested restricted stock units shall be released to you or the Company shall cause to be issued in book-entry form, registered in your name or in the name of your legal representatives, beneficiaries or heirs, as the case may be, the number of shares of Common Stock representing your vested restricted stock units. No fractional shares shall be issued.

**No Stockholder Rights** The restricted stock units do not entitle you to any of the rights of a stockholder of Common Stock. Upon settlement of the restricted stock units into shares of Common Stock, you will obtain full voting and other rights as a stockholder of the Company.

**Units Restricted** You may not sell, transfer, pledge or otherwise dispose of any restricted stock units or rights under this Agreement other than by will or by the laws of descent and distribution. Notwithstanding the foregoing, you may designate a beneficiary or beneficiaries to receive any property distributable with respect to the restricted stock units upon your death. A beneficiary designation must be filed with the Company on the proper form.

**Taxes** No shares will be distributed to you unless you have made arrangements acceptable to the Company to pay any withholding taxes that may be due as a result of the vesting and/or settlement of this award.

These restricted stock units are subject to Code Section 409A. The Company has attempted in good faith to structure this award in a manner that conforms to the requirements of Code Sections 409A(a)(2), (3) and (4), and any ambiguities herein will be interpreted to so comply to the maximum extent permissible. However, you acknowledge

and agree that the Company has made no representations or warranties to you with respect to whether this award in fact complies with Code Sections 409A(a)(2), (3) and (4) or the income tax consequences related to this award.



| | |
|---|---|
| **Restrictions on Issuance** | The Company will not issue shares to you if the issuance of shares at that time would violate any law or regulation. |
| **Restrictions on Resale** | You agree not to sell any shares of Common Stock you receive under this Agreement at a time when applicable laws, regulations, Company trading policies (including the Company's Insider Trading Policy, a copy of which can be found on the Company's intranet) or an agreement between the Company and its underwriters prohibit a sale. This restriction will apply as long as your Service continues and for such period of time after the termination of your Service as the Company may specify. |
| **No Retention Rights** | Your award or this Agreement does not give you the right to be retained by the Company (or a Parent, Subsidiary or Affiliate) in any capacity. The Company and its Parents, Subsidiaries and Affiliates reserve the right to terminate your Service at any time, with or without cause. Nor shall this Agreement in any way be construed or interpreted so as to affect adversely or otherwise impair the right of the Company or the stockholders to remove you from the Board at any time in accordance with the provisions of applicable law. |
| **Recoupment Policy** | This award, and the shares acquired upon settlement of this award, shall be subject to any Company recoupment policy in effect from time to time. |
| **Adjustments** | In the event of a stock split, a stock dividend or a similar change in Common Stock, the number of restricted stock units may be adjusted pursuant to the Plan. |
| **Applicable Law** | This Agreement will be interpreted and enforced with respect to issues of contract law under the laws of the State of Delaware (without regard to its choice-of-law provisions). |
| **The Plan and Other Agreements** | The text of the Plan is incorporated in this Agreement by reference. A copy of the Plan is available on the Company's intranet or by request to the Finance Department. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.<br><br>This Agreement, the Notice of Restricted Stock Unit Award, and the Plan constitute the entire understanding between you and the Company regarding this award. Any prior agreements, commitments or negotiations concerning this award are superseded. This Agreement may be amended only by another written agreement between the parties. |

**BY SIGNING THE COVER SHEET OF THIS AGREEMENT, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED ABOVE AND IN THE PLAN.**

# TECHNOLOGY TRANSFER AND SUPPLY AGREEMENT

THIS TECHNOLOGY TRANSFER AND SUPPLY AGREEMENT (this ***"Agreement"***) is made as of this 22nd day of May, 2012 (the ***"Effective Date"***) by and between Theravance, Inc., a Delaware Corporation having its principal place of business at 901 Gateway Blvd., South San Francisco, California, 94080 (***"Theravance"***) and Hospira Worldwide, Inc., a Delaware Corporation having its principal place of business at 275 North Field Drive, Lake Forest, Illinois, 60045 (***"Hospira"***).

**WITNESSETH:**

**WHEREAS,** Theravance owns the rights to the human pharmaceutical compound, telavancin that is marketed and sold under the name, VIBATIV® (***"Product"***);

**WHEREAS,** Theravance desires to engage Hospira to perform manufacture, fill, and finish services with respect to the Product; and

**WHEREAS**, Hospira desires to perform such services for Theravance with respect to the Product;

**NOW, THEREFORE**, in consideration of the premises and the mutual promises and agreements contained herein, Theravance and Hospira hereby agree as follows:

## ARTICLE 1. DEFINITIONS

The following words and phrases when used herein with capital letters shall have the meanings set forth or referenced below:

1.1 ***"Act"*** shall mean the United States Federal Food, Drug and Cosmetic Act (21 U.S.C. 301), as amended from time to time.

1.2 ***"Active Pharmaceutical Ingredient"*** or ***"API"*** means the active pharmaceutical substance of the Drug in bulk form prior to incorporation into the Product.

1.3 ***"Active Pharmaceutical Ingredient Specifications"*** means the detailed description and parameters of the API set forth on Exhibit 1.3.

1.4 ***"Adverse Drug Experience(s)"*** has the meaning as set forth in 21 CFR 310.305.

1.5 ***"Affiliate"*** means, with respect to a party, any corporation, partnership, joint venture and/or firm which controls, is controlled by or is under common control with such party. As used in this Section 1.5, ***"control"*** means: (a) in the case of corporate entities, direct or indirect ownership of at least fifty percent (50%) of the stock or shares having the right to vote for the election of directors; and (b) in the case of non-corporate entities, the direct or indirect power to manage, direct or cause the direction of the management and policies of the non-corporate entity or the power to elect at least fifty percent (50%) of the members of the governing body of such non-corporate entity.

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***CERTAIN INFORMATION HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

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1.6 ***"Applicable Law"*** means all laws applicable to the manufacture, processing, packaging, distribution, sale and use of the Product as may be amended and in effect from time to time, including the Act and the regulations promulgated thereunder; the Canadian Food and Drugs Act (R.S., chapter F-27) and related regulations; European Directive 2003/94/EC and 2001/83/EC, and related legislation; all applicable cGMP; and all corresponding laws, ordinances, rules and regulations of any other applicable jurisdiction.

1.7 ***"Business Day"*** shall mean a day which is not a Saturday or Sunday or a bank or public holiday in San Francisco, California, Chicago, Illinois or McPherson, Kansas.

1.8 ***"Certificate of Analysis"*** means a document, signed by an authorized representative of Hospira, describing the Product Specifications of and testing methods applied to the Product, and the results thereof.

1.9 ***"Certificate of Compliance"*** means a document, signed by an authorized representative of Hospira, attesting that a particular lot, batch or run was manufactured in accordance with cGMP, Applicable Law, and the Product Specifications. The Certificate of Compliance may be included within the Certificate of Analysis, or separately, if required by Theravance for regulatory purposes or Applicable Law.

1.10 ***"cGMP"*** means those principles and guidelines of good manufacturing practices as set forth in 21 C.F.R. Parts 210 and Part 211; EU Directive 2003/94/EC - guidelines of good manufacturing practices for medicinal products for human use (EudraLex Vol. 4); Canadian Good Manufacturing Practices as contained in Canada Food & Drug Regulations C.R.C., c. 870, C.02- C.04; the ICH Guideline on Good Manufacturing Practice for Active Pharmaceutical Ingredients (ICH Q7A), as adopted by EU Directive 2004/27; and the corresponding requirements, of any other applicable jurisdiction.

1.11 ***"Commercial Year"*** means each period of twelve (12) consecutive calendar months during this Agreement beginning on January 1st and ending December 31st, except for the first Commercial Year, which shall commence on the first day of the month after the month of Theravance's first *bona fide* sale of Product manufactured by Hospira to a non-Affiliate customer after the Product has received Regulatory Approval for manufacturing at Hospira's McPherson, Kansas site and ends on December 31st thereafter.

1.12 ***"Components"*** means all those vials or component parts of the vials into which the Drug will be filled, and the labeling, packaging, ancillary goods, shipping materials and other items to be supplied by Hospira or its Components supplier(s) to manufacture the Product in accordance with the Product Specifications.

***CERTAIN INFORMATION HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.



1.13 ***"Confidential Information"*** means all information, data, and know how, whether commercial, financial, technical, operational, or otherwise in any format, disclosed hereunder by one party or any of its Affiliates to the other party or any of its Affiliates in connection with this agreement which by its nature is clearly confidential, or is otherwise marked or designated as confidential or proprietary, whether disclosed orally in documentary form, by documentation or otherwise and including the terms of this Agreement, except any portion thereof which:

(a) is known to the recipient at the time of the disclosure, as evidenced by its written records or other competent evidence;

(b) is disclosed to the recipient by a Third Party lawfully in possession of such information and not under an obligation of nondisclosure;

(c) is or becomes patented, published or otherwise part of the public domain through no fault of the recipient; or

(d) is developed by or for the recipient independently of Confidential Information disclosed hereunder as evidenced by the recipient's written records or other competent evidence;

Notwithstanding the forgoing, specific aspects of Confidential Information shall not be deemed to be within the forgoing exceptions when such exceptions only apply to more general knowledge or when the relevant specific aspects are identified using Confidential Information disclosed under this Agreement.

1.14 ***"Drug"*** means the human pharmaceutical compound, telavancin, a lipoglycopeptide used for the treatment of Gram-positive pathogens.

1.15 ***"EMA"*** means the European Medicines Agency and any successor entity.

1.16 ***"Excipient"*** means [***].

1.17 ***"Excipient Specifications"*** means the detailed description and parameters of the Excipient set forth in Exhibit 1.3.

1.18 "***Facility"*** means Hospira's pharmaceutical manufacturing plant at McPherson, Kansas, or such other manufacturing facility agreed by the parties in writing.

1.19 ***"FDA"*** means the United States Food and Drug Administration or any successor entity.

**CONFIDENTIAL**

***CERTAIN INFORMATION HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.



1.20 ***"Health Canada"*** means the Therapeutic Products Inspectorate of the Canadian Health Products and Food Branch and any successor entity.

1.21 ***"Manufacturing Process"*** means any and all processes (or any step in any process) that is provided to Hospira by Theravance and that will be used to manufacture the Product, as evidenced in the batch documentation and/or technology transfer reports.

1.22 ***"Master Batch Record"*** shall mean the document that defines the manufacturing methods, materials, and other procedures, directions and controls associated with the manufacture and testing of the Product, which may be amended in writing from time to time by mutual agreement of the parties.

1.23 ***"MSDS"*** means the Material Data Safety Sheet for the Product or the API containing such information as may be required by applicable government agencies.

1.24 ***"Product"*** means VIBATIV® in a 750mg dosage form, filled, finished and packaged in accordance with the Product Specifications.

1.25 ***"Product Specifications"*** means those manufacturing, materials, packaging, labeling, testing, and performance specifications for the Product filed with the relevant Regulatory Authority, required for the manufacture of the Product that is to be purchased and supplied under this Agreement, as such are set forth on Exhibit 1.25 which specifications may be amended by the parties from time to time in accordance with this Agreement.

