As filed with the Securities and Exchange Commission on June 10, 2004.

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-1

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Theravance, Inc.

(Exact Name of Registrant as Specified in its Charter)

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

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

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

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

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

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

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

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

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

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee
Common Stock, $0.01 par value	$96,000,000	$12,163.20

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.

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

Subject to Completion.
Preliminary Prospectus dated June , 2004.

PROSPECTUS

Shares

Theravance

Common Stock

This is our initial public offering of shares of our common stock. We are offering shares. We expect the initial public offering price to be between $ and $ per share.

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

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

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

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

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

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

Merrill Lynch & Co. **Lehman Brothers**

Credit Suisse First Boston

Perseus Group

Thomas Weisel Partners LLC

The date of this prospectus is , 2004.

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

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

PROSPECTUS SUMMARY

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

Theravance, Inc.

Our Company

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

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

Our Relationship with GlaxoSmithKline

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

2004 Strategic Alliance. In March 2004, we entered into a strategic alliance with GSK whereby GSK received an option to license product candidates from all of our other current and future drug discovery and development programs initiated prior to September 1, 2007, on pre-determined terms and on an exclusive, worldwide basis. If GSK exercises its option to license any of our programs, we will receive an upfront payment, additional payments if future milestones are achieved and royalties on any future sale of medicines developed from these programs. In addition, GSK would fund all of the development and commercialization costs for product candidates in such programs. Consistent with our strategy, we will be obligated at our sole cost to discover two structurally different product candidates for certain programs that GSK opts in to.

GSK currently owns approximately 19.8% of our outstanding stock. GSK's ownership of our stock could increase to approximately 60% through the issuance to GSK of the number of shares of stock that we may be required to redeem from our stockholders as described below. In July 2007, GSK has the right to require us to redeem 50% of our common stock at $35.00 per share. This right is referred to in this prospectus as the "call." If GSK does not exercise this right, then in August 2007, our stockholders have the right to require us to redeem 50% of their common stock at $12.50 per share. This right is referred to in this prospectus as the "put." In either case, GSK is contractually obligated to pay the full redemption price; however, GSK's maximum obligation for the shares subject to the put is capped at $525 million. If GSK's ownership of our stock increases to more than 50% as a result of the call or the put, GSK will receive an extension of its exclusive option to our programs initiated prior to September 1, 2012; otherwise, this exclusive option does not apply to programs initiated after September 1, 2007.

Our Programs

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

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

Bacterial Infections. Our lead antibiotic product candidate, telavancin, is a rapidly bactericidal, injectable antibiotic. In January 2004, we completed a Phase 2 clinical trial in complicated skin and skin structure infections comparing the safety and efficacy of telavancin with current standard antibiotic therapy. We are currently in discussions with the U.S. Food and Drug Administration regarding our plans to initiate Phase 3 clinical trials for telavancin. The primary market that we are targeting represents approximately 32 million patient treatment days with antibiotics effective against infections caused by drug-resistant Gram-positive bacteria. From 1998 to 2003, treatment days in this category grew at a rate of 12% annually. Worldwide sales in this category totaled $730 million in 2003. Vancomycin, a generic medicine, leads this portion of the injectible antibiotic market with annual worldwide sales of approximately $370 million.

Overactive Bladder (OAB). Our lead product candidate for OAB is TD-6301. We initiated the first Phase 1 clinical trial of TD-6301 in December 2003. This clinical trial demonstrated that the drug was safe and well-tolerated in healthy volunteers. We plan to initiate additional Phase 1 clinical trials in 2004. The market for medicines to treat OAB in the United States, Japan and Europe was approximately $1.5 billion in 2003.

In addition, we have three other programs in preclinical studies in the areas of asthma and COPD, gastrointestinal disease and anesthesia. The seventh program, in the areas of asthma and COPD, is in the lead-optimization stage.

Our Strategy

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

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

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

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

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

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

Company Information

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

THE OFFERING

Common stock we are offering	shares
Common stock to be outstanding after this offering	shares
Use of proceeds	We expect to use the net proceeds of this offering for working capital and for other general corporate purposes, including the funding of our research and development efforts and investment in the development of our technologies. See "Use of Proceeds."
Proposed Nasdaq National Market symbol	THRX

The number of shares of common stock to be outstanding after the offering is based on shares of common stock outstanding as of March 31, 2004, plus a total of 13,900,000 shares of our Class A common stock held by affiliates of GSK. Our Class A common stock has rights and obligations substantially the same as our common stock except that our Class A common stock is not subject to the call and the put described in the section entitled "Description of Capital Stock—Common Stock Call and Put Arrangements with GSK." The number of shares of common stock to be outstanding after this offering does not take into account:

- 13,533,963 shares of common stock issuable upon the exercise of stock options outstanding as of March 31, 2004 with a weighted average exercise price of $4.47 per share;
- 56,611 shares of common stock issuable upon exercise of outstanding warrants as of March 31, 2004 with a weighted average exercise price of $8.17 per share; and
- an additional 1,058,500 shares reserved as of March 31, 2004 for future stock option grants and purchases under our equity compensation plans. See "Management—Equity Benefit Plans" and note 12 of the notes to our consolidated financial statements.

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

- the conversion of all our outstanding preferred stock into 48,774,848 shares of common stock that occurred on May 11, 2004;
- the exchange by GSK of 4,000,000 shares of common stock for 4,000,000 shares of Class A common stock that occurred on May 11, 2004;
- the adoption of our restated certificate of incorporation and restated bylaws to be effective upon the completion of this offering;
- no exercise of the underwriter's overallotment option; and
- a for reverse stock split of our outstanding common stock and Class A common stock.

SUMMARY CONSOLIDATED FINANCIAL DATA

The following tables present our summary consolidated statements of operations data for our fiscal years 2001 through 2003 and the three months ended March 31, 2003 and 2004, and our summary consolidated balance sheet data as of March 31, 2004. You should read this information in conjunction with our consolidated financial statements, including the related notes, and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this prospectus. The summary consolidated balance sheet data is presented on an actual basis and as adjusted to reflect the sale of shares of common stock offered by us in this offering at the public offering price of $ per share and after deducting underwriting discounts and estimated offering costs and giving effect to the application of the net proceeds.

	Years Ended December 31,			Three Months Ended March 31,	
	2001	2002	2003	2003	2004
	(in thousands, except per share amounts)				
				(unaudited)	
Consolidated Statements of Operations Data					
Revenue from related party	$ —	$ 156	$ 3,605	$ 535	$ 1,387
Operating expenses:					
Research and development(1)	53,773	66,481	61,704	13,382	18,874
General and administrative	10,506	11,817	12,153	2,842	3,288
Stock-based compensation(2)	10,134	4,941	2,214	205	385
Total operating expenses	74,413	83,239	76,071	16,429	22,547
Loss from operations	(74,413)	(83,083)	(72,466)	(15,894)	(21,160)
Interest and other income	11,530	4,990	3,373	817	666
Interest and other expense	(1,962)	(1,134)	(1,490)	(348)	(217)
Net loss	$ (64,845)	$ (79,227)	$ (70,583)	$ (15,425)	$ (20,711)
Basic and diluted net loss per common share:					
Historical	$ (7.57)	$ (8.07)	$ (6.69)	$ (1.52)	$ (1.91)
Pro forma			$ (1.19)		$ (0.35)
Shares used in per common share calculations:					
Historical	8,566	9,820	10,554	10,157	10,816
Pro forma			59,309		59,591

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

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

Research and development	$ 6,574	$ 3,398	$ 1,300	$ (37)	$ 292
General and administrative	3,560	1,543	914	242	93
Total non-cash stock-based compensation	$ 10,134	$ 4,941	$ 2,214	$ 205	$ 385

	As of March 31, 2004	
	Actual	As Adjusted
	(unaudited)	
Consolidated Balance Sheet Data		
Cash, cash equivalents and marketable securities	$ 73,873	
Working capital	54,157	
Total assets	110,628	
Long-term liabilities	39,236	
Accumulated deficit	(386,661)	

RISK FACTORS

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

Risks Related to our Business

If our product candidates are determined to be unsafe or ineffective in humans, our business and financial condition will be materially and adversely affected.

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

If our clinical trials fail to demonstrate the safety and efficacy of our product candidates, we will be unable to obtain regulatory approval and commercialize our product candidates.

We must provide the Food and Drug Administration (FDA) and similar foreign regulatory authorities with data from preclinical studies and clinical trials that demonstrate that our product candidates are safe and effective for a defined indication before they can be approved for commercial distribution. Currently, telavancin, product candidates in our LABA collaboration with GSK and TD-6301, our lead overactive bladder product candidate, are in Phase 1 or 2 clinical trials. Clinical trials involving our product candidates may reveal that those candidates are ineffective, are unacceptably toxic or have other unacceptable side effects. Likewise, the results of preclinical studies do not predict clinical success, and larger and later-stage clinical trials may not produce the same results as earlier-stage clinical trials. Frequently, product candidates that have shown promising results in early preclinical studies or clinical trials have subsequently suffered significant setbacks or failed in later clinical trials. In addition, clinical trials of potential products often reveal that it is not possible or practical to continue development efforts for these product candidates. If our clinical trials are substantially delayed or fail to prove the safety and effectiveness of our product candidates, our business and financial condition will be materially and adversely affected.

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

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

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

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

If the product candidates we develop are not approved by regulatory agencies, including the Food and Drug Administration, we will be unable to commercialize them.

The FDA must approve any new medicine before it can be marketed and sold in the United States. We will not obtain this approval for a product candidate unless and until the FDA approves a New Drug Application (NDA) in which we have demonstrated that our product candidate is effective and safe. The regulatory agencies of foreign governments and agencies must also approve our product candidates before they can be sold in those countries and they generally have similar standards. Negative or inconclusive results or adverse events or findings during a preclinical study or a clinical trial could cause a test or trial to be repeated or a program to be terminated. Data obtained from these tests and trials are susceptible to varying interpretations that could delay, limit or prevent regulatory approval. In addition, changes in regulatory policy during the period of product development and regulatory review of each submitted New Drug Application may cause delays or rejections of the product.

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

Even if we receive regulatory approval, this approval may include limitations on the indicated uses for which we can market our medicines. Further, if we obtain regulatory approval, a marketed medicine and its manufacturer are subject to continual review, including review and approval of the manufacturing facilities. Discovery of previously unknown problems with a medicine may result in restrictions on its permissible uses, or on the manufacturer, including withdrawal of the medicine from the market. Failure to maintain regulatory approval will limit our ability to commercialize our product candidates, which would materially and adversely affect our business and financial condition.

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

We have not generated any product sales revenue to date. We may never generate revenue from selling medicines or achieve profitability. We expect to continue to incur substantial and increasing losses for the foreseeable future, particularly as we increase our research and development, clinical trial and administrative activity. As a result, we are uncertain when or if we will be able to achieve or sustain profitability. We have been engaged in discovering and developing compounds and product candidates since mid-1997. As of March 31, 2004, we had an accumulated deficit of $386.7 million. Our ability to generate product sales revenue and achieve profitability is dependent on our ability to successfully complete the development of our product candidates, conduct clinical trials, obtain necessary regulatory approvals and have our products manufactured and marketed. We cannot assure you that we will be profitable even if we successfully commercialize our products. Failure to become and remain profitable would adversely affect the price of our common stock and our ability to raise capital and continue operations.

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

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

In addition, if GSK files for regulatory approval of a medicine containing a LABA product candidate discovered by GSK and then also if the approved medicine is sold commercially, we would be required to pay GSK milestone payments of up to an aggregate of $220.0 million under our LABA collaboration. We may also need to raise additional funds if we choose to expand more rapidly than we presently anticipate. We may seek to sell additional equity or debt securities, or both, or incur other indebtedness. The sale of additional equity or debt securities, if convertible, could result in dilution to our stockholders. The incurrence of indebtedness would result in increased fixed obligations and could also result in covenants that would restrict our operations. In addition, our ability to raise debt and equity financing is constrained by our alliance with GSK and we cannot guarantee that future financing will be available in amounts or on terms acceptable to us, if at all. If we are unable to raise additional capital in amounts or on terms acceptable to us, our business and financial condition will be materially and adversely affected.

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

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

We cannot assure you that GSK will fulfill its obligations under these agreements. If GSK fails to fulfill its obligations under these agreements, we may be unable to assume the development of the products covered by the agreements or enter into alternative arrangements with a third party. In addition, with the exception of product candidates in our LABA collaboration, GSK is not restricted from developing its own product candidates that compete with those licensed from us. If GSK elected to advance its own product candidates in preference to those licensed from us, future payments to us could be curtailed and our business and financial condition would be materially and adversely affected. Accordingly, our ability to receive any revenue from the product candidates covered by these agreements is dependent on the efforts of GSK. We could also become involved in disputes with GSK, which could lead to delays in or termination of our development and commercialization programs and time-consuming and expensive litigation or arbitration. If GSK terminates or breaches its agreements with us, or otherwise fails to complete its obligations in a timely manner, our chances of successfully developing or commercializing these product candidates would be materially and adversely affected.

In addition, while our alliance with GSK sets forth pre-agreed upfront payments, development obligations, milestone payments and royalty rates under which GSK may obtain exclusive rights to develop and commercialize our product candidates, GSK may in the future seek to negotiate more favorable terms on a project-by-project basis. There can be no assurance that GSK will opt in to any development program under the terms of the alliance agreement, or at all. GSK's failure to opt in to our development programs could have an adverse affect on our business.

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

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

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

If GSK does not opt in to one or more of our programs, we may be required to enter into collaborations with other third parties whereby we have to relinquish material rights, including revenue from commercialization of our medicines. Furthermore, our ability to raise additional capital to fund our drug discovery and development efforts is greatly limited as a result of our agreements with GSK. In addition, we may not be able to control the amount of time and resources that our collaborative partners devote to our product candidates and our partners may choose to pursue alternative products.

Moreover, these collaboration arrangements are complex and time-consuming to negotiate. If we are unable to reach agreements with third-party collaborators, we may fail to meet our business objectives. We face significant competition in seeking third-party collaborators and may be unable to find third parties to pursue strategic collaborations on a timely basis or on acceptable terms. Our inability to successfully collaborate with third parties would materially and adversely affect our business.

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

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

Our manufacturing strategy presents the following additional risks:

- because of the complex nature of our compounds, our manufacturers may not be able to successfully manufacture our compounds in a cost effective or timely manner;

- some of the manufacturing processes for our compounds have not been tested in quantities needed for continued clinical trials or commercial sales, and delays in scale-up to commercial quantities could delay clinical trials, regulatory submissions and commercialization of our compounds; and

- because some of the third-party manufacturers and formulators are located outside of the U.S., there may be difficulties in importing our compounds or their components into the U.S. as a result of, among other things, FDA import inspections, incomplete or inaccurate import documentation or defective packaging.

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

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

We are substantially dependent on third-party vendors and clinical research organizations for preclinical studies and clinical trials related to our drug discovery and development efforts. If we lose our relationship with any one or more of these providers, we could experience a significant delay in both identifying another comparable provider and then contracting for its services. We may be unable to retain an alternative provider on reasonable terms, if at all. Even if we locate an alternative provider, it is likely that this provider will need additional time to respond to our needs and may not provide the same type or level of service as the original provider. In addition, any clinical research organization that we retain will be subject to the FDA's regulatory requirements and similar foreign standards and we do not have control over compliance with these regulations by these providers.

Consequently, if these practices and standards are not adhered to by these providers, the development and commercialization of our product candidates could be delayed which could delay our profitability and severely harm our business and financial condition.

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

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

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

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

Established pharmaceutical companies may invest heavily to quickly discover and develop novel compounds that could make our product candidates obsolete. Accordingly, our competitors may succeed in obtaining patent protection, receiving FDA approval or discovering, developing and commercializing medicines before we do. We are also aware of other companies that may currently be engaged in the discovery of medicines that will compete with the product candidates that we are developing. In addition, in the markets that we are targeting, we expect to compete against current market-leading medicines. In particular, telavancin will compete against vancomycin, a generic drug that is currently the market-leading medicine for the portion of the antibiotic market we are targeting. Any new medicine that competes with a generic market leading medicine must demonstrate compelling advantages in efficacy, convenience, tolerability and/or safety in order to overcome the severe price competition and be commercially successful. If we are not able to compete effectively against our current and future competitors, our business will not grow and our financial condition and operations will suffer.

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

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

Our strategy is to engage pharmaceutical or other healthcare companies with an existing sales organization and distribution system to sell and distribute our products. We may not be able to establish these sales and distribution relationships on acceptable terms, or at all. If we receive regulatory approval to commence commercial sales of any of our product candidates, other than those

subject to our current or future agreements with GSK or pursuant to other strategic partnerships that we may enter into, we will have to establish a sales and marketing organization with appropriate technical expertise and supporting distribution capability. At present, we have no sales personnel and a very limited number of marketing personnel. Factors that may inhibit our efforts to commercialize our products without strategic partners or licensees include:

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

If we are not able to partner with a third party and are not successful in recruiting sales and marketing personnel or in building a sales and marketing infrastructure, our business will suffer.

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

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

Our scientific team has expertise in many different aspects of drug discovery and development. Our company is located in northern California, which is headquarters to many other pharmaceutical and biopharmaceutical companies and many academic and research institutions. There is currently a shortage of experienced scientists, which is likely to continue, and competition for skilled personnel in our market is very intense. In addition, we have encountered difficulty hiring experienced scientists from global pharmaceutical companies, many of which are located on the east coast of the United States. Competition for experienced scientists may limit our ability to hire and retain highly qualified personnel on acceptable terms. Failure to attract and retain qualified personnel would impair our discovery and development efforts and materially harm our business.

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. The insurance we maintain may not be adequate to cover our losses resulting from disasters or other similar business interruptions, which could seriously impair our business and financial condition.

Risks Related to GSK's Ownership of Our Stock

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

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

GSK will own approximately % of our outstanding capital stock. In addition, GSK has certain rights to maintain its percentage ownership of our capital stock in the future, and in 2007 GSK may exercise its call right to acquire additional shares and thereby increase its ownership up to approximately 60% of our then outstanding capital stock. If GSK exercises this call right, or a sufficient number of our stockholders exercise the put right provided for in our certificate of incorporation, GSK could own a majority of our capital stock. In addition, pursuant to the agreements described in the section entitled "Description of Capital Stock," GSK has the right to designate one member to our 12-member board of directors and, depending on GSK's ownership percentage of our capital stock after September 2007, GSK will have the right to control the nomination of up to one half of our board of directors. GSK's control relationship could give rise to conflicts of interest, including:

- conflicts between GSK, as our controlling stockholder, and our other stockholders, whose interests may differ with respect to our strategic direction or significant corporate transactions; and

- conflicts related to corporate opportunities that could be pursued by us, on the one hand, or by GSK, on the other hand.

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

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

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

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

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

Our governance agreement with GSK limits the number of shares of capital stock that we may issue and the amount of debt that we may incur. Prior to the termination of the call and put arrangements with GSK in 2007, without the prior written consent of GSK, we may not issue any equity securities if it would cause more than 84 million shares of common stock, or securities that are vested and exercisable or convertible into shares of common stock, to be outstanding. After estimating the number of shares we will require for equity incentive plans through the termination of the call and put arrangements, we believe that we may issue up to a total of approximately 16 million new shares of capital stock for capital raising purposes, including shares that we issue in connection with this offering. In addition:

- If, on or after the termination of the call and put arrangements with GSK in 2007, GSK directly or indirectly controls more than 35.1% of our outstanding capital stock, then without the prior written consent of GSK, we may not issue more than an aggregate of 25 million shares of our capital stock after September 1, 2007 through August 2012; and

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

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

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

In 2007, GSK has the right to require us to redeem 50% of our outstanding common stock for $35.00 per share, and, if GSK does not exercise this right, our stockholders will have the right to cause us to redeem up to the same number of shares for $12.50 per share. The existence of the call feature on 50% of our common stock at a fixed price of $35.00 may act as a material impediment to our common stock trading above the $35.00 per share call price. If the call is exercised, our stockholders would participate in valuations above $35.00 per share only with respect to 50% of their shares. Conversely, because the put applies to only 50% of our common stock and is not exercisable prior to 2007, the put may not have an effective supporting effect on our stock price. In addition, while GSK is generally prevented from making any unsolicited tender offer for our common stock, any announcement by GSK that it does not intend to exercise the call or any offer GSK may make to our board of directors on terms less favorable than the call right described above could adversely affect our common stock price.

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

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

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

- In the event that our common stock were to be considered as "not participating in corporate growth to any significant extent," a holder thereof may be required, during the period beginning upon such holder's acquisition of such stock and ending during the put period, to include currently in gross income a portion of the excess of $12.50 per share over the fair market value of the stock at issuance;

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

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

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

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

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

Risks Related to Legal and Regulatory Uncertainty

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

We rely upon a combination of patents, patent applications, trade secret protection and confidentiality agreements to protect the intellectual property related to our technologies. Any involuntary disclosure to or misappropriation by third parties of this proprietary information could enable competitors to quickly duplicate or surpass our technological achievements, thus eroding our competitive position in our market. As of May 1, 2004, we had 35 issued United States patents and have received notices to allowance for 7 other United States patent applications. As of that date, we had 75 pending patent applications in the United States and 59 granted foreign patents. We also have 14 Patent Cooperation Treaty applications that permit us to pursue patents outside of the United States, and 272 foreign national patent applications. Our patent applications may be challenged or fail

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

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

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

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

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

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

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

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

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

Our research and development activities involve the controlled use of potentially hazardous substances, including chemical, biological and radioactive materials. In addition, our operations produce hazardous waste products. We cannot eliminate the risk of accidental contamination or discharge and the resultant injury which may result from a discharge of these materials may subject us to substantial federal and state criminal and civil liability. Federal, state and local laws and regulations govern the use, manufacture, storage, handling and disposal of hazardous materials. Compliance with these laws and regulations may be expensive, and current or future environmental regulations may impair our research, development and production efforts which could harm our business.

Risks Related to this Offering

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

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

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

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

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

- GSK's call right in 2007 for 50% of our common stock at $35.00 per share;
- announcements regarding GSK's decisions whether or not to opt in to any of our product development programs;
- the extent to which GSK advances our product candidates through development into commercialization;
- announcements regarding GSK generally;
- announcements of patent issuances or denials, technological innovations or new commercial products by us or our competitors;
- developments concerning any collaboration we may undertake with companies other than GSK;
- publicity regarding actual or potential testing or trial results or the outcome of regulatory review relating to products under development by us or our competitors;
- regulatory developments in the United States and foreign countries; and
- economic and other external factors beyond our control.

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

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

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

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

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

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

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

- requiring supermajority stockholder voting to effect certain amendments to our certificate of incorporation and bylaws;

- restricting the ability of stockholders to call special meetings of stockholders;
- prohibiting stockholder action by written consent; and
- establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted on by stockholders at stockholder meetings.

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

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

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

USE OF PROCEEDS

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

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

We expect to use the net proceeds for working capital and other general corporate purposes, including the funding of our research and development efforts and investment in the development of our proprietary technologies. We have not allocated any specific portion of the net proceeds to any particular purpose, and our management will have the discretion to allocate the proceeds as it determines. We may use a portion of the net proceeds for the acquisition of businesses, products and technologies that we believe are complementary to our own, though we have no agreements or understandings with respect to any acquisition at this time. We intend to invest the net proceeds of this offering in short-term, interest-bearing, investment-grade securities until they are used.

DIVIDEND POLICY

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

CAPITALIZATION

The following table sets forth our unaudited capitalization as of March 31, 2004:

- on an actual basis;
- on a pro forma basis to reflect the May 2004 closing of our strategic alliance with GSK, which included: (i) the conversion of all of our outstanding convertible preferred stock (Series A through Series D-1) into 44,774,848 shares of common stock and (ii) the conversion of 4,000,000 shares of Series E convertible preferred stock held by an affiliate of GSK into 4,000,000 shares of common stock and the exchange of such shares for 4,000,000 shares of Class A common stock; and
- on a pro forma as adjusted basis to reflect the matters discussed above and the sale of the shares of common stock offered in this offering at an assumed initial public offering price of $ per share after deducting the underwriting discount and estimated offering expenses.

The following table does not reflect the sale of 9,900,000 shares of Class A common stock to an affiliate of GSK in connection with the May 2004 closing of our strategic alliance with GSK.

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

	March 31, 2004		
	Actual	Pro Forma	Pro Forma As Adjusted
		(unaudited)	
		(in thousands)	
Long-term obligations, less current portion	$ 3,203	$ 3,203	
Convertible preferred stock, $0.01 par value; 50,000,000 shares authorized, 47,663,737 shares issued and outstanding, actual; no shares authorized or outstanding, pro forma; pro forma as adjusted(1)	367,528	—	
Stockholders' equity (deficit):			
Preferred stock, $0.01 par value; no shares authorized, issued and outstanding, actual; 5,000,000 shares authorized, no shares issued and outstanding, pro forma and 230,000 shares authorized, no shares issued and outstanding pro forma as adjusted	—	—	
Common stock, $0.01 par value; 110,000,000 shares authorized, 11,413,885 shares issued and outstanding, actual; 175,000,000 shares authorized, 56,188,733 shares issued and outstanding, pro forma; 200,000,000 shares authorized, shares issued and outstanding, pro forma as adjusted(2)	113	561	
Class A common stock, $0.01 par value, no shares authorized, issued and outstanding, actual; 13,900,000 shares authorized, 4,000,000 shares issued and outstanding, pro forma; 30,000,000 shares authorized, shares issued and outstanding, pro forma as adjusted	—	40	
Additional paid-in capital	68,896	435,936	
Notes receivable from stockholders	(869)	(869)	
Deferred stock-based compensation	(1,210)	(1,210)	
Accumulated other comprehensive income	67	67	
Accumulated deficit	(386,661)	(386,661)	
Total stockholders' equity (deficit)	(319,664)	47,864	
Total capitalization	$ 51,067	$ 51,067	

(1) Actual excludes 56,611 shares of convertible preferred stock issuable upon exercise of outstanding warrants with a weighted average exercise price of $8.17 per share.

(2) Actual, pro forma and pro forma as adjusted excludes 13,533,963 shares of common stock issuable upon exercise of outstanding options with a weighted average exercise price of $4.47 per share and an additional 1,058,500 shares reserved for future stock option grants and purchases under our equity compensation plans and includes 159,364 shares issued upon exercise of stock options that were exercised after March 21, 2002 and unvested at March 31, 2004. Pro forma and pro forma as adjusted excludes 56,611 shares of common stock issuable upon exercise of outstanding warrants with a weighted average exercise price of $8.17 per share.

DILUTION

The net tangible book value of our common stock as of was $ million, or approximately $ per share. Net tangible book value per share represents the amount of stockholders' deficit divided by shares of common stock outstanding at that date.

Net tangible book value dilution per share to new investors represents the difference between the amount per share paid by purchasers of common stock in this offering and the pro forma net tangible book value per share of common stock immediately after completion of this offering. After giving effect to our sale of shares of common stock in this offering, after deducting the underwriting discounts and estimated offering expenses, our pro forma net tangible book value as of would have been $ per share. This represents an immediate increase in net tangible book value of $ per share to existing stockholders and an immediate dilution in net tangible book value of $ per share to purchasers of common stock in this offering, as illustrated in the following table:

Assumed initial public offering price per share		$
Net tangible book value per share as of	$	
Increase per share attributable to new investors	$	
Pro forma net tangible book value per share at after giving effect to the offering		$
Dilution per share to new investors		$

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

The following table summarizes, on a pro forma basis, as of , the difference between the number of shares of common stock purchased from us, the total consideration paid to us, and the average price per share paid by existing stockholders and by new investors at an assumed initial public offering price of $ per share, before deducting underwriting discounts and estimated offering expenses.

	Shares Purchased		Total Consideration		
	Number	Percent	Amount	Percent	Average Price Per Share
Existing stockholders		%	$	%	$
New investors		%	$	%	$
Total		100.0%	$	100.0%	

The discussion and the tables above assume no exercise of stock options or warrants outstanding on and no issuance of shares reserved for future issuance under our equity compensation plans. As of there were:

- shares of common stock issuable upon exercise of outstanding options with a weighted average exercise price of per share;
- shares of common stock issuable upon exercise of outstanding warrants with a weighted average exercise price of per share; and
- an additional shares reserved for future stock option grants and purchases under our existing equity compensation plans.

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

- the percentage of shares of common stock held by existing stockholders will decrease to approximately % of the total number of shares of our common stock outstanding after this offering; and
- the number of shares held by new investors will be increased to or approximately % of the total number of shares of our common stock outstanding after this offering.

SELECTED CONSOLIDATED FINANCIAL DATA

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

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

	Years Ended December 31,					Three Months Ended March 31,	
	1999	2000	2001	2002	2003	2003	2004
	(in thousands, except per share amounts)						
						(unaudited)	
Consolidated Statements of Operations Data							
Revenue from related party	$ —	$ —	$ —	$ 156	$ 3,605	$ 535	$ 1,387
Operating expenses:							
Research and development(1)	39,663	49,802	53,773	66,481	61,704	$ 13,382	$ 18,874
General and administrative	4,901	10,937	10,506	11,817	12,153	2,842	3,288
Stock-based compensation(2)	3,203	43,188	10,134	4,941	2,214	205	385
Total operating expenses	47,767	103,927	74,413	83,239	76,071	16,429	22,547
Loss from operations	(47,767)	(103,927)	(74,413)	(83,083)	(72,466)	(15,894)	(21,160)
Interest and other income	7,101	10,193	11,530	4,990	3,373	817	666
Interest and other expense	(465)	(1,201)	(1,962)	(1,134)	(1,490)	(348)	(217)
Net loss	$ (41,131)	$ (94,935)	$ (64,845)	$ (79,227)	$ (70,583)	$ (15,425)	$ (20,711)
Basic and diluted net loss per common share:							
Historical	$ (11.99)	$ (16.09)	$ (7.57)	$ (8.07)	$ (6.69)	$ (1.52)	$ (1.91)
Pro forma					$ (1.19)		$ (0.35)
Shares used in per common share calculations:							
Historical	3,430	5,900	8,566	9,820	10,554	10,157	10,816
Pro forma					59,309		59,591

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

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

Research and development	$ 2,524	$ 24,403	$ 6,574	$ 3,398	$ 1,300	$ (37)	$ 292
General and administrative	679	18,785	3,560	1,543	914	242	93
Total non-cash stock-based compensation	$ 3,203	$ 43,188	$ 10,134	$ 4,941	$ 2,214	$ 205	$ 385

	December 31,					March 31,
	1999	2000	2001	2002	2003	2004
	(in thousands)					
						(unaudited)
Consolidated Balance Sheet Data						
Cash, cash equivalents and marketable securities	$ 114,428	$ 203,995	$ 152,976	$ 148,550	$ 89,152	$ 73,873
Working capital	105,847	194,885	142,649	112,720	71,085	54,157
Total assets	147,175	246,854	188,749	192,715	125,449	110,628
Long-term liabilities	4,203	11,713	7,916	18,187	37,494	39,236
Convertible preferred stock	185,209	327,107	327,107	367,358	367,358	367,528
Accumulated deficit	(56,360)	(151,295)	(216,140)	(295,367)	(365,950)	(386,661)
Total stockholders' deficit	(52,937)	(102,918)	(157,752)	(231,934)	(299,566)	(319,664)

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

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

Overview

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

We commenced operations in 1997, and as of March 31, 2004, we had an accumulated deficit of approximately $386.7 million. Most of our spending to date has been for research and development activities and general and administrative expenses. We expect to incur substantial losses for at least the next several years as we continue to invest in research and development. Depending upon the timing and structure of corporate collaborations, we anticipate that research and development expenses will increase significantly to the extent that we enter later-stage clinical trials for our product candidates currently in Phase 1 or 2, and enter clinical trials for our other product candidates. The clinical development of our product candidates may take many years and require substantial expenditures. We intend to enter into collaborative arrangements with third parties to develop certain product candidates. We have no internal manufacturing capacity or sales capabilities. We have limited marketing capabilities. As a result, our ability to achieve revenue and profitability is principally dependent on our ability to collaborate with partners in order to successfully complete the development of our product candidates, conduct clinical trials, obtain necessary regulatory approvals and manufacture and commercialize our product candidates.

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

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

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

Operating Expenses

Our Development Programs

In our bacterial infections program, we have completed seven Phase 1 human clinical trials and are currently undergoing Phase 2 clinical trials for our lead product candidate, telavancin. Assuming agreement by the FDA on our future clinical trial plans, we plan to initiate a Phase 3 clinical trial with telavancin, which would increase our research and development expenses significantly through 2006.

In our respiratory disease program, GSK is responsible for all development and commercialization costs associated with our LABA collaboration. We participate in the joint steering and project committees and are not reimbursed for our participation.

We will be responsible for all development costs associated with our product candidates in our other development programs unless GSK opts in to a development program pursuant to our strategic alliance or we enter into a collaboration agreement with a third party that provides otherwise.

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

Research and Development Expenses

Research and development expenses consist of costs of our drug-discovery efforts, conducting preclinical studies and clinical trials, activities related to regulatory filings, patent prosecution related to our development programs and manufacturing development efforts. These costs generally consist of salaries and benefits, facilities costs, laboratory supplies and amounts paid to third-party contractors that conduct certain research, development and manufacturing activities on our behalf. We outsource to third parties a substantial portion of our preclinical studies and all of our clinical trials and manufacturing of raw materials, active pharmaceutical ingredient and finished product.

General and Administrative Expenses

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

Critical Accounting Policies

This discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities

and the disclosure of contingent assets and liabilities at the date of the financial statements as well as the reported revenue and expenses during the reporting periods. We continually evaluate our estimates and judgments related to revenue recognition. We base our estimates on the terms of underlying agreements, the expected course of development, historical experience and other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

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

Revenue Recognition

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

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

Preclinical Study and Clinical Trial Expenses

A substantial portion of our preclinical studies and all of our clinical trials have been performed by third-party contract research organizations (CROs). Some CROs bill monthly for services performed, while others bill based upon milestones achieved. We accrue preclinical study and clinical trial expenses based upon an estimate of the services performed by the CRO each period. Most contracts have a duration of less than one year. As we progress our product candidates into later-stage clinical trials, we may enter into contracts with longer terms and different payment structures. We would evaluate the appropriate accrual process under such multi-year contracts to record the expenses incurred under those circumstances.

Stock-based Compensation

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

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

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

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

Agreements with GlaxoSmithKline

2002 LABA Collaboration

In November 2002, we entered into a collaboration agreement with GSK to develop and commercialize LABA product candidates for the treatment of asthma and COPD. Under the terms of the agreement, each company contributed four product candidates to the collaboration. We received an initial cash payment from GSK of $10.0 million in December 2002. In addition, we also sold 4.0 million shares of our Series E preferred stock to GSK for $40.0 million. In connection with this collaboration, in 2003 we received cash payments totaling $30.0 million as development milestones were achieved, and another $5.0 million was received in the first quarter of 2004.

We recorded the initial cash payment and subsequent milestone payments as deferred revenue, to be amortized ratably over our estimated period of performance (the product development period), which we currently estimate to be eight years from the collaboration's inception. Collaboration revenue was $156,000 in 2002 and $3.6 million in 2003, and $535,000 for the three months ended March 31, 2003 and $1.4 million for the three months ended March 31, 2004. Subsequent development milestones will be recorded as deferred revenue when received and amortized over the remaining period of performance during the development period. Additionally, GSK reimbursed us for certain costs related to the collaboration of $1.5 million in 2002 and $2.7 million in 2003 and $1.8 million for the three months ended March 31, 2003 and $259,000 for the three months ended March 31, 2004. We recorded these amounts as an offset to research and development expense.

GSK has agreed to make additional payments to us based on achievement of development and commercialization milestones over the development period. In addition, payments may be received based on product sales milestones subsequent to the estimated eight-year development period. If the development and commercialization of our LABA product candidates is successful, these payments could total $460.0 million, of which $150.0 million would be attributable to the product candidates reaching certain sales thresholds. Alternatively, we may be required to make milestone payments of up to an aggregate of $220.0 million if GSK files for regulatory approval of a medicine containing a LABA product candidate discovered by GSK and then also if the approved medicine is sold commercially. GSK will pay us the same royalty payments from product sales containing any LABA commercialized from this collaboration regardless of the origin of the compound. The royalty structure would result in an average percentage royalty rate in the low to mid-teens at annual net sales up to approximately $4.0 billion, and the average royalty rate would decline to single digits at annual net sales of more than $6.0 billion. Sales of single agent LABA medicines and combination LABA/inhaled corticosteroid medicines would be combined for the purposes of this royalty calculation.

2004 Strategic Alliance

In March 2004, we entered into a strategic alliance with GSK for the development and commercialization of product candidates in a variety of therapeutic areas. In connection with the

alliance agreement, we received a $20.0 million payment in May 2004. In addition, in May 2004, GSK, through an affiliate, purchased 9.9 million shares of our Class A common stock for $108.9 million, which increased GSK's percentage ownership in our outstanding stock from approximately 6.6% to approximately 19.8%. GSK also has an option to increase its ownership to up to approximately 60% in 2007 and to maintain its current ownership percentage until then. The alliance provides GSK with an option to license, on an exclusive, worldwide basis, product candidates from all of our existing discovery and development programs, or discovery and development programs initiated prior to September 1, 2007. Upon opting in to a new program, GSK would be responsible for all development, manufacturing and commercialization activities for such programs. Consistent with our strategy, we will be obligated at our sole cost to discover two structurally different product candidates for certain programs that GSK opts in to. We may receive clinical, regulatory and commercial milestone payments based on performance and royalties on any future sales. If a product is successfully commercialized, in addition to any royalty revenue we receive, the total upfront and milestone payments that we could receive could range from up to $130.0 million to $162.0 million for programs with single-agent medicines and up to $252.0 million for programs with both a single-agent and a combination medicine. GSK is not obligated to opt in to any of our development programs. If GSK does not exercise its opt-in right with respect to a development program, we will need to collaborate with another third party or we will incur significant development costs and potential delays in the development of the program until funding is available.

GSK may increase its ownership in our outstanding stock to up to approximately 60% through the issuance to GSK of the number of shares of stock that we may be required to redeem from our stockholders as described below. In July 2007, GSK has the right to require us to redeem ("call") 50% of our outstanding shares of common stock at $35.00 per share. If GSK does not exercise this right, our stockholders have the right to require us to redeem ("put") 50% of their common stock at $12.50 per share in August 2007. In either case, GSK is contractually obligated to pay the full redemption price; however, GSK's maximum obligation for the shares subject to the put is capped at $525.0 million. In connection with those arrangements, we have agreed not to issue new shares which would cause the potential put liability to exceed $525.0 million. If GSK's ownership increases to more than 50% in 2007 as a result of the call or put, it will receive an extension of its option to opt in to our programs initiated prior to September 1, 2012; otherwise, this exclusive option does not apply to programs initiated after September 1, 2007. See the section entitled "Description of Capital Stock—Common Stock Call and Put Arrangements with GSK."

Results of Operations

Comparison of three months ended March 31, 2003 and 2004

Revenue. We recognized revenue of $535,000 for the three months ended March 31, 2003 and $1.4 million for the three months ended March 31, 2004 from the amortization of upfront and milestone payments from GSK related to our LABA collaboration agreement. Through March 31, 2004, we have received a $10.0 million payment for entering into the collaboration and $35.0 million of milestone payments under this agreement that are being amortized into revenue ratably through 2010.

Research and development. Research and development expenses increased from $13.4 million for the three months ended March 31, 2003 to $18.9 million for the three months ended March 31, 2004. This increase primarily resulted from a $4.8 million increase in development costs related to higher clinical trial expenses for telavancin and TD-6301, and preclinical studies for other development projects. We anticipate that research and development expenses may continue to increase substantially in 2004 and subsequent years as we increase our research and development efforts and as our existing and future product candidates proceed through preclinical studies and more costly clinical trials; however, actual expenses will be based on the timing and structure of any collaborations in which the partner may incur a portion of these expenses.

General and administrative. General and administrative expenses increased from $2.8 million for the three months ended March 31, 2003 to $3.3 million for the three months ended March 31, 2004. This increase was primarily related to an increase in consulting and business development expenses in 2004. We anticipate general and administrative expenses will increase in 2004 and subsequent years to support our discovery and development efforts, commercial development activities and expanded operational infrastructure, including costs associated with operating as a public company.

Stock-based compensation. Stock-based compensation expense increased from $205,000 for the three months ended March 31, 2003 to $385,000 for the three months ended March 31, 2004. This increase reflects the amortization of deferred stock-based compensation recorded in 2003.