1.26 ***"QP"*** shall mean a qualified person who is entrusted to perform "***QP Testing/ Release"*** of the Product in the European Union, in accordance with European Directive 2001/83/EC relating to Medicinal Products for Human Use.

1.27 ***"Regulatory Approval"*** means any licenses and permits for the manufacture of the Product at the Facility and all other approvals (including supplements, amendments, pre- and post-marketing approvals, and pricing and reimbursement approvals), licenses, registrations or authorizations of a relevant Regulatory Authority necessary for the distribution, sale or use of the Product in the Territory.

1.28 ***"Regulatory Authority"*** means the FDA and/or the EMA or any other federal, state or local or other regulatory agency, department, bureau or other governmental entity, which is responsible for issuing Regulatory Approvals of the Product in the Territory.

1.29 ***"Specially Regulated Waste"*** means any hazardous waste, toxic waste, medical waste, nuclear waste, mixed waste, or other waste materials or by-products, including waste water, which may be subject to or require special handling, treatment, storage, or disposal under any federal, state or local laws or regulations intended to address such types of waste materials that arise from the manufacture of the Product.



1.30 ***"Term"*** means, individually the Initial Term of this Agreement, or collectively the Initial Term and any Renewal Term, as those defined terms are used herein.

1.31 ***"Territory"*** means: (i) the United States of America, including the District of Columbia, the Commonwealth of Puerto Rico, all territories and possessions of the United States of America, United States military bases, and any other location over which the FDA has jurisdiction to regulate medicinal products intended for human use; (ii) Canada; and (iii) the European Union (***"EU 27"***) and any other countries that are later admitted to the European Union by acceding to the treaties of the European Union.

1.32 ***"Third Party"*** shall mean a party other than Hospira or Theravance and their respective Affiliates.

1.33 ***"Waste"*** shall mean all rejects, improper goods, garbage, refuse, remainder, residue, waste water or other discarded material, including solid, liquid, semisolid, or contained gaseous material that arises from the manufacture of the Product, including rejected, excess or unsuitable materials, API and Products. The term Waste shall not include any Specially Regulated Waste.

## ARTICLE 2. TECHNOLOGY TRANSFER PROJECT

2.1 ***General***. The parties shall undertake a technology transfer project (***"Project"***) consisting of the activities set forth in Exhibit 2.1 (***"Statement of Work"***). Under the Project, Hospira shall assist Theravance in the technology transfer related to the Manufacturing Process and to obtain the required sNDA or equivalent approval(s) in the jurisdictions in the Territory. Hospira then shall manufacture and deliver Product to Theravance for sale by Theravance as a human pharmaceutical product.

2.2 ***Commercially Reasonable Efforts***. Each party shall use all commercially reasonable efforts successfully to complete the Project. However, the parties understand and agree that neither of them can guarantee that the Project will be successful, nor warrants that a marketable product will result from the Project.

## ARTICLE 3. TECHNOLOGY TRANSFER FEES; PROJECT MANAGEMENT

3.1 ***Technical Transfer Fee***. Theravance shall pay to Hospira a technical transfer fee (***"Technical Transfer Fee"***) for its work under the Project in accordance with the payment schedule set forth in Exhibit 2.1.

3.2 ***Stability Studies***. If so requested by Theravance, Hospira will perform stability studies on the Product separate and apart from the Project. Hospira will invoice Theravance for any such stability studies at the prices set forth in Exhibit 3.2.



3.3 ***Changes in Project Scope***.

(a) If Theravance requests changes in the Project or the Product Specifications, or if technical difficulties require that Hospira perform either additional work or repeat work, and such additional work is required not because of Hospira's fault or negligence, Hospira shall within [***] Business Days provide Theravance with a new or revised proposal with cost estimates for such changes or additional work, based on its customary per/hour, per/person rates relative to the work to be performed, including costs for reasonable travel and sustenance, materials and supplies. If Theravance approves such costs, the mutually agreeable changes will be documented in writing and signed by both parties as a change order, and Hospira shall perform such agreed-upon new or additional work. Theravance shall pay Hospira's costs for such additional work or repeat work performance as set forth in this Agreement.

(b) In the event that Theravance decides to pursue marketing and sales activities for the Product in countries or geographic regions outside of the Territory, Hospira shall provide Theravance with all reasonable additional technical/developmental and regulatory support, including, for example, regulatory support for Theravance's supplemental regulatory filings, packaging and product development, labeling, and Regulatory Authority inspections. Any additional technical/developmental and regulatory support for such other countries or geographic regions shall be considered a change in

Project scope and the Parties will agree to the reasonable incremental costs of such additional support in accordance with Section 3.3(a). Any additional pre-approval inspections of the Facility that may be required by relevant Regulatory Authorities as a result shall be reimbursed in accordance with Section 7.3(c).

3.4 ***Project Manager***. Each party will appoint an authorized individual who will have primary responsibility for day-to-day interactions with the other party for the activities under the Project (***"Project Manager"***). Each party will use all reasonable efforts to provide the other party with at least [***] days prior written notice of any change in its Project Manager. All communications between Hospira and Theravance regarding the conduct of the activities under the Project will be addressed to its Project Manager.

3.5 ***Technology Transfer Supplies***. Based on Theravance's Product Specifications, Hospira will manufacture the Product in compliance with cGMP for production and regulatory purposes as follows: [***] (***"Technology Transfer Supplies"***) at the prices set forth in Exhibit 2.1. In accordance with a schedule to be mutually agreed by the parties, Theravance shall issue its purchase order(s) for such Technology Transfer Supplies at least [***] days before any requested manufacturing date. For the sake of clarity, all relevant provisions of Articles 5, 7, 8 and 9 shall apply to the manufacture and delivery of the Technology Transfer Supplies.



## ARTICLE 4. THERAVANCE'S REGULATORY SUBMISSIONS

4.1 ***Regulatory Review***.

(a) Upon Theravance's request, Hospira shall review those portions of Theravance's proposed submissions for Regulatory Approval as related to Hospira's manufacturing, packaging and quality control procedures before the submissions are filed with relevant Regulatory Authorities. Hospira shall complete its review of any English-language submissions within [***] Business Days after receipt. For any non English-language submissions, Theravance shall provide Hospira with a submission translated into English and the parties will agree on a reasonable period of time that Hospira may require for review of such submissions.

(b) Upon Theravance's request, Hospira shall consult with and advise Theravance in responding to questions from Regulatory Authorities regarding Theravance's regulatory submission(s) for the Products, *provided, however,* that Theravance shall have the final control over such submissions. In the event that any additional review and consultation is required by a Regulatory Authority (for example, for technical responses to a Regulatory Authority finding of deficiency, should one arise), Hospira shall provide Theravance with cost estimates (which shall include a professional services fee at its customary per/hour, per/person rates relative to the work to be performed, consistent with its charges to other similarly-situated customers). If Theravance approves such costs in writing, Theravance shall reimburse Hospira for such approved costs upon completion of the work and within [***] days of receipt of Hospira's invoice.

4.2 ***User Fees***. Theravance shall pay any Regulatory Authority user fees which may become payable for the Product.

4.3 ***Ownership of Regulatory Approvals***. The parties agree that Theravance shall be the sole and exclusive owner of all right, title and interest in and to all Regulatory Approvals related to the Product and any submissions for such Regulatory Approvals. Hospira shall reasonably assist Theravance in the preparation of all documents necessary to effect Theravance's rights in such Regulatory Approval applications and submissions. Theravance shall provide to Hospira for its files a final copy of the CMC section of any such applications and/or submissions for Regulatory Approval.

4.4 ***Qualification of and Purchases from Alternate Sites***. Theravance shall have the right, in its sole discretion, to qualify manufacturing site(s) with Third Parties to manufacture and supply the Product during the Term (each, an "***Alternate Supplier***"). Theravance may obtain [***] of its requirements of Product in the Territory from such Alternate Supplier(s) during the Term; *provided, however*, that if Hospira is unable to fulfill any of its manufacturing and supply obligations hereunder then Theravance may obtain such amount of its requirements of Product that Hospira is unable to supply from such Alternate Suppliers and for such period of time that Hospira is unable to supply.



## ARTICLE 5. MANUFACTURE AND SUPPLY OF PRODUCT

5.1 ***Purchase and Sale of Product***. Upon obtaining the first of the Regulatory Approvals required for manufacturing Product at the Facility, pursuant to the terms and conditions of this Agreement and during each Commercial Year, and subject to the exceptions of Section 4.4, Hospira shall manufacture, sell and deliver Product to Theravance, and Theravance shall purchase and take delivery of [***] of its requirements for Product in those jurisdictions within the Territory where Regulatory Approval(s) have been obtained. Notwithstanding any of the foregoing, Theravance shall be entitled to [***] for purposes of [***] and such batches shall [***] to purchase and take delivery of Product from [***] under this Section 5.1.

5.2 ***Manufacturing Standards***. Hospira will manufacture, package, and label the Product in accordance with the Product Specifications, cGMP and all Applicable Laws, as then in effect. The parties agree that, should Theravance wish to implement any amendment to the Product Specifications,

Theravance shall provide written notice thereof to Hospira for Hospira's review and approval, which approval shall not be unreasonably withheld. Each party further agrees promptly to notify the other of any new instructions or changes to the Product Specifications required by the FDA or Applicable Laws and shall confer with each other with respect to the best means to comply with such instructions or change requirements.

5.3 ***Government Approvals***. Hospira agrees to manufacture and supply those quantities of Product requested in Purchase Orders by Theravance that are necessary to validate the Facility, obtain Regulatory Approval(s) and build Theravance's inventory in anticipation of the commercial sale of the Products and Theravance shall be required to pay for such Product in accordance with the terms of this Agreement irrespective of whether the Product ultimately receives any Regulatory Approvals in the Territory. Notwithstanding the forgoing or anything else in this Agreement to the contrary, Theravance shall be entitled to designate the intended jurisdiction or market within the Territory (e.g. the United States, Canada or EU 27) for which any Product is to be manufactured, tested, packaged, labeled and released.

5.4 ***Active Pharmaceutical Ingredient; Excipient***

(a) ***Supply***.

(i) Hospira shall manufacture Product for Theravance from quantities of API and Excipient that Theravance shall supply to Hospira at no cost. Theravance shall supply API and Excipient to Hospira in quantities sufficient to satisfy Hospira's gross manufacturing requirements of the Product no later than [***] prior to the scheduled start of API/Excipient compounding. Hospira shall use the API and Excipient received from Theravance only for the technology transfer activities contemplated by this Agreement and the manufacture of Product for Theravance hereunder. Theravance shall deliver or arrange for the delivery of API and the Excipient, [***] pursuant to no-cost purchase orders that Hospira issues to Theravance.



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(ii) With each delivery of API/Excipient, Theravance will include a certificate of analysis, signed by an authorized individual of Theravance (or its designee) containing basic information regarding the API/Excipient, including: (A) the manufacturing date of the batch/lot delivered; (B) the batch/lot number; and (C) the quantity of API/Excipient in such batch/lot as shipped to Hospira. Theravance shall also supply a separate sample ("tailgate sample"; "satellite sample") for each container of API/Excipient supplied.

(iii) Within [***] days of Hospira's receipt of any API or Excipient supplied by or on behalf of Theravance hereunder, Hospira shall: (A) perform an identification test on the API and Excipient and confirm the shipment quantity; (B) perform any other tests mutually agreed upon in writing; and (C) notify Theravance of any inaccuracies with respect to quantity or of any claim that any portion of the shipment fails the identification or other test. In the event Hospira notifies Theravance of any deficiency in the quantity or quality of API and/or Excipient received, Theravance shall promptly ship to Hospira, at Theravance's own expense, the quantity of API and/or Excipient necessary to complete the shipment. In the event Hospira notifies Theravance that the API and/or Excipient shipment does not conform to the API Specifications and/or Excipient Specifications, Theravance shall have the right to confirm such findings at the Facility.

(iv) If Theravance determines that such shipment of API and/or Excipient conforms to the API Specifications and/or Excipient Specifications, the parties shall submit samples of such shipment to a mutually acceptable independent expert for testing. If such independent expert determines that the shipment conforms to the API Specifications and/or Excipient Specifications, Hospira shall bear all expenses of shipping and testing such shipment samples. If Theravance or such independent expert determines that such shipment does not meet the API Specifications and/or Excipient Specifications, Theravance shall replace, at no cost to Hospira, the portion of the API and/or Excipient shipment which does not conform to the API Specifications and/or Excipient Specifications and bear all expenses of shipping and testing the shipment samples. Notwithstanding the foregoing, the independent expert may also determine that additional sample testing by an independent laboratory is necessary Hospira shall dispose of any nonconforming portion of any API and/or Excipient shipment as directed by Theravance, at Theravance's expense.

(b) ***Title***. Notwithstanding the [***] terms of Section 5.4(a)(i), [***] to the API and Excipient while they are in the Facility. Subject to the limitation in Section 5.4(c), Hospira shall assume responsibility and risk for the safekeeping, storage and handling for all shipments of API and Excipient delivered hereunder and accepted by Hospira.

(c) ***Loss and Replacement of API and Excipient***. In the event of loss or damage of any API and/or Excipient delivered hereunder or the failure of Product to meet Product Specifications, Theravance shall supply to Hospira replacement API and/or Excipient according to the terms set forth in Section 5.4(a), except as otherwise provided herein. If the replacement of such API and/or Excipient results from a negligent act or omission or the willful



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misconduct by Hospira in the manufacture, handling or storage of Product or API and/or Excipient, Theravance shall supply to Hospira replacement API and/or Excipient and Hospira shall be responsible for the cost of the replacement API and/or Excipient equal to Theravance's purchase cost/kg (as evidenced by Theravance's invoices).

(d) ***Maximum Liability***. Notwithstanding any of the foregoing, in no event shall Hospira's liability for such replacement costs of API and/or Excipient exceed: (i) [***]; (ii) [***]; or (iii) in the event of loss during the handling and storage of API and/or Excipient (x) prior to the start of compounding operations; or (y) during storage of the Product after completion of filling operations and prior to delivery, [***]. For greater clarity, Hospira's liability under (iii), above, explicitly excludes loss of API during any and all aspects of compounding, filling and finishing the API, the Excipient and/or Product. Theravance expressly acknowledges and agrees that this Section 5.4(d) states Theravance's sole remedy, and Hospira's sole liability, with respect to any claim arising hereunder for any such loss, damage, or misuse of API and/or Excipient by Hospira.

5.5 ***Facility; Dedicated Equipment.***

(a) ***Maintenance of Facility***. Hospira shall secure and maintain in good order, at its sole cost and expense, such current governmental registrations, licenses and permits as are required by Regulatory Authorities in order for Hospira to perform all of its obligations under this Agreement. Hospira further agrees that at all times during the Term, that it shall maintain the Facility, and all equipment, machinery, systems, intangibles and contract rights in use at the Facility in the ordinary course of business, in compliance with cGMP and Applicable Laws.

(b) ***Dedicated Equipment; Costs***. The parties anticipate that certain specialized and dedicated equipment (***"Dedicated Equipment"***) will be required to manufacture the Product for Theravance. The list of such Dedicated Equipment and Hospira's estimate of the purchase cost is attached in Exhibit 5.5. Hospira shall obtain firm quotes from one or more equipment manufacturers and advise Theravance of the overall costs to be incurred in connection with the purchase, installation and validation of such Dedicated Equipment. After Theravance approves such costs, which approval shall not be unreasonably withheld, Hospira shall install and validate the Dedicated Equipment and bill Theravance for the associated costs. Theravance shall make payment to Hospira no later than [***] days after Theravance receives Hospira's invoice for the same. Title to the Dedicated Equipment shall be in Theravance's name. Hospira shall label such Dedicated Equipment as Theravance property and evidencing Theravance's ownership interests. Hospira shall use commercially reasonable efforts to maintain the Dedicated Equipment in good condition, normal wear and tear excepted. The parties shall address all issues involving warranty repairs or replacement with the equipment supplier by mutual accord. Hospira shall use Dedicated Equipment only in connection with the manufacture the Product; *provided, however*, that if Hospira wishes to use such Dedicated Equipment for manufacture of any product(s) other than the Product, Hospira and Theravance shall meet and discuss the technical and practical ramifications of such use and appropriate compensation to Theravance.



5.6 ***Components***. Hospira shall be responsible for the procurement and qualification of the Components required for the manufacture of the Product. Hospira will source all of the Components from suppliers that have been approved and qualified by Hospira in accordance with Hospira's internal vendor qualification and approval processes. The parties understand and agree that Theravance will have reviewed and approved the Components and Component suppliers listed in the Product Specifications. Under no circumstances shall Hospira have any liability to Theravance, nor shall Hospira be deemed to be in breach of this Agreement, if Hospira is unable to supply the Product to Theravance due to a failure of such suppliers to provide such Components to Hospira.

5.7 ***Product Labeling***.

(a) Hospira shall label the Product in accordance with the Product Specifications using content provided by Theravance. Theravance shall control the content and type of all labeling and packaging (and any changes or supplements thereto) for the Product and shall have the responsibility, at Theravance's expense, for: (i) ensuring such content is compliant with Regulatory Approval and all Applicable Law; and (ii) any changes or supplements to such content, including the expense of securing any approvals required by any applicable Regulatory Authority for any such changes or supplements. Hospira shall be responsible for obtaining such labels (and any changes or supplements thereto) in accordance with content specified by Theravance.

(b) Any changes to the labeling and packaging shall be communicated to Hospira in writing at least [***] days prior to the desired implementation date together with the required documentation specifying the content to be included in the labeling and packaging, including all necessary photo-ready art (or its substantial equivalent). Theravance shall reimburse Hospira for Hospira's actual costs of making any changes under this Section 5.7(b) and for the cost of any labeling that Hospira is unable to use due to such changes.

5.8 ***Off-Site Waste***. If necessary, Hospira shall hire, direct and pay all costs for a waste contractor to remove all Waste from Hospira's manufacturing facility for Product consistent with the Product's MSDS. The costs associated with the removal of Specially Regulated Waste shall be borne by Theravance. Hospira shall only dispose of Specially Regulated Waste at sites and through waste management vendors that have been approved in writing by Theravance, whose approval shall not be withheld unreasonably. Hospira shall document the destruction of any Specially Regulated Waste in writing and provide copies of such written documentation to an authorized representative of Theravance. Theravance maintains the right, but not the obligation, to witness the actual disposal of Specially Regulated Waste. Theravance shall, upon request by Hospira, provide the MSDS for the API and the MSDS for the Product to Hospira.

5.9 ***Delivery***. Hospira shall deliver the Product to Theravance, [***]. Title to and risk of loss over the Products shall pass to [***]. Hospira shall not deliver any Product until both Hospira and Theravance have released such Product pursuant to the Product Specifications and/or the Quality Agreement in the form attached here as Exhibit 7.2 ("Quality Agreement"). [***] For any shipments outside the United States, Theravance shall be the exporter of record; *provided, however*, that Hospira shall assist Theravance in the preparation of any required export documentation.

5.10 [***] Hospira shall use its best efforts to ensure that [***]. Except if caused by events of Force Majeure or other manufacturing, quality control or other issues beyond Hospira's reasonable ability to control, [***], Theravance shall have the right to [***] that Hospira eventually issues for the Products [***].

5.11 ***Price and Payment.***

(a) ***Price***. Hospira shall invoice Theravance for Product it delivers to Theravance at the price(s) as set forth on Exhibit 5.11. Each invoice shall reference the price of the Product in effect on the date of Hospira's invoice. All pricing is firm through December 31, 2013. Beginning January 1, 2014 and on each succeeding January 1st thereafter during the Term, Hospira shall have the right to increase the price of the Product once annually. Price increases shall be effective for deliveries beginning January 1st of each calendar year. Such increases shall not exceed [***]. Hospira shall use all reasonable efforts to provide written notice to Theravance of any anticipated price increase no later than October 31st of any calendar year.

(b) ***Payment***. Hospira shall invoice Theravance upon delivery of the Product. Theravance shall make payment net [***] days from the date of receipt of Hospira's invoice. Hospira shall include on all invoices the relevant purchase order number as provided by Theravance. The currency to be used to invoice and for payment shall be US Dollars. Hospira shall send invoices by email to AP@Theravance.com.

(c) ***Taxes***. Theravance shall pay all federal, state, county or municipal sales or use tax, excise, customs charges, duties or similar charge, or any other tax assessment (other than that assessed against income), license, fee or other charge lawfully assessed or charged on the manufacture, sale or transportation of the Product that Hospira manufactures, sells and delivers pursuant to this Agreement. In particular, Theravance shall be responsible for and pay all Prescription Drug User (PDUFA) annual establishment fees with respect to the Product. Theravance shall provide Hospira with copies of any state tax exemption form(s) if it intends to claim exemption for sales or use taxes in any state(s) where the Product is to be shipped.



5.12 ***Inspection; Nonconforming Product***.

(a) ***Documentation; Inspection***. Upon completion of the manufacture of each batch of Product, Hospira will provide Theravance with a Certificate of Analysis confirming that the batch was manufactured in conformity with the Product Specifications and all Applicable Laws. In addition, Hospira will provide Theravance with a copy of the Master Batch Record and all other documents and records as required by the Quality Agreement for Theravance's release of the batch and such samples of the batch that Theravance may reasonably request. For purposes of testing and releasing the Product for sale in the European Union, Hospira will make available to Theravance its Qualified Person(s) (***"QP"***) at one or more of its European Affiliates.

(b) Theravance shall have a period of [***] days from the date of its receipt of all such documentation (and if, applicable, batch samples) to inspect, and accept or reject, the corresponding batch as conforming or non-conforming with the Product Specifications and all Applicable Laws. If Theravance rejects the batch, it shall promptly so notify Hospira and provide the reason for the rejection. If the reason for the rejection is non-conformance with Product Specifications and, as a result of further review and testing, Hospira determines that the Batch does conform to the Product Specifications, Hospira shall so notify Theravance and the parties shall then submit samples of such batch to a mutually acceptable independent expert for testing.