Interest and other income. Interest and other income includes interest income earned on cash and marketable securities, net realized gains on marketable securities and net sublease income on facilities. Interest income decreased for the three months ended March 31, 2003 from $817,000 to $666,000 in the three months ended March 31, 2004, due to lower cash balances in the 2004 period earning a lower rate of return.

Interest and other expense. Interest and other expense includes interest expense on capital lease and debt arrangements. Interest and other expense decreased from $348,000 in the 2003 period to $217,000 in the 2004 period due to declining lease and debt balances.

Comparison of years ended December 31, 2002 and 2003

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

Research and development. Research and development expenses decreased from $66.5 million in 2002 to $61.7 million in 2003. This decrease was due to a decline in development costs of $5.3 million, $3.0 million of which was related to our telavancin program, for which there were large preclinical safety studies conducted and more orders for clinical supplies placed in 2002 compared to 2003. LABA development costs declined by $3.8 million in 2003, $1.2 million of which related to higher GSK reimbursements in 2003 under the LABA collaboration agreement, which we entered into in November 2002, and $2.6 million of which was attributable to lower costs in 2003, as GSK assumed full responsibility for development costs under our collaboration. Facilities expenses also declined $1.0 million in 2003 compared to 2002, due to subleasing a portion of our facilities. These decreases in expenses in 2003 were partially offset by an increase of $2.1 million in costs associated with hiring new employees.

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

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

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

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

Comparison of years ended December 31, 2001 and 2002

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

Research and development. Research and development expenses increased from $53.8 million in 2001 to $66.5 million in 2002. The increase was primarily due to a $8.5 million increase in development costs of which $5.8 million was attributable to telavancin being advanced into Phase 1 clinical trials in December 2001 and $3.8 million was attributable to the LABA program prior to our collaboration with GSK. GSK reimbursed $1.5 million of expenses incurred in late 2002. In addition, headcount expenses increased $2.7 million in 2002 as compared to 2001 as staffing levels increased, and facilities costs rose $2.1 million with the additional lease costs associated with a 60,000 square foot building. Research and development expense in 2001 includes an impairment charge of $650,000 in 2001 related to the write-off of certain intangibles acquired in 1999.

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

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

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

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

Income Taxes

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

Liquidity and Capital Resources

Since inception through March 31, 2004, we have financed our operations primarily through the net proceeds from private placements of preferred stock totaling $367.5 million and upfront and milestone payments totaling an aggregate of $45.0 million from GSK under our LABA collaboration. As of March 31, 2004, we had $73.9 million in cash, cash equivalents and marketable securities, excluding $5.7 million in restricted cash and cash equivalents that was pledged as collateral for certain of our leased facilities and equipment. On May 11, 2004, we received an upfront payment of

$20.0 million from GSK in connection with the strategic alliance discussed above. Additionally, on that same date we issued 9.9 million shares of Class A common stock to an affiliate of GSK in exchange for $108.9 million.

Our governance agreement with GSK limits the number of shares of capital stock that we may issue and the amount of debt that we may incur. Prior to the termination of the call and put arrangements with GSK in 2007, without the prior written consent of GSK, we may not issue any equity securities if it would cause more than 84 million shares of common stock, or securities that are vested and exercisable or convertible into shares of common stock, to be outstanding. After estimating the number of shares we will require for equity incentive plans through the termination of the call and put arrangements, we believe that we may issue up to a total of approximately 16 million new shares of capital stock for capital raising purposes, including shares that we issue in connection with this offering. In addition:

- If, on or after the termination of the call and put arrangements with GSK in 2007, GSK directly or indirectly controls more than 35.1% of our outstanding capital stock, then without the prior written consent of GSK, we may not issue more than an aggregate of 25 million shares of our capital stock after September 1, 2007 through August 2012; and

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

These limits on issuing equity and debt could leave us without adequate financial resources to fund our discovery and development efforts in the event that GSK does not opt in to development programs pursuant to our alliance agreement and no other third-parties enter into collaborations with us for these programs. This could result in a reduction of our discovery and development efforts and our ability to commercialize product candidates and generate revenues and may cause us to enter into collaborations with third-parties on less favorable terms.

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

We believe the proceeds from this offering, together with our cash and cash equivalents and marketable securities, will be sufficient to meet our anticipated operating needs for at least the next eighteen months, excluding any funding from collaborations that may be received during this period. We expect to require additional capital after that period. We may need to raise additional funds if we choose to expand more rapidly than we presently anticipate, or if our operating costs exceed our expectations. Subject to the restrictions in our agreements with GSK, we may seek to sell additional equity or debt securities, or both, or incur indebtedness under one or more credit facilities. The incurrence of indebtedness would result in increased fixed obligations and could also result in covenants that would restrict our operations. We cannot guarantee that future financing will be available in amounts or on terms acceptable to us, if at all.

Cash Flows

	Years Ended December 31,			Three Months Ended March 31,	
	2001	2002	2003	2003	2004
				(unaudited)	
			(in millions)		
Cash (used in) provided by					
Operating activities	$ (47.7)	$ (58.6)	$ (31.7)	$ (14.7)	$ (14.6)
Investing activities	36.2	51.6	(13.6)	(16.8)	7.0
Financing activities	(2.4)	66.7	(27.8)	(0.7)	(0.6)

Cash used in operating activities related primarily to funding net operating losses, excluding non-cash charges primarily associated with depreciation, impairment charges and stock-based compensation. Cash used in operating activities was relatively unchanged in the three months ended March 31, 2004 compared to the same period of 2003. Cash used in operating activities in 2003 was less than 2002 primarily due to the $30.0 million in milestone payments that we received during the year from GSK under our LABA collaboration, and a decline in our operating expenses from $83.2 million in 2002 to $76.1 million in 2003. Cash used in operating activities increased from 2001 to 2002, as our operating expenses increased from $74.4 million in 2001 to $83.2 million in 2002.

Cash used in investing activities included capital expenditures of $122,000 for the three months ended March 31, 2003 and $193,000 for the three months ended March 31, 2004 and $1.5 million, $7.0 million and $763,000 in 2001, 2002 and 2003, respectively. The higher 2002 capital expenditures primarily related to leasehold improvements on our facilities. In 2002, notes receivable increased by $6.4 million as we extended loans to assist relocating employees with the purchase of their primary residence. Other investing activities for the periods primarily comprise net purchases and sales of marketable securities.

Cash used in financing activities included $768,000 and $836,000 payments on notes payable on capital leases in the three months ended March 31, 2003 and 2004, respectively. Cash from financing activities in the three months ended March 31, 2004 also includes $170,000 of proceeds from warrant exercises for convertible preferred stock. Cash used in financing activities in 2003 included $25.0 million in repayment of line of credit borrowing in 2002, and $3.2 million in notes payable and capital lease payments. Cash provided by financing activities in 2002 included $40.0 million from the issuance of Series E preferred stock to GSK in connection with our LABA collaboration, and a $25.0 million line of credit borrowing in 2002, which was repaid in 2003. Financing activities in 2001 consisted primarily of net payments on debt and capital lease arrangements.

We have provided loans to certain of our officers and employees to assist them with the purchase of a primary residence. These loans are collateralized by the residence and in certain circumstances the shares of our common stock owned by the borrower. We have also allowed certain officers and employees to exercise their stock options with full recourse promissory notes payable to us. As of March 31, 2004, the outstanding balance of all notes receivable was $11.5 million, of which $2.3 million may be forgiven subject to continuous employment. We expect to recognize expense for loan forgiveness ratably over the required terms of employment under the loan agreement as follows: $701,000 for the remainder of 2004, $728,000 in 2005, $564,000 in 2006 and $149,000 in 2007 and the balance thereafter.

On June 4, 2004, we entered into an agreement with our chief executive officer, Mr. Winningham pursuant to which we agreed to forgive Mr. Winningham's housing loan in the amount of $3,750,000, thereby extinguishing his debt in full, in recognition of Mr. Winningham entering into a lock-up agreement with us and GSK pursuant to which he has agreed not to sell or transfer 50% of the shares purchasable under all of his options prior to September 2007 and agreed not to put a

portion of the shares purchasable under his options to purchase common stock in 2007 pursuant to the call and put arrangements with GSK. See "Certain Relationships and Related Party Transactions—Loans to Executive Officers."

On June 4, 2004, we entered into an agreement with Dr. Humphrey pursuant to which we agreed to forgive Dr. Humphrey's housing loan in the amount of $953,500, thereby extinguishing his debt in full, in recognition of Dr. Humprey entering into a lock-up agreement with us and GSK pursuant to which he has agreed not to sell or transfer 50% of the shares purchasable under all of his options prior to September 2007 and agreed not to put a portion of the shares purchasable under his options to purchase common stock in 2007 pursuant to the call and put arrangements with GSK. See "Certain Relationships and Related Party Transactions—Loans to Executive Officers."

Contractual Obligations and Commitments

Our major outstanding contractual obligations relate to our notes payable, capital leases from equipment financings, operating leases and fixed purchase commitments under contract research, development, clinical supply agreements. These contractual obligations as of March 31, 2004, are as follows (in millions):

	Less than 1 year	1-3 years	4-5 years	After 5 years	Total
Notes payable	$ 0.6	$ 0.6	$ 0.2	$ 0.5	$ 1.9
Capital lease obligations	3.7	2.6	—	—	6.3
Operating leases	6.8	13.3	12.3	19.5	51.9
Purchase obligations	2.6	—	—	—	2.6
Total	$ 13.7	$ 16.5	$ 12.5	$ 20.0	$ 62.7

As security for performance of our obligations under the operating leases for our headquarters, we have issued letters of credit totaling $3.8 million, collateralized by an equal amount of restricted cash. Additionally, we have restricted cash of $1.7 million as collateral for certain equipment leases. The terms of these facilities and equipment leases require us to maintain an unrestricted cash and marketable securities balance of at least $50.0 million on the last day of each calendar quarter.

In connection with the 2004 GSK transactions, we have a commitment to pay fees totaling approximately $1.8 million to a financial advisor.

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

Disclosure About Market Risk

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

lease obligations and notes payable are all at fixed interest rates, and therefore, have minimal exposure to changes in interest rates.

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

BUSINESS

Overview

We are a biopharmaceutical company focused on the discovery, development and commercialization of small molecule medicines for unmet medical needs across a number of therapeutic areas including respiratory disease, bacterial infections, overactive bladder and gastrointestinal disorders. We have a pipeline of product candidates that we discovered and expect to develop in collaboration with partners or on our own. We plan to commercialize our medicines through partnerships with global pharmaceutical companies. In approximately seven years of operations, four product candidates discovered by us have advanced into clinical trials. Further, we have six additional product candidates discovered by us in preclinical studies. We believe that two of our product candidates have demonstrated clinical proof-of-concept in Phase 2 clinical trials.

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

In November 2002, we entered into a collaboration agreement with GlaxoSmithKline (GSK), a pharmaceutical company with substantial capabilities in respiratory drug development, formulation and commercialization, to develop and commercialize product candidates for the treatment of asthma and chronic obstructive pulmonary disease (COPD). These product candidates are intended to be administered via inhalation once daily both as a single new medicine and as part of a new combination medicine with an inhaled corticosteroid. In December 2003, our lead compound, GSK 159797, and GSK's lead compound, GSK 159901, each completed a Phase 2a clinical trial. We believe that both compounds demonstrated clinical proof-of-concept in these clinical trials. Both product candidates are undergoing further safety studies necessary before commencing Phase 2b clinical trials. GSK 159797, which was discovered by us, is currently the designated lead compound for the program.

We entered into a strategic alliance agreement with GSK in March 2004 whereby GSK received an option to license product candidates from all of our current and future drug discovery programs initiated prior to September 1, 2007, on pre-determined terms and on an exclusive, worldwide basis. If GSK exercises its option to license any of our programs, we will receive an upfront payment, additional payments upon achievement of future milestones and royalties on any future sales. In addition, GSK would fund all of the subsequent development and commercialization costs for product candidates in such programs. Consistent with our strategy, we will be obligated at our sole cost to discover two structurally different product candidates for certain programs that GSK opts in to. In July 2007, GSK has the right to require us to redeem 50% of our common stock at $35.00 per share. If GSK does not exercise this right, then in August 2007, our stockholders have the right to require us to redeem up to 50% of their common stock at $12.50 per share. In either case, GSK is obligated to fund the full redemption price and its ownership of our stock could increase to approximately 60% through the concurrent issuance to GSK of the number of shares of stock that we redeem. In addition, if GSK's ownership of our stock increases to more than 50% as a result of the call right or put right, GSK will receive an extension of its exclusive option to our programs initiated prior to September 1, 2012.

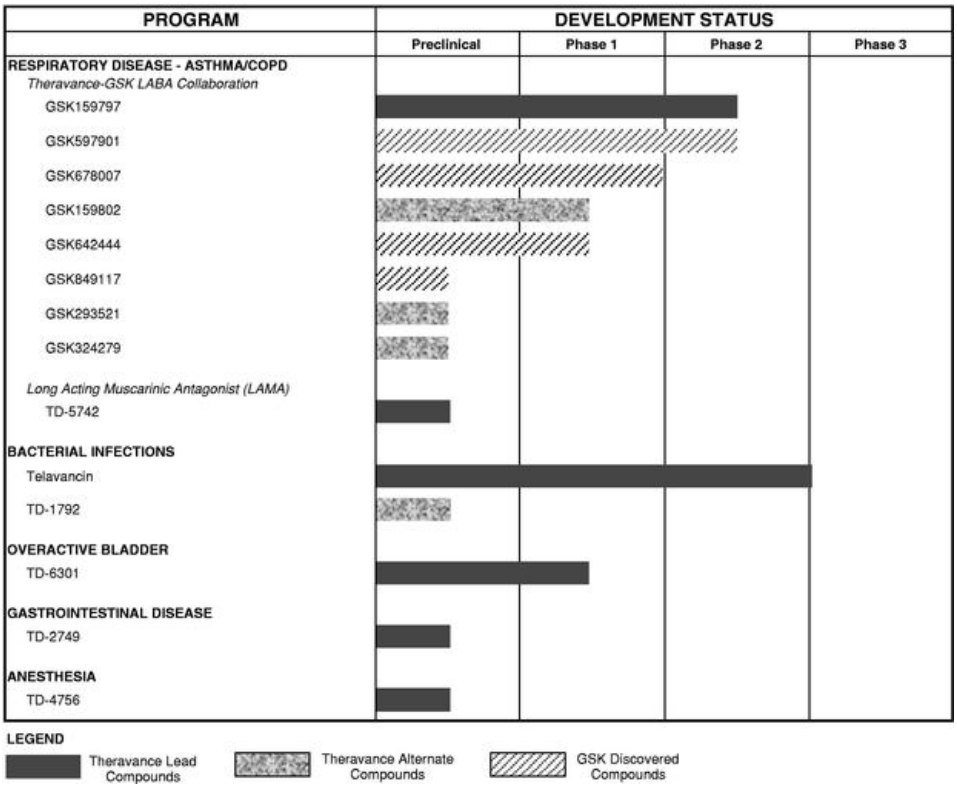
Telavancin, the lead product candidate in our bacterial infection program, is a rapidly bactericidal, injectable antibiotic. We have completed seven Phase 1 clinical trials for telavancin. In January 2004, we completed the first Phase 2 clinical trial in complicated skin and skin structure infections comparing the safety and efficacy of telavancin with current standard antibiotic therapy. We are currently in discussions with the U.S. Food and Drug Administration (FDA) regarding our plans to initiate Phase 3 clinical trials for telavancin.

The first Phase 1 clinical trial of our lead product candidate in our overactive bladder program, TD-6301, was initiated in December 2003. This clinical trial demonstrated that TD-6301 was safe and well-tolerated in healthy volunteers. We plan to initiate additional Phase 1 clinical trials in 2004.

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

Our Programs

We have applied our expertise in multivalency to discover product candidates and lead compounds in a wide variety of therapeutic areas. We believe that our lead product candidates have demonstrated in clinical trials and/or in relevant animal models, potential advantages such as substantial increases in potency, duration of action and/or selectivity relative to existing medicines or drugs in late-stage clinical trials. The table below describes the status of programs and identifies which compounds were discovered by us and are being pursued as lead product candidates, which compounds were discovered by us and are being pursued as an alternative to a lead product candidate, and which compounds were discovered by GSK and are part of the pool of compounds being pursued under our long acting beta$_2$ agonist (LABA) collaboration with GSK.



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

Our Relationship with GlaxoSmithKline

2002 LABA Collaboration

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

In connection with this collaboration, we received from GSK an upfront payment of $10 million. In addition, we sold GSK four million shares of our Series E preferred stock for an aggregate purchase price of $40 million. We have received $35 million in milestone payments through March 31, 2004, and may receive additional milestone payments from GSK if our LABA product candidates achieve development, regulatory or commercial milestones. If the continued development and commercialization of our LABA product candidates is successful, these payments could total up to an additional $460 million, of which $150 million would be attributable to the product candidates reaching certain sales thresholds. We will pay GSK regulatory and commercial milestone payments if a GSK LABA product candidate reaches approval and launch. The payments to GSK in an aggregate amount not to exceed $220 million would be made if GSK files for regulatory approval of a medicine containing a LABA product candidate discovered by GSK, and then also if the approved medicine is sold commercially. In addition, we will receive the same royalties on product sales of medicines from the LABA collaboration, regardless of whether the product candidate originated with us or with GSK. The royalty structure would result in an average percentage royalty rate in the low to mid-teens at annual net sales up to approximately $4 billion, and the average royalty rate would decline to single digits at annual net sales of more than $6 billion. Sales of single agent LABA medicines and combination LABA/inhaled corticosteroid medicines would be combined for the purposes of this royalty calculation.

2004 Strategic Alliance

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

GSK must exercise its "opt-in" right no later than sixty days subsequent to (i) for our inhaled respiratory discovery programs, the "development candidate" stage (generally defined as the point when the lead candidate is selected for preclinical studies and preparation for entry into a Phase 1 clinical trial), or (ii) for programs other than inhaled respiratory programs, the "proof-of-concept" stage (generally defined as the successful completion of a Phase 2a clinical trial if the biological target for the drug has been clinically validated by an existing medicine, and successful completion of a Phase 2b clinical trial if the biological target for the drug has not been clinically validated by an existing medicine). Upon its decision to opt in to a program, GSK will be responsible for and will fund all future development, manufacturing and commercialization activities for product candidates in that program. Consistent with our strategy, we may be obligated at our sole cost to discover two structurally different product candidates for programs that GSK opts in to. If these programs are successfully advanced through development by GSK, we will receive clinical, regulatory and commercial milestone

payments and royalties on any sales of medicines developed from these programs. If a product is successfully commercialized, in addition to any royalty revenue that we receive, the total upfront and milestone payments in any given program that GSK opts in to could range from $130.0 million to $162.0 million for programs with single-agent medicines and up to $252.0 million for programs with both a single-agent and a combination medicine. If GSK chooses not to opt in to a program, we retain all rights to the program and may continue the program alone or with a third party. GSK will have only one opportunity to opt in to each of our programs. There can be no assurance that GSK will opt in to any program under the terms of the alliance agreement or at all, which could have an adverse effect on our business and financial condition.

Upon entering into the strategic alliance with GSK, we received from GSK a payment of $20 million. At the same time, an affiliate of GSK purchased 9.9 million shares of our Class A common stock for an aggregate purchase price of $108.9 million. The purchase of our Class A common stock increased the ownership position of our outstanding stock by GSK and GSK affiliates from approximately 6.6% to 19.8%.

As part of the sale of our Class A common stock to an affiliate of GSK, we amended our certificate of incorporation to provide for the redemption of our common stock under certain circumstances. In July 2007, GSK has the right to require us to redeem 50% of our common stock at $35.00 per share. This right is referred to in this prospectus as the "call." If GSK does not exercise this call right, then in August 2007, our stockholders have the right to cause us to redeem 50% of their common stock at $12.50 per share. This right is referred to in this prospectus as the "put." In either case, GSK is contractually obligated to pay the full redemption price; however, GSK's maximum obligation for the shares subject to the put is capped at $525 million. GSK's ownership of our stock could increase to approximately 60% through the concurrent issuance to GSK of the number of shares of stock that we redeem. In addition, if GSK's ownership of our stock increases to more than 50% as a result of the call right or put right, GSK will receive an extension of its exclusive option to our programs initiated prior to September 1, 2012; otherwise, this exclusive option does not apply to programs initiated after September 1, 2007. For a more detailed description of the call and the put, see "Description of Capital Stock—Common Stock Call and Put Arrangements with GSK."

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

Development Programs

Asthma and Chronic Obstructive Pulmonary Disease (COPD)

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

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

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

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

GSK is also developing a once-daily inhaled corticosteroid (ICS) to use in a new combination medicine with a once-daily LABA from the collaboration. Advair, an inhaled twice-a-day combination medicine containing a long-acting beta$_2$ agonist and an ICS, is marketed by GSK.

The Unmet Medical Need

Asthma and COPD are both chronic diseases characterized by inflammation of the airways leading to limitation or obstruction of airflow and resulting in various symptoms relating to difficulty in breathing. Although many therapies are available for asthma and a growing number for COPD, these diseases remain major causes of death and disability. Approximately 17 million people in the United States, 15 million people in Western Europe and 5 million people in Japan have been diagnosed with asthma. The American Lung Association estimates that 14 million Americans have been diagnosed with COPD. A similar number of people have been diagnosed with COPD in Western Europe and nearly 3 million people have been diagnosed with COPD in Japan. According to IMS Health, the market for inhaled products containing long-acting beta$_2$ agonists in the United States, Japan and Europe was approximately $4.5 billion in 2003.

Advair is the current market-leading medicine for treating asthma and COPD with over $3.5 billion of sales in 2003. It is an inhaled combination medicine consisting of a long-acting beta$_2$ agonist (salmeterol) and an inhaled corticosteroid (fluticasone) taken twice daily. While Advair has been effective in the management and treatment of asthma and COPD, it must be administered twice a day, which reduces patient compliance.

In our LABA collaboration with GSK, we plan to develop a longer-acting beta$_2$ agonist that can be taken as an inhaled medicine once a day and can be combined with a once-a-day inhaled corticosteroid so the combination medicine would also be taken once a day. We believe once-a-day dosing would be a significant convenience and compliance-enhancing advantage leading to improved overall clinical outcomes in patients with asthma or COPD.

Status of Our Program

Four of our LABA product candidates and four GSK LABA product candidates are currently in development. Two product candidates, one from each company, have completed Phase 2a clinical trials. The two Phase 2a clinical trials completed in December 2003 involved patients with asthma. These clinical trials were designed to measure bronchodilation in asthmatic patients at various times following a single dose of the product candidates compared to both placebo and salmeterol, the current market-leading long-acting beta$_2$ agonist. These product candidates, GSK 159797 and GSK 159901, have demonstrated statistically greater bronchodilation at 24 hours compared to placebo and salmeterol. We believe these results represent clinical proof-of-concept and are predictive that the beneficial effect will also be seen in patients receiving these product candidates for daily treatment. The lead product candidate in this program, GSK 159797, which was discovered by us, did not have an adverse impact on heart rate, a common side effect for beta$_2$ agonists. A multi-dose Phase 2a clinical trial in patients with asthma is underway with respect to GSK 159797, the current lead compound, and a similar trial is expected to begin during the second half of 2004 with respect to GSK 159901, which was discovered by GSK.

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

Based on GSK 159797's and GSK 159901's Phase 2 clinical trial results, Phase 2b clinical trials are currently planned for these compounds. Prior to initiation of Phase 2b clinical trials, GSK 159797 and GSK 159901 will be formulated into their proposed final commercial formulations in a dry powder inhaler. We believe that it is important for the final medicine to be delivered in a dry powder inhaler, as this has been the most successful method of delivering a combination of a long-acting $beta_2$ agonist and an ICS. The work completed by GSK to date suggests that GSK 159797 and GSK 159901 can be formulated for delivery through a dry powder inhaler.

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

Inhaled Long-Acting Muscarinic Antagonists (LAMAs) for COPD

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

The Unmet Medical Need

Until recently, only one short-acting inhaled muscarinic antagonist (ipratropium) has been available in the United States, both as a single agent and in combination with the short-acting $beta_2$ agonist albuterol. This product requires dosing four or more times per day.

An inhaled LAMA (tiotropium or Spiriva) suitable for once-a-day dosing was launched in the United States in May 2004. Tiotropium has been available in Europe since 2002. Tiotropium produces prolonged blockage of muscarinic M_3 receptors. Although blocking the M_3 receptor is important for bronchodilation, there is emerging evidence that other receptor sub-types may play a role in mediating bronchodilation. In addition, after inhalation a significant amount of tiotropium reaches the systemic circulation, and, as a consequence, muscarinic M_3 receptors at other sites in the body can be blocked for an extended time. We believe this systemic activity of tiotropium is the cause of bothersome side effects such as dry mouth and constipation, which have been seen more frequently with tiotropium (especially in elderly patients) than with short-acting muscarinic antagonists (which have lower systemic adsorption) or with the long-acting $beta_2$ agonist, salmeterol.

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

Status of Our Program

We designated TD-5742 our lead LAMA compound. Preclinical studies for TD-5742 are expected to begin in 2004 and if those studies are successful, our current plan is to initiate a Phase 1 clinical trial for this compound in 2005.

Bacterial Infections

Despite the variety of antibiotics currently available, bacterial infections remain a significant and growing medical problem. Many of these infections are serious and require hospitalization and treatment with injectable antibiotics. The market that we are primarily targeting represents approximately 32 million patient treatment days with antibiotics effective against infections caused by drug resistant Gram-positive bacteria. According to IMS Health, from 1998 to 2003, treatment days in this category grew at a rate of 12% annually. Worldwide sales in this category totaled $730 million in 2003. Vancomycin, a generic medicine, leads this portion of the injectible antibiotic market with worldwide annual sales of approximately $370 million.

The Unmet Medical Need

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

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

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

Status of Our Program

We have completed seven Phase 1 clinical trials for telavancin which were designed to test the safety, pharmacokinetics and pharmacodynamics of the drug. Positive results from the trials supported further clinical development.

In January 2004, we completed our first Phase 2 clinical trial of telavancin in complicated skin and skin structure infections (cSSSI) comparing the safety and efficacy of telavancin with current standard antibiotic therapy. This study was a randomized, double blind exploratory comparison of telavancin at 7.5 mg/kg versus standard therapy for the treatment of cSSSI in 169 patients. Eighty-four patients were randomized to receive telavancin and 83 received standard therapy (vancomycin or a semi-synthetic penicillin). Based on the results of this Phase 2 clinical trial, we believe we have demonstrated proof-of-concept for telavancin.

An ongoing Phase 2 clinical trial in cSSSI, identical to the first, is expected to ultimately enroll up to 200 patients. This study provides an opportunity to continue to build the safety database with telavancin as well as explore the safety and efficacy of a 10mg/kg dose of telavancin. A third Phase 2 clinical trial in *Staphylococcus aureus* blood stream infections (bacteremia) is ongoing. This trial randomizes patients to receive either telavancin 10mg/kg or standard therapy (as in the cSSSI studies).

This is a trial in uncomplicated blood stream infection that includes patients with a single positive blood culture without evidence of infection in other tissues.

We are currently in discussions with the FDA regarding our plans to initiate a Phase 3 clinical trial for telavancin. The Phase 3 clinical trial will focus on serious infections where MRSA is a common and challenging causative bacteria. In parallel with the clinical development program for telavancin, we are working to finalize commercial manufacturing processes for the active pharmaceutical ingredient and formulated drug product.

Overactive Bladder

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

The Unmet Medical Need

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

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

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

Preclinical studies indicate that our product candidate, TD-6301, may be more bladder selective than comparable products. This selectivity may result in less frequent side effects, particularly dry mouth, compared to the current market-leading medicines.

Status of Our Program

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

Gastrointestinal Motility Dysfunction

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

The Unmet Medical Need

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

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

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

Status of Our Program

TD-2749, our lead compound in this program, has met our preclinical requirements, including favorable prokinetic efficacy compared to tegaserod in relevant animal models. TD-2749 will next be tested in the various preclinical studies that the regulatory authorities require before initiating Phase 1 clinical trials. If TD-2749 shows the required safety in these studies, we plan to initiate Phase 1 clinical trials in 2005.

Anesthesia

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

The Unmet Medical Need

The leading intravenous sedative-hypnotics are propofol (Diprivan) and midazolam (Versed). According to IMS Health, the market for injectable forms of these two drugs in the United States, Japan, and Europe was approximately $900 million in 2003.

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

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

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

Status of Our Development Program

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

Asthma and COPD Research Programs

When inhaled into the lungs, both muscarinic antagonists and $beta_2$ agonists cause bronchodilation, but by different mechanisms of action. Moreover, both classes of drugs have non-bronchodilator effects that can be complementary and beneficial in patients with COPD and perhaps in patients with severe asthma. Currently many patients are using both inhaled muscarinic antagonists and inhaled $beta_2$ agonists (either in two separate inhalers or via the product Combivent which combines short-acting agents from the two drug classes). According to Scott-Levin (a division of Verispan), in the United States approximately 35% of patients on maintenance bronchodilator therapy are using both muscarinic antagonists and $beta_2$ agonists.

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

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

Multivalency

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

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

- Many targets have multiple binding sites and/or exist in clusters with similar or different targets;

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

- Molecules that simultaneously attach to multiple binding sites can exhibit considerably greater potency, duration of action and/or selectivity than molecules that attach to only one binding site; and

- Greater potency, duration of action and/or selectivity provides the basis for superior therapeutic effects, including enhanced convenience, tolerability and/or safety compared to conventional drugs.

Our Strategy

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

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

- existing drugs have levels of efficacy, convenience, tolerability and/or safety that are insufficient to meet an important medical need; and

- we believe our expertise in multivalency can be applied to create superior product candidates that are more potent, longer acting and/or more selective than currently available medicines; and

- there are established animal models that can be used to provide us with evidence as to whether our product candidates are likely to provide superior therapeutic benefits relative to current medicines; and

- there is a relatively large commercial opportunity.

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

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

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

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

Manufacturing

We currently rely on a small number of third-party manufacturers and our collaborative partner, GSK, to produce our compounds for clinical purposes and expect do so for commercial production of any product candidates that are approved for marketing. Commercial manufacturing of our LABA program candidates will be handled by GSK. Additionally, GSK will be responsible for the manufacturing of any product candidates associated with the programs in which it exercises its opt-in right under the strategic alliance agreement.

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

Government Regulation

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

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

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

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

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

The results of product development, preclinical studies and clinical trials must be submitted to the FDA as part of a new drug application, or NDA. The NDA also must contain extensive manufacturing information. Once the submission has been accepted for filing, the FDA typically takes one year to review the application and respond to the applicant. The review process is often significantly extended by FDA requests for additional information or clarification. Once approved, the FDA may withdraw the product approval if compliance with pre- and post-marketing regulatory standards is not maintained or if problems occur after the product reaches the marketplace. In addition, the FDA may require post-marketing studies, referred to as Phase 4 studies, to monitor the

effect of approved products, and may limit further marketing of the product based on the results of these post-marketing studies. The FDA has broad post-market regulatory and enforcement powers, including the ability to suspend or delay issuance of approvals, seize or recall products, withdraw approvals, enjoin violations, and institute criminal prosecution.

If we obtain regulatory approval for a medicine, this clearance will be limited to those diseases and conditions for which the medicine is effective, as demonstrated through clinical trials. Even if this regulatory approval is obtained, a marketed medicine, its manufacturer and its manufacturing facilities are subject to continual review and periodic inspections by the FDA. Discovery of previously unknown problems with a medicine, manufacturer or facility may result in restrictions on the medicine or manufacturer, including costly recalls or withdrawal of the medicine from the market.

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

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

Patents and Proprietary Rights

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

As of May 1, 2004, we had 35 issued United States patents and have received notices of allowance for 7 other United States patent applications. As of that date, we had 75 pending patent applications in the United States and 59 granted foreign patents. We also have 14 Patent Cooperation Treaty applications that permit us to pursue patents outside of the United States and 272 foreign national patent applications. The claims in these various patents and patent applications are directed to compositions of matter, including claims covering product candidates, lead compounds and key intermediates, pharmaceutical compositions, methods of use, and processes for making our compounds along with methods of design, synthesis, selection and use relevant to multivalency in general and to our research and development programs in particular.

We have entered into a License Agreement with Janssen Pharmaceutical pursuant to which we have licensed rights under certain patents owned by Janssen covering an excipient used in the formulation of telavancin. Pursuant to the terms of this license agreement, we are obligated to pay royalties and milestone payments to Janssen based on any commercial sales of telavancin.

Competition

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

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

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

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

Employees

As of May 1, 2004, we had 235 full-time employees, over 183 of whom were primarily engaged in research and development activities. None of our employees are represented by a labor union. We consider our employee relations to be good.

Facilities

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

Legal Proceedings

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

MANAGEMENT

The following table sets forth our executive officers, directors and key employees, their ages and the positions they held as of May 15, 2004.

Name	Age	Position
Executive Officers and Directors		
Rick E Winningham	44	Chief Executive Officer, President and Director
Patrick P.A. Humphrey, Ph.D., D.Sc.	58	Executive Vice President, Research
Marty Glick	55	Executive Vice President, Finance and Chief Financial Officer
David L. Brinkley	46	Senior Vice President, Commercial Development
Arthur L. Campbell, Ph.D.	53	Senior Vice President, Technical Operations
Michael M. Kitt, M.D.	54	Senior Vice President, Development
Bradford J. Shafer	44	Senior Vice President, General Counsel and Secretary
A. Gregory Sturmer	41	Vice President, Finance
P. Roy Vagelos, M.D.	74	Chairman of the Board of Directors
Julian C. Baker(1)	37	Director
Jeffrey M. Drazan(1)(2)	45	Director
Robert V. Gunderson, Jr.(3)	52	Director
Arnold J. Levine, Ph.D.	64	Director
Ronn C. Loewenthal(1)	45	Director
Michael G. Mullen	45	Director
William H. Waltrip(2)(3)	66	Director
George M. Whitesides, Ph.D.(1)	64	Director
William D. Young(1)(3)	59	Director
Key Employees		
Michael Conner, D.V.M.	50	Vice President, Safety Assessment/Toxicology
John Kent, Ph.D.	61	Vice President, Pharmaceutical Sciences
Edmund J. Moran, Ph.D.	42	Vice President, Medicinal Chemistry
G. Roger Thomas, Ph.D.	48	Vice President, Pharmacology

(1) Member of Compensation Committee.

(2) Member of Audit Committee.

(3) Member of Nominating/Corporate Governance Committee.

Executive Officers and Directors

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

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

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

Marty Glick has been our Executive Vice President, Finance since April 2000 and has served as our Chief Financial Officer since joining Theravance in 1998. From 1998 to April 2000 Mr. Glick served as our Senior Vice President, Finance. From 1987 to 1997 he was employed with Genentech, Inc., most recently as Vice President of Finance. Mr. Glick is chair of the Biotechnology Industry Organization's Tax and Finance Committee. Mr. Glick also co-founded EyeTech Pharmaceuticals, Inc., a company specializing in discovering novel drugs to treat the leading cause of blindness, and he currently serves on its board of directors. Mr. Glick earned an M.B.A. in Finance from the Kellogg School of Management at Northwestern University and a B.S.B.A. from Creighton University, where he graduated magna cum laude. Mr. Glick is also a Certified Public Accountant and a Chartered Accountant (Canada).

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

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

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

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

A. Gregory Sturmer joined Theravance as Vice President, Finance in 1998. He was Corporate Controller of Vivus, Inc. from 1995 to 1998, Chief Financial Officer of Sonoma Valley Hospital, a northern California hospital from 1991 to 1995 and a manager with Arthur Andersen, LLP from 1984

to 1991. Mr. Sturmer is a Certified Public Accountant and has an M.B.A. from Pepperdine University and a B.S. from California State University, Hayward, where he graduated summa cum laude.

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

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

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

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

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

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

Michael G. Mullen has served as a director of Theravance since September 2002. Since 1999, Mr. Mullen has been a member of the Bellevue Group of Switzerland, which focuses on investing in

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

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

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

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

Key Employees

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

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

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

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

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

Election of Officers

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

Committees of the Board of Directors

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

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

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

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

Compensation Committee. The expected members of our compensation committee are Messrs. Young, Whitesides, Baker, Drazan and Loewenthal. Mr. Young chairs the compensation committee. The purpose of our compensation committee is to discharge the responsibilities of our board of directors relating to compensation of our executive officers. Specific responsibilities of our compensation committee include:

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

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

Director Compensation

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

Under the director compensation program adopted on April 28, 2004, members of our board of directors who are not our employees will also receive equity incentives. Each independent director who joins our board of directors after April 28, 2004 will receive a nonstatutory stock option exercisable for 40,000 shares of common stock with an exercise price equal to the then fair market value per share of our common stock. This stock option will vest in two equal annual installments of 20,000 shares on the first and second anniversaries of his or her date of election or appointment to our board of directors. On April 28, 2004, each of Messrs. Baker, Drazan, Gunderson, Levine, Lowenthal, Mullen, Waltrip, Whitesides and Young, the current non-employee members of our board of directors, was granted a fully-vested nonstatutory stock option exercisable for 40,000 shares of common stock with an exercise price of $6.25 per share. In addition, at each annual meeting beginning in 2005, each non-employee member of our board of directors will receive a fully-vested nonstatutory stock option exercisable for 20,000 shares of common stock with an exercise price equal to the then fair market value per share of our common stock. Options granted under the director compensation program will not be exercisable before September 1, 2007 and will have a term of 10 years.

Dr. Vagelos receives annual compensation of approximately $82,500 for his service as Chairman of our board of directors. In addition, Dr. Vagelos is entitled to receive option grants in each of 2003, 2004 and 2005 for a number of shares equal to 125% of the number of shares granted to Mr. Winningham in each of those years, provided that Dr. Vagelos continues to provide a high level of

involvement and exceptional contributions to our business. On January 24, 2003, we granted an option to Dr. Vagelos to purchase 218,750 shares of our common stock at an exercise price of $2.00 per share. The option is exercisable for all of the shares. Provided Dr. Vagelos remains in our service, the option shares will vest over four years. On March 29, 2004, we granted an option to Dr. Vagelos to purchase 645,000 shares of our common stock at an exercise price of $6.25 per share. Provided Dr. Vagelos remains in our service, the option will become exercisable for 40% of the shares on September 2, 2007, for 30% of the shares on March 29, 2008, and for 30% of the shares on March 29, 2009. The 2004 option will vest in full if we are acquired and Dr. Vagelos ceases service with us due to involuntary termination. A transaction by which GSK acquires less than 100% our stock or assets will not be considered an acquisition that would trigger the foregoing acceleration provision.

Compensation Committee Interlocks and Insider Participation

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

Executive Compensation

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

Summary Compensation Table

	Annual Compensation			Long-Term Compensation Awards
Name and Principal Position	**Salary($)**	**Bonus($)**	**Other Annual Compensation($)**	**Securities Underlying Options(#)**
Rick E Winningham *Chief Executive Officer*	$ 622,917	$ 359,375	—	275,000
Patrick P.A. Humphrey *Executive Vice President, Research*	325,194	150,099	$ 48,413(2)	92,250
Marty Glick *Executive Vice President, Finance and Chief Financial Officer*	309,030	142,611	—	52,250
Michael Kitt *Senior Vice President, Development*	288,865	100,093	—	80,000
Bradford J. Shafer *Senior Vice President, General Counsel*	278,863	243,517(1)	—	45,000

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

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

Option Grants in Last Fiscal Year

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

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

In addition to the options listed in the table, we granted options to purchase the number of shares indicated to the named executive officers on March 29, 2004: Mr. Winningham: 645,000, Mr. Humphrey: 315,000, Mr. Glick: 315,000, Mr. Kitt: 150,000, and Mr. Shafer: 150,000. Each of these options has an exercise price of $6.25 per share and becomes exercisable as follows: for 40% of the shares on September 2, 2007, 30% of the shares on March 29, 2008 and 30% of the shares on March 29, 2009. In addition, we granted Mr. Glick an option to purchase 100,000 shares, with an exercise price of $6.25 per share. The option will vest in three equal annual installments on March 29, 2005, 2006 and 2007, but will not be exercisable before September 1, 2007. The options will vest in full if we are acquired and the officer ceases employment with us due to involuntary termination. A transaction by which GSK acquires less than 100% our stock or assets will not be considered an acquisition that would trigger the foregoing acceleration provision.

	Individual Grants				Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term(3)	
Name	Number of Securities Underlying Options Granted	Percent of Total Options Granted To Employees In Fiscal Year(1)	Exercise Price(2)	Expiration Date	5%	10%
Rick E Winningham	175,000	5.74%	$ 2.00	1/24/2013	$	$
	100,000	3.28%	$ 2.00	1/24/2013	$	$
Patrick P.A. Humphrey	52,250	1.72%	$ 2.00	1/24/2013	$	$
	40,000	1.31%	$ 2.00	1/24/2013	$	$
Marty Glick	52,250	1.71%	$ 2.00	1/24/2013	$	$
Michael Kitt	40,000	1.31%	$ 2.00	1/24/2013	$	$
	40,000	1.31%	$ 2.00	1/24/2013	$	$
Bradford J. Shafer	45,000	1.48%	$ 2.00	1/24/2013	$	$

(1) The figures representing percentages of total options granted to employees in the last fiscal year are based on a total of 3,047,140 shares underlying options granted to our employees during fiscal year 2003.

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

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

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

- Subtracting from that result the total option exercise price.

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

Option exercises and fiscal year-end values

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

	Number of Securities Underlying Unexercised Options at December 31, 2003		Value of Unexercised in-the-Money Options at December 31, 2003(1)	
Name	**Vested**	**Unvested**	**Vested**	**Unvested**
Rick E Winningham	690,104	784,896		
Patrick P.A. Humphrey	336,974	355,276		
Marty Glick	160,724	40,276		
Michael Kitt	162,291	267,709		
Bradford J. Shafer	40,104	69,896		

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

Employment Agreements

On August 23, 2001, we extended an offer to Mr. Winningham to become our Chief Executive Officer. The agreement provides for an annual salary of $600,000 and that Mr. Winningham is eligible to receive a bonus of up to 50% of his salary and additional bonuses based on extraordinary accomplishments at the discretion of our board of directors. The agreement provides that if Mr. Winningham's service is terminated without cause, he will receive a lump-sum severance payment of 24 months salary plus two times his current target bonus. The agreement also provides that Mr. Winningham may borrow up to $3,750,000 from us pursuant to an interest-free loan to purchase a residence. Mr. Winningham elected to borrow such funds in July 2002. Under the agreement, we agreed to share with Mr. Winningham any loss or profit realized on the sale of his principal residence if he remained employed by us through 2006. The loan was secured by a second deed of trust on the residence and a pledge of any shares acquired pursuant to the exercise of certain of his stock options. This loan was forgiven and the home equity sharing arrangement was terminated on June 4, 2004 in connection with Mr. Winningham's agreement to lock-up certain shares for an extended period. We also agreed to pay Mr. Winningham a bonus equal to the amount of additional income and employment taxes that he will incur upon the loan being forgiven. See the section entitled "Certain Relationships and Related Party Transactions."

On April 6, 2001, we extended an offer to Dr. Humphrey to become our Senior Vice President of Research. The agreement provides that Dr. Humphrey is eligible to receive a bonus of up to 30% of his salary. The agreement provides that we will pay 50% of Dr. Humphrey's housing rental costs or that Dr. Humphrey may borrow up to $1,000,000 from us pursuant to an interest-free loan to purchase a residence. Dr. Humphrey elected to borrow such funds in February 2002. The loan was secured by a deed of trust on the residence and a pledge of any shares acquired pursuant to the exercise of certain

of his stock options. This loan was forgiven on June 4, 2004 in connection with Dr. Humphrey's agreement to lock-up certain shares for an extended period. We also agreed to pay Dr. Humphrey a bonus equal to the amount of additional income and employment taxes that he will incur upon the loan being forgiven. See the section entitled "Certain Relationships and Related Party Transactions."

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

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

Severance and Change of Control Arrangements

The compensation committee of the board of directors, as plan administrator of the 2004 Equity Incentive Plan, has the authority to provide for accelerated vesting of the shares of common stock subject to outstanding options held by the officers named in the Summary Compensation Table and any other person in connection with certain changes in control of Theravance. In connection with our adoption of the 2004 Equity Incentive Plan, we have provided that upon a change in control of Theravance, each outstanding option and all shares of restricted stock will generally not accelerate vesting unless the surviving corporation does not assume the option or award or replace it with a comparable award. If options or awards are assumed or replaced by the surviving corporation, they will become fully exercisable and fully vested if the holder's employment or service is terminated without cause within three months before or twenty-four months following a change in control. Options granted before 2004 will vest as if the optionee had completed an additional 12 months of service if we are acquired and the officer ceases employment with us due to involuntary termination.

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

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

Equity Benefit Plans

2004 Equity Incentive Plan

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

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

Share Reserve. We have reserved 5,700,000 shares of our common stock for issuance under the 2004 Equity Incentive Plan, plus the number of shares remaining available for issuance under our 1997 Stock Plan and Long-Term Stock Option Plan, of which no more than 3,100,000 shares may be issued as direct stock awards. In general, if options or shares awarded under the 1997 Stock Plan, the Long Term Stock Option Plan, or the 2004 Equity Incentive Plan are forfeited or repurchased, then those options or shares will again become available for awards under the 2004 Equity Incentive Plan.

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

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

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

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

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

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

A participant who exercises a stock appreciation right receives the increase in value of our common stock over the base price. The base price for stock appreciation rights granted under the 2004 Equity Incentive Plan shall be determined by the compensation committee. The settlement value of the stock appreciation right may be paid in cash or shares of common stock. Options and stock appreciation rights vest at the times determined by the compensation committee. In most cases, our options and stock appreciation rights will vest over a four-year period following the date of grant. Options and stock appreciation rights generally expire 10 years after they are granted. The compensation committee

may provide for a longer term except that options and stock appreciation rights generally expire earlier if the participant's service terminates earlier. No participant may receive options or stock appreciation rights under the 2004 Equity Incentive Plan covering more than 2,325,000 shares in one calendar year, except that a newly hired employee may receive options or stock appreciation rights covering up to 3,100,000 shares in the first year of employment.

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

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

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

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

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

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

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

- Each non-employee director who first joins our board of directors after the effective date of the 2004 Equity Incentive Plan will receive an initial option for 40,000 shares. The initial grant of this option will occur when the director takes office. The option will vest in two equal annual installments.
- At the time of each of our annual stockholders' meetings, beginning in 2005, each non-employee director who will continue to be a director after that meeting will

automatically be granted an option for 20,000 shares of our common stock. However, a new non-employee director who is receiving the initial option will not receive this option in the same calendar year. The options will be fully vested at grant.

- A non-employee director's option granted under this program will become fully vested upon a change in control of Theravance.

- The exercise price of each non-employee director's option will be equal to the fair market value of our common stock on the option grant date. A director may pay the exercise price by using cash, shares of common stock that the director already owns, or an immediate sale of the option shares through a broker designated by us. The non-employee director's options have a 10-year term, except that they expire one year after the director leaves the board of directors (three years if the departure from the board of directors occurred before September 1, 2007) or three years after the director leaves the board of directors due to retirement, if the ten-year term has not expired.

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

Employee Stock Purchase Plan

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

Share Reserve. We have reserved 500,000 shares of our common stock for issuance under the plan.

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

Eligibility. All of our employees are eligible to participate if we employ them for more than 20 hours per week and for more than five months per year. However, we have decided not to allow officers to participate in this plan, at least initially. Eligible employees may begin participating in the Employee Stock Purchase Plan at the start of any offering period.

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

Amount of Contributions. Our Employee Stock Purchase Plan permits each eligible employee to purchase common stock through payroll deductions. Each employee's payroll deductions may not exceed 15% of the employee's cash compensation. Purchases of our common stock will generally occur on January 31, April 30, July 31 and October 31 of each year, except that the first purchase will occur at least 6 months after the date of this prospectus. Each participant may purchase up to the number of shares determined by our board of directors on any purchase date, not to exceed 3,875 shares. The value of the shares purchased in any calendar year may not exceed $25,000.

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

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

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

Limitation of Liability and Indemnification of Officers and Directors

Upon the closing of this offering, we will adopt and file a new amended and restated certificate of incorporation and will amend and restate our bylaws. Our new amended and restated certificate of incorporation and amended and restated bylaws provide that we will indemnify our directors and officers to the fullest extent permitted by Delaware law, as it now exists or may in the future be amended, against all expenses and liabilities reasonably incurred in connection with their service for or on behalf of us. In addition, the new amended and restated certificate of incorporation provides that our directors will not be personally liable for monetary damages to us for breaches of their fiduciary duty as directors, unless they violated their duty of loyalty to us or our stockholders, acted in bad faith, knowingly or intentionally violated the law, authorized illegal dividends or redemptions or derived an improper personal benefit from their action as directors. We maintain liability insurance which insures our directors and officers against certain losses and which insures us against our obligations to indemnify our directors and officers.

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

PRINCIPAL STOCKHOLDERS

The following table sets forth certain information known to us regarding beneficial ownership of our common stock as of March 31, 2004 and as adjusted to reflect the sale of the shares of common stock in this offering by:

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

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

Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission and generally includes voting or investment power with respect to securities. Except as noted by footnote, and subject to community property laws where applicable, the persons named in the table below have sole voting and investment power with respect to all shares of common stock shown as beneficially owned by them. Affiliates of Merrill Lynch, Pierce, Fenner & Smith Incorporated and affiliates of Lehman Brothers Inc. own 2,287,582 and 2,143,790 shares of our common stock, respectively, which each acquired in private transactions prior to September 2000.

This table lists applicable percentage ownership based on 66,088,733 shares of common stock outstanding as of March 31, 2004, and also lists applicable percentage ownership based on shares of common stock outstanding after the closing of the offering. The number of shares of common stock to be outstanding after the offering is based on shares of common stock outstanding as of March 31, 2004, plus the May 11, 2004 issuance of 9,900,000 shares of our Class A common stock to an affiliate of GSK. Options and warrants to purchase shares of our common stock that are exercisable within 60 days of March 31, 2004, are deemed to be beneficially owned by the persons holding these options for the purpose of computing percentage ownership of that person, but are not treated as outstanding for the purpose of computing any other person's ownership percentage.

		Percentage of Shares Beneficially Owned	
Name and Address of Beneficial Owner(1)	**Number of Shares Beneficially Owned**	**Before Offering**	**After Offering**
5% Stockholders			
Sierra Ventures VI, L.P.(2) 3000 Sand Hill Road, Building 4, Suite 210 Menlo Park, CA 94025	4,561,699	6.9%	%
GlaxoSmithKline plc(3) 980 Great West Road Brentford Middlesex TW8 9GS United Kingdom	4,000,000	6.1	
P. Roy Vagelos, M.D.	3,660,156	5.5	

Biotech Growth S.A. Swiss Bank Tower Obarie Street, Panama 1 Republic of Panama	3,111,111	4.7
Executive Officers and Directors		
Rick E Winningham(4)	2,120,000	3.2
Marty Glick(5)	1,028,000	1.6
Patrick P.A. Humphrey(6)	1,007,250	1.5
Bradford J. Shafer(7)	623,750	*
Michael M. Kitt, M.D.(8)	580,000	*
P. Roy Vagelos, M.D.(9)	3,660,156	5.5
Julian C. Baker(10)	154,903	*
Jeffrey M. Drazan(11)	4,586,699	6.9
Robert V. Gunderson, Jr.(12)	174,059	*
Arnold J. Levine, Ph.D.	110,000	*
Ronn C. Loewenthal(13)	978,104	1.5
Michael G. Mullen(14)	3,111,111	4.7
William H. Waltrip(15)	50,000	*
George M. Whitesides, Ph.D.(16)	1,213,000	1.8
William D. Young(17)	50,000	*
All executive officers and directors as a group (15 persons)(18)	19,447,032	29.4

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

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

(2) Includes 4,162,479 shares held of record by Sierra Ventures VI, L.P. and 399,220 shares held of record by SV Associates VI, L.P. in nominee name. SV Associates VI, L.P. is the general partner of Sierra Ventures VI, L.P. Management of the business affairs of SV Associates VI, L.P., including the decisions respecting disposition and voting of investments, is by majority decision of its general partners.

(3) Includes 4,000,000 shares of common stock converted to Class A common stock on May 11, 2004 held of record by Glaxo Group Limited plc. As presented, does not include 9,900,000 shares of Class A common stock purchased by SmithKline Beecham Corporation on May 11, 2004. Glaxo Group Limited plc and SmithKline Beecham Corporation each are wholly-owned subsidiaries of GlaxoSmithKline Group.

(4) Includes 2,120,000 shares issuable upon exercise of stock options.

(5) Includes 616,000 shares issuable upon exercise of stock options.

(6) Includes 1,007,250 shares issuable upon exercise of stock options.

(7) Includes 260,000 shares issuable upon exercise of stock options. Also includes 353,750 shares held of record by the Bradford J. Shafer Revocable Living Trust Dated 10/30/97. Also includes 29,514 shares subject to repurchase by us if Mr. Shafer is no longer employed by us. Also includes 10,000 shares held in trust for the benefit of Mr. Shafer's children.

(8) Includes 580,000 shares issuable upon exercise of stock options.

(9) Includes 1,195,000 shares issuable upon exercise of stock options. Also includes 150,000 shares held of record by the Marianthi Foundation, of which Dr. Vagelos is a founder and current director. Also includes 60,000 shares held of record by the Cara Diana Roberts Trust, 60,000 shares held of record by the Olivia Sophia Vagelos Trust, and 60,000 shares held of record by the Lydia Joan Roberts Trust, of which Dr. Vagelos is the trustee. Also includes 243,837 shares subject to repurchase by us if Dr. Vagelos ceases to serve as a director.

(10) Includes 50,000 shares issuable upon exercise of stock options. Also includes 104,903 shares held of record by FBB Associates, a partnership in which Mr. Baker has shared voting and investment power.

(11) Includes 4,162,479 shares held of record by Sierra Ventures VI, L.P. and 399,220 shares held of record by SV Associates VI, L.P. in nominee name. Mr. Drazan is a general partner of SV Associates VI, L.P. SV Associates VI, L.P. is the general partner of Sierra Ventures VI, L.P. Mr. Drazan disclaims beneficial ownership of the shares held by Sierra Ventures VI, L.P. and Sierra Ventures Associates VI, L.P. except to the extent of his pecuniary interest therein.

(12) Includes 96,640 shares held of record by G&H Partners, of which Mr. Gunderson is a general partner, and 27,419 shares held by UMB Bank for the benefit of G&H Partners. Mr. Gunderson disclaims beneficial ownership of such shares except to the extent of his pecuniary interest in G&H Partners.

(13) Includes 50,000 shares issuable upon exercise of stock options. Also includes 928,104 shares held of record by Dr. Hasso Plattner, for whom Mr. Loewenthal has power of attorney and voting and investment power. Mr. Loewenthal disclaims beneficial ownership of the shares held by Dr. Plattner.

(14) Includes 3,111,111 shares held of record by Biotech Growth, S.A, a subsidiary of BB Biotech AG. Mr. Mullen is President of Bellevue Research, Inc., which provides research and consulting services to Bellevue Asset Management, which has the legal mandate to assist in the management of the assets of BB Biotech AG. Mr. Mullen disclaims beneficial ownership of such shares.

(15) Includes 50,000 shares issuable upon exercise of stock options.

(16) Includes 152,500 shares subject to repurchase by us if Dr. Whitesides ceases to serve as a director. Also includes 300,000 shares held of record by the Whitesides Family Trust, of which Dr. Whitesides is the trustee.

(17) Includes 50,000 shares issuable upon exercise of stock options.

(18) Includes an aggregate of 5,978,250 shares issuable upon exercise of options and an aggregate of 425,851 outstanding shares subject to repurchase by us upon termination of service to us by the holders thereof.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

GSK Transactions

In December 2002, we entered into a collaboration agreement with GSK. In connection with this agreement, we received a payment of $10.0 million and sold 4,000,000 shares of our Series E preferred stock to Glaxo Group Limited, an affiliate of GSK and one of our greater than 5% beneficial stockholders, at a purchase price of $10.00 per share. These shares were converted to common stock in connection with our May 2004 sale of Class A common stock to SmithKline Beecham Corporation, an affiliate of Glaxo Group Limited and GSK. We have also received $35.0 million in milestone payments through March 31, 2004 pursuant to the collaboration agreement, and may receive clinical, regulatory and commercial milestone payments from GSK pursuant to this collaboration based on the performance of our product candidates. For a more detailed description of the collaboration agreement, see the section entitled "Business—Our Relationship with GSK."

In May 2004, we sold 9,900,000 shares of Class A common stock to SmithKline Beecham Corporation, an affiliate of GSK and Glaxo Group Limited, one of our greater than 5% beneficial stockholders, at a purchase price of $11.00 per share and issued to Glaxo Group Limited 4,000,000 shares of Class A common stock in exchange for 4,000,000 shares of common stock. We also entered into a strategic alliance agreement with GSK pursuant to which GSK received an option to license product candidates from all of our current and future discovery and development programs initiated prior to September 1, 2007 on an exclusive, worldwide basis, and we received from GSK an upfront payment of $20.0 million. For a more detailed description of the alliance agreement, see the section entitled "Business—Our Relationship with GSK." In addition, we have entered into a governance agreement with GSK, which governs future acquisitions or dispositions of our securities by GSK and GSK's right to elect directors to our board of directors. The governance agreement is further described in the section entitled "Description of Capital Stock—Governance Agreement."

Amended and Restated Investors' Rights Agreement

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

Employment Agreements

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

Indemnification Agreements

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

Stock Option Grants

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

Loans to Executive Officers

We have provided loans to the officers and directors identified below for the exercise of options to purchase shares of Theravance common stock. In general, the loans are interest-free and the full amount of an officer's loan will be forgiven if the officer remains employed by us at the time the shares subject to his option vest in full. Mr. Shafer's loan dated March 16, 2000 bears interest at the rate of 7% per year compounded annually and does not provide for automatic forgiveness when the options vest in full. As of March 31, 2004, no payments had been made on any of the loans listed in the table, except as set forth below.

Name & Title	Principal Amount	Number of Shares Acquired	Indebtedness as of March 31, 2004	Date of Loan	Full Vesting Date	Maturity Date
P. Roy Vagelos *Chairman of the Board of Directors*	$ 392,000	800,000	$ 392,000	12/17/98	11/01/04	12/31/04
Marty Glick *Executive Vice President, Finance and Chief Financial Officer*	$ 98,000	200,000	$ 98,000	10/2/98	6/30/04	6/30/04
Bradford J. Shafer	$ 229,250	43,750	$ 301,869	3/16/00	2/1/04	3/16/05
Senior Vice President, General Counsel	$ 105,000	125,000	$ 105,000	2/11/00	8/2/05	8/2/05
George Whitesides	$ 12,250	25,000	$ 12,250	12/14/98	9/3/05	9/29/05
Director	$ 9,800	20,000	$ 9,800	12/14/98	9/1/06	8/31/06
	$ 39,200	80,000	$ 39,200	12/14/98	5/20/07	5/20/07
	$ 12,250	25,000	$ 12,250	12/14/98	5/20/07	5/20/07
	$ 14,700	30,000	$ 14,700	12/14/98	5/20/07	5/20/07
Arnold Levine	$ 12,250	25,000	$ 12,250	12/17/98	2/24/02	4/14/06
Director	$ 9,800	20,000	$ 9,800	12/17/98	2/24/02	8/31/06

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

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

On July 1, 2002 we extended a loan to Mr. Winningham, our President and Chief Executive Officer, in the principal amount of $3,750,000 pursuant to the terms of his employment offer letter. The proceeds from the loan were used by Mr. Winningham to purchase his principal residence. The note is interest free, with principal due on July 1, 2012, subject to acceleration upon borrower's cessation of employment under certain circumstances and certain other events. The loan provides that

50% of the principal of such loan is to be forgiven on his fifth anniversary of employment with us and an additional 16% of the original principal is to be forgiven on his seventh anniversary with us. The loan was secured by a second deed of trust on the residence and a pledge of 1,200,000 shares of stock issuable upon exercise of his options. The largest aggregate amount of indebtedness outstanding during 2003 and the amount outstanding on March 31, 2004 was $3,750,000.

On June 4, 2004 we entered into an agreement with Mr. Winningham pursuant to which we terminated the home equity sharing arrangement and agreed to forgive Mr. Winningham's housing loan in the amount of $3,750,000, thereby extinguishing his debt in full, in recognition of Mr. Winningham entering into a lock-up agreement with us and GSK pursuant to which he has agreed not to sell or transfer 50% of the shares purchasable under all of his options and agreed not to put a portion of the shares purchasable under his options. We also agreed to pay Mr. Winningham a bonus equal to the amount of additional income and employment taxes that he will incur upon the loan being forgiven. We granted Mr. Winningham an option on December 28, 2001 to purchase 1,181,819 shares of our common stock at an exercise price of $5.50 per share and he is vested as of May 31, 2004 in 782,954 of the shares purchasable under the option. Under the June 2, 2004 agreement, Mr. Winningham agreed to deposit 200,000 of the shares purchasable under this initial option into escrow if he exercises the option prior to September 7, 2007. Should Mr. Winningham leave our employ due to voluntary resignation or a termination by us for cause, then he will forfeit any shares deposited into escrow. We will release these 200,000 shares from escrow over the following periods: 25% on December 31, 2005, 25% on December 31, 2006, and the balance on September 7, 2007 and will release the shares immediately should Mr. Winningham die or leave our employ due to disability.

On February 27, 2002 we extended a loan to Dr. Humphrey, our Executive Vice President, Research, in the principal amount of $1,000,000 pursuant to the terms of his employment offer letter. The proceeds from the loan were used by Dr. Humphrey to purchase his principal residence. The note is interest free, with principal due on February 27, 2012, subject to acceleration upon borrower's cessation of employment under certain circumstances and certain other events. The loan was secured by a deed of trust on the residence and a pledge of 600,000 shares of stock issuable upon exercise of his options. The largest aggregate amount of indebtedness outstanding during 2003 and the amount outstanding on March 31, 2004 was $953,500.

On June 4, 2004 we entered into an agreement with Dr. Humphrey pursuant to which we agreed to forgive Dr. Humphrey's housing loan in the amount of $953,500, thereby extinguishing his debt in full, in recognition of Dr. Humprey entering into a lock-up agreement with us and GSK pursuant to which he has agreed not to sell or transfer 50% of the shares purchasable under all of his options and agreed not to put a portion of the shares purchasable under his options. We also agreed to pay Dr. Humphrey a bonus equal to the amount of additional income and employment taxes that he will incur upon the loan being forgiven. We granted Dr. Humphrey an option on June 30, 2001 to purchase 300,000 shares of our common stock at an exercise price of $5.50 per share and he is vested as of May 1, 2004 in 218,750 of the shares purchasable under the option. On February 24, 2002 we granted Dr. Humphrey additional options to purchase 300,000 shares of our common stock at an exercise price of $5.50 per share; he is vested as of May 1, 2004 in 162,500 of the shares purchasable under these additional options. Under the June 2, 2004 agreement, Dr. Humphrey agreed to deposit 97,180 of the shares purchasable under his initial options into escrow if he exercises the options prior to September 7, 2007. Should Dr. Humphrey leave our employ due to voluntary resignation or a termination by us for cause, then he will forfeit any shares deposited into escrow. We will release these 97,180 shares from escrow over the following periods: 25% on December 31, 2005, 25% on December 31, 2006, and the balance on September 7, 2007 and will release the shares immediately should Dr. Humphrey die or leave our employ due to disability.

On September 8, 2000 we extended a loan to Mr. Brinkley, our Senior Vice President, Commercial Development, in the principal amount of $230,000 pursuant to the terms of his

employment offer letter. The proceeds from the loan were used by Mr. Brinkley to purchase his principal residence. The note is interest free, with principal due on September 1, 2005, subject to acceleration upon borrower's cessation of employment and certain other events. The loan is secured by a second deed of trust on the residence. The largest aggregate amount of indebtedness outstanding during 2003 and the amount outstanding on March 31, 2004 was $230,000.

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

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

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

DESCRIPTION OF CAPITAL STOCK

General

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

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

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

At March 31, 2004, we had outstanding 56,188,733 shares of common stock, 13,900,000 shares of Class A common stock and no shares of preferred stock. All of our outstanding Class A common stock is held by GSK and its affiliates. In addition, as of March 31, 2004, 13,533,963 shares of our common stock were subject to outstanding options, and 56,611 shares of our capital stock were subject to outstanding warrants. At March 31, 2004, 515,221 shares of our outstanding common stock held by our employees and consultants were subject to a lapsing right of repurchase in our favor, under which we may repurchase these shares upon the termination of the holder's employment or consulting relationship. The number of shares of common stock and Class A common stock outstanding as of March 31, 2004 reflects our May 2004 closing of our strategic alliance with GSK that included: (i) the conversion of our outstanding convertible preferred stock (Series A through Series D-1) into 44,774,848 shares of common stock, (ii) the conversion of 4,000,000 shares of Series E convertible preferred stock held by GSK into 4,000,000 shares of common stock and the exchange of such shares for 4,000,000 shares of Class A common stock and (iii) the issuance of 9,900,000 shares of Class A common stock to GSK.

Common Stock

Voting Rights

Generally

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

Class A common stock

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

Dividends

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

is paid in the form of shares of common stock or rights to acquire shares of common stock, the holders of common stock shall receive common stock, or rights to acquire common stock, as the case may be, and the holders of Class A common stock shall receive Class A common stock, or rights to acquire Class A common stock, as the case may be.

Liquidation

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

Common Stock Call and Put Arrangements with GSK

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

- In 2007, GSK has the right to call, by requiring us to redeem, 50% of our then outstanding shares of common stock at a price of $35.00 per share; and
- If:
    - in 2007, GSK declines to exercise its call right, or
    - prior to 2007, we experience an insolvency event, as described below,

  holders of our common stock will have the right to put to GSK, by requiring us to redeem 50% of their shares of common stock at a price of $12.50 per share.

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

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

Call Rights

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

Our Obligations

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

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

Payment and Procedure

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

- all of our common stock called by us and for which the deposit has been made under exercise of the call will be deemed not to be outstanding for any purpose, regardless of whether or not payment for such shares has occurred or the stock certificates for such common stock have been surrendered for cancellation; and

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

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

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

Put Rights

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

Our Obligations

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

- the rights of such holder to cause us to redeem up to 50% of our common stock held by the holder;

- the date of the commencement and termination of the period in which the put can be exercised;

- the price per share to be paid to a holder upon exercise of the put;

- the identity and address of the depositary; and

- instructions as to how to exercise the put.

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

Obligations of GSK

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

Payment and Procedure

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

Acceleration of Put upon An Insolvency Event

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

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

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

Redeemed Shares

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

Legend

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

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

Optional Conversion of Class A Common Stock

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

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

Authorized Number of Directors

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

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

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

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

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

Vacancies on Our Board of Directors

GSK has the right to nominate any replacement for a director nominated by GSK at the end of that director's term or upon removal from office, subject to the approval of a majority of the directors (other than any director nominated by GSK) with respect to nominations pursuant to the governance agreement. The directors that were not nominated by GSK have the right to nominate any replacement for a director that was not nominated by GSK.

Preferred Stock

Our certificate of incorporation in effect upon the closing of this offering will authorize 200,000 shares of Series A junior participating preferred stock that are purchasable upon exercise of the rights under our rights agreement. See "—Rights Agreement" These shares are:

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

Corporate Opportunities

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

Governance Agreement

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

Rights of GSK Prior to the Call/Put Termination Date

Agreements Related to Our Board of Directors

Composition of Our Board of Directors

GSK shall have the right to either:

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

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

Limitations on Our Actions

GSK Approval of Certain Issuances of Our Equity Securities

Without the prior written consent of GSK, we may not issue any equity securities other than shares of common stock, options to acquire common stock and permitted indebtedness. We may only issue these equity securities if, as a consequence of such issuance, the aggregate number of shares of our common stock would not exceed 84 million (as adjusted for stock splits, stock dividends, combinations and other recapitalizations). Shares of common stock subject to executive lock-up agreements as described in "Certain Relationships and Related Party Transactions" are not included in the aggregate number of common stock for purposes of this restriction.

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

The term "permitted indebtedness" is referred to as any indebtedness that we issue prior to the call/put termination date and in an amount equal to or less than $100 million and, if the indebtedness may be converted or exchanged into our voting stock, then the terms of the indebtedness must provide that it may not be converted or exchanged prior to the call/put termination date.

Limitations on Our Indebtedness

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

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

Limitation on Acquisition of our Equity Securities by GSK

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

- acquire any of our equity securities;
- make or participate in any solicitation of proxies to vote from any holders of our equity securities;
- form or participate in a "group" within the meaning of Section 13(d)(3) of the Securities and Exchange Act of 1934, as amended, with any person not bound by the terms of the governance agreement with respect to any voting stock;
- acquire any of our assets or rights to purchase any of our assets except for assets offered for sale by us or the acquisition or purchase of our assets pursuant to the existing agreements that we have in place with GSK;
- enter into any arrangement or understanding with others to do any of the actions listed immediately above;
- act together with others to offer to us or any of our stockholders any business combination, restructuring, recapitalization or similar transaction involving us or otherwise seek together with others to control, change or influence the management, board of directors or our policies or nominate any person as a director who is not nominated by the then incumbent directors, or propose any matter to be voted upon by our stockholders; and
- prior to August 31, 2007, request that we or our board of directors amend or waive the restrictions set forth immediately above.

Permitted GSK Purchases of Our Equity Securities from Us

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

- if we issue equity securities to a third party (other than pursuant to exercise of options issued as compensation to our directors, officers, employees or consultants), the purchase of a number of equity securities that would bring GSK's percentage ownership of our voting stock to the same level that it was at immediately prior to the issuance of equity securities to the third party at the same price at which the equity securities were sold to the third party;
- the purchase, on a quarterly basis, of equity securities comparable to those that are issued as compensation to our directors, officers, employees or consultants during the preceding quarter pursuant to option exercises or vesting of restricted stock, at the fair market value at the time of GSK's notification to us of its intention to purchase such equity securities that would bring GSK's percentage ownership of our voting stock to the same level that it was at immediately prior to such issuances;
- the acquisition of additional equity securities issued in connection with a stock split or recapitalization; and

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

Permitted GSK Purchases of Equity Securities from Our Stockholders

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

- the purchase of common stock from holders of common stock pursuant to the put;
- the acquisition of securities of another biotechnology or pharmaceutical company that owns our equity securities (provided that those shares will be subject to the provisions of the governance agreement on the same basis as GSK's shares of Class A common stock); or
- the making of an offer to acquire equity securities if (a) a person or group (other than GSK) acquires 20% or more of our voting stock or (b) our board of directors formally acts to facilitate a change in control of us (other than with GSK), subject to the following conditions:
    - that the offer be an offer for 100% of our voting stock;
    - that the offer include no condition as to financing; and
    - that the offer includes a condition that the holders of a majority of the shares of the voting stock not owned by GSK accept the offer by tendering their shares or voting their shares in favor of the offer.

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

Limitations on Dispositions of Our Equity Securities by GSK

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

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

Voting Arrangements

Agreement to Vote

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

Exceptions to Agreement to Vote

GSK can vote as it chooses on any proposal to:

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

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

Grant of Proxy

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

Rights of GSK Following the Call/Put Termination Date

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

Agreements Related to Our Board of Directors

Composition of Our Board of Directors

Our board of directors will include:

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

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

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

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

Approval by a Majority of GSK Nominated Directors of Certain Actions

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

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

Limitations on Our Actions

GSK Approval of Certain Issuances of Our Equity Securities

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

- equity securities issued pursuant to any employee, officer, director or consultant compensation plan that has been approved by the majority of our board of directors; and
- equity securities issued by us to third parties, provided that the aggregate number of shares of any such equity securities issued to such third parties during the period described above may not exceed the equivalent of 25 million shares of common stock (on an as converted to common stock basis and as adjusted for stock splits, stock dividends, combinations and other recapitalizations).

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

Limitation on Acquisition of our Equity Securities by GSK

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

Permitted GSK Purchases of Our Equity Securities From Us

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

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

- GSK may purchase additional equity securities if we have determined to sell equity securities to pay all or any portion of the milestones that we may owe GSK pursuant to our existing agreements with GSK. In this event, GSK has the first right to purchase the additional equity securities on the terms that we intend to sell the equity securities; provided that, the voting stock held by GSK at such time was acquired in accordance with the terms of the governance agreement and our certificate of incorporation.

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

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

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

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

Permitted GSK Purchases of Equity Securities from Our Stockholders

GSK may acquire our equity securities from our stockholders under the same circumstances that it is allowed to acquire our equity securities from our stockholders prior to the call/put termination

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

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

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

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

- that the offer occurs before September 1, 2012;
- that the offer includes no condition as to financing;
- that the offer is approved by a majority of our independent directors;
- that the offer includes a condition that the holders of a majority of the shares of the voting stock not owned by GSK accept the offer by tendering their shares in the offer; and
- that the offer is for the greater of (a) the fair market value per share on the date immediately preceding the date of the first public announcement of the offer or (b) $105 per share (as adjusted to take into account stock dividends, stock splits, recapitalizations and the like).

Limitations on Disposition of Our Equity Securities by GSK

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

Voting Arrangements

Agreement to Vote

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

Exceptions to Agreement to Vote

GSK can vote as it chooses on any proposal to:

- effect a change in control of us;
- effect the acquisition by us of any business or assets that would constitute a substantial portion of our business or assets;

- effect the sale, license or transfer of all or a substantial portion of our business or assets unless GSK has no contractual rights over the business or assets in question pursuant to our strategic alliance agreement with GSK, and such sale, license or transfer occurs in the ordinary course of business; or

- issue equity securities to one or more parties (other than in an public offering) that would result in that party or parties holding 20% or more of the voting stock.

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

Grant of Proxy

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

Rights of GSK during the Interim Period

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

Agreements Related to Our Board of Directors

Composition of Our Board of Directors

GSK shall have the right to:

- nominate a director; and

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

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

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

Approval by a Majority of Our Independent Directors of Certain Actions

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

- our acquisition of any business or assets that would constitute a substantial portion of our business or assets;

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

- the repurchase or redemption of any of our equity securities other than (A) redemptions required by the terms of our voting stock, (B) purchases made at fair market value in

connection with any deferred compensation plan that we maintain and (C) repurchases of unvested or restricted stock at or below cost pursuant to a compensation plan.

Limitations on Our Actions

GSK Approval of Certain Issuances of Equity Securities

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

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

- equity securities issued by us to third parties provided that the aggregate number of shares of any such equity securities issued to such third parties during the period described above may not exceed the equivalent of 25,000,000 shares of common stock (on an as converted to common stock basis and as adjusted for stock splits, stock dividends, combinations and other recapitalizations).

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

Limitation on Acquisition of our Equity Securities by GSK

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

Permitted GSK Purchases of Our Equity Securities From Us

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

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

Permitted GSK Purchases of Equity Securities from Our Stockholders

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

- that the offer occurs on or after September 1, 2008;

- that the offer includes no condition as to financing;

- that the offer is approved by a majority of our independent directors;
- that the offer includes a condition that the holders of a majority of the shares of the voting stock not owned by GSK accept the offer by tendering their shares in the offer; and
- that the shares purchased will be subject to the provisions of the governance agreement on the same basis as the shares of GSK's Class A common stock.

Limitation on Disposition of Our Equity Securities by GSK

GSK may not sell or transfer any of our voting stock held by it without the prior approval of a majority our independent directors until September 1, 2008. GSK is permitted to sell or transfer its voting stock in connection with a change in control of us that is approved by a majority of our independent directors. In the event that the prohibition on the disposition of voting stock by GSK expires on September 1, 2008 as set forth above, GSK shall only be able to dispose of voting stock after such date and prior to September 1, 2012 through either a public offering or pursuant to Rule 144 under the Securities Act of 1933, as amended.

Voting Arrangements

Agreement to Vote

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

Exceptions to Agreement to Vote

GSK can vote as it chooses on any proposal to:

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

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

Grant of Proxy

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

Rights of GSK Following the Call/Put Termination Date

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

Agreements Related to Our Board of Directors

Composition of Our Board of Directors

GSK shall have the right to either:

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

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

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

Limitation on Acquisition of our Equity Securities by GSK

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

Permitted GSK Purchases of Our Equity Securities From Us

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

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

Permitted GSK Purchases of Equity Securities from Our Stockholders

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

bring GSK's percentage ownership of our voting stock to no greater than 60%, subject to the following conditions:

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

Limitation on Disposition of Our Equity Securities by GSK

GSK may not sell or transfer any of our voting stock held by them without the prior approval of a majority our independent directors until September 1, 2008. GSK is permitted to sell or transfer its voting stock in connection with a change in control of us that is approved by a majority of our independent directors. In the event that the prohibition on the disposition of voting stock by GSK expires on September 1, 2008 as set forth above, GSK shall only be able to dispose of voting stock after such date and prior to September 1, 2012 through either a public offering or pursuant to Rule 144 under the Securities Act of 1933, as amended.

Voting Arrangements

Agreement to Vote

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

Exceptions to Agreement to Vote

GSK can vote as it chooses on any proposal to:

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

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

Grant of Proxy

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

Redemption of Our Common Stock

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

Covenants

Severance Arrangements

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

Indemnification by GSK

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

Amendments; Termination

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

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

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

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

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

We are subject to Section 203 of the Delaware General Corporation Law, which regulates corporate acquisitions. In general, Section 203 prohibits a Delaware corporation from engaging in a

"business combination" with an "interested stockholder" for a period of three years following the date the person became an interested stockholder, unless:

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

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

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

Our certificate of incorporation and bylaws do not provide for the right of stockholders to act by written consent without a meeting or for cumulative voting in the election of directors. In addition, our bylaws provide that special meetings of the stockholders can only be called by the Chairman of our board of directors, the chief executive officer, our board of directors or the request of stockholders holding at least $66^{2}/_{3}\%$ of the outstanding common stock. These provisions, which require the vote of stockholders holding at least $66^{2}/_{3}\%$ of the outstanding common stock to amend, may have the effect of deterring hostile takeovers or delaying changes in our management.

Rights Agreement

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

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

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

- not be exercisable;

- be represented by the same certificate that represents the shares with which the rights are associated; and
- trade together with those shares.

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

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

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

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

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

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

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

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

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

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

For so long as the rights are redeemable, our board of directors may amend any provisions in the rights agreement without stockholder consent. After the rights are no longer redeemable, our board of directors may only amend the rights agreement without stockholder consent if such amendment

would not change the amendment provisions, adversely affect the interests of the holders of rights, or cause the rights to again become redeemable. Despite the foregoing, at no time may the redemption price of the rights be amended or changed.

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

Warrants

As of March 31, 2004 there were warrants outstanding to purchase a total of 4,000 shares of common stock at a price of $1.25 per share, 4,000 shares of common stock at a price of $5.00 per share and 48,611 shares of common stock at a price of $9.00 per share. Such numbers do not reflect the exercise of an outstanding warrant to purchase 4,000 shares of common stock at a price of $1.25 per share in May 2004. Warrants outstanding as of March 31, 2004 reflect the May 2004 conversion of all of our outstanding preferred stock into shares of common stock.

Registration Rights

The holders of 49,735,830 shares of our common stock and the holders of 4,000,000 shares of our Class A common stock are entitled to rights with respect to the registration of their shares under the Securities Act. These registration rights are contained in our amended and restated investors' rights agreement and are described below. The registration rights under the investors' rights agreement with respect to holders of our common stock will expire five years following the completion of this offering, or, with respect to an individual holder holding two percent or less of our outstanding capital stock, when such holder is able to sell all of its shares in a single transaction pursuant to Rule 144 under the Securities Act. The registration rights under the investors' rights agreement with respect to holders of our Class A common stock will expire seven years following the date of redemption of our common stock pursuant to the call or, in the alternative, on the close of business on the last day that the put can be exercised, or, with respect to an individual holder of Class A common stock holding two percent or less of our outstanding capital stock, when such holder is able to sell all of its shares in a single transaction pursuant to Rule 144 under the Securities Act.

Demand Registration Rights

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

Piggyback Registration Rights

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

except for underwriters' discounts and commissions, incurred in connection with these piggyback registration rights.

S-3 Registration Rights

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

Transfer Agent and Registrar

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

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no market for our common stock. Future sales of substantial amounts of our common stock in the public market could adversely affect prevailing market prices from time to time. Furthermore, since only a limited number of shares will be available for sale shortly after this offering because of certain contractual and legal restrictions on resale described below, sales of substantial amounts of our common stock in the public market after the restrictions lapse could adversely affect the prevailing market price and our ability to raise equity capital in the future.