(c) ***Testing***. If such independent expert determines that the batch conforms to the Product Specifications, Theravance shall bear all expenses of shipping and testing such batch samples and Theravance shall be responsible for Hospira's invoice price of the batch. If such independent expert determines that the batch does not meet the Product Specifications, Hospira shall bear all expenses of shipping and testing the batch samples. Notwithstanding the foregoing, the independent expert may also determine that additional sample testing by an independent laboratory is necessary. Absent manifest error, the test results of the independent expert (or those of the independent laboratory, if so referred by the expert) shall be binding on the parties.

(d) ***Replacement; Disposition of Rejected Product***. Hospira shall use all reasonable efforts to replace, at no cost to Theravance, that portion of the batch which does not conform to the Product Specifications or otherwise was not manufactured in accordance with Applicable Laws [***]; *provided, however*, that Theravance provides sufficient replacement API and Excipient to Hospira in accordance with the provisions of Section 5.4. Hospira shall dispose of any rejected Product at its own cost and expense.

(e) ***Deemed Acceptance; Latent Defects***. Any Product that Theravance does not reject pursuant to this Section 5.12 shall be deemed accepted, and all claims with respect to Product not conforming with Product Specifications are waived by Theravance, except as to latent defects which are not discoverable by the exercise of ordinary diligence and reasonable care, render the Product not conforming to Product Specifications, and are solely caused by Hospira. The parties shall consult to confirm the cause of any latent defect. If the parties do not

agree as to whether the Product is non-conforming, they shall submit samples of such Product for independent testing in accordance with Section 5.12(b). If it is determined that the Product is non-conforming and the cause of the defect is attributable to Hospira, then Hospira will replace at no cost to Theravance all such defective Product with Product that meet the Product Specifications, subject to the limitation of Section 5.4(d). All other relevant provisions of Section 5.12 shall apply to the manufacture and delivery of such replacement Product.

5.13 ***Miscellaneous***.

(a) ***Approval of Subcontracting***. Hospira shall not subcontract or otherwise delegate to any Third Party any portion of its obligations under this Agreement without Theravance's prior written approval; *provided*, *however*, that the foregoing restriction on subcontracting shall not prohibit Hospira from subcontracting non-essential or routine tasks involving the Facility generally, such as janitorial services or other general infrastructure maintenance or upgrades.

(b) ***Process Rework***. Process rework created as a result of Theravance's changes shall be billed separately at a reasonable fee mutually agreed upon in writing.

(c) ***Sub-Lots***. Should Theravance desire Hospira to split a manufacturing lot of Product into two (2) or more sub-lots during packaging, Hospira will [***].

(d) ***Storage Fee***. Theravance will use its commercially reasonable efforts to take delivery of all Products from the Facility as soon as reasonably practicable after Hospira's release of the Product. A cold storage fee of [***] shall be due and payable to Hospira if Theravance stores Product at the Facility for more than [***] days after the date of Theravance's Product release. The cold storage fee can be waived in the event of a discrepancy being investigated for the batch(es) under investigation.

(e) ***QP Testing/Release***. Hospira shall not charge Theravance for any QP Testing/Release performed by its QPs as envisaged in Section 5.12(a), if such QP Testing/Release is performed for a lot or lots of Product destined for the European Union only, and in lieu of testing and release for United States designated Product. However, if Theravance desires or requires QP Testing/Release of a lot or lots for both the United States and the European Union, then Hospira will [***] QP Testing/Release of such lot(s).

## ARTICLE 6. ORDERS AND FORECASTS

6.1 [***] ***Year Product Supply Forecast***. For capacity planning purposes, upon its submission for Regulatory Approval, Theravance shall provide Hospira with a written forecast of its estimated annual requirements of the Product [***] ("***Annual Forecast***"). Thereafter, by [***] of each calendar year, Theravance shall [***] for the period commencing [***].



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6.2 ***First Purchase Order***. The parties shall cooperate in estimating and scheduling production for Theravance's first commercial order of Product approximately [***] in advance of the anticipated date of Regulatory Approval or Theravance's desired Product availability date.

6.3 ***Rolling Forecast***. Concurrent with the placing of its first commercial order of Product, and during each calendar quarter thereafter, Theravance shall provide to Hospira a good faith, estimated rolling forecast of the quantity of the Product that Theravance expects to order for [***] (each, a ***"Rolling Forecast"***). [***] shall be considered a binding commitment upon Theravance to purchase quantities described therein and a binding commitment upon Hospira to produce and deliver such quantities on the delivery dates described therein (***"Firm Order Period"***). [***] shall be non-binding upon the parties.

6.4 ***Purchase Orders***. Theravance shall submit a purchase order (***"Purchase Order"***) to Hospira [***] days prior to the requested delivery date of the Product. All Purchase Orders shall be made on or before the first day of the calendar month by which the [***] days advanced notice period is measured and shall reference this Agreement and shall be governed exclusively by the terms contained herein. Theravance shall set forth in each Purchase Order: (i) the quantity of Product ordered; (ii) the amount of API and Excipient required to fill the Purchase Order; (iii) the specified delivery date and delivery instructions; and (iv) the price to be paid for the Product. Work will commence only upon Hospira's receipt of Theravance's Purchase Order.

6.5 ***Purchase Order Acceptance***. Hospira will confirm each Purchase order issued in accordance with Section 6.4 within ten (10) Business Days after receipt and shall use all commercially reasonable efforts to meet the delivery dates set forth therein.

6.6 ***Additional Quantities***. Should Theravance order quantities of Product in excess of [***] over the forecasted amount of the latest Firm Order Period, Hospira shall not be obligated to supply said additional quantities; *provided*, *however*, that Hospira shall use reasonable commercial efforts to produce and deliver to Theravance said additional quantities within [***] days of issuance of the Purchase Order for such additional quantities.

6.7 ***Format of Forecasts and Purchase Orders***. Theravance shall submit each Rolling Forecast and all Purchase Orders electronically in spreadsheet form and will specify the quantities of Products in units and the Hospira product number (list number/inventory number).

6.8 ***Minimum Purchase Requirement***. Beginning with the Commercial Year during which Hospira manufactures [***] Product pursuant to Theravance's forecasts, Theravance agrees to purchase from Hospira in such Commercial Year (and in each Commercial Year thereafter) a percentage of its Annual Forecast of the Drug Product in those jurisdictions within the Territory where Regulatory Approval(s) have been obtained in accordance with the provisions of this Section 6.8 (***"Minimum Purchase Requirement"***). [***] Theravance's Minimum Purchase requirements shall be [***], but in no case shall be [***] in any Commercial Year. In lieu of Theravance taking delivery of all of the Minimum Purchase Requirement,

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Theravance shall have the option to pay for the shortfall of the Minimum Purchase Requirement at the prices set forth in Exhibit 5.11 and waive Hospira's manufacture and delivery obligations for the Product. In the latter event, Hospira shall invoice Theravance for the amount payable, and Theravance shall pay Hospira such amount within [***] days after receipt of Hospira's invoice. Notwithstanding the foregoing, all Product paid for by Theravance shall count towards the Minimum Purchase Requirement.

6.9 ***Purchase Order Changes; Cancellations***

(a) ***Changes***. If Theravance requests that changes be made to any of its Purchase Orders within the Firm Order Period, Hospira shall attempt to accommodate such changes within reasonable manufacturing capabilities and efficiencies. If Hospira can accommodate such changes, Hospira shall advise Theravance of any costs associated therewith. If Theravance indicates in writing to Hospira that it should proceed to make the changes, Theravance shall be deemed to have accepted the obligation to pay Hospira for such costs. If Hospira cannot accommodate such change, Theravance shall nonetheless be bound to its original Purchase Orders.

(b) ***Cancellations***. If Theravance cancels any Purchase Order within [***] prior to the start of manufacture, Hospira shall be relieved of its manufacturing obligations relating to such order and Theravance will pay Hospira for such canceled order in full. Notwithstanding the foregoing, Theravance shall not be liable for any cancellation that is due to its inability to supply sufficient API and/or Excipient for such Purchase Order requirements, and such inability is caused by an event of *force majeure* or other condition not reasonably within the control of Theravance; *provided, however*, that Theravance provides Hospira with no less than [***] days prior written notice of the impending inability to supply and the date upon which it expects the required quantities of API and/or Excipient to be delivered to Hospira.

6.10 ***Shortage of Supply***. In the event that Hospira is unable to manufacture the Product in accordance with Theravance's Purchase Orders, Hospira shall notify Theravance within [***]. If the inability is not: (a) caused by an event of *force majeure*; (b) attributable in whole or in part to Theravance's acts or omissions or breach of its obligations under this Agreement; or (c) attributable in whole or in part to Hospira's Component suppliers' acts or omissions, then Hospira shall undertake all commercially reasonable measures to minimize any possible shortage of Product to Theravance as a result of its manufacturing issues. If Hospira cannot undertake such measures promptly, then either party may request that the Project Managers convene a meeting to discuss possible remedial action. For any Commercial Year where Hospira is unable to supply Product for a Firm Order Period, Theravance shall have no Minimum Purchase Requirement in that Commercial Year and shall be entitled to source all of its requirements for Product from Alternate Suppliers during the period of time that Hospira remains unable to supply.



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## ARTICLE 7. QUALITY

7.1 ***Quality Control***. Hospira shall apply its quality control procedures and in-plant quality control checks on the manufacture, packaging, and labeling of Product in the same manner as Hospira applies such procedures and checks to products of similar nature manufactured for sale by Hospira. In addition, Hospira will test and release Product in accordance with the test methods described in Exhibit 7.1 to ensure that Product conforms to the Product Specifications. The parties may change the test methods from time to time by mutual agreement.

7.2 ***Quality Agreement***. The parties shall use all commercially reasonable efforts to negotiate and execute a quality agreement substantially in the form of the Quality Agreement attached hereto as Exhibit 7.2 within [***] days following the Effective Date.

7.3 ***Audit Rights***.

(a) ***General Audit.*** Upon [***] days prior written notice to Hospira, Theravance shall have the right to have representatives visit the Facility during normal business hours to review Hospira's manufacturing operations relating to the Product and assess its compliance with cGMP and quality assurance standards and to discuss any related issues with Hospira's manufacturing and management personnel. Hospira shall provide Theravance with copies of Hospira's manufacturing records (including the Master Batch Record) and other relevant documentation relating to the Products for the purposes of assuring Product quality and compliance with agreed-upon manufacturing procedures. Such general audits shall: (i) be limited to not more than [***] auditors designated by or representing Theravance; (ii) last for not more than [***]; and (iii) may be conducted not more than [***] per calendar year.

(b) ***For Cause Audits***. Theravance shall also have the right to conduct "for-cause" audits to address significant product or safety concerns as discovered through Product failures related to Hospira's manufacture of the Product. Product failures would include issues related to stability out of specification, sterility, labeling or container integrity. Theravance shall notify Hospira in writing in advance of the audit and thereafter, Theravance and Hospira shall mutually determine the timing of the audit. Each for-cause audit shall be limited to two (2) auditors for no more than two (2) days, except if the parties mutually agree that a longer for-cause audit period is necessary.

(c) ***Regulatory Authority Inspections***. Hospira also agrees to allow any Regulatory Authority to conduct any inspection of the Facility related to the manufacture of the Product which such Regulatory Authority may require and Hospira agrees to reasonably cooperate with the Regulatory Authority in connection with such inspection. Hospira will provide Theravance with notice of any such inspection as soon as practicable. In the event that a Regulatory Authority other than the FDA, Health Canada and the EMA requests or requires an audit of the Facility related to pre-approval inspection (***"PAI"***), Hospira shall be entitled to charge a fee of [***]. This fee shall include PAI preparation activities and support of the audit.

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(d) ***Confidential Information in Audits***. Audits by Theravance or its designees may involve the disclosure of Confidential Information of Hospira or other customers of Hospira, and any such Confidential Information shall be subject to the terms of Article 11 hereof. The results of such audits and inspections shall be considered Confidential Information under Article 11 and shall not be disclosed to Third Parties, [***], unless required by law and only then upon prior written notice to Hospira or to Theravance as the case may be.

7.4 [***] Notwithstanding the general audit rights in Section 7.3(a), Hospira will permit [***]. Theravance will provide Hospira with sufficient advance notice [***] that Hospira may make appropriate arrangements.

7.5 ***Change in Product Specifications; Manufacturing Process.*** Each of Theravance and Hospira agrees that it will not change the Product Specifications or any aspect of the manufacturing process (including changes to the Components, equipment, processes or procedures used to manufacture Product) without the prior written approval of the other party, which approval shall not be unreasonably withheld, delayed, or conditioned. Upon agreement, the parties shall implement all such changes in accordance with the change control provisions of the Quality Agreement.

7.6 ***Complaints and Adverse Reactions***. Each party shall promptly advise the other of any complaints, notices of Adverse Drug Experience(s) or event reports, safety issues or toxicity issues relating to the Products of which it becomes aware, and which may be the result of, or have an effect on, the Product manufacturing operations performed by Hospira. Theravance shall be responsible for all reporting of such information to Regulatory Authorities. Hospira shall promptly evaluate any complaint or notice of Adverse Drug Experience(s) and reasonably assist Theravance in responding to the same.

7.7 ***Record Keeping***. Hospira shall supply Theravance with such records documenting the technology transfer work as foreseen in the Project Statement of Work or as are otherwise requested by Theravance. Hospira shall retain all records documenting the technology transfer work and all records relating to the manufacture of each batch of Products for not less than five (5) years or for such other period as required by Applicable Law. Thereafter, Hospira shall not destroy such records without giving Theravance prior written notice and the opportunity further to store such records or to have such records shipped to Theravance, at Theravance's cost and expense.

7.8 ***Failed Batch***. In accordance with the Quality Agreement, Hospira shall investigate, and cooperate fully with Theravance in investigating, any batch of the Product that fails to comply with cGMP or fails to meet the Product Specifications or any Regulatory Authority requirements. Hospira shall keep Theravance informed of the status of any investigation and, upon completion of the investigation, shall provide Theravance with a final written report describing the cause of the failure and summarizing the results of the investigation.

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7.9 ***Product Recalls***.

(a) In the event: (i) any Regulatory Authority or other national government authority issues a request, directive or order that the Product be recalled; (ii) a court of competent jurisdiction orders such a recall, or (iii) Theravance or Hospira reasonably determines that Product should be recalled, the parties shall take all appropriate corrective actions, and shall cooperate in any governmental investigations surrounding the recall.

(b) In the event that such recall results from a breach of Hospira's express warranties under Sections 8.2(a) and 8.2(b), Hospira shall be responsible for replacing the quantity of Products that were recalled at no cost to Theravance. Hospira shall use all commercially reasonable efforts to replace such Product as soon as practicable. In addition, Hospira agrees that it shall be responsible for the administrative expenses of any recall. For purposes of this Agreement, the administrative expenses of recall shall include the expenses of notification and destruction or return of the recalled Product, and any costs associated with the delivery of replacement Product, but shall not include lost profits of either party, nor the cost to replace API in excess of the limitations stated in Section 5.4(d). In the event that the recall does not result from the breach of Hospira's express warranties under this Agreement, Theravance shall be responsible for the expenses of the recall.

## ARTICLE 8. WARRANTIES; COVENANTS AND INDEMNIFICATION

8.1 ***Theravance's Warranties***. Theravance represents and warrants that:

(a) the API and the Excipient delivered to Hospira pursuant to this Agreement shall, at the time of delivery, not be adulterated or misbranded within the meaning of the Act or within the meaning of any other Applicable Law in which the definitions of adulteration and misbranding are substantially the same as those contained in the Act, as the Act and such laws are constituted and effective at the time of delivery, and will not be an article which, under the provisions of Sections 404 and 505 of the Act, may not be introduced into interstate commerce;

(b) the API and the Excipient supplied to Hospira hereunder shall have been manufactured in accordance with all applicable cGMP (including ICH Q7A) and meet the API Specifications and Excipient Specifications set forth on Exhibit 1.3;

(c) all specifications, including API Specifications, Excipient Specifications and Product Specifications that Theravance provides to Hospira shall conform to the appropriate submissions that Theravance files with the relevant Regulatory Authorities;

(d) to the best of its knowledge, the Manufacturing Process does not infringe any patents or know-how of a Third Party;

(e) Theravance's performance of its obligations under this Agreement will not result in a material violation or breach of any agreement, contract, commitment or obligation to which Theravance is a party or by which it is bound and will not conflict with or constitute a default under its corporate charter or bylaws; and



(f) it will not sell Product into any regulatory jurisdiction unless and until it receives the necessary Regulatory Authority approvals.

8.2 ***Hospira's Warranties and Covenants***. Hospira represents and warrants to Theravance that:

(a) all Product that Hospira delivers to Theravance pursuant to this Agreement shall, at the time of delivery, not be adulterated or misbranded within the meaning of the Act or within the meaning of any other Applicable Law in which the definitions of adulteration and misbranding are substantially the same as those contained in the Act, as the Act and such laws are constituted and effective at the time of delivery and will not be an article which may not under the provisions of Sections 404 and 505 of the Act be introduced into interstate commerce;

(b) all Product Hospira delivers to Theravance pursuant to this Agreement shall, at the time of delivery, be free from defects in material and workmanship and shall be: (i) manufactured in accordance and conformity with the Product Specifications; (ii) manufactured in compliance with all Applicable Laws, including those relating to the environment, food or drugs and occupational health and safety, including those enforced or promulgated by the FDA, Health Canada and EMA (including compliance with cGMP) and (iii) at the time of delivery free and clear of any and all encumbrances, liens and other Third Party claims, with good and marketable title thereto transferred to Theravance.

(c) in its performance of its obligations under the Statement of Work and this Agreement, Hospira will not knowingly incorporate into the manufacturing process any patents or know-how of a Third Party for which it does not have a license that permits it to do so and/or to be able to grant to Theravance the licenses and other rights otherwise required to be granted to Theravance hereunder;

(d) Hospira's performance of its obligations under this Agreement will not result in a material violation or breach of any agreement, contract, commitment or obligation to which Hospira is a party or by which it is bound and will not conflict with or constitute a default under its corporate charter or bylaws;

(e) the foregoing warranties shall not extend to any nonconformity or defect which relates to or is caused by API and/or the Excipient supplied by Theravance to Hospira. Except for Hospira's indemnity obligations in Section 8.3, the replacement provisions of Sections 5.4(c) and (d), 5.12(d) and 7.9(b) shall be Theravance's sole and exclusive remedy for nonconforming or defective Products; and



(f) HOSPIRA MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO PRODUCT. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY HOSPIRA.

8.3 ***Indemnification by Hospira***. Hospira shall indemnify and hold harmless Theravance and its Affiliates and their respective officers, directors, employees, contractors, consultants and agents (each, a ***"Theravance Indemnitee***") from and against any and all losses, damages, liabilities, expenses and costs, including reasonable legal expense and attorneys' fees ("***Losses***"), to which any Theravance Indemnitee may become subject as a result of any claim, demand, action or other proceeding by any Third Party (a "***Claim***") against a Theravance Indemnitee arising or resulting, directly or indirectly, from: (a) Hospira's breach of any representation or warranty set forth in Section 8.2(a-d) and Section 8.2(f); (b) any infringement of any Third Party intellectual property right relating to Hospira's manufacturing processes used in the manufacture of Product pursuant to this Agreement (excluding infringement due to adherence to the Manufacturing Process, the API Specifications, the Excipient Specifications, the Product Specifications, API, Excipient

or Product); or (c) any negligent or wrongful act or omission on the part of Hospira, its employees, agents or representatives and which relates to Hospira's performance hereunder. Notwithstanding anything to the contrary herein, the foregoing indemnity shall not apply to the extent such Losses arise out of or result from any material breach of the representations, warranties and covenants made by Theravance under this Agreement, or Theravance's negligent or wrongful acts or omissions or willful misconduct.

8.4 ***Indemnification by Theravance***. Theravance shall indemnify and hold harmless Hospira and its Affiliates and their respective officers, directors, employees, contractors, consultants and agents (each, an ***"Hospira Indemnitee***") from and against any and all Losses to which any Hospira Indemnitee may become subject as a result of any Claim against a Hospira Indemnitee arising or resulting directly or indirectly from: (a) Theravance's breach of any representation or warranty set forth in Section 8.1; (b) any infringement of any Third Party intellectual property right relating to the Manufacturing Process, the API Specifications, the Excipient Specifications, the Product Specifications, API, the Excipient, the Drug or Product (excluding Hospira's processes used in the manufacture of the Product pursuant to this Agreement); (c) the use of or lack of safety or efficacy, sale, administration, import and/or transport by Theravance or its Affiliates or licensees of the Product manufactured and supplied by Hospira under this Agreement; and (d) any negligent or wrongful act or omission on the part of Theravance, its employees, agents or representatives and which relate to Theravance's performance hereunder. Notwithstanding anything to the contrary herein, the foregoing indemnity shall not apply to the extent such Losses arise out of or result from any material breach of the representations, warranties and covenants made by Hospira under this Agreement, or Hospira's negligent or wrongful acts or omissions or willful misconduct.

8.5 ***Conditions of Indemnification***. If either party seeks indemnification from the other hereunder, it shall promptly give notice to the other party of any Claim and shall cooperate



fully with the other party in the investigation and defense of all such Claim. The indemnifying party shall have the option to assume the other party's defense in any such Claim with counsel reasonably satisfactory to the other party. In the event the indemnifying party assumes such defense, the indemnified party shall have the right, but not the obligation, to be represented by counsel of its own selection and at its own expense. No settlement or compromise shall be binding on a party hereto without its prior written consent, such consent not to be unreasonably withheld.

8.6 ***No Consequential Damages***. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOST PROFITS RESULTING FROM ANY BREACH OF THIS AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## ARTICLE 9. INTELLECTUAL PROPERTY RIGHTS

9.1 ***Hospira's Proprietary Rights***. Hospira has granted no license, express or implied, to Theravance to use Hospira proprietary technology, know-how or other proprietary rights: (a) existing as of the Effective Date; or (b) developed by or for Hospira on or after the Effective Date outside the scope of any Project undertaken by Hospira pursuant to this Agreement.