Sales of Restricted Shares

Upon completion of this offering, we will have outstanding an aggregate of shares of common stock, assuming no exercise of the underwriters' overallotment option and no exercise of outstanding options or warrants. Of these shares, the shares sold in this offering will be freely tradable without restrictions or further registration under the Securities Act, unless one of our existing affiliates as that term is defined in Rule 144 under the Securities Act purchases such shares.

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

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

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

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

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

Options

Rule 701 provides that the shares of common stock acquired upon the exercise of currently outstanding options or other rights granted under our equity plans may be resold, to the extent not restricted by the terms of the lock-up agreements, by persons, other than affiliates, beginning 90 days after the date of this prospectus, restricted only by the manner of sale provisions of Rule 144, and by affiliates in accordance with Rule 144, without compliance with its one-year minimum holding period. As of March 31, 2004, 7,694,203 shares will be available for resale in the public market in reliance on Rule 701, all of which shares are restricted by the terms of the lock-up agreements. As of March 31, 2004, our board of directors had authorized an aggregate of up to 18,281,395 shares of common stock for issuance under our existing equity plans. As of March 31, 2004 options to purchase a total of 10,538,963 shares of common stock were outstanding, all of which options are exercisable but restricted by our right to repurchase unvested shares upon the termination of an optionee's business relationship with us. Of these options, 4,749,892 shares are no longer restricted by our right of repurchase and will be eligible for sale, if not restricted by the terms of the lock-up agreements, in the public market in accordance with Rule 701 under the Securities Act beginning 90 days after the date of this prospectus. All of the shares issuable upon exercise of these options are restricted by the terms of the lock-up agreements.

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

Warrants

As of March 31, 2004 there were warrants outstanding to purchase a total of 4,000 shares of common stock at a price of $1.25 per share, 4,000 shares of common stock at a price of $5.00 per share, and 48,611 shares of common stock at a price of $9.00 per share. Such numbers do not reflect the exercise of an outstanding warrant to purchase 4,000 shares of common stock at a price of $1.25 per share in May 2004. Warrants outstanding as of March 31, 2004 reflect the May 2004 conversion of all of our outstanding preferred stock into shares of common stock.

Lock-up Agreements

Except for sales of common stock to the underwriters in accordance with the terms of the purchase agreement, we and our executive officers, directors, stockholders and all of our optionholders

have agreed not to sell or otherwise dispose of, directly or indirectly, any shares of our common stock (or any security convertible into or exchangeable or exercisable for common stock) without the prior written consent of Merrill Lynch for a period of 180 days from the date of this prospectus. In addition, for a period of 180 days from the date of this prospectus, except as required by law, we have agreed that our board of directors will not consent to any offer for sale, sale or other disposition, or any transaction which is designed or could be expected to result in the disposition by any person, directly or indirectly, of any shares of our common stock without the prior written consent of Merrill Lynch. Merrill Lynch, in its sole discretion, at any time or from time to time and without notice, may release for sale in the public market all or any portion of the shares restricted by the terms of the lock-up agreements. The lock-up agreement will not apply to transactions relating to shares of common stock acquired in open market transactions after the closing of this offering.

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

Registration Rights

The holders of 53,735,830 shares of common stock, or the registrable securities, are entitled to have their shares registered by us under the Securities Act under the terms of an agreement between us and the holders of these registrable securities. Subject to limitations specified in the agreement, these registration rights include the following:

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

- If we register any common stock, either for our own account or for the account of other security holders, the holders of registrable securities (including an additional 11,413,885 shares held by stockholders that do not have the right to initiate a request for registration) are entitled to include their shares of common stock in the registration, subject to the ability of the underwriters to limit the number of shares included in the offering in view of market conditions.

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

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

MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES

Overview

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

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

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

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

General Consequences of Owning Common Stock

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

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

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

In addition, there is an issue as to whether the call right and put right to which a stockholder's shares of common stock are subject could cause such common stock (or 50% of such common stock) to be characterized, for United States federal income tax purposes, as not "participating in corporate growth to any significant extent." If so characterized, such common stock (or 50% of such common stock) would be treated as preferred stock for purposes of Section 305 of the Code. In such event, the holder thereof would be required, during the period beginning upon the stockholder's purchase of the common stock and ending during the put period, to include currently in gross income (to the extent of our current or accumulated earnings and profits) a portion (determined by analogy to the original issue discount rules for debt instruments) of the excess, if any, of $12.50 per share (the put price) over the fair market value of the share at issuance, unless any such excess does not exceed a de minimis amount. No portion of the common stock is expected, based on the advice of our tax advisors, to be treated as preferred stock under Section 305 of the Code, and we therefore do not intend to treat all or any portion of the common stock as preferred stock. However, due to a lack of definitive judicial or administrative interpretation, this conclusion is not free from doubt.

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

General Consequences of Disposing of Common Stock

A stockholder will recognize gain or loss upon the sale of its common stock equal to the difference between its adjusted basis in its sold shares and the sum of the amount of cash and the fair market value of any property the stockholder receives in exchange therefor. Except with respect to the

various issues described herein, any such gain or loss will be long- or short-term capital gain or loss depending on the stockholder's holding period for the common stock.

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

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

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

There is a risk that a redemption of a stockholder's common stock pursuant to the call right or pursuant to the exercise of a put right could be treated as a recapitalization under Section 368(a)(1)(E) of the Code in which the stockholder is deemed to exchange its shares of common stock which are subject to the put and the call right for shares of common stock which are not subject to a put or a call right and cash. It is not expected, based on the advice of our tax advisors, that a redemption of a stockholder's common shares should be treated in such a manner, although, due to a lack of definitive judicial or administrative interpretation, this conclusion is not free from doubt. In the event that a

redemption of a stockholder's common stock does result in such recapitalization treatment, such stockholder would recognize gain but not loss in the exchange equal to the lesser of:

- the amount of cash received in the redemption; and
- the excess of:

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

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

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

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

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

Information Reporting and Backup Withholding

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

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

UNDERWRITING

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

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

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

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

Overallotment Option

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

Intersyndicate Agreement

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

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

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

- offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of or otherwise transfer or dispose of directly or indirectly, any shares of common stock or any securities convertible into or exercisable or exchangeable for common stock; or

- enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the common stock,

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

- the sale of shares to the underwriters;

- the issuance by us of shares of common stock upon the exercise of an option or a warrant or the conversion of a security outstanding on the date of this prospectus that is described in this prospectus;

- the issuance by us of shares or options to purchase shares of common stock pursuant to our stock incentive and employee stock purchase plans, provided that the recipient of the shares agrees to be subject to the restrictions described in this paragraph; or

- transactions by any person other than us relating to shares of common stock or other securities acquired in open market transactions after the completion of the offering of the shares.

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

Commissions and Discounts

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

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

In addition, we have agreed to pay a financial advisory fee of $ to Merrill Lynch, Pierce, Fenner & Smith Incorporated and $ to Lehman Brothers Inc. for services rendered by them to us in connection with this offering.

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

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

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

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

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

Affiliates of Merrill Lynch, Pierce, Fenner & Smith Incorporated and affiliates of Lehman Brothers Inc. own 2,287,582 and 2,143,790 shares of our common stock, respectively, which each acquired in private transactions prior to September 2000.

Reserved Shares

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

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

Prior to this offering, there has been no public market for our common stock. The initial public offering price will be determined by negotiations between us and the representatives. Among the factors to be considered in determining the initial public offering price will be our future prospects and those of our industry in general, our revenues, earnings and other financial operating information in recent periods, and the price-earnings ratios, price-sales ratios, market prices of securities, our arrangements with GSK and financial and operating information of companies engaged in activities similar to ours. The estimated initial public offering price range set forth on the cover page of this preliminary prospectus is subject to change as a result of market conditions and other factors.

LEGAL MATTERS

Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, Menlo Park, California, will pass upon the validity of the common stock offered by this prospectus. Members of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP are the beneficial owners of 174,059 shares of our common stock. Davis Polk & Wardwell, Menlo Park, California, will pass upon certain legal matters for the underwriters.

EXPERTS

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

WHERE YOU CAN FIND MORE INFORMATION

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

As a result of the offering, we will become subject to the full informational requirements of the Securities Exchange Act of 1934, as amended. We will fulfill our obligations with respect to such requirements by filing periodic reports and other information with the SEC. We intend to furnish our stockholders with annual reports containing consolidated financial statements certified by an independent registered public accounting firm. We also maintain an Internet site at *www.theravance.com*.

Theravance, Inc.

Index to Consolidated Financial Statements

Report of Ernst & Young LLP, Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Theravance, Inc.

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

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

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

Palo Alto, California
May 21, 2004
except for Note 14, as to which the date is
May 27, 2004

Theravance, Inc.

Consolidated Balance Sheets

(In thousands, except per share data)

	December 31,		March 31,	Pro Forma Stockholders' Equity at March 31,
	2002	2003	2004	2004
			(unaudited)	(unaudited)
Assets				
Current assets:				
Cash and cash equivalents	$ 108,796	$ 35,748	$ 27,592	
Marketable securities	39,754	53,404	46,281	
Receivable from related party	1,509	408	238	
Prepaid and other current assets	1,765	1,688	3,574	
Total current assets	151,824	91,248	77,685	
Property and equipment, net	20,267	15,815	14,812	
Restricted cash and cash equivalents	7,753	6,124	5,684	
Deferred sublease costs	1,327	921	812	
Notes receivable	5,741	5,651	6,108	
Notes receivable from related parties	5,461	4,714	4,476	
Other assets	342	976	1,051	
Total assets	$ 192,715	$ 125,449	$ 110,628	
Liabilities, convertible preferred stock and stockholders' equity (deficit)				
Current liabilities:				
Line of credit	$ 25,000	$ —	$ —	
Accounts payable	1,579	3,199	2,520	
Accrued personnel-related expenses	3,976	4,441	3,236	
Accrued clinical and development expenses	2,491	1,849	3,895	
Other accrued liabilities	1,624	1,929	4,028	
Current portion of notes payable	377	420	432	
Current portion of capital lease obligations	2,807	3,052	3,399	
Current portion of deferred revenue	1,250	5,273	6,018	
Total current liabilities	39,104	20,163	23,528	
Deferred rent	1,726	2,131	2,199	
Notes payable	1,384	967	855	
Capital lease obligations	6,483	3,431	2,348	
Deferred revenue	8,594	30,965	33,834	
Commitments				
Convertible preferred stock, $0.01 par value; 50,000 shares authorized; 47,644 shares issued and outstanding at December 31, 2002 and 2003 and 47,664 at March 31, 2004, aggregate liquidation preference of $374,468 at December 31, 2002 and 2003 and $374,638 at March 31, 2004; no shares outstanding, pro forma	367,358	367,358	367,528	$ —
Stockholders' equity (deficit):				
Common stock, $0.01 par value; 110,000 shares authorized, issuable in series; 11,161, 11,206 and 11,255 shares issued and outstanding at December 31, 2002 and 2003, and March 31, 2004, respectively; 56,029 shares outstanding, pro forma	112	112	113	561
Class A Common Stock, $0.01 par value, no shares authorized, issued or outstanding, actual; 13,900 shares authorized, 4,000 issued and outstanding, pro forma				40
Additional paid-in capital	67,662	68,697	68,896	435,936
Notes receivable from stockholders	(1,765)	(928)	(869)	(869)
Deferred stock-based compensation	(2,797)	(1,518)	(1,210)	(1,210)
Accumulated other comprehensive income	221	21	67	67
Accumulated deficit	(295,367)	(365,950)	(386,661)	(386,661)
Total stockholders' equity (deficit)	(231,934)	(299,566)	(319,664)	$ 47,864
Total liabilities, convertible preferred stock, and stockholders' equity (deficit)	$ 192,715	$ 125,449	$ 110,628	

See accompanying notes.

Theravance, Inc.

Consolidated Statements of Operations

(In thousands, except per share data)

	Years Ended December 31,			Three Months Ended March 31,	
	2001	2002	2003	2003	2004
				(unaudited)	
Revenue from related party	$ —	$ 156	$ 3,605	$ 535	$ 1,387
Operating expenses:					
Research and development	53,773	66,481	61,704	13,382	18,874
General and administrative	10,506	11,817	12,153	2,842	3,288
Stock-based compensation*	10,134	4,941	2,214	205	385
Total operating expenses	74,413	83,239	76,071	16,429	22,547
Loss from operations	(74,413)	(83,083)	(72,466)	(15,894)	(21,160)
Interest and other income	11,530	4,990	3,373	817	666
Interest and other expense	(1,962)	(1,134)	(1,490)	(348)	(217)
Net loss	$ (64,845)	$ (79,227)	$ (70,583)	$ (15,425)	$ (20,711)
Net loss per common share	$ (7.57)	$ (8.07)	$ (6.69)	$ (1.52)	$ (1.91)
Shares used in computing net loss per common share	8,566	9,820	10,554	10,157	10,816
Pro forma net loss per common share			$ (1.19)		$ (0.35)
Shares used in computing pro forma net loss per common share			59,309		59,591

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

	Years Ended December 31,			Three Months Ended March 31,	
	2001	2002	2003	2003	2004
				(unaudited)	
Research and development	$ 6,574	$ 3,398	$ 1,300	$ (37)	$ 292
General and administrative	3,560	1,543	914	242	93
Total non-cash stock-based compensation	$ 10,134	$ 4,941	$ 2,214	$ 205	$ 385

See accompanying notes.

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

	Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Notes Receivable from Stockholders	Deferred Stock-Based Compensation	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount						
Balance at January 1, 2001	43,644	$ 327,107	11,630	$ 116	$ 69,794	$ (3,268)	$ (18,759)	$ 494	$ (151,295)	$ (102,918)
Repurchases of common stock, net of stock option exercises at prices ranging from $0.50 to $5.50 per share	—	—	(511)	(5)	(1,315)	469	—	—	—	(851)
Stock-based compensation related to grants of stock options to nonemployees	—	—	—	—	486	—	—	—	—	486
Stock-based compensation related to an officer's stock option	—	—	—	—	3,000	—	(2,444)	—	—	556
Reversal of deferred stock-based compensation related to employee terminations	—	—	—	—	(3,061)	—	1,505	—	—	(1,556)
Amortization of deferred stock-based compensation	—	—	—	—	—	—	10,648	—	—	10,648
Forgiveness and repayments of notes receivable	—	—	—	—	—	209	—	—	—	209
Comprehensive loss:										
Net loss	—	—	—	—	—	—	—	—	(64,845)	(64,845)
Net unrealized gain on marketable securities	—	—	—	—	—	—	—	519	—	519
Total comprehensive loss										(64,326)
Balance at December 31, 2001	43,644	327,107	11,119	111	68,904	(2,590)	(9,050)	1,013	(216,140)	(157,752)
Issuance of Series E convertible preferred stock to a collaborative partner for cash at $10.00 per share in December 2002, net of issuance costs of $64	4,000	39,937	—	—	—	—	—	—	—	—
Stock option exercises at prices ranging from $0.85 to $5.50, net of repurchases	—	—	42	1	70	108	—	—	—	179
Forgiveness of notes receivable	—	—	—	—	—	717	—	—	—	717
Stock-based compensation related to grants of stock options to nonemployees	—	—	—	—	511	—	—	—	—	511
Reversal of deferred stock-based compensation related to employee terminations	—	—	—	—	(1,823)	—	781	—	—	(1,042)
Amortization of deferred stock-based compensation	—	—	—	—	—	—	5,472	—	—	5,472
Issuance of warrants to purchase Series D-1 convertible preferred stock	—	314	—	—	—	—	—	—	—	—
Comprehensive loss:										
Net loss	—	—	—	—	—	—	—	—	(79,227)	(79,227)
Net unrealized loss on marketable securities	—	—	—	—	—	—	—	(792)	—	(792)
Total comprehensive loss										(80,019)
Balance at December 31, 2002	47,644	367,358	11,161	112	67,662	(1,765)	(2,797)	221	(295,367)	(231,934)
Stock option exercises at prices ranging from $0.85 to $5.50, net of repurchases and net of unvested stock options exercised early	—	—	45	—	100	—	—	—	—	100
Forgiveness and repayments of notes receivable	—	—	—	—	—	837	—	—	—	837
Stock-based compensation related to grants of stock options to nonemployees	—	—	—	—	262	—	—	—	—	262
Reversal of deferred stock-based compensation related to employee terminations	—	—	—	—	(862)	—	220	—	—	(642)
Deferred stock-based compensation	—	—	—	—	1,535	—	(1,535)	—	—	—
Amortization of deferred stock-based compensation	—	—	—	—	—	—	2,594	—	—	2,594
Comprehensive loss:										
Net loss	—	—	—	—	—	—	—	—	(70,583)	(70,583)
Net unrealized loss on marketable securities	—	—	—	—	—	—	—	(200)	—	(200)
Total comprehensive loss										(70,783)
Balance at December 31, 2003	47,644	367,358	11,206	112	68,697	(928)	(1,518)	21	(365,950)	(299,566)
Stock option exercises at prices ranging from $0.85 to $5.50, net of repurchases and net of unvested stock options exercised early (unaudited)	—	—	49	1	122	—	—	—	—	123
Exercise of warrants to purchase 20,000 shares of Series C preferred stock (unaudited)	20	170	—	—	—	—	—	—	—	—
Forgiveness and repayments of notes receivable (unaudited)	—	—	—	—	—	59	—	—	—	59
Stock-based compensation related to grants of stock options to nonemployees (unaudited)	—	—	—	—	94	—	—	—	—	94
Reversal of deferred stock-based compensation related to employee terminations (unaudited)	—	—	—	—	(17)	—	17	—	—	—
Amortization of deferred stock-based compensation (unaudited)	—	—	—	—	—	—	291	—	—	291
Comprehensive loss:										
Net loss (unaudited)	—	—	—	—	—	—	—	—	(20,711)	(20,711)

Net unrealized gain on marketable securities (unaudited)	—	—	—	—	—	—	—	46	—	46
Total comprehensive loss (unaudited)										(20,665)
Balance at March 31, 2004 (unaudited)	47,664	$ 367,528	11,255	$ 113	$ 68,896	$ (869)	$ (1,210)	$ 67	$ (386,661)	$ (319,664)

See accompanying notes.

Theravance, Inc.

Consolidated Statements of Cash Flows

(In thousands)

	Years Ended December 31,			Three Months Ended March 31,	
	2001	2002	2003	2003	2004
				(Unaudited)	
Cash flows (used in) provided by operating activities					
Net loss	$ (64,845)	$ (79,227)	$ (70,583)	$ (15,425)	$ (20,711)
Adjustments to reconcile net loss to net cash used in operating activities:					
Depreciation	4,933	5,124	5,209	1,179	1,196
Impairment charges	650	—	—	—	—
Stock-based and other non-cash compensation	10,134	4,941	2,214	205	385
Forgiveness of notes receivable	380	1,430	1,342	407	247
Other non-cash operating activities	—	119	503	34	45
Changes in operating assets and liabilities:					
Receivables, prepaid and other current assets	41	(2,147)	1,092	(11,935)	(1,720)
Accounts payable and accrued liabilities	(188)	1,086	1,283	(1,827)	3,494
Accrued personnel-related expenses	795	(147)	465	(1,875)	(1,205)
Deferred rent	408	532	405	101	68
Deferred revenue	—	9,688	26,394	14,465	3,614
Net cash used in operating activities	(47,692)	(58,601)	(31,676)	(14,671)	(14,587)
Cash flows (used in) provided by investing activities					
Purchases of property and equipment	(1,542)	(6,986)	(763)	(122)	(193)
Purchases of marketable securities	(196,358)	(69,721)	(65,114)	(25,222)	(9,187)
Sales and maturities of marketable securities	233,951	133,037	51,264	8,102	16,356
Restricted cash and cash equivalents	670	1,820	1,629	465	440
Deferred sublease costs	—	(216)	(38)	(37)	—
Increase in notes receivable	(611)	(6,380)	(784)	—	(484)
Decrease in notes receivable	60	22	197	10	68
Net cash provided by (used in) investing activities	36,170	51,576	(13,609)	(16,804)	7,000
Cash flows (used in) provided by financing activities					
Proceeds from notes payables and capital leases	1,773	4,695	—	—	—
Proceeds from line of credit	—	25,000	75,000	25,000	—
Payments on notes payables and capital leases	(3,345)	(3,104)	(3,181)	(768)	(836)
Payments on line of credit	—	—	(100,000)	(25,000)	—
Net issuances of convertible preferred stock	—	39,937	—	—	170
Net (repurchases) issuances of common stock	(851)	179	418	62	97
Net cash (used in) provided by financing activities	(2,423)	66,707	(27,763)	(706)	(569)
Net (decrease) increase in cash and cash equivalents	(13,945)	59,682	(73,048)	(32,181)	(8,156)
Cash and cash equivalents at beginning of period	63,059	49,114	108,796	108,796	35,748
Cash and cash equivalents at end of period	$ 49,114	$ 108,796	$ 35,748	$ 76,615	$ 27,592
Supplemental Disclosures of Cash Flow Information					
Cash paid for interest	$ 852	$ 938	$ 920	$ 277	$ 29
Non-cash investing and financing activities:					
Repurchases/issuances of common stock for notes receivable	$ 469	$ 108	$ 26	$ —	$ —
Conversion of note payable to leasehold improvement allowance	$ 2,714	$ —	$ —	$ —	$ —
Deferred financing costs	$ —	$ 300	$ —	$ —	$ —
Deferred stock-based compensation	$ —	$ —	$ 1,535	$ —	$ —

See accompanying notes.

Theravance, Inc.
Notes to Consolidated Financial Statements

(Information as of March 31, 2004 and for the three months ended March 31, 2003 and 2004 is unaudited)

1. Organization and Description of Business

Theravance, Inc. (Theravance or the Company) is a biopharmaceutical company focused on the discovery, development and commercialization of small molecule medicines for unmet medical needs across a number of therapeutic areas including respiratory disease, bacterial infections, overactive bladder and gastrointestinal disorders. The Company has a pipeline of product candidates that it discovered and expects to develop in collaboration with partners or on its own. In approximately seven years of operation, four product candidates discovered by the Company have advanced into clinical trials. Further, the Company has six additional product candidates discovered by it in preclinical studies. The Company believes that two of its product candidates in Phase 2 clinical trials have demonstrated clinical proof-of-concept.

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

2. Basis of Presentation and Significant Accounting Policies

Principles of Consolidation

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

Unaudited Interim Financial Information

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

Use of Estimates

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

Cash and Cash Equivalents

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

Under certain lease agreements and letters of credit, the Company has used cash and cash equivalents as collateral. There was $7.8 million, $6.1 million and $5.7 million of restricted cash and cash equivalents related to such agreements at December 31, 2002 and 2003 and March 31, 2004, respectively.

Marketable Securities

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

Revenue Recognition

The Company recognizes revenue in accordance with the criteria outlined in Staff Accounting Bulletin No. 101 (SAB 101,) "Revenue Recognition in Financial Statements", as amended by SAB 104 and Emerging Issues Task Force (EITF) Issue 00-21 "Revenue Arrangements with Multiple Deliverables" (EITF 00-21). In connection with the Company's agreements with GlaxoSmithKline (GSK), the Company recognizes revenue from non-refundable, upfront fees and development milestone payments ratably over the term of its performance under the agreements. When the period of deferral cannot be specifically identified from the agreement, management estimates the period based upon the terms of the agreement and other relevant facts. The Company periodically reviews the estimated performance period.

The Company was reimbursed by GSK for certain external development costs under the GSK collaboration agreement. Such reimbursements have been reflected as a reduction in research and development expense and not as revenue, and were $1.5 million in 2002 and $2.7 million in 2003, and were $1.8 million and $0.3 million for the three months ending March 31, 2003 and 2004, respectively.

Concentration of Credit Risks and Other Uncertainties

The Company invests in a variety of financial instruments and, by its policy, limits the amount of credit exposure with any one issuer, industry or geographic area.

The Company is dependent on third-party vendors and clinical research organizations for selected manufacturing and service functions related to its drug discovery and development efforts.

The Company generally has relationships with only a small number of providers for each of these services. These third parties provide formulation and manufacturing of the Company's product candidates and conduct preclinical testing and clinical trials. If the Company loses its relationship with any one or more of these providers, it could experience a significant delay in both identifying other comparable providers and then contracting for its product or services. Even if the Company locates alternative providers, it is likely that these providers may need additional time to respond to the Company's needs and may not provide the same type or level of product or services as the original providers. In addition, the Company may be unable to retain alternative providers on reasonable terms, if at all. The occurrence of any of these events may delay the development or commercialization of the Company's product candidates and have a material effect on the consolidated results of operations.

Future financing may not be available in amounts or on terms acceptable to the Company, if at all. The Company will require significant additional capital to fully implement its business plan.

Property and Equipment

Property and equipment is stated at cost and depreciated using the straight-line method over the estimated useful lives of the assets, ranging from three to seven years. Leasehold improvements and assets under capital leases are amortized over the shorter of their estimated useful lives or the related lease term.

Deferred Sublease Costs

Deferred sublease costs consist of recoverable leasehold improvements and commissions paid to obtain tenants for leased facilities no longer occupied by the Company. These costs are being amortized over the respective sublease terms.

Long-Lived Assets

Long-lived assets include property, equipment, and deferred sublease costs. The carrying value of long-lived assets is reviewed for impairment whenever events or changes in circumstances indicate that the asset may not be recoverable. An impairment loss is recognized when the total of estimated future cash flows expected to result from the use of the asset and its eventual disposition are less than its carrying amount or appraised value, as appropriate.

Related Parties

The Company's related parties are its directors, executive officers and GSK. Transactions with executive officers and directors include notes receivable, described below. Transactions with GSK are described in Note 4.

Robert V. Gunderson is a director of the Company. The Company has engaged Gunderson Dettmer Stough Villeneuve Franklin & Hachigan, LLP as its primary legal counsel. Fees are incurred and paid in the ordinary course of business.

Notes Receivable

The Company has provided full recourse loans to certain of its officers and employees, in connection with relocation, primarily to assist them with the purchase of a primary residence, which collateralizes the resulting loans. The Company also allowed certain holders to exercise their stock options by executing stock purchase agreements and full recourse notes payable to the Company. As of March 31, 2004, the outstanding balance of all notes receivable was $11.5 million. Certain loans contain forgiveness provisions, which are dependent on the officer or employee's continued employment with the Company. At March 31, 2004, $2.3 million of outstanding loans may be forgiven, subject to continuous employment requirements. The Company expects to recognize expense for the loan forgiveness ratably over the required terms of employment under the loan agreement as follows: $701,000 in 2004, $728,000 in 2005, $564,000 in 2006, $149,000 in 2007 and the balance thereafter. The loans issued for the exercise of stock options are dated prior to November 2001 and thus are not subject to variable accounting as required under EITF 00-23 "Issues Related to the Accounting for Stock Compensation Under APB No. 25 and FASB Interpretation 44."

Interest receivable related to the notes was $599,000, $1.0 million and $1.0 million at December 31, 2002, 2003 and March 31, 2004, respectively, and is included in other assets. The Company accrues interest on the notes at rates ranging up to 8%.

The outstanding loans have maturity dates ranging from January 2004 through 2013.

Deferred Rent

Because the Company's operating leases provide for rent increases over the terms of the leases, average annual rent of the term exceeds the Company's actual cash rent payments of the first 5.5 years of the leases. Deferred rent consists of the difference between cash payments and the recognition of rent expense on a straight-line basis for the buildings the Company occupies. Rent expense is being recognized ratably over the life of the leases.

Research and Development Costs

Research and development costs are expensed as incurred. Research and development costs consist of salaries and benefits, laboratory supplies and facility costs, as well as fees paid to third parties that conduct certain research and development activities on behalf of the Company, net of certain external development costs reimbursed by GSK.

Preclinical Study and Clinical Trial Expenses

Most of the Company's preclinical studies and all of its clinical trials have been performed by third-party contract research organizations (CROs). Some CROs bill monthly for services performed, while others bill based upon milestones achieved. The Company accrues preclinical study and clinical trial expenses based upon an estimate of the services performed by the CRO each period. Most contracts have a duration of less than one year. As the Company progresses its product candidates into later-stage clinical trials, it may enter into contracts with longer terms and different payment structures. The Company would evaluate the appropriate accrual process under such multi-year contracts to record the expenses incurred under those circumstances.

Stock-based Compensation

Deferred stock-based compensation.

The Company accounts for employee stock options using the intrinsic-value method in accordance with Accounting Principles Board ("APB") Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB Opinion No. 25"), Financial Accounting Standards Board Interpretation ("FIN") No. 44, "Accounting for Certain Transactions Involving Stock Compensation, an interpretation of APB No. 25," and related to interpretations and has adopted the disclosure-only provisions of SFAS No. 123, "Accounting for Stock-Based Compensation" ("SFAS No. 123").

The option valuation models used to value the options under SFAS No. 123 were developed for use in estimating the fair value of traded options that have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions, including the expected price volatility. Because the employee stock options have characteristics significantly different from those of traded options and because changes in the subjective input can materially affect the fair value estimate, in the Company's opinion, the existing models do not necessarily provide a reliable single measure of the fair value of the Company's employee stock options.

The information regarding pro forma net loss as required by SFAS No. 123 has been determined as if the Company had accounted for its employee stock options under the fair value method of that Statement. The resulting effect on net loss pursuant to SFAS No. 123 is not likely to be representative of the effects on net loss pursuant to SFAS No. 123 in future years, since future years are likely to include additional grants and the irregular effect of future years' vesting.

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

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

Other stock-based compensation

Other stock-based compensation generally consists of the fair value of options granted to non-employees, such as consultants and advisors, calculated using the Black-Scholes method. The Company accounts for options granted to non-employees in accordance with EITF No. 96-18, "Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services." These options are subject to periodic remeasurement

over the period services are rendered based on changes in the value of the Company's common stock. As a result, other stock-based compensation charges in future periods may vary significantly.

Fair value of employee stock options

For purposes of disclosures pursuant to Statement of Financial Accounting Standards No. 123 (SFAS No. 123), as amended by SFAS No. 148, the estimated fair value of options is amortized to expense over the vesting period of the options. The following table shows the pro forma effect on net loss and net loss per common share if the fair value recognition provisions of SFAS No. 123 had been applied to stock based employee compensation (in thousands, except per share amounts):

	Years Ended December 31,			Three Months Ended March 31,	
	2001	2002	2003	2003	2004
				(unaudited)	
Net loss, as reported	$ (64,845)	$ (79,227)	$ (70,583)	$ (15,425)	$ (20,711)
Add: Employee stock-based compensation calculated using the intrinsic value method	9,648	4,430	1,952	172	291
Less: Total employee stock compensation calculated using the fair value method	(10,544)	(10,233)	(7,291)	(1,796)	(1,319)
Pro forma net loss	$ (65,741)	$ (85,030)	$ (75,922)	$ (17,049)	$ (21,739)
Net loss per common share, as reported	$ (7.57)	$ (8.07)	$ (6.69)	$ (1.52)	$ (1.91)
Pro forma net loss per common share	$ (7.67)	$ (8.66)	$ (7.19)	$ (1.68)	$ (2.01)

The foregoing pro forma information regarding net loss and net loss per common share has been determined as if the Company had accounted for its employee stock options under the Black-Scholes method. The weighted-average assumptions used to value these options were as follows:

	Years Ended December 31,			Three Months Ended March 31,	
	2001	2002	2003	2003	2004
				(unaudited)	
Risk-free interest rate	6.00%	3.30%	2.08%	2.08%	—
Expected life (in years)	4-5	4-5	4-5	4-5	—
Volatility	.7	.7	.7	.7	—
Weighted average estimated fair value of stock options granted	$3.14	$2.85	$1.50	$1.07	$—

The Company does not currently pay dividends. For accounting purposes, the fair value was not calculated for the stock options granted in the three months ended March 31, 2004.

Comprehensive Loss

Comprehensive income (loss) is comprised of net loss and other comprehensive income (loss). Other comprehensive loss consists of unrealized gains and losses on the Company's available-for-sale securities in accordance with SFAS No. 130, "Reporting Comprehensive Income."

Income Taxes

The Company utilizes the asset and liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and tax basis of assets and liabilities and are measured using enacted tax rates and laws that will be in effect when the differences are expected to reverse. A valuation allowance is provided when it is more likely than not that some portion or all of a deferred tax asset will not be realized.

Unaudited Pro Forma Information

The unaudited pro forma stockholders' equity as of March 31, 2004 reflects the (i) conversion of all of our outstanding convertible preferred stock (Series A through Series D-1) into 44,774,848 shares of common stock, (ii) conversion of 4.0 million shares of Series E convertible preferred stock held by GSK into common stock and (iii) the issuance by us of 4.0 million shares of Class A Common Stock to GSK in exchange for the common stock issued upon conversion of its Series E Preferred Stock in connection with the May 2004 closing of the strategic alliance agreement with GSK, as if the transaction had occurred on March 31, 2004. The pro forma stockholders' equity does not include GSK's purchase of 9.9 million shares of the Company's Class A common stock in the May 2004 transaction (See Note 4).

Reclassification of Prior Year Amounts

Certain prior year amounts have been reclassified to conform to the current year's presentation.

3. Net Loss Per Common Share

Basic net loss per common share (Basic EPS) is computed by dividing net loss by the weighted-average number of common shares outstanding, less shares subject to repurchase. Diluted net loss per common share (Diluted EPS) is computed by dividing net loss by the weighted-average number of common shares outstanding, plus dilutive potential common shares. At March 31, 2004, potential common shares consist of shares subject to repurchase, the 48,774,848 common shares issuable upon the conversion of preferred stock, 9,678,000 shares issuable upon the exercise of stock options and

56,611 shares issuable upon the exercise of warrants. Diluted EPS is identical to Basic EPS since potential common shares are excluded from the calculation as their effect is anti-dilutive.

	Years Ended December 31,			Three Months Ended March 31,	
	2001	2002	2003	2003	2004
				(unaudited)	
Basic and diluted: *(In thousands, except for per share amounts)*					
Net loss	$ (64,845)	$ (79,227)	$ (70,583)	$ (15,425)	$ (20,711)
Weighted average shares of common stock outstanding	11,295	11,174	11,357	11,197	11,395
Less: weighted average shares subject to repurchase	(2,729)	(1,354)	(803)	(1,040)	(579)
Weighted average shares used in computing basic and diluted net loss per common share	8,566	9,820	10,554	10,157	10,816
Basic and diluted net loss per common share	$ (7.57)	$ (8.07)	$ (6.69)	$ (1.52)	$ (1.91)

The pro forma basic and diluted net loss per common share shows the effect of the conversion of the Company's preferred stock into common stock (see Note 4) (in thousands, except for per share amounts).

	Year Ended December 31, 2003	Three Months Ended March 31, 2004
		(unaudited)
Pro forma basic and diluted:		
Shares used above	10,554	10,816
Pro forma adjustment to reflect weighted average effect of assumed conversion of preferred stock	48,755	48,775
Total weighted average shares of common stock outstanding, pro forma	59,309	59,591
Basic and diluted pro forma net loss per common share	$ (1.19)	$ (0.35)

4. Agreements with GlaxoSmithKline

2002 LABA Collaboration

In November 2002, the Company entered into a collaboration agreement with GSK to discover and commercialize long acting beta$_2$ agonist (LABA) product candidates for the treatment of asthma and chronic obstructive pulmonary disease (COPD). Under the terms of the agreement, each company contributed four product candidates to the collaboration. The Company received an initial upfront cash

payment of $10.0 million from GSK in December 2002. In addition, the Company also sold 4.0 million shares of our Series E convertible preferred stock to GSK for $40.0 million. In connection with this collaboration, in 2003 the Company received cash payments totaling $30.0 million as development milestones were achieved, and another $5.0 million was received in the first quarter of 2004.

The Company recorded the initial cash payment and subsequent milestone payments as deferred revenue, to be amortized ratably over our estimated period of performance (the product development period), which the Company currently estimate to be eight years from the agreement's inception. Collaboration revenue was $535,000 for the three months ended March 31, 2003 and $1.4 million for the three months ended March 31, 2004, and $156,000 in 2002 and $3.6 million in 2003. Subsequent development milestones will be recorded as deferred revenue when received and amortized over the remaining period of performance during the development period. Additionally, GSK reimbursed the Company for certain costs related to the collaboration of $1.5 million in 2002 and $2.7 million in 2003 and $1.8 million for the three months ended March 31, 2003 and $259,000 for the three months ended March 31, 2004. The Company recorded these amounts as an offset to research and development expense.

GSK has agreed to make additional payments to the Company based on achievement of development and commercialization milestones over the development period. In addition, payments may be received based on product sales milestones subsequent to the estimated eight-year development period. If the development and commercialization of the Company's product candidates is successful, these payments could total $460.0 million, of which $150.0 million would be attributable to the product candidates reaching certain sales thresholds. Alternatively, the Company may be required to make milestone payments of up to an aggregate of $220.0 million if GSK files for regulatory approval of a medicine containing a LABA product candidate discovered by GSK and then also if the approved medicine is sold commercially. GSK will pay the Company the same royalty payments from product sales containing any LABA commercialized from this collaboration regardless of the origin of the compound.

2004 Strategic Alliance

In March 2004, the Company and GSK entered into a strategic alliance for the development and commercialization of product candidates in a variety of therapeutic areas. In May 2004, the Company's stockholders approved the strategic alliance agreement. In connection with the alliance agreement, the Company received a $20.0 million payment in May 2004. In addition, in May 2004 GSK, through an affiliate, purchased 9.9 million shares of the Company's Class A common stock for $108.9 million. The alliance provides GSK with an option to license, on an exclusive, worldwide basis, product candidates from all of the Company's existing discovery and development programs, or development programs initiated through September 1, 2007. Upon opting in to a new program, GSK would be responsible for all development, manufacturing and commercialization activities for such programs. Consistent with our strategy, we will be obligated at our sole cost to discover two structurally different product candidates for certain programs that GSK opts in to. The Company may receive clinical, regulatory and commercial milestone payments and royalties on any future sales. If a product is successfully commercialized, in addition to any royalty revenue the Company may receive, the total upfront and milestone payments that the Company could receive could range from up to $130.0 million

to $162.0 million for programs with single-agent medicines and up to $252.0 million for programs with both a single-agent and a combination medicine. GSK is not obligated to opt in to any of the Company's development programs. If GSK does not exercise its opt-in right with respect to a development program, the Company will need to collaborate with another third party or it will incur significant development costs and potential delays in the development of the program until funding is available.

GSK may increase its ownership in the Company's outstanding stock to up approximately 60% through the concurrent issuance to GSK of the number of shares of stock that the Company redeems as described below. In July 2007, GSK has the right to require us to redeem ("call") 50% of the Company's outstanding shares of common stock at $35.00 per share. If GSK does not exercise this right, in August 2007 the Company's stockholders have the right to require it to redeem ("put") 50% of their common stock at $12.50 per share. In either case, GSK is contractually obligated to pay the full redemption price, however, GSK's maximum obligation for the shares subject to the put is capped at $525.0 million. In connection with those arrangements, the Company has agreed not to issue new shares which would cause the potential put liability to exceed $525.0 million. If GSK's ownership increases to more than 50% in 2007 as a result of the call or put, it will receive an extension of its option to opt in to exclusive licenses to our development programs initiated prior to September 1, 2012; otherwise, this exclusive option does not apply to the programs initiated after September 1, 2007.