9.2 ***Theravance's Proprietary Rights***. Theravance has granted no license, express or implied, to Hospira to use Theravance's proprietary technology, know-how or other proprietary rights other than for Hospira's technology transfer and manufacturing obligations under this Agreement. Theravance shall be the sole owner of any proprietary technology, know-how or other proprietary rights developed by Hospira pursuant to the Project (***"Project Inventions"***), and Theravance shall be entitled to apply for patent protection on such Project Inventions at Theravance's expense and risk. Hospira agrees to assist Theravance as reasonably necessary to apply for, obtain and maintain patent protection on Project Inventions, including executing any necessary legal papers and furnishing information or data in its possession reasonably necessary to apply for, obtain or maintain such patent protection. Hospira agrees to assign, and does hereby assign, such Project Inventions to Theravance without further compensation. Hospira shall have no right to use Project Inventions in the making, having made, using, offering for sale, selling, and/or importing of Drugs and/or Products other than for the purposes of this Agreement.

## ARTICLE 10. TERM AND TERMINATION

10.1 ***Term***. This Agreement shall commence on the Effective Date and, unless earlier terminated as provided below, shall expire at the end of the fifth (5th) Commercial Year (***"Initial Term"***). This Agreement may be extended for additional terms of one (1) year (each, a ***"Renewal Term"***) upon the mutual written consent of the Parties; *provided, however*, that either party shall have given notice to the other of its intent to renew the Agreement at least [***] prior to the end of the Initial Term and that the parties have commenced good faith negotiations on such renewal.



10.2 ***Termination of the Project***. Either party wishing to terminate the Project shall request in writing a pre-termination consultation with the other party to review potential concerns and to make reasonable efforts to continue with this Agreement. Upon [***] days following said consultation, either party may terminate the Project or this Agreement upon [***] days prior written notice to the other party if the terminating party determines in good faith that

the technology transfer for the Product is not technically feasible using commercially reasonable efforts. If the Project or this Agreement is terminated in accordance with this Section 10.2, Hospira shall advise Theravance of Hospira's actual technology transfer costs on the Project incurred prior to such termination. Theravance will pay to Hospira that portion of the Technology Transfer Fee that represents: (a) the technology transfer work Hospira has completed and for which payment has not yet been received; and (b) on a *pro rata* basis, all technology transfer work that Hospira has undertaken but not yet completed as of the date of notice of termination. In addition, Theravance shall reimburse Hospira for all of its documented out-of-pocket costs related to any non-cancelable commitments for raw materials, Components and services that Hospira has undertaken as part the Project in accordance with the Statement of Work.

10.3 ***General Termination Rights***. Either party may terminate this Agreement as follows:

(a) immediately by providing written notice to the other party: (i) if proceedings in voluntary or involuntary bankruptcy are initiated by, on behalf of or against the other party (and, in the case of any such involuntary proceeding, not dismissed within ninety (90) days); or (ii) if the other party is adjudicated bankrupt, files a petition under applicable insolvency laws, is dissolved or has a receiver appointed for substantially all of its property; or

(b) by giving to the other party [***] days' prior written notice upon the breach of any warranty or any other material provision of this Agreement by the other party if the breach is not cured within [***] days after written notice thereof to the party in default; or

(c) upon notice to the other party should the other party continue to be unable to perform its obligations under this Agreement for a period in excess of [***] days by reason of *force majeure*, in accordance with Section 12.1(a); or

(d) after September 30, 2012, by giving to the other party [***] prior written notice [***]. The provisions of this Section 10.3(d) shall apply only [***] and not to the transfer, sale or divestiture of substantially all of the stock, business and/or assets of Theravance. In the event Theravance exercises this termination right, Theravance shall be obligated to order, purchase and take delivery of [***] of Product from Hospira prior to the effective date of termination of the Agreement at the then-current prices set forth on Exhibit 5.11. In lieu of



Theravance ordering and taking delivery of any or all of the [***], Theravance shall have the option to [***] Hospira's manufacture and delivery obligations for such batches. This obligation shall not be exclusive of any other obligation owed by or accruing to Theravance prior to the date of termination.

10.4 ***Theravance's Failure to Purchase Minimums***. If, in any [***] consecutive Commercial Years after the first Commercial Year, Theravance [***], Hospira may terminate this Agreement upon [***] days prior written notice to Theravance.

10.5 ***Accrued Payment Obligations***. Upon termination pursuant to this Article 10, Theravance shall reimburse Hospira for Hospira's cost of all Components purchased and on hand or on order, if such Components were ordered by Hospira based on Theravance's Firm Purchase Orders, and such supplies of Components that cannot be reasonably used by Hospira for other purposes. Hospira shall invoice Theravance for all amounts due hereunder. Payment shall be made pursuant to Section 5.11(b). At Theravance's option and request Hospira shall ship to Theravance any such remaining supply of Component at Theravance's cost.

10.6 ***Return of Inventory and Dedicated Equipment***. In the event of expiry or earlier termination of this Agreement, Hospira shall return to Theravance at Theravance's option and request any Dedicated Equipment, remaining inventory of API and/or Excipient and Product at Theravance's expense, unless termination shall have been as a result of a breach of this Agreement by Hospira, in which case such inventory shall be returned at Hospira's expense.

10.7 ***Return of Confidential Information***. Upon expiry or termination of this Agreement for any reason, each party shall immediately return to the other all of the other party's Confidential Information, in any form or medium disclosed by the disclosing Party (or upon a party's instructions in writing, destroy the same and certify its destruction), *provided, however*, that each party shall be allowed to retain one (1) copy of the other's Confidential Information solely for the purpose of ensuring continued compliance with Article 11. For the avoidance of doubt, any such retained copy shall continue to be protected by the non-use and non-disclosure obligations in Article 11 for as long as it is in the possession of the receiving party notwithstanding any early termination or expiration under Section 11.2 or otherwise.

10.8 ***Survival***. The expiry or earlier termination of this Agreement shall not relieve either party of any obligations that it may have incurred prior to such expiry or earlier termination, and all covenants and agreements contained in this Agreement, which by their terms or context are intended to survive, will continue in full force and effect for a period of three (3) years unless a different time period is indicated in this Agreement.

## ARTICLE 11. CONFIDENTIAL INFORMATION

11.1 ***Nondisclosure***. It is contemplated that in the course of the performance of this Agreement each party may, from time to time, disclose Confidential Information to the other.

Hospira agrees that, except as expressly provided herein, it shall not disclose Confidential Information received from Theravance, and shall not use Confidential Information disclosed to it by Theravance, for any purpose other than to fulfill Hospira's obligations hereunder. Theravance agrees that, except as expressly provided herein, it shall not disclose Confidential Information received from Hospira, and shall not use Confidential Information disclosed to it by Hospira, for any purpose other than to fulfill Theravance's obligations hereunder. Each party shall use reasonable and customary precautions to safeguard the other party's Confidential Information, including ensuring that it will limit the permitted disclosures of the other's Confidential Information only to those persons who have a "need to know" such Confidential Information and ensuring that all employees, consultants and agents who are given access to such Confidential Information are informed of the confidential and proprietary nature of such Confidential Information and have contractual or professional confidentiality and non-use obligations that are at least as restrictive as those contained in this Agreement.

11.2 ***Exceptions to Duty of Nondisclosure***.

(a) Notwithstanding Section 11.1 or any other provisions of this Agreement, nothing contained in this Agreement shall preclude Theravance from utilizing Confidential Information of Hospira as may be necessary in prosecuting the patent rights of Theravance pursuant to Article 9, obtaining Regulatory Approval(s), manufacturing Product pursuant to the terms and conditions of this Agreement, or complying with Applicable Laws or court orders (*provided*, *however*, that Theravance uses reasonable efforts to seek confidential treatment of such information, except as required to file and prosecute such patent applications).

(b) Notwithstanding any other provision of this Agreement, a receiving party may disclose Confidential Information of the disclosing party if such disclosure is required by law to be disclosed; *provided*, *however*, that the receiving party gives the disclosing party prompt advance notice of such legal requirement so that the disclosing party has a reasonable opportunity to apply for confidential treatment of such Confidential Information or seek other appropriate equitable relief. The receiving party shall cooperate in good faith with any such effort by the disclosing party. Should Theravance determine that this Agreement or any collateral document needs to be filed with the Securities and Exchange Commission, it will seek customary confidentiality of commercial terms and sensitive information contained herein or therein through a confidential treatment request, and consult with Hospira in advance concerning such request.

(c) The obligations of the parties relating to Confidential Information shall expire [***] years after the termination of this Agreement.

11.3 ***Public Announcements***. Neither party shall make any public announcement concerning the transactions contemplated herein, or make any public statement which includes the name of the other party or any of its Affiliates, or otherwise use the name of the other party or any of its Affiliates in any public statement or document, except as may be required by law or



judicial order, without the written consent of the other party, which consent shall not be unreasonably withheld. Subject to any legal or judicial disclosure obligation, any such public announcement proposed by a party that names the other party shall first be provided in draft to the other party.

11.4 ***Injunctive Relief***. The parties acknowledge that either party's breach of this Article 11 may cause the other party irreparable injury for which it would not have an adequate remedy at law. In the event of a breach or threatened breach, the non-breaching party may be entitled to injunctive relief in addition to any other remedies it may have at law or in equity

## ARTICLE 12. MISCELLANEOUS

12.1 ***Force Majeure and Failure of Suppliers***.

(a) ***Excusable Delay***. Neither party shall be considered to be in breach of this Agreement if a delay in the performance of any of its duties or obligations hereunder (except the payment of money) has been caused by or is the result of an act of God, acts of a public enemy, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions, boycotts, fires, explosions, floods, shortages of material or energy, or other unforeseeable causes beyond the reasonable control and without the fault or negligence of the party so affected (each an event of ***"force majeure"***). The performance of the affected party shall be extended for a period equal to the period of such delay; *provided*, *however*, that the affected party shall give prompt notice to the other party of such cause, and shall take promptly whatever reasonable steps are necessary to relieve the effect of such cause and resume compliance with this Agreement as soon as possible. Should the event of *force majeure* continue for a period longer than [***] days, the party not so affected may terminate this Agreement in accordance with Section 10.3(c).

(b) ***Transfer of Production***. If Hospira becomes subject to an event of *force majeure* which interferes with production of Product at the Facility, the parties shall mutually agree on implementation of an agreed-upon action plan to transfer production of Product to another Hospira plant. The parties shall, after the execution of this Agreement and at the request of either party, meet to discuss and define such an action plan.