5. Marketable Securities

The Company invests in a variety of highly liquid investment-grade securities. The following is a summary of the Company's available-for-sale securities at December 31, 2002 and December 31, 2003 (in thousands):

	December 31, 2002				December 31, 2003			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
U.S. government agencies	$ 15,765	$ 5	$ —	$ 15,770	$ 52,987	$ 24	$ (7)	$ 53,004
U.S. corporate notes	14,318	31	(3)	14,346	11,662	17	(2)	11,677
U.S. commercial paper	44,950	23	—	44,973	—	—		—
Asset-backed securities	18,353	165	—	18,518	16,739	28	(38)	16,729
Certificates of deposit	190	—	—	190	2,372	—	(1)	2,371
Money market funds	62,506	—	—	62,506	11,495	—		11,495
Total	156,082	224	(3)	156,303	95,255	69	(48)	95,276
Less amounts classified as cash and cash equivalents	(108,796)	—	—	(108,796)	(35,748)	—		(35,748)
Less amounts classified as restricted cash	(7,753)	—	—	(7,753)	(6,124)	—		(6,124)
Amounts classified as marketable securities	$ 39,533	$ 224	$ (3)	$ 39,754	$ 53,383	$ 69	$ (48)	$ 53,404

The following is a summary of the Company's available-for-sale securities at March 31, 2004 (in thousands):

	March 31, 2004 (unaudited)			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
U.S. government agencies	$ 20,163	$ 42	$ (5)	$ 20,200
U.S. corporate notes	14,949	17	(5)	14,961
U.S. commercial paper	16,855	—		16,855
Asset-backed securities	12,802	36	(18)	12,820
Certificates of deposit	1,708	—		1,708
Money market funds	13,013	—		13,013
Total	79,490	95	(28)	79,557
Less amounts classified as cash and cash equivalents	(27,592)	—		(27,592)
Less amounts classified as restricted cash	(5,684)	—		(5,684)
Amounts classified as marketable securities	$ 46,214	$ 95	$ (28)	$ 46,281

The estimated fair value amounts have been determined by the Company using available market information. At March 31, 2004, approximately 46% of marketable securities (excluding asset-backed securities) mature within twelve months, and 30% of marketable securities mature within twenty-four months. The remaining 24% are asset-backed securities with effective maturities within 24 months. Average duration of available-for-sale securities was approximately five months at March 31, 2004.

Gross realized gains (losses) on available-for-sale securities were $500,000, $(23,000), and $(31,000) for the years ended December 31, 2002 and 2003 and for the three months ended March 31, 2004, respectively.

6. Property and Equipment

Property and equipment consists of the following (in thousands):

	December 31,		March 31, 2004
	2002	2003	
			(unaudited)
Computer equipment and software	$ 4,085	$ 4,257	$ 4,303
Furniture and fixtures	3,603	3,649	3,649
Laboratory equipment	14,445	14,943	15,091
Leasehold improvements	12,443	12,453	12,453
	34,576	35,302	35,496
Less accumulated depreciation and amortization	(14,309)	(19,487)	(20,684)
Property and equipment, net	$ 20,267	$ 15,815	$ 14,812

There was $5.0 million, $5.2 million and $1.2 million of depreciation expense recorded for the years ended December 31, 2002 and 2003 and for the three months ended March 31, 2004, respectively.

7. Line of Credit

In November 2002, the Company entered into a one-year agreement for a revolving line of credit of $25.0 million, renewable for a second year at the Company's option. In November 2003, the Company did not renew the line of credit. In connection with the agreement, the Company issued warrants to the lender for the purchase of up to 48,611 shares of Series D-1 convertible preferred stock at an exercise price of $9.00 per share. The warrants are exercisable through November 2007, subject to certain conditions. The fair value of these warrants was determined at the issuance date, and was recorded as a deferred cost and amortized ratably over the one-year term of the agreement. The warrants remained outstanding as of March 31, 2004.

8. Long-Term Obligations

Capital Lease Arrangements

At December 31, 2003, the Company's aggregate commitments under capital lease agreements are as follows (in thousands):

Year ending December 31:	
2004	$ 3,475
2005	2,525
2006	1,130
Total minimum lease payments	7,130
Less amount representing interest	(647)
Present value of future payments	6,483
Less current portion	(3,052)
Long-term portion	$ 3,431

Laboratory and computer equipment, furniture and fixtures and leasehold improvements financed under capital lease arrangements are included in property and equipment and the related depreciation is included in depreciation expense in the consolidated statement of cash flows. The cost of assets financed under capital leases was $15.0 million at December 31, 2002 and 2003 and March 31, 2004. The related accumulated depreciation was $6.9 million, $9.8 million and $10.5 million at December 31, 2002 and 2003 and March 31, 2004, respectively. The Company has the option to purchase the assets at the end of the term at the then fair value. The underlying assets secure the capital lease obligations.

In June 2002, the Company completed substantially all lease draws available under its lease arrangements. The lease specifies that the Company is required to maintain an unrestricted cash and marketable securities balance of at least $50.0 million on the last day of each calendar quarter and to set aside specified amounts of cash as collateral. At December 31, 2002 and 2003 and March 31, 2004, the Company had restricted cash and cash equivalents as collateral of $3.8 million, $2.2 million and $1.7 million (see Note 9).

Notes Payable

Notes payable are as follows (in thousands):

	December 31, 2002	December 31, 2003	March 31, 2004 (unaudited)
Note payable to G.E. Capital	$ 889	$ 561	$ 473
Note payable to lessor	872	826	814
	$ 1,761	$ 1,387	$ 1,287

In June 2002, the Company received approximately $1.1 million under a tenant improvement loan from G.E. Capital, which is payable in monthly installments through June 2005 and bears interest

at 10.4%. Additionally, in connection with the Company's lease agreement for its 60,000 square foot facility in South San Francisco, California (see Note 9), the Company received approximately $897,000 in July 2002 under a Tenant Improvement Loan from the lessor, which is payable in monthly installments through 2012 and bears interest at 14.5%. Both notes are secured by the underlying leasehold improvements.

The aggregate maturities of notes payable for each of the five years and thereafter are as follows: $420,000 in 2004; $262,000 in 2005; $75,000 in 2006, $87,000 in 2007 and $543,000 thereafter.

9. Operating Leases and Subleases

The Company leases a 110,000 square foot facility and an adjacent 60,000 square foot facility in South San Francisco, California. Both of the leases expire in 2012 and have two renewal options of five years each. As security for performance of its future obligations under these leases, the Company has letters of credit for an aggregate $3.8 million, collateralized by an equal amount of restricted cash. If the Company's unrestricted cash and marketable securities balance is less than $50.0 million during the terms of the leases, then the letters of credit must be increased by an aggregate of $1.0 million. The current annual rental expense under the combined leases for the Company's headquarters is approximately $5.4 million, subject to annual increases.

As of March 31, 2004, approximately 35,000 square feet of the 60,000 square foot facility is subleased to two corporate tenants not affiliated with the Company. In addition, the Company has subleased its previously occupied facilities in South San Francisco, California and in Cranbury, New Jersey for periods approximating the Company's remaining lease terms.

At December 31, 2003, the Company's future minimum commitments under noncancelable operating leases, net of sublease income, are as follows (in thousands):

	Minimum Lease Commitments	Sublease Income	Net Lease Commitments
Year ending December 31:			
2004	$ 6,805	$ (3,157)	$ 3,648
2005	6,643	(1,859)	4,784
2006	6,692	(1,184)	5,508
2007	6,340	(305)	6,035
2008	6,133	—	6,133
Thereafter	20,991	—	20,991
	$ 53,604	$ (6,505)	$ 47,099

Expenses and income associated with operating leases were as follows (in millions):

	Years Ended December 31,			Three Months Ended	
	2001	2002	2003	March 31, 2003	March 31, 2004
				(unaudited)	
Rent expense	$ 4.5	$ 6.2	$ 6.7	$ 1.7	$ 1.7
Sublease income, net	(0.9)	(1.0)	(0.7)	(0.1)	(0.1)

10. Commitments

Guarantees and Indemnifications

In November 2002, the FASB issued interpretation No. 45, Guarantor's Accounting and Disclosure Requirements for Guarantees of Indebtedness of Others (FIN No. 45). FIN No. 45 requires that upon issuances of a guarantee, the guarantor must recognize a liability for the fair value of the obligations it assumes under the guarantee.

The Company indemnifies its officers and directors for certain events or occurrences, subject to certain limits. The Company believes the fair value of these indemnification agreements is minimal. Accordingly, the Company has not recognized any liabilities relating to these agreements as of March 31, 2004.

Purchase Obligations

At March 31, 2004, the Company had outstanding purchase obligations, primarily for services from contract research organizations, totaling $2.6 million. Additionally, in connection with the GSK transaction that closed in May 2004, the Company has a commitment to pay fees totaling approximately $1.8 million to a financial advisor.

11. Convertible Preferred Stock

The Company has classified the convertible preferred stock prior to May 11, 2004 outside of stockholders' equity (deficit). An acquisition of the Company whereby 50% or more of the outstanding voting power of the Company would have triggered a liquidation event that entitled the preferred stockholders to their liquidation preference. This provision applied to all series of the Company's convertible preferred stock. Since a majority of the outstanding stock of the Company is controlled by outside investors, a hostile takeover or other sale could have occurred outside the control of the Company and thereby triggered a change in control, which would have been a liquidation event.

In connection with the closing of the GSK alliance agreement on May 11, 2004, all shares of the Company's convertible preferred stock converted to common stock on a one-for-one basis, except for Series D convertible preferred stock, which converted on a basis of $1^{2}/_{3}$ shares of common stock for each share of Series D convertible preferred stock.

12. Stockholders' Equity (Deficit)

Stock Option Plans

In June 1997, the Board of Directors adopted the 1997 Stock Option Plan (the 1997 Plan). In June 1998, the Board of Directors adopted the Long-Term Option Plan (the Long-Term Plan). These plans provide for the granting of incentive and nonstatutory stock options to employees, officers, directors, and consultants of the Company. Incentive stock options may be granted with exercise prices not less than the estimated fair value, and nonstatutory stock options may be granted with an exercise price not less than 85% of the estimated fair value, of the common stock on the date of grant. Stock options granted to a stockholder owning more than 10% of voting stock of the Company must have an exercise price of not less than 110% of the estimated fair value of the common stock on the date of grant. The Board of Directors determines the estimated fair value of common stock. Stock options are generally granted with terms of up to ten years and vest over a period of four to six years.

The Company has allowed certain stock option holders to exercise their options by executing stock purchase agreements and full-recourse notes payable to the Company. The stock purchase agreements provide the Company with the right to repurchase unvested shares. Certain full-recourse notes payable include forgiveness provisions whereby the Company forgives the unpaid principal of the note on its maturity date if the optionee remains in continuous service until the maturity date on the notes. At March 31, 2004, 336,610 shares were subject to repurchase under these outstanding note agreements.

Through March 31, 2004, in connection with the grant of certain stock options to employees, the Company recorded aggregate deferred stock-based compensation of $40.6 million and amortized $33.7 million as non-cash stock-based compensation expense. Deferred stock-based compensation represents the difference between the exercise price and the estimated fair value of the Company's common stock on the date these stock options were granted. The Company recognizes compensation expense for fixed awards in accordance with the accelerated expense attribution method under FIN No. 28, "Accounting for Stock Appreciation Rights and Other Variable Stock Option Award Plans".

The Company has granted options to purchase shares of common stock to nonemployees with exercise prices ranging from $0.50 to $5.50 per share. As of December 31, 2003, options to acquire 163,959 shares are periodically subject to remeasurement of fair value using a Black-Scholes model over their remaining vesting terms. The following assumptions were used for 2003 and 2002 and for the three months ended March 31, 2004: a volatility of 0.7, a risk-free interest rate of 2.0%, 3.3% and 1.2%, respectively, no dividend yield, and a life of the option equal to the full term, generally ten years from the date of grant. In connection with these transactions, the Company recognized expense of $486,000, $511,000, $262,000, and $94,000 for the years ended December 31, 2001, 2002 and 2003 and for the three months ended March 31, 2004, respectively.

Director Compensation Program

On April 28, 2004, the Compensation Committee of the Board of Directors approved a director compensation program for the Company's outside directors. Pursuant to this program, each outside director will receive an annual retainer plus a fee for attending each board and committee meeting. In addition, each outside director was granted an option to purchase 40,000 shares of common stock with an exercise price equal to the then fair market value of the Company's common stock.

The following table summarizes option activity under the 1997 Plan and the Long-Term Plan, and related information:

	Number of Shares Available for Grant	Number of Shares Subject to Outstanding Options	Weighted-Average Exercise Price Per Share
	(In thousands, except per share amounts)		
Balance at January 1, 2001	4,315	2,056	$ 3.41
Options granted	(3,134)	3,134	$ 5.50
Options exercised	—	(32)	$ 1.36
Options forfeited	300	(300)	$ 3.64
Shares repurchased	361	—	$ 0.67
Balance at December 31, 2001	1,842	4,858	$ 4.75
Additional shares authorized	4,100	—	
Options granted	(3,109)	3,109	$ 5.21
Options exercised	—	(154)	$ 1.06
Options forfeited	412	(412)	$ 4.21
Shares repurchased	113	—	$ 0.85
Balance at December 31, 2002	3,358	7,401	$ 5.05
Options granted	(3,047)	3,047	$ 2.00
Options exercised	—	(86)	$ 1.85
Options forfeited	450	(450)	$ 5.06
Shares repurchased	40	—	$ 1.82
Balance at December 31, 2003	801	9,912	$ 4.17
Additional shares authorized (unaudited)	—	—	
Options granted (unaudited)	—	—	—
Options exercised (unaudited)	—	(49)	$ 1.84
Options forfeited (unaudited)	185	(185)	$ 4.58
Balance at March 31, 2004 (unaudited)	986	9,678	$ 4.17

During the three months ended March 31, 2004, the Company's Board of Directors approved grants of stock options to purchase a total of 4.0 million shares at exercise prices of $2.00 and $6.25 per share. For accounting purposes, stock-based compensation expense associated with these grants will be recorded in the three months ending June 30, 2004, upon shareholder approval.

The weighted-average fair value of options granted with exercise prices less than the estimated fair value of common stock on the date of grant during the year ended December 31, 2003 was $3.18. No options were granted with exercise prices less than the estimated fair value of common stock on the date of grant during the years ended December 31, 2001 and 2002.

The weighted-average fair value of options granted with exercise prices equal to the estimated fair value of common stock on the date of grant during the year ended December 31, 2001, 2002 and 2003 was $3.14, $2.85 and $1.07, respectively.

At December 31, 2003 and March 31, 2004, all outstanding options to purchase common stock of the Company were exercisable. These options are summarized in the following table:

	December 31, 2003			March 31, 2004		
Exercise Price Per Share	Number of Shares Subject to Outstanding Options	Number of Shares Subject to Options Vested	Weighted-Average Remaining Contractual Life	Number of Shares Subject to Outstanding Options	Number of Shares Subject to Options Vested	Weighted-Average Remaining Contractual Life
$0.13	30	—	3.7	30	—	3.5
$0.50	13	—	6.2	—	—	—
$0.85	437	48	6.1	427	33	5.8
$2.00	3,200	2,654	9.1	3,138	2,502	8.9
$5.25	161	7	6.2	74	—	6.0
$5.50	6,071	2,676	7.7	6,009	2,244	7.5
	9,912	5,385	8.1	9,678	4,779	7.8

Stock Subject to Repurchase

At December 31, 2003, and March 31, 2004, there were 611,224 shares and 515,221 shares of the Company's common stock, respectively, subject to the Company's right to repurchase at the original purchase price. These shares were issued upon the exercise of unvested stock options and the execution of certain stock purchase agreements. The Company's repurchase rights lapse generally over a four-year period.

Reserved Shares

The Company has reserved shares of common stock for future issuance as follows (in thousands):

	December 31, 2003 Number Of Shares	March 31, 2004 Number Of Shares
Subject to outstanding warrants	102	57
Stock option plans:		
Subject to outstanding options	9,912	9,678
Available for future grants	801	986
Conversion of preferred stock	48,755	48,775
Total	59,570	59,496

Stock Options Exercised Early

The Company generally allows employees to exercise options prior to vesting. In accordance with EITF 00-23, "Issues Related to Accounting for Stock Compensation under APB Opinion No. 25 and FASB Interpretation No. 44, stock options granted or modified after March 21, 2002," that are subsequently exercised for cash prior to vesting are treated differently from prior grants and related exercises. The consideration received for an exercise of an option granted after the effective date of this guidance is considered to be a deposit of the exercise price and the related dollar amount is recorded as a liability. The liability is only reclassified into equity on a ratable basis as the option vests. The Company has applied the guidance and recorded a liability in the consolidated balance sheets relating to 173,426 and 159,364 options granted that were exercised and unvested at December 31, 2003 and March 31, 2004, respectively. Furthermore, these shares are not presented as outstanding on the accompanying consolidated statements of convertible preferred stock and stockholders' equity (deficit) and consolidated balance sheets. Instead, these shares are disclosed as outstanding options.

Warrants

At December 31, 2003 and March 31, 2004, there were outstanding warrants to purchase 4,000 shares of the Company's Series A convertible preferred stock for $1.25 per share, and 4,000 warrants to purchase the Company's Series B convertible preferred stock for $5.00 per share.

13. Income Taxes

Due to operating losses and the inability to recognize an income tax benefit, there is no provision for income taxes.

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets are as follows (in thousands):

	December 31,	
	2002	2003
Deferred tax assets:		
Net operating loss carryforwards	$ 70,200	$ 85,400
Deferred revenues	3,940	14,500
Capitalized research and development expenditures	11,050	13,500
Research and development tax credit carryforwards	5,390	6,720
Depreciation	4,830	3,730
Reserves and accruals	1,910	1,610
Deferred compensation	2,360	1,510
Valuation allowance	(99,680)	(126,970)
Net deferred tax assets	$ —	$ —

Realization of deferred tax assets is dependent on future taxable income, if any, the timing and the amount of which are uncertain. Accordingly, the deferred tax assets have been fully offset by a

valuation allowance. The valuation allowance increased by $24.8 million, $29.4 million and $27.3 million for the years ended December 31, 2001, 2002 and 2003, respectively.

As of December 31, 2003, the Company had federal net operating loss carryforwards of approximately $249.0 million and federal research and development tax credit carryforwards of approximately $4.0 million, which will expire from 2011 through 2023. The Company also had state net operating loss carryforwards of approximately $14.0 million expiring in the years 2006 through 2013 and state research tax credits of approximately $2.8 million, which carry forward indefinitely.

Utilization of net operating loss and tax credit carryforwards may be subject to a substantial annual limitation due to the ownership change limitations provided by the Internal Revenue Code and similar state provisions. The annual limitation may result in expiration of net operating loss and tax credit carryforwards before some or all of such amounts have been utilized.

14. Subsequent Events

On May 27, 2004, the Board of Directors authorized the filing of a registration statement with the Securities and Exchange Commission to register shares of the Company's common stock in connection with a proposed initial public offering.

On May 27, 2004, the Board of Directors approved the forgiveness, on a basis grossed-up for income taxes, home loans for two executives (the Company's Chief Executive Officer and President, and Executive Vice President, Research). The total principal of the loans to be forgiven is $4.7 million.

On May 27, 2004, the Company's Board of Directors adopted the 2004 Equity Incentive Plan and 2004 Employee Stock Purchase Plan. Both of these equity plans are to be effective as of the date of the Company's initial public offering.

Through and including , 2004 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

Shares

Theravance

Common Stock

PROSPECTUS

Merrill Lynch & Co. **Lehman Brothers**

Credit Suisse First Boston

Perseus Group

Thomas Weisel Partners LLC

, 2004

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

Estimated expenses payable in connection with the sale of the common stock in this offering are as follows:

SEC registration fee	$	12,163
NASD filing fee	$	10,100
Nasdaq National Market listing fee	$	150,000
Printing and engraving expenses	$	
Legal fees and expenses	$	
Accounting fees and expenses	$	
Transfer agent and registrar fees and expenses	$	
Miscellaneous	$	
Total	$	

The registrant will bear all of the expenses shown above.

Item 14. Indemnification of Directors and Officers.

The Delaware General Corporation Law and the registrant's certificate of incorporation and bylaws provide for indemnification of the registrant's directors and officers for liabilities and expenses that they may incur in such capacities. In general, directors and officers are indemnified with respect to actions taken in good faith in a manner reasonably believed to be in, or not opposed to, the best interests of the registrant, and with respect to any criminal action or proceeding, actions that the indemnitee had no reasonable cause to believe were unlawful. Reference is made to the registrant's certificate of incorporation filed as Exhibit 3.2 hereto and the registrant's bylaws filed as Exhibit 3.5 hereto.

The registrant has entered into indemnification agreements with its officers and directors, a form of which is attached as Exhibit 10.11 hereto and incorporated herein by reference. The Indemnification Agreements provide the registrant's officers and directors with further indemnification to the maximum extent permitted by the Delaware General Corporation Law. The purchase agreement provides that the underwriters are obligated, under certain circumstances, to indemnify directors, officers and controlling persons of the registrant against certain liabilities, including liabilities under the Securities Act. Reference is made to the form of purchase agreement filed as Exhibit 1.1 hereto.

The registrant currently maintains a directors' and officers' liability insurance policy.

Item 15. Recent Sales of Unregistered Securities.

In the three years preceding the filing of this registration statement, the registrant has sold the following securities that were not registered under the Securities Act:

Common Stock

In June 2001, the registrant issued an aggregate of 21,084 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $20,051.10 pursuant to exercises of options granted under its 1997 Stock Plan.

In July 2001, the registrant issued an aggregate of 802 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $681.70 pursuant to exercises of options granted under its 1997 Stock Plan.

In August 2001, the registrant issued an aggregate of 125 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $106.25 pursuant to exercises of options granted under its 1997 Stock Plan.

In September 2001, the registrant issued an aggregate of 599 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $3,294.50 pursuant to exercises of options granted under its 1997 Stock Plan.

In October 2001, the registrant issued an aggregate of 656 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $557.60 pursuant to exercises of options granted under its 1997 Stock Plan.

In November 2001, the registrant issued an aggregate of 558 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $2,218.05 pursuant to exercises of options granted under its 1997 Stock Plan.

In December 2001, the registrant issued an aggregate of 2,658 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $11,131.50 pursuant to exercises of options granted under its 1997 Stock Plan.

In February 2002, the registrant issued an aggregate of 125,000 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $106,250 pursuant to exercises of options granted under its 1997 Stock Plan.

In April 2002, the registrant issued an aggregate of 16,130 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $8,165 pursuant to exercises of options granted under its 1997 Stock Plan.

In May 2002, the registrant issued an aggregate of 3,298 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $7,034.80 pursuant to exercises of options granted under its 1997 Stock Plan.

In June 2002, the registrant issued an aggregate of 3,333 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $18,331.50 pursuant to exercises of options granted under its 1997 Stock Plan.

In July 2002, the registrant issued an aggregate of 1,820 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $10,010 pursuant to exercises of options granted under its 1997 Stock Plan.

In August 2002, the registrant issued an aggregate of 42 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $231.00 pursuant to exercises of options granted under its 1997 Stock Plan.

In November 2002, the registrant issued an aggregate of 4,656 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $25,608.00 pursuant to exercises of options granted under its 1997 Stock Plan.

In March 2003, the registrant issued an aggregate of 218,750 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $437,500.00 pursuant to exercises of options granted under its 1997 Stock Plan.

In April 2003, the registrant issued an aggregate of 7,108 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $12,399.90 pursuant to exercises of options granted under its 1997 Stock Plan.

In May 2003, the registrant issued an aggregate of 2,352 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $1,999.20 pursuant to exercises of options granted under its 1997 Stock Plan.

In July 2003, the registrant issued an aggregate of 2,265 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $12,167.00 pursuant to exercises of options granted under its 1997 Stock Plan.

In August 2003, the registrant issued an aggregate of 4,173 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $5,143 pursuant to exercises of options granted under its 1997 Stock Plan.

In September 2003, the registrant issued an aggregate of 3,000 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $6,000.00 pursuant to exercises of options granted under its 1997 Stock Plan.

In October 2003, the registrant issued an aggregate of 760 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $4,180.00 pursuant to exercises of options granted under its 1997 Stock Plan.

In December 2003, the registrant issued an aggregate of 20,840 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $26,913.00 pursuant to exercises of options granted under its 1997 Stock Plan and its Long-Term Stock Option Plan.

In January 2004, the registrant issued an aggregate of 2,657 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $13,378.00 pursuant to exercises of options granted under its 1997 Stock Plan.

In February 2004, the registrant issued an aggregate of 25,950 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $21,886.00 pursuant to exercises of options granted under its 1997 Stock Plan and its Long-Term Stock Option Plan.

In March 2004, the registrant issued an aggregate of 5,911 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $25,972.50 pursuant to exercises of options granted under its 1997 Stock Plan.

In April 2004, the registrant issued an aggregate of 137,283 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $478,413.00 pursuant to exercises of options granted under its 1997 Stock Plan.

In May 2004, the registrant issued an aggregate of 14,007 shares of its common stock to employees, consultants, directors and other service providers for an aggregate purchase price of $35,745.50 pursuant to exercises of options granted under its 1997 Stock Plan.

No underwriters were involved in the foregoing sales of securities. Such sales were made in reliance upon the exemption provided by Section 4(2) of the Securities Act for transactions not involving a public offering.

Class A Common Stock

In May 2004, the company sold an aggregate of 9,900,000 shares of its Class A common stock to one accredited investor at an aggregate purchase price of $108,900,000.

In May 2004, one accredited investor exchanged 4,000,000 shares of our common stock for 4,000,000 shares of our Class A common stock.

Series E Preferred Stock

In December 2002, the company sold an aggregate of 4,000,000 shares of its Series E convertible preferred stock to one accredited investor at an aggregate purchase price of $40,000,000.00.

Options

In June 2001, the registrant granted options to purchase an aggregate of 382,000 shares of common stock at an exercise price of $5.50 per share.

In December 2001, the registrant granted options to purchase an aggregate of 1,516,450 shares of common stock at an exercise price of $5.50 per share.

In February 2002, the registrant granted options to purchase an aggregate of 1,685,660 shares of common stock at an exercise price of $5.50 per share.

In April 2002, the registrant granted options to purchase an aggregate of 435,100 shares of common stock at an exercise price of $5.50 per share.

In June 2002, the registrant granted options to purchase an aggregate of 728,500 shares of common stock at an exercise price of $5.50 per share.

In December 2002, the registrant granted options to purchase an aggregate of 260,300 shares of common stock at an exercise price of $2.00 per share.

In January 2003, the registrant granted options to purchase an aggregate of 2,412,640 shares of common stock at an exercise price of $2.00 per share.

In April 2003, the registrant granted options to purchase an aggregate of 343,500 shares of common stock at an exercise price of $2.00 per share.

In June 2003, the registrant granted options to purchase an aggregate of 151,000 shares of common stock at an exercise price of $2.00 per share.

In September 2003, the registrant granted options to purchase an aggregate of 85,000 shares of common stock at an exercise price of $2.00 per share.

In December 2003, the registrant granted options to purchase an aggregate of 55,000 shares of common stock at an exercise price of $2.00 per share.

In February 2004, the registrant granted options to purchase an aggregate of 1,019,607 shares of common stock at an exercise price of $2.00 per share.

In March 2004, the registrant granted options to purchase an aggregate of 2,995,000 shares of common stock at an exercise price of $6.25 per share.

In April 2004, the registrant granted options to purchase an aggregate of 421,000 shares of common stock at an exercise price of $6.25 per share.

The foregoing options were granted to employees, directors and consultants in accordance with the terms of the registrant's equity compensation plans. Such issuances were made in reliance upon the exemption provided by Rule 701 promulgated under the Securities Act and, in the case of certain consultants, Section 4(2) of the Securities Act.

Warrants

In November 2002, the registrant issued a warrant to a financial institution for an aggregate of 48,611 shares of Series D-1 preferred stock with an exercise price per share of $9.00.

No underwriters were involved in the foregoing sales of securities. Such sales were made in reliance upon the exemption provided by Section 4(2) of the Securities Act for transactions not involving a public offering.

Item 16. Exhibits and Financial Statement Schedules.

(a) *Exhibits*:

Exhibit No.	Exhibit Index
1.1*	Form of Purchase Agreement
3.1	Restated Certificate of Incorporation of the registrant (currently in effect)
3.2*	Form of Amended and Restated Certificate of Incorporation of the registrant effecting a reverse stock split to take effect prior to the closing of the offering
3.3*	Form of Amended and Restated Certificate of Incorporation of the registrant to take effect upon the closing of the offering
3.4	Bylaws of the registrant (currently in effect)
3.5*	Form of Amended and Restated Bylaws to take effect as of the closing of the offering
4.1*	Specimen certificate representing the common stock of the registrant
4.2	Form of Rights Agreement
5.1*	Opinion of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP
10.1	1997 Stock Plan
10.2	Long-Term Stock Option Plan
10.3	2004 Equity Incentive Plan
10.4	Employee Stock Purchase Plan
10.5	Change in Control Severance Plan
10.6	Warrant issued to Comdisco, dated as of April 27, 1998
10.7	Warrant issued to Silicon Valley Bank, dated as of November 26, 2002
10.8	Amended and Restated Lease Agreement, 951 Gateway Boulevard, between the registrant and HMS Gateway Office L.P., dated January 1, 2001
10.9	Lease Agreement, 901 Gateway Boulevard, between the registrant and HMS Gateway Office L.P., dated January 1, 2001
10.10#	Collaboration Agreement between the registrant and Glaxo Group Limited, dated as of November 14, 2002
10.11	Form of Indemnification Agreement for directors and officers of the registrant
10.12	Class A Common Stock Purchase Agreement between the registrant and SmithKline Beecham Corporation, dated as of March 30, 2004
10.13	Amended and Restated Investors' Rights Agreement by and among the registrant and the parties listed therein, dated as of May 11, 2004
10.14	Amended and Restated Governance Agreement by and among the registrant, SmithKline Beecham Corporation and GlaxoSmithKline dated as of June 4, 2004

10.15#	Strategic Alliance Agreement between the registrant and Glaxo Group Limited, dated as of March 30, 2004
10.16#	License Agreement between the registrant and Janssen Pharmaceutica, dated as of May 14, 2002
10.17	Offer Letter with Rick E Winningham dated August 23, 2001
10.18	Full Recourse Note Secured by Deed of Trust and Stock Pledge issued by Rick E Winningham to the registrant, dated as of July 1, 2002
10.19	Stock Pledge Agreement between the registrant and Rick E Winningham, dated as of July 1, 2002
10.20	Letter Agreement between the registrant and Rick E Winningham, dated as of June 4, 2004
10.21	Offer Letter with Patrick P.A. Humphrey dated April 6, 2001
10.22	Full Recourse Note Secured by Deed of Trust and Stock Pledge issued by Patrick P.A. Humphrey to the registrant, dated as of February 27, 2002
10.23	Stock Pledge Agreement between the registrant and Patrick P.A. Humphrey, dated as of February 27, 2002
10.24	Letter Agreement between the registrant and Patrick P.A. Humphrey dated June 4, 2004
21.1	List of Subsidiaries
23.1*	Consent of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP (included in Exhibit 5.1)
23.2	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm
24.1	Power of Attorney (included on page II-8)

* To be included by amendment

\# Application has been made to the Securities and Exchange Commission to seek confidential treatment of certain provisions. Omitted material for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.

(b) *Consolidated Financial Statements Schedules*:

All schedules for which provision is made in the applicable accounting regulations of the Securities and Exchange Commission are not required under the related instructions, the required information is disclosed in the notes to the consolidated financial statements or the schedules are inapplicable, and therefore have been omitted.

Item 17. Undertakings.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to provisions described in Item 14 above, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant

will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The registrant hereby undertakes (1) to provide to the underwriters at the closing specified in the purchase agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser; (2) that for purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective; and (3) that for the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in South San Francisco, California on June 10, 2004.

THERAVANCE, INC.

By: /s/ RICK E WINNINGHAM

Rick E Winningham
Chief Executive Officer

POWER OF ATTORNEY AND SIGNATURES

The undersigned officers and directors of Theravance, Inc. hereby constitute and appoint Rick E Winningham, Marty Glick and Bradford J. Shafer, and each of them singly, with full power of substitution, our true and lawful attorneys-in-fact and agents to take any actions to enable Theravance, Inc. to comply with the Securities Act, and any rules, regulations and requirements of the Securities and Exchange Commission, in connection with this registration statement, including the power and authority to sign for us in our names in the capacities indicated below any and all amendments (including post-effective amendments) to this registration statement and any other registration statement filed pursuant to the provisions of Rule 462 under the Securities Act and the power to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto each said attorney-in-fact and agents full power and authority to perform each and every act in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or either of them or their or his substitute or substitutes may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

Name	Title	Date
/s/ RICK E WINNINGHAM Rick E Winningham	Chief Executive Officer and Director (principal executive officer)	June 10, 2004
/s/ MARTY GLICK Marty Glick	Chief Financial Officer (principal financial and accounting officer)	June 10, 2004
/s/ P. ROY VAGELOS P. Roy Vagelos	Director	June 10, 2004
/s/ JULIAN C. BAKER Julian C. Baker	Director	June 10, 2004

/s/ JEFFREY M. DRAZAN Jeffrey M. Drazan	Director	June 10, 2004
/s/ ROBERT V. GUNDERSON, JR. Robert V. Gunderson, Jr.	Director	June 10, 2004
/s/ ARNOLD J. LEVINE Arnold J. Levine	Director	June 10, 2004
/s/ RONN C. LOEWENTHAL Ronn C. Loewenthal	Director	June 10, 2004
/s/ MICHAEL MULLEN Michael Mullen	Director	June 10, 2004
/s/ WILLIAM H. WALTRIP William H. Waltrip	Director	June 10, 2004
/s/ GEORGE M. WHITESIDES George M. Whitesides	Director	June 10, 2004
/s/ WILLIAM D. YOUNG William D. Young	Director	June 10, 2004

EXHIBIT INDEX

Exhibit No.	Exhibit Index
1.1*	Form of Purchase Agreement
3.1	Restated Certificate of Incorporation of the registrant (currently in effect)
3.2*	Form of Amended and Restated Certificate of Incorporation of the registrant effecting a reverse stock split to take effect prior to the closing of the offering
3.3*	Form of Amended and Restated Certificate of Incorporation of the registrant to take effect upon the closing of the offering
3.4	Bylaws of the registrant (currently in effect)
3.5*	Form of Amended and Restated Bylaws to take effect as of the closing of the offering
4.1*	Specimen certificate representing the common stock of the registrant
4.2	Form of Rights Agreement
5.1*	Opinion of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP
10.1	1997 Stock Plan
10.2	Long-Term Stock Option Plan
10.3	2004 Equity Incentive Plan
10.4	Employee Stock Purchase Plan
10.5	Change in Control Severance Plan
10.6	Warrant issued to Comdisco, dated as of April 27, 1998
10.7	Warrant issued to Silicon Valley Bank, dated as of November 26, 2002
10.8	Amended and Restated Lease Agreement, 951 Gateway Boulevard, between the registrant and HMS Gateway Office L.P., dated January 1, 2001
10.9	Lease Agreement, 901 Gateway Boulevard, between the registrant and HMS Gateway Office L.P., dated January 1, 2001
10.10#	Collaboration Agreement between the registrant and Glaxo Group Limited, dated as of November 14, 2002
10.11	Form of Indemnification Agreement for directors and officers of the registrant
10.12	Class A Common Stock Purchase Agreement between the registrant and SmithKline Beecham Corporation, dated as of March 30, 2004
10.13	Amended and Restated Investors' Rights Agreement by and among the registrant and the parties listed therein, dated as of May 11, 2004
10.14	Amended and Restated Governance Agreement by and among the registrant, SmithKline Beecham Corporation and GlaxoSmithKline dated as of June 4, 2004
10.15#	Strategic Alliance Agreement between the registrant and Glaxo Group Limited, dated as of March 30, 2004
10.16#	License Agreement between the registrant and Janssen Pharmaceutica, dated as of May 14, 2002
10.17	Offer Letter with Rick E Winningham dated August 23, 2001
10.18	Full Recourse Note Secured by Deed of Trust and Stock Pledge issued by Rick E Winningham to the registrant, dated as of July 1, 2002

10.19	Stock Pledge Agreement between the registrant and Rick E Winningham, dated as of July 1, 2002
10.20	Letter Agreement between the registrant and Rick E Winningham, dated as of June 4, 2004
10.21	Offer Letter with Patrick P.A. Humphrey dated April 6, 2001
10.22	Full Recourse Note Secured by Deed of Trust and Stock Pledge issued by Patrick P.A. Humphrey to the registrant, dated as of February 27, 2002
10.23	Stock Pledge Agreement between the registrant and Patrick P.A. Humphrey, dated as of February 27, 2002
10.24	Letter Agreement between the registrant and Patrick P.A. Humphrey dated June 4, 2004
21.1	List of Subsidiaries
23.1*	Consent of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP (included in Exhibit 5.1)
23.2	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm
24.1	Power of Attorney (included on page II-8)

* To be included by amendment

\# Application has been made to the Securities and Exchange Commission to seek confidential treatment of certain provisions. Omitted material for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.

QuickLinks

EXHIBIT INDEX

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 3.1

RESTATED CERTIFICATE OF INCORPORATION
OF
THERAVANCE, INC.

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

Theravance, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"),

DOES HEREBY CERTIFY:

FIRST: That the name of this corporation is Theravance, Inc. and that this corporation was originally incorporated pursuant to the General Corporation Law on November 19, 1996 under the name Advanced Medicine, Inc.

SECOND: That the Board of Directors duly adopted resolutions proposing to further amend and restate the Restated Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Restated Certificate of Incorporation of this corporation be further amended and restated in its entirety as follows:

ARTICLE I

The name of this corporation is Theravance, Inc.

ARTICLE II

The address of the registered office of this corporation in the State of Delaware is 15 East North Street, in the City of Dover, County of Kent. The name of its registered agent at such address is Incorporating Services, Ltd.

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

A. *Classes of Stock.* This corporation is authorized to issue three classes of stock to be designated, respectively, "Common Stock," "Class A Common Stock", and "Preferred Stock." The total number of shares that this corporation is authorized to issue is 193,900,000 shares. 175,000,000 shares shall be Common Stock, 13,900,000 shares shall be Class A Common Stock, and 5,000,000 shares shall be Preferred Stock, each with a par value of $0.01 per share.

B. *Rights, Preferences and Restrictions of Preferred Stock.* The Preferred Stock authorized by this Restated Certificate of Incorporation may be issued from time to time in one or more series. The Board of Directors is hereby authorized, in the resolution or resolutions adopted by the Board of Directors providing for the issue of any wholly unissued series of Preferred Stock, within the limitations and restrictions stated in this Restated Certificate of Incorporation, to fix or alter the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), the redemption price or prices, and the liquidation preferences of any wholly unissued series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or any of them, and to increase or decrease the number of shares of any series subsequent to the issue of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

C. *Common Stock and Class A Common Stock*. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock and Class A Common Stock are as set forth below in this Section C of this Article IV(C).

1. *Dividend Rights*. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, if any, the holders of the Common Stock and Class A Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of this corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors and shall share equally on a per share basis in all such dividends and other distributions. In the case of dividends or other distributions payable in stock of the corporation including, distributions pursuant to stock splits or divisions of the stock of the corporation which occur after the initial issuance of Class A Common Stock, only shares of Common Stock shall be paid or distributed with respect to Common Stock and only shares of Class A Common Stock shall be paid or distributed with respect to Class A Common Stock. In the case of any combination or reclassification of the Common Stock or the Class A Common Stock, the shares of the Common Stock or the Class A Common Stock, as the case may be, shall also be combined or reclassified so that the number of shares of Common Stock outstanding immediately following such combination or reclassification shall bear the same relationship to the number of shares of Common Stock outstanding immediately prior to such combination or reclassification as the number of shares of Class A Common Stock outstanding immediately following such combination or reclassification bears to the number of shares of Class A Common Stock outstanding immediately prior to such combination or reclassification.

2. *Liquidation Rights*. Upon the liquidation, dissolution or winding up of this corporation, subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights, if any, the assets of this corporation shall be distributed among the holders of Common Stock and Class A Common Stock pro rata based on the number of shares of Common Stock and Class A Common Stock held by each.

3. *Voting Rights*. Except as set forth in Section C.10 of this Article IV, the Common Stock and Class A Common Stock shall vote together on matters as a single class and the holder of each share of Common Stock and the holder of each share of Class A Common Stock shall each have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of this corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. The number of authorized shares of Common Stock and Class A Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of this corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

4. *Redemption*. Subject to the provisions of the Governance Agreement, dated as of May 11, 2004, among this corporation, SmithKline Beecham Corporation, a Pennsylvania corporation ("GSK"), GlaxoSmithKline plc, an English public limited company ("Glaxo") and Glaxo Group Limited, a limited liability company organized under the laws of England and Wales, as such agreement may be amended from time to time (such agreement, as amended from time to time, the "Governance Agreement"), fifty percent (50%) of the then Callable/Puttable Shares (as defined below in Section C.11 of this Article IV) may be redeemed (the "Call"), out of funds legally available therefor, at the price and upon the terms and conditions set forth below. Pursuant to the Governance Agreement, GSK is required to inform the Company, in the period between June 1, 2007 and July 1, 2007, in writing whether or not it desires to exercise the Call as of the close of business on July 1, 2007 pursuant to this Section C.4. If GSK does request the Call, it shall provide the desired Call Date in such notice, which date shall not be later than July 31, 2007. Upon the occurrence of the Call pursuant to this Section 4, each holder of Callable/Puttable Shares shall receive the Call Price (as defined below) for fifty percent (50%) of the Callable/Puttable Shares held by such holder in accordance with the

provisions of this Section C.4 and the Governance Agreement. The Class A Common Stock shall not be callable or redeemable.