12.2 ***Notices***. All notices hereunder shall be delivered as follows: (a) personally; (b) by facsimile and confirmed by first class mail (postage prepaid); (c) by registered or certified mail (postage prepaid); or (d) by overnight courier service, to the following addresses of the respective parties:

If to Theravance:

Theravance, Inc.
901 Gateway Boulevard
South San Francisco, CA
94080

Attention: [***]
Vice President,
Technical Operations
Facsimile: [***]

With a copy to:

Theravance, Inc.
901 Gateway Boulevard
South San Francisco, CA
94080

Attention: [***]
Senior Vice President,
General Counsel
Facsimile: [***]

If to Hospira:

Hospira, Inc.
275 North Field Drive
Lake Forest, Illinois 60045
Attention: V.P. Contract Manufacturing
Facsimile: [***]

With copy to:

Hospira, Inc.
Building H1; Department NLEG
275 N. Field Drive
Lake Forest, IL 60045
Attention: General Counsel
Facsimile: [***]

Notices shall be effective upon receipt if personally delivered or delivered by facsimile and confirmed by first class mail, on the third business day following the date of registered or certified mailing or on the first business day following the date of or delivery to the overnight courier. A party may change its address listed above by written notice to the other party.

12.3 ***Choice of Law***. This Agreement shall be construed, interpreted and governed by the laws of the State of Delaware, excluding its choice of law provisions. The United Nations Convention on the International Sale of Goods is hereby expressly excluded.

12.4 ***Alternative Dispute Resolution***. The parties recognize that bona fide disputes may arise which relate to the parties' rights and obligations under this Agreement. The parties agree that except as provided in Section 11.4, any such dispute shall be resolved by alternative dispute resolution in accordance with the procedures set forth in Exhibit 12.4.

12.5 ***Assignment***. Neither party shall assign this Agreement nor any part thereof without the prior written consent of the other party; *provided, however*, that: (a) either party may assign this Agreement to one of its wholly-owned subsidiaries or its parent corporation without such consent; and (b) either party, without such consent, may assign this Agreement in connection with the transfer, sale or divestiture of substantially all of its business to which this Agreement pertains or in the event of its merger or consolidation with another company. Any

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permitted assignee shall assume all obligations of its assignor under this Agreement. No assignment shall relieve any party of responsibility for the performance of any accrued obligation which such party then has hereunder. For the avoidance of doubt Theravance may assign this agreement without Hospira's consent to any Third Party to whom it licenses the right to commercialize the Product.

12.6 ***Entire Agreement***. This Agreement, together with the Exhibits referenced and incorporated herein, constitute the entire agreement between the parties concerning the subject matter hereof and supersede all written or oral prior agreements or understandings with respect thereto. If there is any conflict, discrepancy, or inconsistency among the terms of the Quality Agreement, any Statement of Work, the Agreement or other form used by the parties, the Quality Agreement will control as regards all issues related to quality assurance; in all other cases, the Agreement will control.

12.7 ***Severability***. This Agreement is subject to the restrictions, limitations, terms and conditions of all applicable governmental regulations, approvals and clearances. If any term or provision of this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision hereof, and this Agreement shall be interpreted and construed as if such term or provision, to the extent the same shall have been held to be invalid, illegal or unenforceable, had never been contained herein.

12.8 ***Waiver-Modification of Agreement***. No waiver or modification of any of the terms of this Agreement shall be valid unless in writing and signed by authorized representatives of both parties. Failure by either party to enforce any such rights under this Agreement shall not be construed as a waiver of such rights, nor shall a waiver by either party in one or more instances be construed as constituting a continuing waiver or as a waiver in other instances.

12.9 ***Insurance.*** Each party will procure and maintain, at its own expense, for the duration of the Agreement, and for [***] years thereafter if written on a claims made or occurrence reported form, the types of insurance specified below with carriers rated A- VII or better with A. M. Best or like rating agencies:

(a) Workers' Compensation accordance with applicable statutory requirements and shall provide a waiver of subrogation in favor of the other party;

(b) Employer's Liability with a limit of liability in an amount of not less than [***];

(c) Commercial General Liability including premises operations, products & completed operations, blanket contractual liability, personal injury and advertising injury including fire legal liability for bodily injury and property damage in an amount not less than [***] per occurrence and [***] in the aggregate;



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(d) Commercial Automobile Liability for owned, hired and non-owned motor vehicles with a combined single limit in an amount not less than [***] each occurrence;

(e) Excess Liability including products liability with a combined single limit in an amount of not less than [***];

(f) Commercial Crime or Fidelity Bond in an amount of not less than [***] per occurrence and in the aggregate including an endorsement for Third Party liability without the requirement of a conviction;

(g) Marine Insurance covering all shipments from warehouse to warehouse as described on the bill of lading at a full replacement cost.

Each party shall include the other party and its Affiliates, directors, officers, employees and agents as additional insureds with respect to Commercial General Liability, Commercial Automobile Liability and Excess Liability but only as their interest may appear by written contract. Prior to commencement of services, and annually thereafter, each party shall furnish to the other party certificates of insurance evidencing the insurance coverages stated above and shall require at least [***] days written notice to the other party prior to any cancellation, non-renewal or material change in said coverage. In the case of cancellation, non-renewal or material change in said coverage, each party shall promptly provide to the other party a new certificate of insurance evidencing that the coverage meets the requirements in this Section. Each party agrees that its insurance shall act as primary and noncontributory from any other valid and collectible insurance maintained by the other party. Each party may, at its option, satisfy, in whole or in part, its obligation under this Section through its self- insurance program.

12.10 ***Exhibits***. All Exhibits referred to herein are hereby incorporated by reference.

12.11 ***Debarment Warranty***. Hospira and Theravance each represent and warrant that it has never been, and it will not employ, contract with, or retain any person or entity directly or indirectly in connection with the services contemplated by this Agreement, if such a person or entity, as applicable, has ever been: (a) debarred or convicted of a crime for which a person or entity can be debarred under any governmental statute (including 21 USC Section 335a, as amended (**"Section 335a"**)) or, to such party's knowledge, threatened to be debarred or indicted for a crime or otherwise engaged in conduct for which a person or entity can be debarred under any governmental statute, including Section 335a; (b) disqualified under 21 CFR 312.70 or, to such party's knowledge, threatened to be disqualified thereunder; or (c) to such party's knowledge, threatened to be disqualified or indicted for a crime for which a person can be excluded by the federal government as set forth by the Department of Health and Human Services Office of Inspector General at http://exclusions.oig.hhs.gov and the Excluded Parties List System at http://epls.arnet.gov, which includes the General Services Administration. If,



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during the term of this Agreement or within three (3) years thereafter, either Party or any other person or entity directly or indirectly involved in the services performed under this Agreement is so debarred, disqualified, suspended, indicted, excluded or, to either Party's knowledge, comes under investigation by the FDA or any other Regulatory Authority for debarment, disqualification, suspension, indictment, or exclusion, the Party will immediately notify the other Party of same. Each Party agrees to provide written certification to the other that it has not used the services of any debarred, disqualified, suspended or excluded person or entity in any capacity related to the services hereunder if such certification is requested in connection with any certification regarding same that the other Party may make to a Regulatory Authority.

12.12 ***Construction***. In construing this Agreement, unless expressly specified otherwise; (a) references to Articles, Sections and Exhibits are to articles, sections of, and exhibits to, this Agreement; (b) except where the context otherwise requires, use of either gender includes the other gender, and use of the singular includes the plural and vice versa; (c) headings and titles are for convenience only and do not affect the interpretation of this Agreement; (d) any list or examples following the word "including" shall be interpreted without limitation to the generality of the preceding words; (e) except where the context otherwise requires, the word "or" is used in the inclusive sense; (f) all references to "dollars" or "$" herein shall mean U.S. Dollars; and (g) each Party represents that it has been represented by legal counsel in connection with this Agreement and acknowledges that it has participated in the drafting hereof. In interpreting and applying the terms and provisions of this Agreement, the Parties agree that no presumption will apply against the Party which drafted such terms and provisions. Any terms or conditions contained in an invoice that are inconsistent or in conflict with this Agreement shall be deemed not to be a part of such invoice.

12.13 ***Counterparts and Facsimile Signatures***. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile transmission or in Adobe™ Portable Document Format (PDF) sent by electronic mail shall be deemed to be original signatures.

***REMAINDER OF PAGE INTENTIONALLY LEFT BLANK***

***SIGNATURE PAGE FOLLOWS***



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**IN WITNESS WHEREOF**, the parties intending to be bound by the terms and conditions hereof have caused this Agreement to be signed by their duly authorized representatives as of the date first above written.

| **HOSPIRA WORLDWIDE, INC.** | | **THERAVANCE, INC.** | |
|---|---|---|---|
| By: | /s/ Anthony N. Cacich<br>(Signature) | By: | /s/ Junning Lee<br>(Signature) |
| Name: | Anthony N. Cacich | Name: | Junning Lee |
| Title: | Corporate Vice President<br>One 2 One Contract Manufacturing Services | Title: | Vice President, Technical Operations |



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**Note Regarding Exhibits**

Exhibits 1.3, 1.25, 2.1, 3.2 and 7.1 to this Agreement are subject to further revision and updating to reflect final, mutually agreed upon details concerning, among other things, Active Pharmaceutical Ingredient and Excipient Specifications, Product Specifications, Technology Transfer Activities, Stability Studies and Product Test Methods.

Any such revisions will be properly reflected in a writing signed by both parties.



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**EXHIBIT 1.3**

Active Pharmaceutical Ingredient and Excipient Specifications

US/Canada Specification - TLV Drug Substance

[***]



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**EXHIBIT 1.3**

Active Pharmaceutical Ingredient and Excipient Specifications (cont.)

EU Manufacturing QC Release Specification - TLV Drug Substance (Same as regulatory spec)

[***]

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**EXHIBIT 1.3**

Active Pharmaceutical Ingredient and Excipient Specifications (cont.)

Specification for Excipient ([***])

[***]

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**EXHIBIT 1.25**

Product Specifications

EU Specification - TLV Drug Product

[***]

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**EXHIBIT 1.25**

Product Specifications (cont.)

US/Canada Specification - TLV Drug Product

[***]

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Statement of Work
Technology Transfer Activities

***MILESTONE I:*** ***PROJECT INITIATION***

**Start Date:** [***]

**Activities:**
· Product and process evaluation
· Identify filling line requirements
· Initiate technology transfer
· Project management

**Fees**: [***]
**Payment:** Following kick-off

***MILESTONE II*** ***PRODUCT DEVELOPMENT***

**Start Date**: Upon receipt of product requirements and agreed methods of transfer documentation [***]

**Activities:** [***]

**Fees**: [***]
**Payment:** [***]



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Technology Transfer Activities (cont.)

***MILESTONE III*** ***WATER, CLINICAL AND REGISTRATION BATCH PRODUCTION***

**Start Date**: [***]

**Activities:** [***]

**Fees**: [***]

**Payment:** [***]

***MILESTONE IV*** ***PROCESS VALIDATION AND REVIEW***

**Start Date**: [***]

**Activities**: [***]

**Fees**: [***]

**Payment:** [***]



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Technology Transfer Activities (cont.)

***MILESTONE V*** ***REGULATORY FILING PREPARATION AND SUBMISSION***

**Start Date**: [***]
**Activities**: [***]

**Fees:** [***]

***MILESTONE VI*** ***COMMERCIALIZATION***

**Start Date**: [***]

**Activities**: [***]

**Fees:** [***]
**Payment:** [***]

**Total Fees:** [***]

**Product Assumptions:**

[***]



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**EXHIBIT 2.1**

Technology Transfer Activities (cont.)