(a) *Call Price*. The call price shall be $35.00 per share of Common Stock that constitutes a Callable/Puttable Share (the "Call Price"), subject to adjustments pursuant to paragraph (c) of this Section 4.

(b) *Call Notice*. Notice of the Call shall be given through the mailing by the corporation of a notice that the Call will occur (the "Call Notification"), postage prepaid, to the holders of record of the shares of Common Stock that constitute Callable/Puttable Shares at their respective addresses then appearing on the books of the corporation, not more than thirty nor less than ten calendar days prior to Call Date, but neither failure to mail such notice nor any defect therein or in the mailing thereof shall affect the validity of the Call.

(c) *Adjustments*. If the corporation shall at any time after the initial issuance of any Common Stock pay any dividend on Common Stock payable in Common Stock or effect a subdivision or combination of the Common Stock (by reclassification or otherwise) into a greater or lesser number of shares of Common Stock, then in each such case the Call Price shall be adjusted by multiplying the Call Price by the ratio of the number of shares of Common Stock outstanding immediately prior to such event to the number of shares of Common Stock outstanding immediately after such event. If the corporation shall at any time declare or pay any dividend on Common Stock in cash, securities or other property other than Common Stock, the Call Price shall be reduced by the per share value of such cash, securities or other property. The Independent Directors (as defined in the Governance Agreement) shall determine in good faith the value of any non-cash dividend for purposes of the Call or the Call Price set forth in the immediately preceding sentence.

(d) *Condition to the Corporation's Obligations*. Notwithstanding any other provision of this Article IV, the corporation's obligation to pay the Call Price in respect of shares of Common Stock with respect to which the Call Notification has been given (and to deposit with the Depositary (as defined below) funds pursuant to Section C.6(a) of this Article IV) shall be conditioned upon the corporation's having received from GSK or Glaxo, or any other affiliate of GSK, the sum of (i) funds in an amount equal to the product of 50% of the Callable/Puttable Shares existing on the Call Date multiplied by the Call Price, and (ii) such additional funds, if any, sufficient to permit the corporation to redeem the shares of Common Stock with respect to which the Call Notification has been given without violating Section 160 of the Delaware General Corporation Law, any bankruptcy or insolvency law or any other law or regulation for the protection of creditors (collectively, the sum of (i) and (ii) is referred to as the "Call Amount"). The corporation shall only use the funds received from GSK, Glaxo or their Affiliates to fund the Depositary for the purposes of effecting the Call pursuant to this Section C.4.

(e) *Enforcement of GSK Obligations*. The corporation shall be mandatorily obligated to take (and shall have no corporate power or capacity not to take) such action as may be necessary to enforce the obligations of GSK and Glaxo and their affiliates to pay the Call Amount upon receipt of notice from GSK that it intends to exercise the Call, including, without limitation, all actions required to cause GSK and Glaxo and their affiliates to perform their respective obligations under Section 3.1 of the Governance Agreement.

5. *Put by Holders*. Unless the Call has been previously exercised, during the Put Period (as defined below), each holder shares of Common Stock that constitute Callable/Puttable Shares shall have the option (the "Put") to require the corporation to redeem up to fifty percent (50%) of the shares of Common Stock that constitute Callable/Puttable Shares held by such holder.

(a) *Put Price*. In connection with the exercise of the Put by any holder of Common Stock that constitutes Callable/Puttable Shares, the corporation shall redeem each share of Common Stock subject to the Put Notice at a put price per share equal to $12.50 (the "Put Price"), subject to adjustment pursuant to Section C.5(c) of this Article IV. Each holder of shares of Common Stock that constitute Callable/Puttable Shares shall have the right to require the corporation to redeem up to fifty percent (50%) of such holder's shares of Common Stock by delivery of the Put Notice (as defined below) during the Put Period to the corporation or the Depositary (as defined below) electing to have up to fifty percent (50%) of the shares of Common Stock that constitute Callable/Puttable Shares held by such holder redeemed by the corporation, accompanied by a certificate or certificates representing such shares.

(b) *Put Notice*. At least ten and not more than thirty days prior to the beginning of the Put Period or, in the event of an acceleration of the Put in accordance with the terms of Section C.7 of this Article IV, as soon as practicable following the date of the occurrence of the Insolvency Event (as defined below) giving rise to such acceleration (but in no event later than the tenth day following such date), the corporation shall mail the Put Notification (as defined below) to each holder of shares of Common Stock that constitute Callable/Puttable Shares at such holder's address as it appears on the transfer books of the corporation at the address for such holder set forth in the records of the corporation, with a form of Put Notice to be used by such holder in exercising the Put. The Put Notification shall comply in all respects with applicable provisions of the Securities Exchange Act as in effect at the time the Put Notification is given. A notice similar to the Put Notification shall be given by the corporation by publication in the *Wall Street Journal* at least ten and no more than thirty days prior to the beginning of the Put Period or, in the event of an acceleration of the Put, in accordance with the terms of Section C.7 of this Article IV, as soon as practicable following the date of the occurrence of the Insolvency Event giving rise to such acceleration (but in no event later than the tenth day following such date). If the corporation shall fail to give the Put Notification to the holders of Common Stock at least ten days prior to the beginning of the Put Period or, in the event of an acceleration of the Put in accordance with the terms of Section C.7 of this Article IV, as soon as practicable following the date of the occurrence of the Insolvency Event giving rise to such acceleration (but in no event later than the tenth day following such date), as provided herein, the rights of the holders of Common Stock shall not be prejudiced thereby and the Put shall nevertheless become exercisable at the beginning of the Put Period as herein provided but the expiration of the Put Period shall be extended to that date which is thirty-five Business Days (as defined below), or, in the event of such acceleration, sixty-five Business Days, from the date the Put Notification is given to holders of Common Stock. To facilitate the giving of the Put Notification to the holders of Common Stock, the Board of Directors may fix a record date for determination of holders of Common Stock entitled to be given the Put Notification, which record date may not be more than five days prior to the date the Put Notification is given pursuant to this paragraph (b).

(c) *Adjustments*. If the corporation shall effect a subdivision or combination of the Common Stock (by reclassification or otherwise) into a greater or lesser number of shares of Common Stock, then in each such case the Put Price shall be adjusted by multiplying the Put Price in effect immediately prior to such event by the ratio of the number of shares of Common Stock outstanding immediately prior to such event to the number of shares of Common Stock outstanding immediately after such event. If the corporation shall at any time declare or pay any dividend on Common Stock in cash, securities or other property other than Common Stock, the Put Price shall be reduced by the per share value of such dividend. The Independent Directors shall determine in good faith the value of any non-cash dividend for purposes of the Put or the Put Price set forth in the immediately preceding sentence.

(d) *Condition to the Corporation's Obligations*. Notwithstanding any other provision of this Article IV, the corporation's obligation to pay the Put Price in respect of shares of Common Stock with respect to which the Put has been properly exercised (and to deposit with the Depositary funds pursuant to Section C.6(a) of this Article IV) shall be conditioned upon the corporation's having received from GSK, Glaxo, or any of their affiliates,the sum of (i) funds in an amount equal to the product of the number of shares of Common Stock that constitute Callable/Puttable Shares with respect to which the Put has been properly exercised multiplied by the Put Price, and (ii) such additional funds, if any, sufficient to permit the corporation to redeem the shares of Common Stock with respect to which the Put has been properly exercised without violating Section 160 of the Delaware General Corporation Law, any bankruptcy or insolvency law or any other law or regulation for the protection of creditors (collectively, the sum of (i) and (ii) is referred to as the "Put Amount"). In addition, the corporation shall be relieved of any obligation to pay the Put Amount in the event that GSK shall offer to purchase 50% of the outstanding shares of Common Stock that constitute Callable/Puttable Shares from each holder of such shares at a price per share equal to the Put Price. The corporation shall only use the funds received from GSK, Glaxo or their Affiliates to fund the Depositary for the purposes of effecting the Put pursuant to this Section C.5. Notwithstanding anything to the contrary in this Restated Certificate of Incorporation, in no event shall the amount required to be paid by GSK to the corporation and/or to holders of Common Stock in connection with the Put exceed $525,000,000.

(e) *Enforcement of GSK Obligations*. The corporation shall be mandatorily obligated to take (and shall have no corporate power or capacity not to take) such action as may be necessary to enforce the obligations of GSK, Glaxo and their affiliates to pay the Put Amount (and any other amounts payable pursuant to Section 3.4 of the Governance Agreement), including, without limitation, all actions required to cause GSK, Glaxo and their affiliates to perform their respective obligations under Section 3.4 of the Governance Agreement.

6. *Procedures*.

(a) *Payment*. (i) In the event the Call is exercised by GSK, the corporation shall deposit or cause to be deposited the aggregate Call Price (in each case, together with accrued and unpaid dividends to such date) with the Depositary, in trust for payment and issuance to the holders of the Common Stock, and deliver irrevocable written instructions authorizing the Depositary to apply such deposit solely to the payment of the Call Price. The corporation shall deposit the aggregate Call Price and any declared and unpaid dividends: (x) on or prior to the second Business Day prior to the Call Date, if GSK has short-term credit ratings of not less than A-1 from Standard & Poor's Rating Services ("S&P") and not less than P-1 from Moody's Investors Service, Inc. ("Moody's") at the time of GSK gives notice of its intention to exercise the Call pursuant to Section C.4 of this Article IV, or (y) on or prior to the date any Call Notification is first sent or given, if GSK's short credit ratings are less than A-1 from S&P or less than P-1 from Moody's at the time that GSK gives its notice pursuant to Section C.4 of this Article IV (the "Call Price Deposit Date"), provided that the corporation shall have received the aggregate Call Price from GSK or Glaxo at least one Business Day prior to the Call Price Deposit Date. Each holder of shares of Common Stock will be paid the Call Price for their shares of Common Stock within three Business Days following the surrender of the certificate or certificates representing such shares to the Depositary together with a properly executed letter of transmittal covering such shares; provided, however, the consideration payable to a holder an option, warrant, right or other security described in Section 3.3 of the Governance Agreement shall be paid upon the date of conversion, exercise or exchange of such option, warrant, right or security. The corporation's written instructions to the Depositary may provide that any of such deposit remaining unclaimed, at the expiration of two years after the date fixed for the Call, by the holder of any shares of Common Stock subject to the Call be, subject to applicable law, returned to the corporation and

revert to the general funds of the corporation, after which return such holder shall have no claim against the Depositary but shall have a claim as an unsecured creditor against the corporation for the Call Price together with accrued and unpaid dividends to such redemption date, without interest; provided, however, such two year period shall be extended with respect to any holder of options, warrants, rights or securities described in Section 3.3 of the Governance Agreement until such time as the time period to convert, exercise or exchange such options, warrants, rights or securities has lapsed. The Call Notification having been duly given, or the Depositary having been irrevocably authorized by the corporation to give said notice, and the Call Price (together with accrued and unpaid dividends to such redemption date) having been deposited, all as aforesaid, then all shares of Common Stock with respect to which such deposit shall have been made pursuant to exercise of the Call shall forthwith, whether or not the date fixed for the Call shall have occurred or the certificates for such shares of Common Stock shall have been surrendered for cancellation, be deemed no longer to be outstanding for any purpose, and all rights with respect to such shares shall thereupon cease and terminate, except the right of the holders of such shares to receive, out of such deposit in trust, on the redemption date, the Call Price (together with accrued and unpaid dividends to such redemption date) to which they are entitled, without interest. The Company will issue to GSK (or to its designated Affiliate), on the Call Date as specified in the Call Notification, a number of duly authorized and validly issued shares of Class A Common Stock equal to the number of shares of Common Stock acquired thereby by the Company upon cancellation of the Common Stock subject to the Call.

(ii) Promptly following the end of the Put Period, the corporation shall deposit or cause to be deposited with the Depositary the funds and shares in amounts sufficient to pay the Put Price for all shares of Common Stock with respect to which the Put has been properly exercised and for which certificates representing such shares, together with a properly executed Put Notice, have been surrendered to the Depositary. Each holder of shares of Common Stock who has properly exercised the Put, and who has surrendered the shares of Common Stock with respect to which the Put has been exercised, together with a properly executed Put Notice, shall be paid and issued the Put Price promptly following the end of the Put Period. A new certificate representing the shares of Common Stock not subject to the Put shall be issued to the holder of such shares. The corporation will issue to GSK (or to its designated Affiliate), on the date of cancellation of the Common Stock redeemed by the Company pursuant to the Put (which date shall be no later than five Business Days following the end of the Put Period), a number of duly authorized and validly issued shares of Class A Common Stock equal to the number of shares of Common Stock acquired thereby by the Company.

(iii) Any Depository selected by the corporation shall have short-term credit ratings of not less than A-1 from S&P and not less than P-1 from Moody's, and shall have long-term credit ratings of not less than AA from S&P and not less than Aa2 from Moody's. The Depositary shall invest any and all funds in accordance with this Section in short-term United States government securities and shall distribute any income from such investments to GSK or Glaxo upon its demand.

(iv) The shares of Common Stock to be redeemed from each stockholder pursuant to the Put or the Call, as the case may be, shall be redeemed pro-rata with respect to the number of shares represented by each certificate held by such stockholder.

(v) The corporation shall only use the funds received by GSK, Glaxo or their Affiliates to fund the Depositary for the purposes of effecting the Call or the Put, as the case may be.

(b) *Redeemed Shares*. All shares of Common Stock redeemed by the corporation pursuant to the Call or the Put, as the case may be, shall be retired and cancelled promptly after the redemption thereof and may not be reissued.

7. *Default*. Unless the Call has been previously exercised, if, prior to the last day of the Put Period, (i) the corporation shall file a voluntary petition in bankruptcy, or seek reorganization, in order to effect a plan or other arrangement with creditors or any other relief under the Bankruptcy Reform Act, Title 11 of the United States Code, as amended or recodified from time to time (the "Bankruptcy Code"), or under any state or federal law granting relief to debtors, whether now or hereafter in effect, or (ii) any involuntary petition or proceeding pursuant to the Bankruptcy Code or any other applicable state or federal law relating to bankruptcy, reorganization or other relief for debtors is filed or commenced against the corporation and the same is not dismissed within thirty days, or the corporation shall file an answer admitting the jurisdiction of the court and the material allegations of any involuntary petition, or (iii) the corporation shall be adjudicated a bankrupt, or an order for relief shall be entered by any court of competent jurisdiction under the Bankruptcy Code or any other applicable state or federal law relating to bankruptcy, reorganization or other relief for debtors, then, and upon the occurrence of such event (an "Insolvency Event"), without notice of any kind whatsoever, the Put shall thereupon become immediately exercisable by the holders of shares of Common Stock that constitute Callable/Puttable Shares until the end of the Put Period.

8. *Optional Conversion*. Each share of Class A Common Stock outstanding immediately following (i) the date of redemption of the Common Stock pursuant to the Call or (ii) the close of business on the last day of the Put Period (in either case, the "Call/Put Termination Date"), shall, upon the written request of the holder of shares of Class A Common Stock, be converted into one share of Common Stock in accordance with the terms and conditions set forth below. All shares of Class A Common Stock converted by the corporation pursuant to this Section C.8. shall be retired and cancelled. No shares of Class A Common Stock shall be issued after the Call/Put Termination Date.

(a) *Mechanics of Conversion*. Before any holder of Class A Common Stock shall be entitled to voluntarily convert the same into shares of Common Stock, he or she shall surrender the certificate or certificates therefor, duly endorsed, at the office of this corporation or of any transfer agent for the Class A Common Stock, and shall give written notice to this corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. This corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Class A Common Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Class A Common Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date.

(b) *Reservation of Shares*. The corporation shall provide, free from preemptive rights, out of its authorized but unissued shares, or out of shares held in its treasury, sufficient shares of Common Stock to provide for the conversion of all issued and outstanding shares of Class A Common Stock following the Call/Put Termination Date. The corporation covenants that all shares of Common Stock which may be issued upon conversion of Class A Common Stock will upon issue be fully paid and non-assessable by the corporation and free from all taxes, liens and charges with respect to the issue thereof. The corporation further covenants that, if on the Call/Put Termination Date the Common Stock shall be listed on the New York Stock Exchange or on any other national securities exchange or the NASDAQ National Market System, the corporation will, if permitted by the rules of such exchange, seek to list on each such exchange or the NASDAQ National Market

System, as the case may be, all shares of Common Stock, including those issuable upon conversion of the Class A Common Stock.

9. *Legend*. Each certificate representing shares of Common Stock that constitute Callable/Puttable Shares shall bear the following legend:

"The shares of Common Stock represented hereby are subject to (i) redemption at the option of the corporation during the period, at the price and on the terms and conditions specified in the corporation's Restated Certificate of Incorporation and (ii) an option on the part of the holder, under certain circumstances, to require the corporation to redeem such shares of Common Stock, at the price and on the terms and conditions specified in the corporation's Restated Certificate of Incorporation. After redemption, the redeemed shares represented by this certificate shall cease to be outstanding for all purposes and the holder hereof shall be entitled to receive only the redemption price for such shares, without interest."

10. *Voting Rights for the Election of Directors/Board Size*. (a) Until such time as (i) GSK's Percentage Interest (as defined in the Governance Agreement) has fallen below 15% or (ii) directly as a result of any sale or other disposition by GSK of Voting Stock (as defined in the Governance Agreement), GSK's Percentage Interest has fallen below 19.0%, the holders of a majority of the Class A Common Stock outstanding, voting as a separate class, shall be entitled to elect one (1) director.

(b) After and for so long as GSK's Percentage Interest is 35.1% or greater and less than 50.1% during the Interim Period (as defined in the Governance Agreement), the holders of a majority of the Class A Common Stock outstanding, voting as a separate class, shall be entitled to elect (i) one (1) director and (ii) that number of Independent Directors (as defined in the Governance Agreement) equal to GSK's Percentage Interest multiplied by the total number of Independent Directors (with such number being rounded to the nearest whole number).

(c) After and for so long as GSK's Percentage Interest is 50.1% or greater, the holders of a majority of the Class A Common Stock outstanding, voting as a separate class, shall be entitled to elect (i) that number of directors equal to one-third of the then total number of directors comprising the Board and (ii) that number of Independent Directors equal to one-half of the total number of Independent Directors.

(d) After and for so long as GSK's Percentage Interest is 50.1% or greater, the authorized number of directors on the Board shall be no less than nine, or any greater number that is divisible by three.

(e) In the case of any directors elected pursuant to paragraphs (a), (b), and (c) of this Section 10, each director shall be nominated in accordance with the procedures set forth in the Governance Agreement and shall have the qualifications required by the Governance Agreement.

11. *Certain Definitions*. For purposes of this Article IV, Section C, the following terms shall have the following meaning:

(a) "Affiliate" shall have the meaning ascribed to it in the Governance Agreement.

(b) "Business Day" means any day which is not a Saturday, Sunday or a federal holiday.

(c) "Callable/Puttable Shares" means (i) all outstanding shares of Common Stock that are not subject to repurchase by the Company pursuant to any employee, officer, director or consultant compensation plan as of the Call Date or the final day of the Put Period, as the case may be, (ii) all shares of Common Stock subject to issuance upon the exercise of options to acquire Common Stock granted pursuant to any employee, officer, director or consultant compensation plan that are or will be fully vested as of the Call Date or the final day of the Put

Period, as the case may be, (iii) all shares of Common Stock subject to issuance upon the exercise, exchange or conversion of warrants, exchangeable or convertible securities (other than any such options described in clause (ii)) that are by their terms exercisable, exchangeable or convertible as of the Call Date or the final day of the Put Period, as the case may be.

(d) "Change in Control" means a liquidation, dissolution or winding up of this corporation and shall be deemed to be occasioned by, or to include (i) the acquisition of this corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) that results in the transfer of fifty percent (50%) or more of the outstanding voting power of this corporation; or (ii) a sale of all or substantially all of the assets of this corporation.

(e) "Depositary" means the bank or trust company having combined capital, surplus and undivided profits of at least $500,000,000 which is appointed by the corporation to serve as agent for the purpose of receiving certificates representing shares of the Common Stock upon exercise of the Put or Call, as the case may be, and distributing the Call Price or the Put Price therefor, as the case may be.

(f) "Put Notice" means a written notice electing to have shares of Common Stock redeemed by the corporation pursuant to the exercise of the Put.

(g) "Put Notification" means a written notice from the corporation to the holders of the Common Stock that constitute Callable/Puttable Shares of (i) the rights of such holder to cause the corporation to redeem shares of Common Stock during the Put Period, (ii) the date of the commencement and termination of the Put Period, (iii) the Put Price, (iv) the identity and address of the Depositary and (v) instructions as to how to exercise the Put. The Put Notification shall, in all respects, comply with the requirements of the Securities Exchange Act.

(h) "Put Period" means, subject to Section C.5(b) of this Article IV, the period commencing on August 1, 2007 and ending on the close of business on the thirtieth Business Day thereafter or such later date as may be provided in Section C.5 of this Article IV or as may be required under the Securities Exchange Act or the Hart-Scott Rodino Antitrust Improvements Act of 1976; provided, that in the event of acceleration of the Put Period pursuant to Section C.7 of this Article IV, the Put Period shall be the period commencing as soon as practicable following the date of the occurrence of the Insolvency Event giving rise to such acceleration (but in no event later than ten days following such date) and ending on the close of business on the sixtieth Business Day thereafter or such later date as may be provided in Section C.5 of this Article IV or as may be required under the Securities Exchange Act.

(i) "Securities Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(j) "Qualified Change in Control Transaction" shall mean a Change in Control of the Company approved by a majority of the Independent Directors and consummated prior to July 1, 2007 that results in payment or issuance of securities prior to such date of cash or securities with a fair market value prior to such date (as determined in good faith by a majority of the Board) equal to or greater than $12.50 per share of Common Stock (appropriately adjusted to take into account stock dividends, stock splits, recapitalizations and the like).

12. *Put and Call Not Change in Control; Qualified Change in Control Transaction.*

(a) Notwithstanding any other provision of this Article IV of this Restated Certificate of Incorporation, the transactions to be consummated pursuant to exercise of the Put or the Call shall not be deemed to be a "Change in Control" for purposes of this Article IV.

(b) The call provisions and put provisions contained in Sections C.4 through C.8 of this Article IV shall expire and be of no further force or effect immediately prior to the consummation of a Qualified Change in Control Transaction.

ARTICLE V

Except as otherwise provided in this Restated Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of this corporation.

ARTICLE VI

Subject to the provisions of the Governance Agreement, the number of directors of this corporation shall be fixed from time to time as provided in the bylaws or any amendment thereof duly adopted by the Board of Directors or by the stockholders.

ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of this corporation shall so provide.

ARTICLE VIII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of this corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of this corporation.

ARTICLE IX

A director of this corporation shall, to the fullest extent permitted by the General Corporation Law as it now exists or as it may hereafter be amended, not be personally liable to this corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law is amended to authorize corporation action further eliminating or limiting the personal liability of directors, then the liability of a director of this corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended.

Any amendment, repeal or modification of this Article IX, or the adoption of any provision of this Restated Certificate of Incorporation inconsistent with this Article IX, by the stockholders of this corporation shall not apply to or adversely affect any right or protection of a director of this corporation existing at the time of such amendment, repeal, modification or adoption.

ARTICLE X

This corporation reserves the right to amend, alter, change or repeal any provision contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation, provided that so long as any shares of Common Stock and Class A Common Stock are both outstanding, this corporation shall not amend Article IV without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of shares of Common Stock and the holders of at least a majority of the then outstanding shares of shares of Class A Common Stock, each voting as separate classes for this purpose.

ARTICLE XI

To the fullest extent permitted by applicable law, this corporation is authorized to provide indemnification of (and advancement of expenses to) directors and officers of this corporation (and any other persons to which General Corporation Law permits this corporation to provide indemnification) through bylaw provisions, agreements with such directors and officers or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to this corporation, its stockholders, and others.

Any amendment, repeal or modification of the foregoing provisions of this Article XI shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director of this corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

ARTICLE XII

A. In recognition and anticipation (i) that as a result of the exercise of the Put and/or the Call, GSK or companies which, following completion of the Transaction, are controlled by, control or are under common control with GSK (excluding the corporation and any company that is controlled by the corporation) (the "GSK Group") may own a majority of the outstanding capital stock of this corporation, (ii) that directors, officers, employees or designees of GSK may serve as directors of this corporation, (iii) that the GSK Group engages and is expected to continue to engage in the same, similar or related activities and lines of business as those in which the corporation and its affiliates may engage and/or engage in other business activities that overlap with or compete with those in which the corporation and its affiliates may engage, subject only to any agreements to which the GSK Group and this corporation and its affiliates may be parties, (iv) that the corporation and its affiliates will engage in material business transactions with the GSK Group, including (without limitation) being a significant supplier of the GSK Group and engaging in joint ventures and joint development activities, and that this corporation is expected to benefit therefrom, and (v) that the corporation and its affiliates, on the one hand, and the GSK Group, on the other hand, may seek to take advantage of the same or related business and corporate opportunities or may seek to take advantage of corporate and business opportunities that are suitable for or of interest to the other or might be suitable for or of interest to the other if the other were aware of such opportunities, and (vi) that, as a consequence of the foregoing, it is in the best interests of this corporation that the respective rights and duties of the corporation and of GSK, and the duties of any directors or officers of this corporation who are serving as designees of GSK, be determined and delineated in respect of any transactions between, or opportunities that may be suitable for or of interest to, both of the corporation and its affiliates, on the one hand, and the GSK Group, on the other hand, the provisions of this Article XII shall regulate and define the conduct of certain of the business and affairs of the corporation and its affiliates in relation to GSK and any directors or officers of the corporation who are serving as designees of GSK. As used in this Article XII, the corporation's affiliates do not include members of the GSK Group.

B. 1. The corporation and its affiliates, on the one hand, and the GSK Group, on the other hand, may each take advantage of any or all business and corporate opportunities that may be available to them without offering the other any such business or corporate opportunity, informing the other of the existence of any such business or corporate opportunity, or giving the other the opportunity to participate in any such business or corporate opportunity, and the GSK Group shall have no duty arising from engaging in the same or similar activities or lines of business as the corporation and its affiliates, and neither the GSK Group nor any of its or their respective directors or officers shall be liable to this corporation or its stockholders for any breach of any duty to this corporationby reason of such activities by the GSK Group, except as expressly contemplated by section 2 of this Article XII,

Section B. Without limiting the foregoing, the corporation and its affiliates, on the one hand, and the GSK Group, on the other hand, may separately compete for the same acquisition opportunities, in the development or acquisition of the same or similar technology or intellectual property rights, and for the same customers and the same suppliers. The corporation, on its own behalf and on behalf of its affiliates, to the fullest extent permitted by law, renounces any interest in or expectancy in, any or all corporate and business opportunities that are presented to the GSK Group or to any of their officers, directors and employees, even if such officers, directors or employees are also directors of the corporation, except as expressly contemplated by section 2 of this Article XII, Section B and waives any claim that any such opportunity constituted a corporate opportunity of the corporation that should have been presented to the corporation or any of its affiliates; provided, that such renunciation shall not prevent the corporation or its affiliates from separately seeking to take advantage of any or all of such corporate and business opportunities that come to the corporation or its affiliates, or its officers, directors or employees, in their own right, or that the corporation or its affiliates, or its officers, directors or employees become aware of in their own right. Without limiting the foregoing, except as expressly set forth in subsection 2 of this Article XII, Section B, no director, officer or employee of the GSK Group who is also a director or officer of the corporation shall have any duty to inform the corporation (or any of its other directors or its officers) of the availability or potential availability of any corporate or business opportunity known to such person in his or her capacity as an officer, director or employee of GSK or any member of the GSK Group or to inform the corporation (or its other directors or officers) of the plans of the GSK Group with respect thereto.

2. In the event that a director of the corporation who has been designated by GSK to serve on the board of directors acquires knowledge of a potential transaction or technology or other matter which may be a corporate or business opportunity for both the corporation and the GSK Group, such director shall to the fullest extent permitted by law have fully satisfied and fulfilled the fiduciary duty of such director to the corporation and its stockholders with respect to such corporate and business opportunity, and the corporation to the fullest extent permitted by law renounces its interest in and waives any claim that such corporate or business opportunity constituted a corporate opportunity of the corporation that should have been presented to the corporation or any of its affiliates, if such director acts in a manner consistent with the following policy:

(a) A corporate or business opportunity offered to any person who is a director of this corporation, and who is not a director, officer or employee of the GSK Group, shall belong to the corporation; and

(b) A corporate or business opportunity offered to any person who is a director of the corporation and who is a director, officer or employee of GSK or a member of the GSK Group, shall belong to the corporation only if such opportunity is expressly offered to such person primarily in his or her capacity as a director of the corporation, and otherwise shall belong to GSK.

3. Nothing in this Article XII, Section B shall invalidate, limit or restrict the enforceability of any agreement properly entered into by the corporation and GSK, including any non-competition agreement or agreement to provide information or share business or corporate opportunities or participate in business or corporate opportunities, or agreement intended to further effectuate the general purposes of this Article XII, Section B.

C. The provisions of this Article XII shall have no further force or effect at such time as GSK shall first cease to be the owner, in the aggregate, of twenty percent (20%) or more of the Common Stock; *provided*, *however*, that such termination shall not terminate the effect of such provisions with respect to (a) any agreement that was entered into before such time or any transaction entered into in the performance of such agreement, whether entered into before or after such time, (b) any transaction entered into before such time, or (c) any business opportunity that first arose before that time.

D. Notwithstanding anything to the contrary elsewhere contained in this Restated Certificate of Incorporation, the affirmative vote of the holders of at least 85% of the voting power of all shares of the Corporation's voting stock then outstanding, voting together as a single class, shall be required to alter, amend or repeal, or to adopt any provision inconsistent with, this Article XII.

* * *

THIRD: The foregoing amendment and restatement of the Restated Certificate of Incorporation of this corporation was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law.

FOURTH: That said amendment and restatement was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 11th day of May, 2004.

/s/ RICK E WINNINGHAM

Rick E Winningham
Chief Executive Officer

QuickLinks

Exhibit 3.4

AMENDED AND RESTATED

BYLAWS OF

THERAVANCE, INC.

A DELAWARE CORPORATION

Date: November 19, 1996, as amended, effective March 29, 2004

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BYLAWS

ARTICLE I

MEETINGS OF STOCKHOLDERS

Section 1. *Place of Meetings*. All meetings of the stockholders shall be held at such place within or without the State of Delaware as may be fixed from time to time by the board of directors or the chief executive officer, not so designated, at the registered of office of the corporation.

Section 2. *Annual Meeting*. Annual meetings of stockholders shall be held on the ***second Tuesday of June*** in each year if not a legal holiday, and if a legal holiday, then on the next secular day following, at 10:00 a.m., or at such other date and time as shall be designated from time to time by the board of directors or the chief executive officer, at which meeting the stockholders shall elect by a plurality vote a board of directors, in a manner not inconsistent with the terms of that certain Governance Agreement by and among SmithKline Beecham Corporation, a Pennsylvania coporation ("GSK"), GlaxoSmithKline, plc, an English public limited company, and this corporation (the "Governance Agreement"), and shall transact such other business as may properly be brought before the meeting. If no annual meeting is held in accordance with the foregoing provisions, the board of directors shall cause the meeting to be held as soon thereafter as convenient, which meeting shall be designated a special meeting in lieu of annual meeting.

Section 3. *Special Meetings*. Special meetings of the stockholders, for any purpose or purposes, may, unless otherwise prescribed by statute or by the certificate of incorporation, be called by the board of directors or the chief executive officer and shall be called by the chief executive officer or secretary at the request in writing of a majority of the board of directors, or at the request in writing of stockholders owning a *majority* in amount of the entire capital stock of the corporation issued and outstanding and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

Section 4. *Notice of Meetings*. Except as otherwise provided by law, written notice of each meeting of stockholders, annual or special, stating the place, date and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given not less than ten or more than sixty days before the date of the meeting, to each stockholder entitled to vote at such meeting.

Section 5. *Voting List*. The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city or town where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 6. *Quorum*. The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise provided by statute, the certificate of incorporation or these bylaws. Where a separate vote by a class or classes is required, a majority of the outstanding shares of such class or classes, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter. If no quorum shall be present or represented at any meeting of stockholders, such meeting may be adjourned in accordance with Section 7 hereof, until a quorum shall be present or represented.

Section 7. *Adjournments*. Any meeting of stockholders may be adjourned from time to time to any other time and to any other place at which a meeting of stockholders may be held under these bylaws, which time and place shall be announced at the meeting, by a majority of the stockholders present in person or represented by proxy at the meeting and entitled to vote, (whether or not a quorum is present), or, if no stockholder is present or represented by proxy, by any officer entitled to preside at or to act as secretary of such meeting, without notice other than announcement at the meeting. At such adjourned meeting, any business may be transacted which might have been transacted at the original meeting. If any meeting of stockholders at which a quorum is present or represented is adjourned, then, at such adjourned meeting, any business may be transacted that might have been transacted at the original meeting, whether or not a quorum shall be present or represented at such adjourned meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 8. *Action at Meetings*. When a quorum is present at any meeting, the affirmative vote of the holders of a majority of the stock present in person or represented by proxy, entitled to vote and voting on the matter (or where a separate vote by a class or classes is required, the affirmative vote of the majority of shares of such class or classes present in person or represented by proxy at the meeting) shall decide any matter (other than the election of directors) brought before such meeting, unless the matter is one upon which by express provision of law, the certificate of incorporation or these bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such matter. The stock of holders who abstain from voting on any matter shall be deemed not to have been voted on such matter. Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting, entitled to vote and voting on the election of directors.

Section 9. *Voting and Proxies*. Unless otherwise provided in the certificate of incorporation, each stockholder shall at every meeting of the stockholders be entitled to one vote for each share of capital stock having voting power held of record by such stockholder. Each stockholder entitled to vote at a meeting of stockholders, or to express consent or dissent to corporate action in writing without a meeting, may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

Section 10. *Action Without Meeting*. Any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be (1) signed and dated by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and (2) delivered to the corporation within sixty days of the earliest dated consent by delivery to its registered office in the State of Delaware (in which case delivery shall be by hand or by certified or registered mail, return receipt requested), its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

ARTICLE II

DIRECTORS

Section 1. *Number, Election, Tenure and Qualification*. The number of directors which shall constitute the whole board shall be not less than one. Within such limit, the number of directors shall be determined by resolution of the board of directors or by the stockholders at the annual meeting or at any special meeting of stockholder and shall not be inconsistent with the terms of the Governance

Agreement; provided, however, at any time following the date that GSK's Percentage Interest (as defined in the Governance Agreement) is 50.1% or greater, the number of directors which shall constitute the whole board shall not be less than nine (9), or any greater number that is divisible by three (3). The directors shall be elected at the annual meeting or at any special meeting of the stockholders, except as provided in Section 3 of this Article, and each director elected shall hold office until his successor is elected and qualified, unless sooner displaced. Directors need not be stockholders.

Section 2. *Enlargement*. The number of the board of directors may be increased, in a manner not inconsistent with the terms of the Governance Agreement, at any time by vote of a majority of the directors then in office.

Section 3. *Vacancies*. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, in a manner not inconsistent with the terms of the Governance Agreement, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute. In the event of a vacancy in the board of directors, the remaining directors, except as otherwise provided by law or these bylaws, may exercise the powers of the full board, in a manner not inconsistent with the terms of the Governance Agreement, until the vacancy is filled.

Section 4. *Resignation and Removal*. Any director may resign at any time upon written notice to the corporation at its principal place of business or to the chief executive of officer or secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event. Any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, unless otherwise specified by law, the certificate of incorporation or the Governance Agreement. Any term of directorship of any GSK Director or GSK Nominee (as such terms are defined in the Governance Agreement) shall automatically cease upon the occurrence of the events described in the Governance Agreement requiring the resignation of such director.

Section 5. *General Powers*. The business and affairs of the corporation shall be managed by its board of directors, which may exercise all powers of the corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these bylaws directed or required to be exercised or done by the stockholders.

Section 6. *Chairman of the Board*. If the board of directors appoints a chairman of the board, he shall, when present, preside at all meetings of the stockholders and the board of directors. He shall perform such duties and possess such powers as are customarily vested in the officer of the chairman of the board or as may be vested in him by the board of directors.

Section 7. *Place of Meetings*. The board of directors may hold meetings, both regular and special, either within or without the State of Delaware.

Section 8. *Regular Meetings*. Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board; provided that any director who is absent when such a determination is made shall be given prompt notice of such determination. A regular meeting of the board of directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

Section 9. *Special Meetings*. Special meetings of the board may be called by the chief executive officer, secretary, or on the written request of two or more directors, or by one director in the event that there is only one director in office. Two days' notice to each director, either personally or by telegram, cable, telecopy, commercial delivery service, telex or similar means sent to his business or home address, or three days' notice by written notice deposited in the mail, shall be given to each

director by the secretary or by the officer or one of the directors calling the meeting. A notice or waiver of notice of a meeting of the board of directors need not specify the purposes of the meeting.

Section 10. *Quorum, Action at Meeting, Adjournments*. At all meetings of the board a majority of directors then in office, but in no event less than one third of the entire board, shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors, except as may be otherwise specifically provided by law or by the certificate of incorporation. For purposes of this section, the term "entire board" shall mean the number of directors last fixed by the stockholders or directors, as the case may be, in accordance with law and these bylaws; provided, however, that if less than all the number so fixed of directors were elected, the "entire board" shall mean the greatest number of directors so elected to hold office at any one time pursuant to such authorization. If a quorum shall not be present at any meeting of the board of directors, a majority of the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 11. *Action by Consent*. Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the board of directors or of any committee thereof may be taken without a meeting, if all members of the board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee.

Section 12. *Telephonic Meetings*. Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the board of directors or of any committee thereof may participate in a meeting of the board of directors or of any committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 13. *Committees*. The board of directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the directors of the corporation, the composition of which shall not be inconsistent with the terms of the Governance Agreement. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the board of directors, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the certificate of incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the bylaws of the corporation; and, unless the resolution designating such committee or the certificate of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the board of directors. Each committee shall keep regular minutes of its meetings and make such reports to the board of directors as the board of directors may request. Except as the board of directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the directors or in such rule, its business shall be conducted as nearly as possible in the same manner as is provided in these bylaws for the conduct of its business by the board of directors.

Section 14. *Compensation*. Unless otherwise restricted by the certificate of incorporation or these bylaws, the board of directors shall have the authority to fix from time to time the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the board of directors and the performance of their responsibilities as directors may be paid a fixed sum for attendance at each meeting of the board of directors and/or a stated salary as director. No such payment shall preclude any director from serving the corporation or its parent or subsidiary corporations in any other capacity and receiving compensation therefor. The board of directors may also allow compensation for members of special or standing committees for service on such committees.

ARTICLE III

OFFICERS

Section 1. *Enumeration*. The officers of the corporation shall be chosen by the board of directors and shall be a president, a secretary and a treasurer and such other officers with such titles, terms of office and duties as the board of directors may from time to time determine, including a chairman of the board, one or more vice-presidents, and one or more assistant secretaries and assistant treasurers. If authorized by resolution of the board of directors, the chief executive officer may be empowered to appoint from time to time assistant secretaries and assistant treasurers. Any number of offices may be held by the same person, unless the certificate of incorporation or these bylaws otherwise provide.

Section 2. *Election*. The board of directors at its first meeting after each annual meeting of stockholders shall choose a president, a secretary and a treasurer. Other officers may be appointed by the board of directors at such meeting, at any other meeting, or by written consent.