**Product Assumptions (cont'd):**

[***]

**Development Fee Assumptions:**

[***]



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**EXHIBIT 3.2**

Stability Studies

| Test No. | Test |
|---|---|
| 1 | [***] |
| 2 | [***] |
| 3 | [***] |
| 4 | [***] |
| 5 | [***] |
| 6 | [***] |
| 7 | [***] |
| 8 | [***] |
| 9 | [***] |

Development Stability

[***]

**Fees:** [***]

Commercial Stability

| Storage Condition | Test Interval (Test #) | | | | |
|---|---|---|---|---|---|
| | [***] | [***] | [***] | [***] | [***] |
| [***] | [***] | [***] | [***] | [***] | [***] |

**Fees:** [***]

**Payment:** [***]

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**Exhibit 5.5**

Dedicated Equipment

List: -40C Upright Freezer, 23 ft3

Cost: [***]

Timing: TBD

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**EXHIBIT 5.11**

Commercial Product Prices

| Presentation | Batch size | Package Configuration | Commercial Year Volume, units | Price per Unit |
|---|---|---|---|---|
| [***] | [***] | [***] | [***] | [***] |

**Commercial Pricing Assumptions and Terms:**

[***]

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**EXHIBIT 7.1**

Product Test Methods

Telavancin Drug Product Release Testing Method Summary
[***]

Telavancin Drug Substance ID Release Testing Method Summary
[***]

[***] Release Testing Method Summary
[***]

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**EXHIBIT 7.1**

Product Test Methods (cont.)

[***]

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**EXHIBIT 7.2**

Form of Quality Agreement

Theravance and Hospira agree to consult and use reasonable efforts to prepare and complete the Technical & Quality Agreement no later than [***] days after the Effective Date. Upon completion, the Technical & Quality Agreement shall be attached to this Exhibit 7.2 and shall be made an integral part of this Agreement.

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**EXHIBIT 12.4**

Alternative Dispute Resolution

The parties recognize that bona fide disputes as to certain matters may arise from time to time during the Term which relate to either party's rights and/or obligations. To have such a dispute resolved by this Alternative Dispute Resolution ("ADR") provision, a party first must send written notice of the dispute to the other party for attempted resolution by good faith negotiations between their respective presidents (or their designee(s), provided any such designee has the authority to act on behalf of such party to effectuate any such resolution) of the affected subsidiaries, divisions, or business units within twenty-eight (28) days after such notice is received (all references to "days" in this ADR provision are to calendar days).

If the matter has not been resolved within twenty-eight (28) days of the notice of dispute, or if the parties fail to meet within such twenty-eight (28) days, either party may initiate an ADR proceeding as provided herein. The parties shall have the right to be represented by counsel in such a proceeding.

1. To begin an ADR proceeding, a party shall provide written notice to the other party of the issues to be resolved by ADR. Within fourteen (14) days after its receipt of such notice, the other party may, by written notice to the party initiating the ADR, add additional issues to be resolved within the same ADR.

2. Within twenty-one (21) days following receipt of the original ADR notice, the parties shall select a mutually acceptable neutral having requisite legal and commercial expertise and credentials (including with respect to the substantive law of the State of Delaware) to preside in the resolution of any disputes in this ADR proceeding. If the parties are unable to agree on a mutually acceptable neutral within such period, either party may request the President of the CPR Institute for Dispute Resolution ("CPR"), 366 Madison Avenue, 14th Floor, New York, New York 10017, to select a neutral pursuant to the following procedures:

(a) The CPR shall submit to the parties a list of not less than five (5) candidates within fourteen (14) days after receipt of the request, along with a Curriculum Vita for each candidate. No candidate shall be an employee, director, or shareholder of either party or any of their subsidiaries or Affiliates.

(b) Such list shall include a statement of disclosure by each candidate of any circumstances likely to affect his or her impartiality.

(c) Each party shall number the candidates in order of preference (with the number one (1) signifying the greatest preference) and shall deliver the list to the CPR within seven (7) days following receipt of the list of candidates. If a party believes a conflict of interest exists regarding any of the candidates, that party shall provide a written explanation of the conflict to the CPR along with its list showing its order of preference for the candidates. Any party failing to return a list of preferences on time shall be deemed to have no order of preference.

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(d) If the parties collectively have identified fewer than three (3) candidates deemed to have conflicts, the CPR immediately shall designate as the neutral the candidate for whom the parties collectively have indicated the greatest preference. If a tie should result between two candidates, the CPR may designate either candidate. If the parties collectively have identified three (3) or more candidates deemed to have conflicts, the CPR shall review the explanations regarding conflicts and, in its sole discretion, may either (i) immediately designate as the neutral the candidate for whom the parties collectively have indicated the greatest preference, or (ii) issue a new list of not less than five (5) candidates, in which case the procedures set forth in subparagraphs 2(a)-2(d) shall be repeated.

3. No earlier than twenty-eight (28) days or later than fifty-six (56) days after selection, the neutral shall hold a hearing to resolve each of the issues identified by the parties. Except as otherwise agreed by the parties or as set forth herein, the ADR proceeding shall be governed in accordance with the CPR Rules for Non-Administered Arbitration of International Disputes (the "CPR Rules"). The ADR proceeding shall take place in San Francisco, California, unless another location is agreed upon by the parties.

4. In advance of the ADR proceeding, each party shall submit a proposed ruling on each issue to be resolved, together with a request for a specific damage award or other remedy for each issue. The proposed rulings and remedies shall not contain any recitation of the facts or any legal arguments and shall not exceed one (1) page per issue.

5. Except as expressly set forth herein, no discovery shall be required or permitted by any means, including depositions, interrogatories, requests for admissions, or production of documents. The parties agree that disclosure of documents shall be implemented by the neutral consistent with Mode B in Schedule 1 to the CPR Protocol on Disclosure of Documents and Presentation of Witnesses in Commercial Arbitration which provides for the disclosure of documents that each side will present in support of its case as well as pre-hearing disclosure of documents essential to a matter of import in the proceeding for which the party has demonstrated a substantial need, provided, however, that such documents have been identified with reasonable particularity.

6. The hearing shall be conducted expeditiously over two (2) consecutive days. Each party shall be entitled to five (5) hours of hearing time which may be allocated for opening statements, the presentation of testimony or other evidence, the cross-examination of witnesses, or closing argument. The neutral may extend the time allotted for the hearing only for good cause or upon agreement of the parties. The parties agree that the presentation of witnesses and testimony shall be implemented by the neutral consistent with Mode B in Schedule 3 to the CPR Protocol on Disclosure of Documents and Presentation of Witnesses in Commercial Arbitration, which provides for testimony to be presented orally at the hearing, and does not permit testimony to be submitted through written witness statements, depositions, or affidavits. The neutral shall not be permitted to appoint experts or require the production of evidence that is not offered by the parties.

7. The neutral shall rule on each disputed issue within fourteen (14) days following completion of the hearing. Such ruling shall adopt in its entirety the proposed ruling and remedy of one of the parties on each disputed issue but may adopt one party's proposed rulings and remedies on some issues and the other party's proposed rulings and remedies on other issues. The neutral shall not issue any written opinion or otherwise explain the basis of the neutral's ruling or award.



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8. The neutral shall be paid a reasonable fee plus expenses. These fees and expenses, along with the reasonable legal fees and expenses of the prevailing party (including all expert witness fees and expenses), the fees and expenses of a court reporter, and any expenses for a hearing room, shall be paid as follows:

(a) If the neutral rules in favor of one party on all disputed issues in the ADR, the losing party shall pay 100% of such fees and expenses.

(b) If the neutral rules in favor of one party on some issues and the other party on other issues, the neutral shall issue with the rulings a written determination as to how such fees and expenses shall be allocated between the parties. The neutral shall allocate fees and expenses in a way that bears a reasonable relationship to the outcome of the ADR, with the party prevailing on more issues, or on issues of greater value or gravity, recovering a relatively larger share of its legal fees and expenses.

9. The rulings of the neutral and the allocation of fees and expenses shall be binding, non-reviewable (except for an alleged act of corruption or fraud on the part of the arbitrator), and non-appealable, and may be entered as a final judgment in any court having jurisdiction.

10. Except as provided in paragraph 9 or as required by law, the existence of the dispute, any settlement negotiations, the ADR hearing, any submissions (including exhibits, testimony, proposed rulings, and briefs), and the rulings shall be deemed Confidential Information. The neutral shall have the authority to impose sanctions for unauthorized disclosure of Confidential Information.

11. The neutral may not award any form of damages or relief prohibited by Section 8.6 of the Agreement. The parties hereby waive the right to punitive damages.

12. The neutral shall have the authority to grant injunctive relief and other specific performance.

13. The neutral shall, in rendering its decision, apply the substantive law of the State of Delaware, without regard to its conflict of laws provisions.

14. The hearings shall be conducted in the English language.

**CONFIDENTIAL**

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**Exhibit 31.1**

**Certification of Chief Executive Officer**
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Rick E Winningham, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Theravance, Inc.;

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

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

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

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

August 1, 2012
**(Date)**

/s/ Rick E Winningham
**Rick E Winningham**
**Chief Executive Officer**
**(Principal Executive Officer)**

**Exhibit 31.2**

**Certification of Chief Financial Officer**
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Michael W. Aguiar, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Theravance Inc.;

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

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

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

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

August 1, 2012
**(Date)**

/s/ Michael W. Aguiar
**Michael W. Aguiar**
**Senior Vice President, Finance and**
**Chief Financial Officer**
**(Principal Financial Officer)**

**Exhibit 32**

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**
**PURSUANT TO**
**18 U.S.C. SECTION 1350,**
**AS ADOPTED PURSUANT TO**
**SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Rick E Winningham, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Theravance Inc. on Form 10-Q for the three months ended June 30, 2012 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended and that information contained in such Quarterly Report on Form 10-Q fairly presents in all material respects the financial condition of Theravance, Inc. at the end of the periods covered by such Quarterly Report on Form 10-Q and results of operations of Theravance, Inc. for the periods covered by such Quarterly Report on Form 10-Q.

August 1, 2012 By: /s/ Rick E Winningham
**(Date)** **Name: Rick E Winningham**
**Title: Chief Executive Officer**

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**
**PURSUANT TO**
**18 U.S.C. SECTION 1350,**
**AS ADOPTED PURSUANT TO**
**SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Michael W. Aguiar, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Theravance Inc. on Form 10-Q for the three months ended June 30, 2012 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended and that information contained in such Quarterly Report on Form 10-Q fairly presents in all material respects the financial condition of Theravance, Inc. at the end of the periods covered by such Quarterly Report on Form 10-Q and results of operations of Theravance, Inc. for the periods covered by such Quarterly Report on Form 10-Q.

August 1, 2012 By: /s/ Michael W. Aguiar
**(Date)** **Name: Michael W. Aguiar**
**Title: Senior Vice President, Finance and Chief Financial Officer**