Section 3. *Tenure*. The officers of the corporation shall hold office until their successors are chosen and qualify, unless a different term is specified in the vote choosing or appointing him, or until his earlier death, resignation or removal. Any officer elected or appointed by the board of directors or by the chief executive officer may be removed at any time, with or without cause, by the affirmative vote of a majority of the board of directors or a committee duly authorized to do so, except that any officer appointed by the chief executive officer may also be removed at any time, with or without cause, by the chief executive officer. Any vacancy occurring in any office of the corporation may be filled by the board of directors, at its discretion. Any officer may resign by delivering his written resignation to the corporation at its principal place of business or to the chief executive officer or the secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

Section 4. *President*. The president shall be the chief operating officer of the corporation. He shall also be the chief executive officer unless the board of directors otherwise provides. If no chief executive officer shall have been appointed by the board of directors, all references herein to the "chief executive officer" shall be to the president. The president shall, unless the board of directors provides otherwise in a specific instance or generally, preside at all meetings of the stockholders and the board of directors, have general and active management of the business of the corporation and see that all orders and resolutions of the board of directors are carried into effect. The president shall execute bonds, mortgages, and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the board of directors to some other officer or agent of the corporation.

Section 5. *Vice-Presidents*. In the absence of the president or in the event of his inability or refusal to act, the vice-president, or if there be more than one vice-president, the vice presidents in the order designated by the board of directors or the chief executive officer (or in the absence of any designation, then in the order determined by their tenure in office) shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon

the president. The vice-presidents shall perform such other duties and have such other powers as the board of directors or the chief executive officer may from time to time prescribe.

Section 6. *Secretary*. The secretary shall have such powers and perform such duties as are incident to the office of secretary. He shall maintain a stock ledger and prepare lists of stockholders and their addresses as required and shall be the custodian of corporate records. The secretary shall attend all meetings of the board of directors and all meetings of the stockholders and record all the proceedings of the meetings of the corporation and of the board of directors in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the board of directors, and shall perform such other duties as may be from time to time prescribed by the board of directors or chief executive officer, under whose supervision he shall be. He shall have custody of the corporate seal of the corporation and he, or an assistant secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his signature or by the signature of such assistant secretary. The board of directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his signature.

Section 7. *Assistant Secretaries*. The assistant secretary, or if there be more than one, the assistant secretaries in the order determined by the board of directors, the chief executive officer or the secretary (or if there be no such determination, then in the order determined by their tenure in office), shall, in the absence of the secretary or in the event of his inability or refusal to act, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the board of directors, the chief executive officer or the secretary may from time to time prescribe. In the absence of the secretary or any assistant secretary at any meeting of stockholders or directors, the person presiding at the meeting shall designate a temporary or acting secretary to keep a record of the meeting.

Section 8. *Treasurer*. The treasurer shall perform such duties and shall have such powers as may be assigned to him by the board of directors or the chief executive officer. In addition, the treasurer shall perform such duties and have such powers as are incident to the office of treasurer. The treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors. He shall disburse the funds of the corporation as may be ordered by the board of directors, taking proper vouchers for such disbursements, and shall render to the chief executive officer and the board of directors, when the chief executive officer or board of directors so requires, an account of all his transactions as treasurer and of the financial condition of the corporation.

Section 9. *Assistant Treasurers*. The assistant treasurer, or if there shall be more than one, the assistant treasurers in the order determined by the board of directors, the chief executive officer or the treasurer (or if there be no such determination, then in the order determined by their tenure in office), shall, in the absence of the treasurer or in the event of his inability or refusal to act, perform the duties and exercise the powers of the treasurer and shall perform such other duties and have such other powers as the board of directors, the chief executive officer or the treasurer may from time to time prescribe.

Section 10. *Bond*. If required by the board of directors, any officer shall give the corporation a bond in such sum and with such surety or sureties and upon such terms and conditions as shall be satisfactory to the board of directors, including without limitation a bond for the faithful performance of the duties of his office and for the restoration to the corporation of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control and belonging to the corporation.

ARTICLE IV

NOTICES

Section 1. *Delivery*. Whenever, under the provisions of law, or of the certificate of incorporation or these bylaws, written notice is required to be given to any director or stockholder, such notice may be given by mail, addressed to such director or stockholder, at his address as it appears on the records of the corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Unless written notice by mail is required by law, written notice may also be given by telegram, cable, telecopy, commercial delivery service, telex or similar means, addressed to such director or stockholder at his address as it appears on the records of the corporation, in which case such notice shall be deemed to be given when delivered into the control of the persons charged with effecting such transmission, the transmission charge to be paid by the corporation or the person sending such notice and not by the addressee. Oral notice or other in hand delivery (in person or by telephone) shall be deemed given at the time it is actually given.

Section 2. *Waiver of Notice*. Whenever any notice is required to be given under the provisions of law or of the certificate of incorporation or of these bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE V

INDEMNIFICATION

Section 1. *Actions other than by or in the Right of the Corporation*. The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. *Actions by or in the Right of the Corporation*. The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to

indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

Section 3. *Success on the Merits*. To the extent that any person described in Section 1 or 2 of this Article V has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in said Sections, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 4. *Specific Authorization*. Any indemnification under Section 1 or 2 of this Article V (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of any person described in said Sections is proper in the circumstances because he has met the applicable standard of conduct set forth in said Sections. Such determination shall be made (1) by the board of directors by a majority vote of directors who were not parties to such action, suit or proceeding (even though less than a quorum), or (2) if there are no disinterested directors or if a majority of disinterested directors so directs, by independent legal counsel (who may be regular legal counsel to the corporation) in a written opinion, or (3) by the stockholders of the corporation.

Section 5. *Advance Payment*. Expenses incurred in defending a pending or threatened civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of any person described in said Section to repay such amount if it shall ultimately be determined that he is not entitled to indemnification by the corporation as authorized in this Article V.

Section 6. *Nonexclusivity*. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article V shall not be deemed exclusive of any other rights to which those provided indemnification or advancement of expenses may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

Section 7. *Insurance*. The board of directors may authorize, by a vote of the majority of the full board, the corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this Article V.

Section 8. *Continuation of Indemnification and Advancement of Expenses*. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article V shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 9. *Severability*. If any word, clause or provision of this Article V or any award made hereunder shall for any reason be determined to be invalid, the provisions hereof shall not otherwise be affected thereby but shall remain in full force and effect.

Section 10. *Intent of Article*. The intent of this Article V is to provide for indemnification and advancement of expenses to the fullest extent permitted by Section 145 of the General Corporation Law of Delaware. To the extent that such Section or any successor section may be amended or supplemented from time to time, this Article V shall be amended automatically and construed so as to permit indemnification and advancement of expenses to the fullest extent from time to time permitted by law.

ARTICLE VI

CAPITAL STOCK

Section 1. *Certificates of Stock*. Every holder of stock in the corporation shall be entitled to have a certificate, signed by, or in the name of the corporation by, the chairman or vice-chairman of the board of directors, or the president or a vice-president and the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the corporation, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue. Certificates may be issued for partly paid shares and in such case upon the face or back of the certificates issued to represent any such partly paid shares, the total amount of the consideration to be paid therefor, and the amount paid thereon shall be specified.

Section 2. *Lost Certificates*. The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the board of directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to give reasonable evidence of such loss, theft or destruction, to advertise the same in such manner as it shall require and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed or the issuance of such new certificate.

Section 3. *Transfer of Stock*. Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares, duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, and proper evidence of compliance with other conditions to rightful transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 4. *Record Date*. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the board of directors may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which shall not be more than sixty days nor less then ten days before the date of such meeting. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting. If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the board of directors may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date is fixed, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by statute, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation as provided in Section 10 of Article I. If no record date is fixed and prior action by the board of directors is required, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the date on which the board of directors adopts the resolution taking such prior action. In order that the corporation may determine the

stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted, and which shall be not more than sixty days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating to such purpose.

Section 5. *Registered Stockholders*. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VII

CERTAIN TRANSACTIONS

Section 1. *Transactions with Interested Parties*. No contract or transaction between the corporation and one or more of its directors or officers, between the corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board or committee thereof which authorizes the contract or transaction or solely because his or their votes are counted for such purpose, if:

(a) The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or

(b) The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(c) The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the board of directors, a committee thereof, or the stockholders.

Section 2. *Quorum*. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes the contract or transaction.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. *Dividends*. Dividends upon the capital stock of the corporation, if any, may be declared by the board of directors at any regular or special meeting or by written consent, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the certificate of incorporation.

Section 2. *Reserves*. The directors may set apart out of any funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

Section 3. *Checks*. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the board of directors may from time to time designate.

Section 4. *Fiscal Year*. The fiscal year of the corporation shall be fixed by resolution of the board of directors.

Section 5. *Seal*. The board of directors may, by resolution, adopt a corporate seal. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization and the word "Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise. The seal may be altered from time to time by the board of directors.

ARTICLE IX

AMENDMENTS

These bylaws may be altered, amended or repealed or new bylaws may be adopted by the stockholders or by the board of directors, when such power is conferred upon the board of directors by the certificate of incorporation, at any regular meeting of the stockholders or of the board of directors or at any special meeting of the stockholders or of the board of directors provided, however, that in the case of a regular or special meeting of stockholders, notice of such alteration, amendment, repeal or adoption of new bylaws be contained in the notice of such meeting.

QuickLinks

Exhibit 3.4

Exhibit 4.2

THERAVANCE, INC.

and

, as Rights Agent

RIGHTS AGREEMENT

Dated as of , 2004

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RIGHTS AGREEMENT

Rights Agreement, dated as of , 2004 ("Agreement"), between Theravance, Inc., a Delaware corporation (the "Company"), and , as Rights Agent (the "Rights Agent").

The Board of Directors of the Company has authorized and declared a dividend of one preferred share purchase right (a "Right") for each share of Common Stock (as hereinafter defined) of the Company outstanding as of the Close of Business (as defined below) on , 2004 (the "Record Date"), each Right representing the right to purchase one one-thousandth (subject to adjustment) of a share of Preferred Stock (as hereinafter defined), upon the terms and subject to the conditions herein set forth, and has further authorized and directed the issuance of one Right (subject to adjustment as provided herein) with respect to each share of Common Stock that shall become outstanding between the Record Date and the earlier of the Distribution Date and the Expiration Date (as such terms are hereinafter defined); *provided*, however, that Rights may be issued with respect to shares of Common Stock that shall become outstanding after the Distribution Date and prior to the Expiration Date in accordance with Section 22.

Accordingly, in consideration of the premises and the mutual agreements herein set forth, the parties hereby agree as follows:

Section 1. *Certain Definitions.* For purposes of this Agreement, the following terms have the meaning indicated:

(a) "Acquiring Person" shall mean any Person (as such term is hereinafter defined) who or which shall be the Beneficial Owner (as such term is hereinafter defined) of 15% or more of the shares of Common Stock then outstanding, but shall not include an Exempt Person (as such term is hereinafter defined); *provided, however*, that (i) if the Board of Directors of the Company determines in good faith that a Person who would otherwise be an "Acquiring Person" became the Beneficial Owner of a number of shares of Common Stock such that the Person would otherwise qualify as an "Acquiring Person" inadvertently (including, without limitation, because (A) such Person was unaware that it beneficially owned a percentage of Common Stock that would otherwise cause such Person to be an "Acquiring Person" or (B) such Person was aware of the extent of its Beneficial Ownership of Common Stock but had no actual knowledge of the consequences of such Beneficial Ownership under this Agreement) and without any intention of changing or influencing control of the Company, then such Person shall not be deemed to be or to have become an "Acquiring Person" for any purposes of this Agreement unless and until such Person shall have failed to divest itself, as soon as practicable (as determined, in good faith, by the Board of Directors of the Company), of Beneficial Ownership of a sufficient number of shares of Common Stock so that such Person would no longer otherwise qualify as an "Acquiring Person"; (ii) if, as of the date hereof or prior to the first public announcement of the adoption of this Agreement, any Person is or becomes the Beneficial Owner of 15% or more of the shares of Common Stock outstanding, such Person shall not be deemed to be or to become an "Acquiring Person" unless and until such time as such Person shall, after the first public announcement of the adoption of this Agreement, become the Beneficial Owner of additional shares of Common Stock (other than pursuant to a dividend or distribution paid or made by the Company on the outstanding Common Stock or pursuant to a split or subdivision of the outstanding Common Stock), unless, upon becoming the Beneficial Owner of such additional shares of Common Stock, such Person is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding; (iii) no Person shall become an "Acquiring Person" as the result of an acquisition of shares of Common Stock by the Company which, by reducing the number of shares outstanding, increases the proportionate number of shares of Common Stock beneficially owned by such Person to 15% or more of the shares of Common Stock then outstanding, *provided, however,* that if a Person shall become the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding by reason of such share acquisitions by the Company and shall thereafter become the Beneficial Owner of any additional

shares of Common Stock (other than pursuant to a dividend or distribution paid or made by the Company on the outstanding Common Stock or pursuant to a split or subdivision of the outstanding Common Stock), then such Person shall be deemed to be an "Acquiring Person" unless upon becoming the Beneficial Owner of such additional shares of Common Stock such Person does not beneficially own 15% or more of the shares of Common Stock then outstanding; and (iv) GlaxoSmithKline plc, Glaxo Group Limited and SmithKlineBeecham Corporation (collectively "GSK") shall not be deemed an "Acquiring Person" under this Agreement for so long as GSK is in compliance with the terms of that certain Governance Agreement dated May 11, 2004 by and among the Company and GSK. For all purposes of this Agreement, any calculation of the number of shares of Common Stock outstanding at any particular time, including for purposes of determining the particular percentage of such outstanding shares of Common Stock of which any Person is the Beneficial Owner, shall be made in accordance with the last sentence of Rule 13d-3(d)(1)(i) of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as in effect on the date hereof.

(b) "Affiliate" and "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date hereof.

(c) A Person shall be deemed the "Beneficial Owner" of, shall be deemed to have "Beneficial Ownership" of and shall be deemed to "beneficially own" any securities:

(i) which such Person or any of such Person's Affiliates or Associates is deemed to beneficially own, directly or indirectly, within the meaning of Rule l3d-3 of the General Rules and Regulations under the Exchange Act as in effect on the date hereof;

(ii) which such Person or any of such Person's Affiliates or Associates has (A) the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities), or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; *provided, however,* that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, (x) securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of such Person's Affiliates or Associates until such tendered securities are accepted for purchase, (y) securities which such Person has a right to acquire upon the exercise of Rights at any time prior to the time that any Person becomes an Acquiring Person or (z) securities issuable upon the exercise of Rights from and after the time that any Person becomes an Acquiring Person if such Rights were acquired by such Person or any of such Person's Affiliates or Associates prior to the Distribution Date or pursuant to Section 3(a) or Section 22 hereof ("Original Rights") or pursuant to Section 11(i) or Section 11(n) with respect to an adjustment to Original Rights; or (B) the right to vote pursuant to any agreement, arrangement or understanding; *provided, however,* that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, any security by reason of such agreement, arrangement or understanding if the agreement, arrangement or understanding to vote such security (1) arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations promulgated under the Exchange Act and (2) is not also then reportable on Schedule 13D under the Exchange Act (or any comparable or successor report); or

(iii) which are beneficially owned, directly or indirectly, by any other Person and with respect to which such Person or any of such Person's Affiliates or Associates has any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities) for the

purpose of acquiring, holding, voting (except to the extent contemplated by the proviso to Section 1(c)(ii)(B)) or disposing of such securities of the Company;

provided, however, that no Person who is an officer, director or employee of an Exempt Person shall be deemed, solely by reason of such Person's status or authority as such, to be the "Beneficial Owner" of, to have "Beneficial Ownership" of or to "beneficially own" any securities that are "beneficially owned" (as defined in this Section l(c)), including, without limitation, in a fiduciary capacity, by an Exempt Person or by any other such officer, director or employee of an Exempt Person.

(d) "Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in the State of New York or the city in which the principal office of the Rights Agent is located are authorized or obligated by law or executive order to close.

(e) "Close of Business" on any given date shall mean 5:00 P.M., New York City time, on such date; *provided*, *however*, that if such date is not a Business Day it shall mean 5:00 P.M., New York City time, on the next succeeding Business Day.

(f) "Common Stock" when used with reference to the Company shall mean the Common Stock and Class A Common Stock, each presently par value $0.01 per share, of the Company. "Common Stock" when used with reference to any Person other than the Company shall mean the common stock (or, in the case of an unincorporated entity, the equivalent equity interest) with the greatest voting power of such other Person or, if such other Person is a Subsidiary of another Person, the Person or Persons which ultimately control such first-mentioned Person.

(g) "Common Stock Equivalents" shall have the meaning set forth in Section 11(a)(iii) hereof.

(h) "Current Value" shall have the meaning set forth in Section 11(a)(iii) hereof.

(i) "Distribution Date" shall have the meaning set forth in Section 3 hereof.

(j) "Equivalent Preferred Shares" shall have the meaning set forth in Section 11(b) hereof.

(k) "Exempt Person" shall mean the Company or any Subsidiary (as such term is hereinafter defined) of the Company, in each case including, without limitation, in its fiduciary capacity, or any employee benefit plan of the Company or of any Subsidiary of the Company, or any entity or trustee holding Common Stock for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or of any Subsidiary of the Company.

(l) "Exchange Ratio" shall have the meaning set forth in Section 24 hereof.

(m) "Expiration Date" shall have the meaning set forth in Section 7 hereof.

(n) "Final Expiration Date" shall have the meaning set forth in Section 7 hereof.

(o) "Flip-In Event" shall have the meaning set forth in Section 11(a)(ii) hereof.

(p) "NASDAQ" shall mean The Nasdaq Stock Market.

(q) "New York Stock Exchange" shall mean the New York Stock Exchange, Inc.

(r) "Person" shall mean any individual, firm, corporation, partnership, limited liability company, trust or other entity, and shall include any successor (by merger or otherwise) to such entity.

(s) "Preferred Stock" shall mean the Series A Junior Participating Preferred Stock, par value $0.01 per share, of the Company having the rights and preferences set forth in the Amended and Restated Certificate of Incorporation attached to this Agreement as Exhibit A.

(t) "Principal Party" shall have the meaning set forth in Section 13(b) hereof.

(u) "Purchase Price" shall have the meaning set forth in Section 7(b) hereof.

(v) "Redemption Date" shall have the meaning set forth in Section 7 hereof.

(w) "Redemption Price" shall have the meaning set forth in Section 23 hereof.

(x) "Right Certificate" shall have the meaning set forth in Section 3 hereof.

(y) "Securities Act" shall mean the Securities Act of 1933, as amended.

(z) "Section 11(a)(ii) Trigger Date" shall have the meaning set forth in Section 11(a)(iii) hereof.

(aa) "Spread" shall have the meaning set forth in Section 11(a)(iii) hereof.

(bb) "Stock Acquisition Date" shall mean the first date of public announcement (which, for purposes of this definition, shall include, without limitation, a report filed pursuant to Section 13(d) of the Exchange Act) by the Company or an Acquiring Person that an Acquiring Person has become such, or such earlier date as a majority of the Board of Directors shall become aware of the existence of an Acquiring Person.

(cc) "Subsidiary" of any Person shall mean any corporation or other entity of which securities or other ownership interests having ordinary voting power sufficient to elect a majority of the board of directors or other persons performing similar functions are beneficially owned, directly or indirectly, by such Person, and any corporation or other entity that is otherwise controlled by such Person.

(dd) "Substitution Period" shall have the meaning set forth in Section 11(a)(iii) hereof.

(ee) "Summary of Rights" shall have the meaning set forth in Section 3 hereof.

(ff) "Trading Day" shall have the meaning set forth in Section 11(d)(i) hereof.

Section 2. *Appointment of Rights Agent.* The Company hereby appoints the Rights Agent to act as agent for the Company and the holders of the Rights (who, in accordance with Section 3 hereof, shall prior to the Distribution Date be the holders of Common Stock) in accordance with the terms and conditions hereof, and the Rights Agent hereby accepts such appointment. The Company may from time to time appoint such co-Rights Agents as it may deem necessary or desirable.

Section 3. *Issue of Right Certificates.*

(a) Until the Close of Business on the earlier of (i) the tenth day after the Stock Acquisition Date or (ii) the tenth Business Day (or such later date as may be determined by action of the Board of Directors prior to such time as any Person becomes an Acquiring Person) after the date of the commencement by any Person (other than an Exempt Person) of, or of the first public announcement of the intention of such Person (other than an Exempt Person) to commence, a tender or exchange offer the consummation of which would result in any Person (other than an Exempt Person) becoming the Beneficial Owner of shares of Common Stock aggregating 15% or more of the Common Stock then outstanding (the earlier of such dates being herein referred to as the "Distribution Date", *provided, however,* that if either of such dates occurs after the date of this Agreement and on or prior to the Record Date, then the Distribution Date shall be the Record Date), (x) the Rights will be evidenced (subject to the provisions of Section 3(b) hereof) by the certificates for Common Stock registered in the names of the holders thereof and not by separate Right Certificates, and (y) the Rights will be transferable only in connection with the transfer of Common Stock. As soon as practicable after the Distribution Date, the Company will prepare and execute, the Rights Agent will countersign and the Company will send or cause to be sent (and the Rights Agent will, if requested, send) by first-class, insured, postage-prepaid mail, to each record holder of Common Stock as of the close of business on the Distribution Date (other than any Acquiring Person or any Associate or Affiliate of an Acquiring Person), at the address of such holder shown on the records of the Company, a Right Certificate, in substantially the form of Exhibit B hereto (a "Right Certificate"), evidencing one Right (subject to

adjustment as provided herein) for each share of Common Stock so held. As of the Distribution Date, the Rights will be evidenced solely by such Right Certificates.

(b) On the Record Date, or as soon as practicable thereafter, the Company will send a copy of a Summary of Rights to Purchase Shares of Preferred Stock, in substantially the form of Exhibit C hereto (the "Summary of Rights"), by first-class, postage-prepaid mail, to each record holder of Common Stock as of the Close of Business on the Record Date (other than any Acquiring Person or any Associate or Affiliate of any Acquiring Person), at the address of such holder shown on the records of the Company. With respect to certificates for Common Stock outstanding as of the Record Date, until the Distribution Date, the Rights will be evidenced by such certificates registered in the names of the holders thereof together with the Summary of Rights. Until the Distribution Date (or, if earlier, the Expiration Date), the surrender for transfer of any certificate for Common Stock outstanding on the Record Date, with or without a copy of the Summary of Rights, shall also constitute the transfer of the Rights associated with the Common Stock represented thereby.

(c) Rights shall be issued in respect of all shares of Common Stock issued or disposed of (including, without limitation, upon disposition of Common Stock out of treasury stock or issuance or reissuance of Common Stock out of authorized but unissued shares) after the Record Date but prior to the earlier of the Distribution Date and the Expiration Date, or in certain circumstances provided in Section 22 hereof, after the Distribution Date. Certificates issued for Common Stock (including, without limitation, upon transfer of outstanding Common Stock, disposition of Common Stock out of treasury stock or issuance or reissuance of Common Stock out of authorized but unissued shares) after the Record Date but prior to the earlier of the Distribution Date and the Expiration Date shall have impressed on, printed on, written on or otherwise affixed to them the following legend:

> This certificate also evidences and entitles the holder hereof to certain Rights as set forth in a Rights Agreement between Theravance, Inc. (the "Company") and , as Rights Agent, dated as of , 2004 and as amended from time to time (the "Rights Agreement"), the terms of which are hereby incorporated herein by reference and a copy of which is on file at the principal executive offices of the Company. Under certain circumstances, as set forth in the Rights Agreement, such Rights will be evidenced by separate certificates and will no longer be evidenced by this certificate. The Company will mail to the holder of this certificate a copy of the Rights Agreement without charge after receipt of a written request therefor. *Under certain circumstances, as set forth in the Rights Agreement, Rights owned by or transferred to any Person who is or becomes an Acquiring Person (as defined in the Rights Agreement) and certain transferees thereof will become null and void and will no longer be transferable.*

With respect to such certificates containing the foregoing legend, until the Distribution Date the Rights associated with the Common Stock represented by such certificates shall be evidenced by such certificates alone, and the surrender for transfer of any such certificate, except as otherwise provided herein, shall also constitute the transfer of the Rights associated with the Common Stock represented thereby. In the event that the Company purchases or otherwise acquires any Common Stock after the Record Date but prior to the Distribution Date, any Rights associated with such Common Stock shall be deemed canceled and retired so that the Company shall not be entitled to exercise any Rights associated with the Common Stock which are no longer outstanding.

Notwithstanding this paragraph (c), the omission of a legend shall not affect the enforceability of any part of this Agreement or the rights of any holder of the Rights.

Section 4. *Form of Right Certificates.* The Right Certificates (and the forms of election to purchase shares and of assignment to be printed on the reverse thereof) shall be substantially in the form set forth in Exhibit B hereto and may have such marks of identification or designation and such legends, summaries or endorsements printed thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any

applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange or interdealer quotation system on which the Rights may from time to time be listed or quoted, or to conform to usage. Subject to the provisions of this Agreement, the Right Certificates shall entitle the holders thereof to purchase such number of one one-thousandths of a share of Preferred Stock as shall be set forth therein at the Purchase Price, but the number of such one one-thousandths of a share of Preferred Stock and the Purchase Price shall be subject to adjustment as provided herein.

Section 5. *Countersignature and Registration.*

(a) The Right Certificates shall be executed on behalf of the Company by the Company's Chief Executive Officer either manually or by facsimile signature, shall have affixed thereto the Company's seal or a facsimile thereof and shall be attested by the Secretary of the Company, either manually or by facsimile signature. The Right Certificates shall be manually countersigned by the Rights Agent and shall not be valid for any purpose unless countersigned. In case any officer of the Company who shall have signed any of the Right Certificates shall cease to be such officer of the Company before countersignature by the Rights Agent and issuance and delivery by the Company, such Right Certificates, nevertheless, may be countersigned by the Rights Agent and issued and delivered by the Company with the same force and effect as though the Person who signed such Right Certificates had not ceased to be such officer of the Company; and any Right Certificate may be signed on behalf of the Company by any Person who, at the actual date of the execution of such Right Certificate, shall be a proper officer of the Company to sign such Right Certificate, although at the date of the execution of this Agreement any such Person was not such an officer.

(b) Following the Distribution Date, the Rights Agent will keep or cause to be kept, at an office or agency designated for such purpose, books for registration and transfer of the Right Certificates issued hereunder. Such books shall show the names and addresses of the respective holders of the Right Certificates, the number of Rights evidenced on its face by each of the Right Certificates and the date of each of the Right Certificates.

Section 6. *Transfer, Split Up, Combination and Exchange of Right Certificates; Mutilated, Destroyed, Lost or Stolen Right Certificates.*

(a) Subject to the provisions of this Agreement, at any time after the Distribution Date and prior to the Expiration Date, any Right Certificate or Right Certificates may be transferred, split up, combined or exchanged for another Right Certificate or Right Certificates, entitling the registered holder to purchase a like number of one one-thousandths of a share of Preferred Stock as the Right Certificate or Right Certificates surrendered then entitled such holder to purchase. Any registered holder desiring to transfer, split up, combine or exchange any Right Certificate or Right Certificates shall make such request in writing delivered to the Rights Agent, and shall surrender the Right Certificate or Right Certificates to be transferred, split up, combined or exchanged at the office or agency of the Rights Agent designated for such purpose. Thereupon the Rights Agent shall countersign and deliver to the Person entitled thereto a Right Certificate or Right Certificates, as the case may be, as so requested. The Company may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer, split up, combination or exchange of Right Certificates.

(b) Subject to the provisions of this Agreement, at any time after the Distribution Date and prior to the Expiration Date, upon receipt by the Company and the Rights Agent of evidence reasonably satisfactory to them of the loss, theft, destruction or mutilation of a Right Certificate, and, in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to them, and, at the Company's request, reimbursement to the Company and the Rights Agent of all reasonable expenses incidental thereto, and upon surrender to the Rights Agent and cancellation of the Right Certificate if mutilated, the Company will make and deliver a new Right Certificate of like tenor to the Rights

Agent for delivery to the registered holder in lieu of the Right Certificate so lost, stolen, destroyed or mutilated.

Section 7. *Exercise of Rights, Purchase Price; Expiration Date of Rights.*

(a) Except as otherwise provided herein, the Rights shall become exercisable on the Distribution Date, and thereafter the registered holder of any Right Certificate may, subject to Section 11(a)(ii) hereof and except as otherwise provided herein, exercise the Rights evidenced thereby in whole or in part upon surrender of the Right Certificate, with the form of election to purchase on the reverse side thereof duly executed, to the Rights Agent at the office or agency of the Rights Agent designated for such purpose, together with payment of the aggregate Purchase Price with respect to the total number of one one-thousandths of a share of Preferred Stock (or other securities, cash or other assets, as the case may be) as to which the Rights are exercised, at any time which is both after the Distribution Date and prior to the time (the "Expiration Date") that is the earliest of (i) the Close of Business on , 200 (the "Final Expiration Date"), (ii) the time at which the Rights are redeemed as provided in Section 23 hereof (the "Redemption Date") or (iii) the time at which such Rights are exchanged as provided in Section 24 hereof.

(b) The Purchase Price shall be initially $[ ] for each one one-thousandth of a share of Preferred Stock purchasable upon the exercise of a Right. The Purchase Price and the number of one one-thousandths of a share of Preferred Stock or other securities or property to be acquired upon exercise of a Right shall be subject to adjustment from time to time as provided in Sections 11 and 13 hereof and shall be payable in lawful money of the United States of America in accordance with paragraph (c) of this Section 7.

(c) Except as otherwise provided herein, upon receipt of a Right Certificate representing exercisable Rights, with the form of election to purchase duly executed, accompanied by payment of the aggregate Purchase Price for the shares of Preferred Stock to be purchased and an amount equal to any applicable transfer tax required to be paid by the holder of such Right Certificate in accordance with Section 9 hereof, in cash or by certified check, cashier's check or money order payable to the order of the Company, the Rights Agent shall thereupon promptly (i) (A) requisition from any transfer agent of the Preferred Stock, or make available if the Rights Agent is the transfer agent for the Preferred Stock, certificates for the number of shares of Preferred Stock to be purchased, and the Company hereby irrevocably authorizes its transfer agent to comply with all such requests, or (B) requisition from a depositary agent appointed by the Company depositary receipts representing interests in such number of one one-thousandths of a share of Preferred Stock as are to be purchased (in which case certificates for the Preferred Stock represented by such receipts shall be deposited by the transfer agent with the depositary agent), and the Company hereby directs any such depositary agent to comply with such request, (ii) when appropriate, requisition from the Company the amount of cash to be paid in lieu of issuance of fractional shares in accordance with Section 14 hereof, (iii) promptly after receipt of such certificates or depositary receipts, cause the same to be delivered to or upon the order of the registered holder of such Right Certificate, registered in such name or names as may be designated by such holder and (iv) when appropriate, after receipt, promptly deliver such cash to or upon the order of the registered holder of such Right Certificate.

(d) Except as otherwise provided herein, in case the registered holder of any Right Certificate shall exercise less than all of the Rights evidenced thereby, a new Right Certificate evidencing Rights equivalent to the exercisable Rights remaining unexercised shall be issued by the Rights Agent to the registered holder of such Right Certificate or to his duly authorized assigns, subject to the provisions of Section 14 hereof.

(e) Notwithstanding anything in this Agreement to the contrary, neither the Rights Agent nor the Company shall be obligated to undertake any action with respect to a registered holder of Rights upon the occurrence of any purported transfer or exercise of Rights pursuant to Section 6 hereof or this

Section 7 unless such registered holder shall have (i) completed and signed the certificate contained in the form of assignment or form of election to purchase set forth on the reverse side of the Rights Certificate surrendered for such transfer or exercise and (ii) provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) thereof as the Company shall reasonably request.

Section 8. *Cancellation and Destruction of Right Certificates.* All Right Certificates surrendered for the purpose of exercise, transfer, split up, combination or exchange shall, if surrendered to the Company or to any of its agents, be delivered to the Rights Agent for cancellation or in canceled form, or, if surrendered to the Rights Agent, shall be canceled by it, and no Right Certificates shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Agreement. The Company shall deliver to the Rights Agent for cancellation and retirement, and the Rights Agent shall so cancel and retire, any other Right Certificate purchased or acquired by the Company otherwise than upon the exercise thereof. The Rights Agent shall deliver all canceled Right Certificates to the Company, or shall, at the written request of the Company, destroy such canceled Right Certificates, and in such case shall deliver a certificate of destruction thereof to the Company.

Section 9. *Availability of Shares of Preferred Stock.*

(a) The Company covenants and agrees that it will cause to be reserved and kept available out of its authorized and unissued shares of Preferred Stock or any shares of Preferred Stock held in its treasury, the number of shares of Preferred Stock that will be sufficient to permit the exercise in full of all outstanding Rights.

(b) So long as the shares of Preferred Stock issuable upon the exercise of Rights may be listed or admitted to trading on any national securities exchange, or quoted on NASDAQ, the Company shall use its best efforts to cause, from and after such time as the Rights become exercisable, all shares reserved for such issuance to be listed or admitted to trading on such exchange, or quoted on NASDAQ, upon official notice of issuance upon such exercise.

(c) From and after such time as the Rights become exercisable, the Company shall use its best efforts, if then necessary to permit the issuance of shares of Preferred Stock upon the exercise of Rights, to register and qualify such shares of Preferred Stock under the Securities Act and any applicable state securities or "Blue Sky" laws (to the extent exemptions therefrom are not available), cause such registration statement and qualifications to become effective as soon as possible after such filing and keep such registration and qualifications effective (with a prospectus at all times meeting the requirements of the Securities Act) until the earlier of the date as of which the Rights are no longer exercisable for such securities and the Expiration Date. The Company may temporarily suspend, for a period of time not to exceed 90 days, the exercisability of the Rights in order to prepare and file a registration statement under the Securities Act and permit it to become effective. Upon any such suspension, the Company shall issue a public announcement stating that the exercisability of the Rights has been temporarily suspended, as well as a public announcement at such time as the suspension is no longer in effect. Notwithstanding any provision of this Agreement to the contrary, the Rights shall not be exercisable in any jurisdiction unless the requisite qualification in such jurisdiction shall have been obtained and until a registration statement under the Securities Act shall have been declared effective, unless an exemption therefrom is available.

(d) The Company covenants and agrees that it will take all such action as may be necessary to ensure that all shares of Preferred Stock delivered upon exercise of Rights shall, at the time of delivery of the certificates therefor (subject to payment of the Purchase Price), be duly and validly authorized and issued and fully paid and nonassessable shares.

(e) The Company further covenants and agrees that it will pay when due and payable any and all federal and state transfer taxes and charges which may be payable in respect of the issuance or delivery

of the Right Certificates or of any shares of Preferred Stock upon the exercise of Rights. The Company shall not, however, be required to pay any transfer tax which may be payable in respect of any transfer or delivery of Right Certificates to a Person other than, or the issuance or delivery of certificates or depositary receipts for the Preferred Stock in a name other than that of, the registered holder of the Right Certificate evidencing Rights surrendered for exercise or to issue or deliver any certificates or depositary receipts for Preferred Stock upon the exercise of any Rights until any such tax shall have been paid (any such tax being payable by that holder of such Right Certificate at the time of surrender) or until it has been established to the Company's reasonable satisfaction that no such tax is due.

Section 10. *Preferred Stock Record Date.* Each Person in whose name any certificate for Preferred Stock is issued upon the exercise of Rights shall for all purposes be deemed to have become the holder of record of the shares of Preferred Stock represented thereby on, and such certificate shall be dated, the date upon which the Right Certificate evidencing such Rights was duly surrendered and payment of the Purchase Price (and any applicable transfer taxes) was made; *provided, however,* that if the date of such surrender and payment is a date upon which the Preferred Stock transfer books of the Company are closed, such Person shall be deemed to have become the record holder of such shares on, and such certificate shall be dated, the next succeeding Business Day on which the Preferred Stock transfer books of the Company are open. Prior to the exercise of the Rights evidenced thereby, the holder of a Right Certificate shall not be entitled to any rights of a holder of Preferred Stock for which the Rights shall be exercisable, including, without limitation, the right to vote or to receive dividends or other distributions, and shall not be entitled to receive any notice of any proceedings of the Company, except as provided herein.

Section 11. *Adjustment of Purchase Price, Number and Kind of Shares and Number of Rights.* The Purchase Price, the number of shares of Preferred Stock or other securities or property purchasable upon exercise of each Right and the number of Rights outstanding are subject to adjustment from time to time as provided in this Section 11.

(a)(i) In the event the Company shall at any time after the date of this Agreement (A) declare and pay a dividend on the Preferred Stock payable in shares of Preferred Stock, (B) subdivide the outstanding Preferred Stock, (C) combine the outstanding Preferred Stock into a smaller number of shares of Preferred Stock or (D) issue any shares of its capital stock in a reclassification of the Preferred Stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing or surviving corporation), except as otherwise provided in this Section 11(a), the number and kind of shares of capital stock issuable upon exercise of a Right as of the record date for such dividend or the effective date of such subdivision, combination or reclassification shall be proportionately adjusted so that the holder of any Right exercised after such time shall be entitled to receive the aggregate number and kind of shares of capital stock which, if such Right had been exercised immediately prior to such date and at a time when the Preferred Stock transfer books of the Company were open, the holder would have owned upon such exercise and been entitled to receive by virtue of such dividend, subdivision, combination or reclassification.

(ii) Subject to Section 24 of this Agreement, in the event any Person becomes an Acquiring Person (the first occurrence of such event being referred to hereinafter as the "Flip-In Event"), then (A) the Purchase Price shall be adjusted to be the Purchase Price in effect immediately prior to the Flip-In Event multiplied by the number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable immediately prior to such Flip-In Event, whether or not such Right was then exercisable, and (B) each holder of a Right, except as otherwise provided in this Section 11(a)(ii) and Section 11(a)(iii) hereof, shall thereafter have the right to receive, upon exercise thereof at a price equal to the Purchase Price (as so adjusted), in accordance with the terms of this Agreement and in lieu of shares of Preferred Stock, such number of shares of Common Stock as shall equal the result obtained by dividing the Purchase Price (as so adjusted)

by 50% of the current per share market price of the Common Stock (determined pursuant to Section 11(d) hereof) on the date of such Flip-In Event; *provided, however,* that the Purchase Price (as so adjusted) and the number of shares of Common Stock so receivable upon exercise of a Right shall, following the Flip-In Event, be subject to further adjustment as appropriate in accordance with Section 11(f) hereof. Notwithstanding anything in this Agreement to the contrary, however, from and after the Flip-In Event, any Rights that are beneficially owned by (x) any Acquiring Person (or any Affiliate or Associate of any Acquiring Person), (y) a transferee of any Acquiring Person (or any such Affiliate or Associate) who becomes a transferee after the Flip-In Event or (z) a transferee of any Acquiring Person (or any such Affiliate or Associate) who became a transferee prior to or concurrently with the Flip-In Event pursuant to either (I) a transfer from the Acquiring Person to holders of its equity securities or to any Person with whom it has any continuing agreement, arrangement or understanding regarding the transferred Rights or (II) a transfer which the Board of Directors has determined is part of a plan, arrangement or understanding which has the purpose or effect of avoiding the provisions of this paragraph, and subsequent transferees of such Persons, shall be void without any further action and any holder of such Rights shall thereafter have no rights whatsoever with respect to such Rights under any provision of this Agreement. The Company shall use all reasonable efforts to ensure that the provisions of this Section 11(a)(ii) are complied with, but shall have no liability to any holder of Right Certificates or other Person as a result of its failure to make any determinations with respect to an Acquiring Person or its Affiliates, Associates or transferees hereunder. From and after the Flip-In Event, no Right Certificate shall be issued pursuant to Section 3 or Section 6 hereof that represents Rights that are or have become void pursuant to the provisions of this paragraph, and any Right Certificate delivered to the Rights Agent that represents Rights that are or have become void pursuant to the provisions of this paragraph shall be canceled. From and after the occurrence of an event specified in Section 13(a) hereof, any Rights that theretofore have not been exercised pursuant to this Section 11(a)(ii) shall thereafter be exercisable only in accordance with Section 13 and not pursuant to this Section 11(a)(ii).

(iii) The Company may at its option substitute for a share of Common Stock issuable upon the exercise of Rights in accordance with the foregoing subparagraph (ii) a number of shares of Preferred Stock or fraction thereof such that the current per share market price of one share of Preferred Stock multiplied by such number or fraction is equal to the current per share market price of one share of Common Stock. In the event that there shall not be sufficient shares of Common Stock issued but not outstanding or authorized but unissued to permit the exercise in full of the Rights in accordance with the foregoing subparagraph (ii), the Board of Directors shall, with respect to such deficiency, to the extent permitted by applicable law and any material agreements then in effect to which the Company is a party, (A) determine the excess (such excess, the "Spread") of (1) the value of the shares of Common Stock issuable upon the exercise of a Right in accordance with the foregoing subparagraph (ii) (the "Current Value") over (2) the Purchase Price (as adjusted in accordance with the foregoing subparagraph (ii)), and (B) with respect to each Right (other than Rights which have become void pursuant to the foregoing subparagraph (ii)), make adequate provision to substitute for the shares of Common Stock issuable in accordance with the foregoing subparagraph (ii) upon exercise of the Right and payment of the Purchase Price (as adjusted in accordance therewith), (1) cash, (2) a reduction in such Purchase Price, (3) shares of Preferred Stock or other equity securities of the Company (including, without limitation, shares or fractions of shares of preferred stock which, by virtue of having dividend, voting and liquidation rights substantially comparable to those of the shares of Common Stock, are deemed in good faith by the Board of Directors to have substantially the same value as the shares of Common Stock (such shares of Preferred Stock and shares or fractions of shares of preferred stock are hereinafter referred to as "Common Stock Equivalents")), (4) debt securities of the Company, (5) other assets, or (6) any combination of the foregoing, having a value which, when added to the value of the

shares of Common Stock issued upon exercise of such Right, shall have an aggregate value equal to the Current Value (less the amount of any reduction in such Purchase Price), where such aggregate value has been determined by the Board of Directors upon the advice of a nationally recognized investment banking firm selected in good faith by the Board of Directors; *provided, however,* that if the Company shall not make adequate provision to deliver value pursuant to clause (B) above within thirty (30) days following the Flip-In Event (the date of the Flip-In Event being the "Section 11(a)(ii) Trigger Date"), then the Company shall be obligated to deliver, to the extent permitted by applicable law and any material agreements then in effect to which the Company is a party, upon the surrender for exercise of a Right and without requiring payment of such Purchase Price, shares of Common Stock (to the extent available), and then, if necessary, such number or fractions of shares of Preferred Stock (to the extent available) and then, if necessary, cash, which shares and/or cash have an aggregate value equal to the Spread. If, upon the occurrence of the Flip-In Event, the Board of Directors shall determine in good faith that it is likely that sufficient additional shares of Common Stock could be authorized for issuance upon exercise in full of the Rights, then, if the Board of Directors so elects, the thirty (30) day period set forth above may be extended to the extent necessary, but not more than ninety (90) days after the Section 11(a)(ii) Trigger Date, in order that the Company may seek stockholder approval for the authorization of such additional shares (such thirty (30) day period, as it may be extended, is herein called the "Substitution Period"). To the extent that the Company determines that some action need be taken pursuant to the second and/or third sentence of this Section 11(a)(iii), the Company (x) shall provide, subject to Section 11(a)(ii) hereof and the last sentence of this Section 11(a)(iii) hereof, that such action shall apply uniformly to all outstanding Rights and (y) may suspend the exercisability of the Rights until the expiration of the Substitution Period in order to seek any authorization of additional shares and/or to decide the appropriate form of distribution to be made pursuant to such second sentence and to determine the value thereof. In the event of any such suspension, the Company shall issue a public announcement stating that the exercisability of the Rights has been temporarily suspended, as well as a public announcement at such time as the suspension is no longer in effect. For purposes of this Section 11(a)(iii), the value of the shares of Common Stock shall be the current per share market price (as determined pursuant to Section 11(d)(i)) on the Section 11(a)(ii) Trigger Date and the per share or fractional value of any "Common Stock Equivalent" shall be deemed to equal the current per share market price of the Common Stock. The Board of Directors of the Company may, but shall not be required to, establish procedures to allocate the right to receive shares of Common Stock upon the exercise of the Rights among holders of Rights pursuant to this Section 11(a)(iii).

(b) In case the Company shall fix a record date for the issuance of rights, options or warrants to all holders of Preferred Stock entitling them (for a period expiring within 45 calendar days after such record date) to subscribe for or purchase Preferred Stock (or shares having the same rights, privileges and preferences as the Preferred Stock ("Equivalent Preferred Shares")) or securities convertible into Preferred Stock or Equivalent Preferred Shares at a price per share of Preferred Stock or Equivalent Preferred Shares (or having a conversion price per share, if a security convertible into shares of Preferred Stock or Equivalent Preferred Shares) less than the then current per share market price of the Preferred Stock (determined pursuant to Section 11(d) hereof) on such record date, the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the number of shares of Preferred Stock and Equivalent Preferred Shares outstanding on such record date plus the number of shares of Preferred Stock and Equivalent Preferred Shares which the aggregate offering price of the total number of shares of Preferred Stock and/or Equivalent Preferred Shares so to be offered (and/or the aggregate initial conversion price of the convertible securities so to be offered) would purchase at such current market price, and the denominator of which shall be the number of shares of Preferred Stock and Equivalent Preferred Shares outstanding on such record date plus the

number of additional shares of Preferred Stock and/or Equivalent Preferred Shares to be offered for subscription or purchase (or into which the convertible securities so to be offered are initially convertible); *provided, however,* that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon exercise of one Right. In case such subscription price may be paid in a consideration part or all of which shall be in a form other than cash, the value of such consideration shall be as determined in good faith by the Board of Directors of the Company, whose determination shall be described in a statement filed with the Rights Agent. Shares of Preferred Stock and Equivalent Preferred Shares owned by or held for the account of the Company shall not be deemed outstanding for the purpose of any such computation. Such adjustment shall be made successively whenever such a record date is fixed; and in the event that such rights, options or warrants are not so issued, the Purchase Price shall be adjusted to be the Purchase Price which would then be in effect if such record date had not been fixed.

(c) In case the Company shall fix a record date for the making of a distribution to all holders of the Preferred Stock (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing or surviving corporation) of evidences of indebtedness or assets (other than a regular quarterly cash dividend or a dividend payable in Preferred Stock) or subscription rights or warrants (excluding those referred to in Section 11(b) hereof), the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the then current per share market price of the Preferred Stock (determined pursuant to Section 11(d) hereof) on such record date, less the fair market value (as determined in good faith by the Board of Directors of the Company whose determination shall be described in a statement filed with the Rights Agent) of the portion of the assets or evidences of indebtedness so to be distributed or of such subscription rights or warrants applicable to one share of Preferred Stock, and the denominator of which shall be such current per share market price (determined pursuant to Section 11(d) hereof) of the Preferred Stock; *provided, however,* that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company to be issued upon exercise of one Right. Such adjustments shall be made successively whenever such a record date is fixed; and in the event that such distribution is not so made, the Purchase Price shall again be adjusted to be the Purchase Price which would then be in effect if such record date had not been fixed.

(d)(i) Except as otherwise provided herein, for the purpose of any computation hereunder, the "current per share market price" of any security (a "Security" for the purpose of this Section 11(d)(i)) on any date shall be deemed to be the average of the daily closing prices per share of such Security for the 30 consecutive Trading Days (as such term is hereinafter defined) immediately prior to such date; *provided, however,*that in the event that the current per share market price of the Security is determined during a period following the announcement by the issuer of such Security of (A) a dividend or distribution on such Security payable in shares of such Security or securities convertible into such shares, or (B) any subdivision, combination or reclassification of such Security, and prior to the expiration of 30 Trading Days after the ex-dividend date for such dividend or distribution, or the record date for such subdivision, combination or reclassification, then, and in each such case, the current per share market price shall be appropriately adjusted to reflect the current market price per share equivalent of such Security. The closing price for each day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported by the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange or, if the Security is not listed or admitted to trading on the New York Stock Exchange, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Security is listed or admitted to trading or, if the Security is not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted,

the average of the high bid and low asked prices in the over-the-counter market, as reported by NASDAQ or such other system then in use, or, if on any such date the Security is not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Security selected by the Board of Directors of the Company. The term "Trading Day" shall mean a day on which the principal national securities exchange on which the Security is listed or admitted to trading is open for the transaction of business or, if the Security is not listed or admitted to trading on any national securities exchange, a Business Day.

(ii) For the purpose of any computation hereunder, if the Preferred Stock is publicly traded, the "current per share market price" of the Preferred Stock shall be determined in accordance with the method set forth in Section 11(d)(i). If the Preferred Stock is not publicly traded but the Common Stock is publicly traded, the "current per share market price" of the Preferred Stock shall be conclusively deemed to be the current per share market price of the Common Stock as determined pursuant to Section 11(d)(i) multiplied by the then applicable Adjustment Number (as defined in and determined in accordance with the terms of the Preferred Stock). If neither the Common Stock nor the Preferred Stock is publicly traded, "current per share market price" shall mean the fair value per share as determined in good faith by the Board of Directors of the Company, whose determination shall be described in a statement filed with the Rights Agent.

(e) No adjustment in the Purchase Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Purchase Price; *provided, however,* that any adjustments which by reason of this Section 11(e) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 11 shall be made to the nearest cent or to the nearest one hundred-thousandth of a share of Preferred Stock or one-hundredth of a share of Common Stock or other share or security as the case may be. Notwithstanding the first sentence of this Section 11(e), any adjustment required by this Section 11 shall be made no later than the earlier of (i) three years from the date of the transaction which requires such adjustment or (ii) the Expiration Date.

(f) If as a result of an adjustment made pursuant to Section 11(a) hereof, the holder of any Right thereafter exercised shall become entitled to receive any shares of capital stock of the Company other than the Preferred Stock, thereafter the Purchase Price and the number of such other shares so receivable upon exercise of a Right shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Preferred Stock contained in Sections 11(a), 11(b), 11(c), 11(e), 11(h), 11(i) and 11(m) hereof, as applicable, and the provisions of Sections 7, 9, 10, 13 and 14 hereof with respect to the Preferred Stock shall apply on like terms to any such other shares.

(g) All Rights originally issued by the Company subsequent to any adjustment made to the Purchase Price hereunder shall evidence the right to purchase, at the adjusted Purchase Price, the number of one one-thousandths of a share of Preferred Stock purchasable from time to time hereunder upon exercise of the Rights, all subject to further adjustment as provided herein.

(h) Unless the Company shall have exercised its election as provided in Section 11(i), upon each adjustment of the Purchase Price as a result of the calculations made in Sections 11(b) and 11(c), each Right outstanding immediately prior to the making of such adjustment shall thereafter evidence the right to purchase, at the adjusted Purchase Price, that number of one one-thousandths of a share of Preferred Stock (calculated to the nearest one hundred-thousandth of a share of Preferred Stock) obtained by (i) multiplying (x) the number of one one-thousandths of a share purchasable upon the exercise of a Right immediately prior to such adjustment by (y) the Purchase Price in effect immediately prior to such adjustment and (ii) dividing the product so obtained by the Purchase Price in effect immediately after such adjustment.

(i) The Company may elect on or after the date of any adjustment of the Purchase Price pursuant to Sections 11(b) or 11(c) hereof to adjust the number of Rights, in substitution for any adjustment in the number of one one-thousandths of a share of Preferred Stock purchasable upon the exercise of a Right. Each of the Rights outstanding after such adjustment of the number of Rights shall be exercisable for the number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable immediately prior to such adjustment. Each Right held of record prior to such adjustment of the number of Rights shall become that number of Rights (calculated to the nearest one-hundredth) obtained by dividing the Purchase Price in effect immediately prior to adjustment of the Purchase Price by the Purchase Price in effect immediately after adjustment of the Purchase Price. The Company shall make a public announcement of its election to adjust the number of Rights, indicating the record date for the adjustment, and, if known at the time, the amount of the adjustment to be made. Such record date may be the date on which the Purchase Price is adjusted or any day thereafter, but, if the Right Certificates have been issued, shall be at least 10 days later than the date of the public announcement. If Right Certificates have been issued, upon each adjustment of the number of Rights pursuant to this Section 11(i), the Company may, as promptly as practicable, cause to be distributed to holders of record of Right Certificates on such record date Right Certificates evidencing, subject to Section 14 hereof, the additional Rights to which such holders shall be entitled as a result of such adjustment, or, at the option of the Company, shall cause to be distributed to such holders of record in substitution and replacement for the Right Certificates held by such holders prior to the date of adjustment, and upon surrender thereof, if required by the Company, new Right Certificates evidencing all the Rights to which such holders shall be entitled after such adjustment. Right Certificates so to be distributed shall be issued, executed and countersigned in the manner provided for herein and shall be registered in the names of the holders of record of Right Certificates on the record date specified in the public announcement.

(j) Irrespective of any adjustment or change in the Purchase Price or the number of one one-thousandths of a share of Preferred Stock issuable upon the exercise of a Right, the Right Certificates theretofore and thereafter issued may continue to express the Purchase Price and the number of one one-thousandths of a share of Preferred Stock which were expressed in the initial Right Certificates issued hereunder.

(k) Before taking any action that would cause an adjustment reducing the Purchase Price below the then par value, if any, of the fraction of Preferred Stock or other shares of capital stock issuable upon exercise of a Right, the Company shall take any corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of Preferred Stock or other such shares at such adjusted Purchase Price.

(l) In any case in which this Section 11 shall require that an adjustment in the Purchase Price be made effective as of a record date for a specified event, the Company may elect to defer until the occurrence of such event issuing to the holder of any Right exercised after such record date the Preferred Stock and other capital stock or securities of the Company, if any, issuable upon such exercise over and above the Preferred Stock and other capital stock or securities of the Company, if any, issuable upon such exercise on the basis of the Purchase Price in effect prior to such adjustment; *provided, however,* that the Company shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares upon the occurrence of the event requiring such adjustment.

(m) Anything in this Section 11 to the contrary notwithstanding, the Company shall be entitled to make such adjustments in the Purchase Price, in addition to those adjustments expressly required by this Section 11, as and to the extent that it in its sole discretion shall determine to be advisable in order that any consolidation or subdivision of the Preferred Stock, issuance wholly for cash of any shares of Preferred Stock at less than the current market price, issuance wholly for cash of Preferred Stock or securities which by their terms are convertible into or exchangeable for Preferred Stock,

dividends on Preferred Stock payable in shares of Preferred Stock or issuance of rights, options or warrants referred to hereinabove in Section 11(b), hereafter made by the Company to holders of its Preferred Stock shall not be taxable to such stockholders.

(n) Anything in this Agreement to the contrary notwithstanding, in the event that at any time after the date of this Agreement and prior to the Distribution Date, the Company shall (i) declare and pay any dividend on the Common Stock payable in Common Stock or (ii) effect a subdivision, combination or consolidation of the Common Stock (by reclassification or otherwise than by payment of a dividend payable in Common Stock) into a greater or lesser number of shares of Common Stock, then, in each such case, the number of Rights associated with each share of Common Stock then outstanding, or issued or delivered thereafter, shall be proportionately adjusted so that the number of Rights thereafter associated with each share of Common Stock following any such event shall equal the result obtained by multiplying the number of Rights associated with each share of Common Stock immediately prior to such event by a fraction the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to the occurrence of the event and the denominator of which shall be the total number of shares of Common Stock outstanding immediately following the occurrence of such event.

(o) The Company agrees that, after the earlier of the Distribution Date or the Stock Acquisition Date, it will not, except as permitted by Sections 23, 24 or 27 hereof, take (or permit any Subsidiary to take) any action if at the time such action is taken it is reasonably foreseeable that such action will diminish substantially or eliminate the benefits intended to be afforded by the Rights.

Section 12. *Certificate of Adjusted Purchase Price or Number of Shares.* Whenever an adjustment is made as provided in Section 11 or 13 hereof, the Company shall promptly (a) prepare a certificate setting forth such adjustment, and a brief statement of the facts accounting for such adjustment, (b) file with the Rights Agent and with each transfer agent for the Common Stock and the Preferred Stock a copy of such certificate and (c) mail a brief summary thereof to each holder of a Right Certificate in accordance with Section 25 hereof (if so required under Section 25 hereof). The Rights Agent shall be fully protected in relying on any such certificate and on any adjustment therein contained and shall not be deemed to have knowledge of any such adjustment unless and until it shall have received such certificate.

Section 13. *Consolidation, Merger or Sale or Transfer of Assets or Earning Power.*

(a) In the event, directly or indirectly, at any time after the Flip-In Event (i) the Company shall consolidate with or shall merge into any other Person, (ii) any Person shall merge with and into the Company and the Company shall be the continuing or surviving corporation of such merger and, in connection with such merger, all or part of the Common Stock shall be changed into or exchanged for stock or other securities of any other Person (or of the Company) or cash or any other property, or (iii) the Company shall sell or otherwise transfer (or one or more of its Subsidiaries shall sell or otherwise transfer), in one or more transactions, assets or earning power aggregating 50% or more of the assets or earning power of the Company and its Subsidiaries (taken as a whole) to any other Person (other than the Company or one or more wholly-owned Subsidiaries of the Company), then upon the first occurrence of such event, proper provision shall be made so that: (A) each holder of a Right (other than Rights which have become void pursuant to Section 11(a)(ii) hereof) shall thereafter have the right to receive, upon the exercise thereof at the Purchase Price (as theretofore adjusted in accordance with Section 11(a)(ii) hereof), in accordance with the terms of this Agreement and in lieu of shares of Preferred Stock or Common Stock of the Company, such number of validly authorized and issued, fully paid, non-assessable and freely tradeable shares of Common Stock of the Principal Party (as such term is hereinafter defined), not subject to any liens, encumbrances, rights of first refusal or other adverse claims, as shall equal the result obtained by dividing the Purchase Price (as theretofore adjusted in accordance with Section 11(a)(ii) hereof) by 50% of the current per share market price of the Common Stock of such Principal Party (determined pursuant to Section 11(d) hereof) on the date of consummation of such consolidation, merger, sale or transfer; *provided*, *however*, that the Purchase Price (as theretofore adjusted in accordance with Section 11(a)(ii) hereof) and the number of shares of Common Stock of such Principal Party so receivable upon exercise of a Right shall be subject to further adjustment as appropriate in accordance with Section 11(f) hereof to reflect any events occurring in respect of the Common Stock of such Principal Party after the occurrence of such consolidation, merger, sale or transfer; (B) such Principal Party shall thereafter be liable for, and shall assume, by virtue of such consolidation, merger, sale or transfer, all the obligations and duties of the Company pursuant to this Agreement; (C) the term "Company" shall thereafter be deemed to refer to such Principal Party; and (D) such Principal Party shall take such steps (including, but not limited to, the reservation of a sufficient number of its shares of Common Stock in accordance with Section 9 hereof) in connection with such consummation of any such transaction as may be necessary to assure that the provisions hereof shall thereafter be applicable, as nearly as reasonably may be, in relation to the shares of its Common Stock thereafter deliverable upon the exercise of the Rights; provided that, upon the subsequent occurrence of any consolidation, merger, sale or transfer of assets or other extraordinary transaction in respect of such Principal Party, each holder of a Right shall thereupon be entitled to receive, upon exercise of a Right and payment of the Purchase Price as provided in this Section 13(a), such cash, shares, rights, warrants and other property which such holder would have been entitled to receive had such holder, at the time of such transaction, owned the Common Stock of the Principal Party receivable upon the exercise of a Right pursuant to this Section 13(a), and such Principal Party shall take such steps (including, but not limited to, reservation of shares of stock) as may be necessary to permit the subsequent exercise of the Rights in accordance with the terms hereof for such cash, shares, rights, warrants and other property.

(b) "Principal Party" shall mean:

(i) in the case of any transaction described in (i) or (ii) of the first sentence of Section 13(a) hereof: (A) the Person that is the issuer of the securities into which the shares of Common Stock are converted in such merger or consolidation, or, if there is more than one such issuer, the issuer the shares of Common Stock of which have the greatest aggregate market value of shares outstanding, or (B) if no securities are so issued, (x) the Person that is the other party to the merger, if such Person survives said merger, or, if there is more than one such Person, the Person the shares of Common

Stock of which have the greatest aggregate market value of shares outstanding or (y) if the Person that is the other party to the merger does not survive the merger, the Person that does survive the merger (including the Company if it survives) or (z) the Person resulting from the consolidation; and

(ii) in the case of any transaction described in (iii) of the first sentence of Section 13(a) hereof, the Person that is the party receiving the greatest portion of the assets or earning power transferred pursuant to such transaction or transactions, or, if each Person that is a party to such transaction or transactions receives the same portion of the assets or earning power so transferred or if the Person receiving the greatest portion of the assets or earning power cannot be determined, whichever of such Persons is the issuer of Common Stock having the greatest aggregate market value of shares outstanding;

provided, however, that in any such case described in the foregoing clause (b)(i) or (b)(ii), if the Common Stock of such Person is not at such time or has not been continuously over the preceding 12-month period registered under Section 12 of the Exchange Act, then (1) if such Person is a direct or indirect Subsidiary of another Person the Common Stock of which is and has been so registered, the term "Principal Party" shall refer to such other Person, or (2) if such Person is a Subsidiary, directly or indirectly, of more than one Person, the Common Stock of all of which is and has been so registered, the term "Principal Party" shall refer to whichever of such Persons is the issuer of Common Stock having the greatest aggregate market value of shares outstanding, or (3) if such Person is owned, directly or indirectly, by a joint venture formed by two or more Persons that are not owned, directly or indirectly, by the same Person, the rules set forth in clauses (1) and (2) above shall apply to each of the owners having an interest in the venture as if the Person owned by the joint venture was a Subsidiary of both or all of such joint venturers, and the Principal Party in each such case shall bear the obligations set forth in this Section 13 in the same ratio as its interest in such Person bears to the total of such interests.

(c) The Company shall not consummate any consolidation, merger, sale or transfer referred to in Section 13(a) hereof unless prior thereto the Company and the Principal Party involved therein shall have executed and delivered to the Rights Agent an agreement confirming that the requirements of Sections 13(a) and (b) hereof shall promptly be performed in accordance with their terms and that such consolidation, merger, sale or transfer of assets shall not result in a default by the Principal Party under this Agreement as the same shall have been assumed by the Principal Party pursuant to Sections 13(a) and (b) hereof and providing that, as soon as practicable after executing such agreement pursuant to this Section 13, the Principal Party will:

(i) prepare and file a registration statement under the Securities Act, if necessary, with respect to the Rights and the securities purchasable upon exercise of the Rights on an appropriate form, use its best efforts to cause such registration statement to become effective as soon as practicable after such filing and use its best efforts to cause such registration statement to remain effective (with a prospectus at all times meeting the requirements of the Securities Act) until the Expiration Date and similarly comply with applicable state securities laws;

(ii) use its best efforts, if the Common Stock of the Principal Party shall be listed or admitted to trading on the New York Stock Exchange or on another national securities exchange, to list or admit to trading (or continue the listing of) the Rights and the securities purchasable upon exercise of the Rights on the New York Stock Exchange or such securities exchange, or, if the Common Stock of the Principal Party shall not be listed or admitted to trading on the New York Stock Exchange or a national securities exchange, to cause the Rights and the securities receivable upon exercise of the Rights to be authorized for quotation on NASDAQ or on such other system then in use;

(iii) deliver to holders of the Rights historical financial statements for the Principal Party which comply in all respects with the requirements for registration on Form 10 (or any successor form) under the Exchange Act; and

(iv) obtain waivers of any rights of first refusal or preemptive rights in respect of the Common Stock of the Principal Party subject to purchase upon exercise of outstanding Rights.

(d) In case the Principal Party has a provision in any of its authorized securities or in its certificate of incorporation or by-laws or other instrument governing its affairs, which provision would have the effect of (i) causing such Principal Party to issue (other than to holders of Rights pursuant to this Section 13), in connection with, or as a consequence of, the consummation of a transaction referred to in this Section 13, shares of Common Stock or Common Stock Equivalents of such Principal Party at less than the then current market price per share thereof (determined pursuant to Section 11(d) hereof) or securities exercisable for, or convertible into, Common Stock or Common Stock Equivalents of such Principal Party at less than such then current market price, or (ii) providing for any special payment, tax or similar provision in connection with the issuance of the Common Stock of such Principal Party pursuant to the provisions of Section 13, then, in such event, the Company hereby agrees with each holder of Rights that it shall not consummate any such transaction unless prior thereto the Company and such Principal Party shall have executed and delivered to the Rights Agent a supplemental agreement providing that the provision in question of such Principal Party shall have been canceled, waived or amended, or that the authorized securities shall be redeemed, so that the applicable provision will have no effect in connection with, or as a consequence of, the consummation of the proposed transaction.

(e) The Company covenants and agrees that it shall not, at any time after the Flip-In Event, enter into any transaction of the type described in clauses (i) through (iii) of Section 13(a) hereof if (i) at the time of or immediately after such consolidation, merger, sale, transfer or other transaction there are any rights, warrants or other instruments or securities outstanding or agreements in effect which would substantially diminish or otherwise eliminate the benefits intended to be afforded by the Rights, (ii) prior to, simultaneously with or immediately after such consolidation, merger, sale, transfer or other transaction, the stockholders of the Person who constitutes, or would constitute, the Principal Party for purposes of Section 13(b) hereof shall have received a distribution of Rights previously owned by such Person or any of its Affiliates or Associates or (iii) the form or nature of organization of the Principal Party would preclude or limit the exercisability of the Rights.

Section 14. *Fractional Rights and Fractional Shares.*

(a) The Company shall not be required to issue fractions of Rights (except prior to the Distribution Date in accordance with Section 11(n) hereof) or to distribute Right Certificates which evidence fractional Rights. In lieu of such fractional Rights, there shall be paid to the registered holders of the Right Certificates with regard to which such fractional Rights would otherwise be issuable, an amount in cash equal to the same fraction of the current market value of a whole Right. For the purposes of this Section 14(a), the current market value of a whole Right shall be the closing price of the Rights for the Trading Day immediately prior to the date on which such fractional Rights would have been otherwise issuable. The closing price for any day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange or, if the Rights are not listed or admitted to trading on the New York Stock Exchange, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Rights are listed or admitted to trading or, if the Rights are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by NASDAQ or such other system then in use or, if on any such date the Rights are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Rights selected by the Board of Directors of the Company. If on any

such date no such market maker is making a market in the Rights, the fair value of the Rights on such date as determined in good faith by the Board of Directors of the Company shall be used.

(b) The Company shall not be required to issue fractions of Preferred Stock (other than fractions which are integral multiples of one one-thousandth of a share of Preferred Stock) or to distribute certificates which evidence fractional shares of Preferred Stock (other than fractions which are integral multiples of one one-thousandth of a share of Preferred Stock) upon the exercise or exchange of Rights. Interests in fractions of Preferred Stock in integral multiples of one one-thousandth of a share of Preferred Stock may, at the election of the Company, be evidenced by depositary receipts, pursuant to an appropriate agreement between the Company and a depositary selected by it; *provided*, that such agreement shall provide that the holders of such depositary receipts shall have all the rights, privileges and preferences to which they are entitled as beneficial owners of the Preferred Stock represented by such depositary receipts. In lieu of fractional shares of Preferred Stock that are not integral multiples of one one-thousandth of a share of Preferred Stock, the Company shall pay to the registered holders of Right Certificates at the time such Rights are exercised or exchanged as herein provided an amount in cash equal to the same fraction of the current market value of a whole share of Preferred Stock (as determined in accordance with Section 14(a) hereof) for the Trading Day immediately prior to the date of such exercise or exchange.

(c) The Company shall not be required to issue fractions of shares of Common Stock or to distribute certificates which evidence fractional shares of Common Stock upon the exercise or exchange of Rights. In lieu of such fractional shares of Common Stock, the Company shall pay to the registered holders of the Right Certificates with regard to which such fractional shares of Common Stock would otherwise be issuable an amount in cash equal to the same fraction of the current market value of a whole share of Common Stock (as determined in accordance with Section 14(a) hereof) for the Trading Day immediately prior to the date of such exercise or exchange.

(d) The holder of a Right by the acceptance of the Right expressly waives his right to receive any fractional Rights or any fractional shares upon exercise or exchange of a Right (except as provided above).

Section 15. *Rights of Action.* All rights of action in respect of this Agreement, excepting the rights of action given to the Rights Agent under Section 18 hereof, are vested in the respective registered holders of the Right Certificates (and, prior to the Distribution Date, the registered holders of the Common Stock); and any registered holder of any Right Certificate (or, prior to the Distribution Date, of the Common Stock), without the consent of the Rights Agent or of the holder of any other Right Certificate (or, prior to the Distribution Date, of the Common Stock), on his own behalf and for his own benefit, may enforce, and may institute and maintain any suit, action or proceeding against the Company to enforce, or otherwise act in respect of, his right to exercise the Rights evidenced by such Right Certificate (or, prior to the Distribution Date, such Common Stock) in the manner provided therein and in this Agreement. Without limiting the foregoing or any remedies available to the holders of Rights, it is specifically acknowledged that the holders of Rights would not have an adequate remedy at law for any breach of this Agreement and will be entitled to specific performance of the obligations under, and injunctive relief against actual or threatened violations of, the obligations of any Person subject to this Agreement.

Section 16. *Agreement of Right Holders.* Every holder of a Right, by accepting the same, consents and agrees with the Company and the Rights Agent and with every other holder of a Right that:

(a) prior to the Distribution Date, the Rights will be transferable only in connection with the transfer of the Common Stock;

(b) after the Distribution Date, the Right Certificates are transferable only on the registry books of the Rights Agent if surrendered at the office or agency of the Rights Agent designated for such purpose, duly endorsed or accompanied by a proper instrument of transfer; and

(c) the Company and the Rights Agent may deem and treat the Person in whose name the Right Certificate (or, prior to the Distribution Date, the Common Stock certificate) is registered as the absolute owner thereof and of the Rights evidenced thereby (notwithstanding any notations of ownership or writing on the Right Certificates or the Common Stock certificate made by anyone other than the Company or the Rights Agent) for all purposes whatsoever, and neither the Company nor the Rights Agent, subject to Section 7(e) hereof, shall be affected by any notice to the contrary.

Section 17. *Right Certificate Holder Not Deemed a Stockholder.* No holder, as such, of any Right Certificate shall be entitled to vote, receive dividends or be deemed for any purpose the holder of the Preferred Stock or any other securities of the Company which may at any time be issuable on the exercise or exchange of the Rights represented thereby, nor shall anything contained herein or in any Right Certificate be construed to confer upon the holder of any Right Certificate, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in this Agreement), or to receive dividends or subscription rights, or otherwise, until the Rights evidenced by such Right Certificate shall have been exercised or exchanged in accordance with the provisions hereof.

Section 18. *Concerning the Rights Agent.*

(a) The Company agrees to pay to the Rights Agent reasonable compensation for all services rendered by it hereunder and, from time to time, on demand of the Rights Agent, its reasonable expenses and counsel fees and other disbursements incurred in the administration and execution of this Agreement and the exercise and performance of its duties hereunder. The Company also agrees to indemnify the Rights Agent for, and to hold it harmless against, any loss, liability or expense, incurred without negligence, bad faith or willful misconduct on the part of the Rights Agent, for anything done or omitted by the Rights Agent in connection with the acceptance and administration of this Agreement, including the costs and expenses of defending against any claim of liability arising therefrom, directly or indirectly.

(b) The Rights Agent shall be protected and shall incur no liability for, or in respect of any action taken, suffered or omitted by it in connection with, its administration of this Agreement in reliance upon any Right Certificate or certificate for the Preferred Stock or Common Stock or for other securities of the Company, instrument of assignment or transfer, power of attorney, endorsement, affidavit, letter, notice, direction, consent, certificate, statement or other paper or document believed by it to be genuine and to be signed, executed and, where necessary, verified or acknowledged, by the proper Person or Persons, or otherwise upon the advice of counsel as set forth in Section 20 hereof.

Section 19. *Merger or Consolidation or Change of Name of Rights Agent.*

(a) Any corporation into which the Rights Agent or any successor Rights Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent shall be a party, or any corporation succeeding to the stock transfer or corporate trust powers of the Rights Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto; *provided*, that such corporation would be eligible for appointment as a successor Rights Agent under the provisions of Section 21 hereof. In case at the time such successor Rights Agent shall succeed to the agency created by this Agreement, any of the Right Certificates shall have been countersigned but not delivered, any such successor Rights Agent

may adopt the countersignature of the predecessor Rights Agent and deliver such Right Certificates so countersigned; and in case at that time any of the Right Certificates shall not have been countersigned, any successor Rights Agent may countersign such Right Certificates either in the name of the predecessor Rights Agent or in the name of the successor Rights Agent; and in all such cases such Right Certificates shall have the full force provided in the Right Certificates and in this Agreement.

(b) In case at any time the name of the Rights Agent shall be changed and at such time any of the Right Certificates shall have been countersigned but not delivered, the Rights Agent may adopt the countersignature under its prior name and deliver Right Certificates so countersigned; and in case at that time any of the Right Certificates shall not have been countersigned, the Rights Agent may countersign such Right Certificates either in its prior name or in its changed name and in all such cases such Right Certificates shall have the full force provided in the Right Certificates and in this Agreement.

Section 20. *Duties of Rights Agent.* The Rights Agent undertakes the duties and obligations imposed by this Agreement upon the following terms and conditions, by all of which the Company and the holders of Right Certificates, by their acceptance thereof, shall be bound:

(a) The Rights Agent may consult with legal counsel (who may be legal counsel for the Company), and the opinion of such counsel shall be full and complete authorization and protection to the Rights Agent as to any action taken or omitted by it in good faith and in accordance with such opinion.

(b) Whenever in the performance of its duties under this Agreement the Rights Agent shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by the Chief Executive Officer and the Secretary of the Company and delivered to the Rights Agent; and such certificate shall be full authorization to the Rights Agent for any action taken or suffered in good faith by it under the provisions of this Agreement in reliance upon such certificate.

(c) The Rights Agent shall be liable hereunder to the Company and any other Person only for its own negligence, bad faith or willful misconduct.

(d) The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the Right Certificates (except its countersignature thereof) or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.

(e) The Rights Agent shall not be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution hereof by the Rights Agent) or in respect of the validity or execution of any Right Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Agreement or in any Right Certificate; nor shall it be responsible for any change in the exercisability of the Rights (including the Rights becoming void pursuant to Section 11(a)(ii) hereof) or any adjustment in the terms of the Rights provided for in Sections 3, 11, 13, 23 and 24, or the ascertaining of the existence of facts that would require any such change or adjustment (except with respect to the exercise of Rights evidenced by Right Certificates after receipt of a certificate furnished pursuant to Section 12, describing such change or adjustment); nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Preferred Stock or other securities to be issued pursuant to this Agreement or any Right Certificate or as to whether any shares of Preferred Stock or other securities will, when issued, be validly authorized and issued, fully paid and nonassessable.

(f) The Company agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Agreement.

(g) The Rights Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from any person reasonably believed by the Rights Agent to be one of the Chief Executive Officer or the Secretary of the Company, and to apply to such officers for advice or instructions in connection with its duties, and it shall not be liable for any action taken or suffered by it in good faith in accordance with instructions of any such officer or for any delay in acting while waiting for those instructions. Any application by the Rights Agent for written instructions from the Company may, at the option of the Rights Agent, set forth in writing any action proposed to be taken or omitted by the Rights Agent under this Agreement and the date on and/or after which such action shall be taken or such omission shall be effective. The Rights Agent shall not be liable for any action taken by, or omission of, the Rights Agent in accordance with a proposal included in any such application on or after the date specified in such application (which date shall not be less than five Business Days after the date any officer of the Company actually receives such application unless any such officer shall have consented in writing to an earlier date) unless, prior to taking any such action (or the effective date in the case of an omission), the Rights Agent shall have received written instructions in response to such application specifying the action to be taken or omitted.

(h) The Rights Agent and any stockholder, director, officer or employee of the Rights Agent may buy, sell or deal in any of the Rights or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Rights Agent under this Agreement. Nothing herein shall preclude the Rights Agent from acting in any other capacity for the Company or for any other legal entity.

(i) The Rights Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents, and the Rights Agent shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorneys or agents or for any loss to the Company resulting from any such act, default, neglect or misconduct, provided reasonable care was exercised in the selection and continued employment thereof.

(j) If, with respect to any Rights Certificate surrendered to the Rights Agent for exercise or transfer, the certificate contained in the form of assignment or the form of election to purchase set forth on the reverse thereof, as the case may be, has not been completed to certify the holder is not an Acquiring Person (or an Affiliate or Associate thereof) or a transferee thereof, the Rights Agent shall not take any further action with respect to such requested exercise or transfer without first consulting with the Company.

Section 21. *Change of Rights Agent.* The Rights Agent or any successor Rights Agent may resign and be discharged from its duties under this Agreement upon 30 days' notice in writing mailed to the Company and to each transfer agent of the Common Stock or Preferred Stock by registered or certified mail, and, following the Distribution Date, to the holders of the Right Certificates by first-class mail. The Company may remove the Rights Agent or any successor Rights Agent upon 30 days' notice in writing, mailed to the Rights Agent or successor Rights Agent, as the case may be, and to each transfer agent of the Common Stock or Preferred Stock by registered or certified mail, and, following the Distribution Date, to the holders of the Right Certificates by first-class mail. If the Rights Agent shall resign or be removed or shall otherwise become incapable of acting, the Company shall appoint a successor to the Rights Agent. If the Company shall fail to make such appointment within a period of 30 days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent or by the holder of a Right Certificate (who

shall, with such notice, submit his Right Certificate for inspection by the Company), then the registered holder of any Right Certificate may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. Any successor Rights Agent, whether appointed by the Company or by such a court, shall be a corporation organized and doing business under the laws of the United States or the laws of any state of the United States or the District of Columbia, in good standing, having an office in the State of _____ or the State of New York, which is authorized under such laws to exercise corporate trust or stock transfer powers and is subject to supervision or examination by federal or state authority and which has at the time of its appointment as Rights Agent a combined capital and surplus of at least $50 million. After appointment, the successor Rights Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Rights Agent without further act or deed; but the predecessor Rights Agent shall deliver and transfer to the successor Rights Agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for the purpose. Not later than the effective date of any such appointment the Company shall file notice thereof in writing with the predecessor Rights Agent and each transfer agent of the Common Stock or Preferred Stock, and, following the Distribution Date, mail a notice thereof in writing to the registered holders of the Right Certificates. Failure to give any notice provided for in this Section 21, however, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.

Section 22. *Issuance of New Right Certificates.* Notwithstanding any of the provisions of this Agreement or of the Rights to the contrary, the Company may, at its option, issue new Right Certificates evidencing Rights in such forms as may be approved by its Board of Directors to reflect any adjustment or change in the Purchase Price and the number or kind or class of shares or other securities or property purchasable under the Right Certificates made in accordance with the provisions of this Agreement. In addition, in connection with the issuance or sale of Common Stock following the Distribution Date and prior to the Expiration Date, the Company may with respect to shares of Common Stock so issued or sold pursuant to (i) the exercise of stock options, (ii) under any employee plan or arrangement, (iii) upon the exercise, conversion or exchange of securities, notes or debentures issued by the Company or (iv) a contractual obligation of the Company, in each case existing prior to the Distribution Date, issue Rights Certificates representing the appropriate number of Rights in connection with such issuance or sale.

Section 23. *Redemption.*

(a) The Board of Directors of the Company may, at any time prior to the Flip-In Event, redeem all but not less than all the then outstanding Rights at a redemption price of $.01 per Right, appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring in respect of the Common Stock after the date hereof (the redemption price being hereinafter referred to as the "Redemption Price"). The redemption of the Rights may be made effective at such time, on such basis and with such conditions as the Board of Directors in its sole discretion may establish. The Redemption Price shall be payable, at the option of the Company, in cash, shares of Common Stock, or such other form of consideration as the Board of Directors shall determine.

(b) Immediately upon the action of the Board of Directors ordering the redemption of the Rights pursuant to paragraph (a) of this Section 23 (or at such later time as the Board of Directors may establish for the effectiveness of such redemption), and without any further action and without any notice, the right to exercise the Rights will terminate and the only right thereafter of the holders of Rights shall be to receive the Redemption Price. The Company shall promptly give public notice of any such redemption; *provided, however,* that the failure to give, or any defect in, any such notice shall not affect the validity of such redemption. Within 10 days after such action of the Board of Directors ordering the redemption of the Rights (or such later time as the Board of Directors may establish for the effectiveness of such redemption), the Company shall mail a notice of redemption to all the holders

of the then outstanding Rights at their last addresses as they appear upon the registry books of the Rights Agent or, prior to the Distribution Date, on the registry books of the transfer agent for the Common Stock. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of redemption shall state the method by which the payment of the Redemption Price will be made.

Section 24. *Exchange.*

(a) The Board of Directors of the Company may, at its option, at any time after the Flip-In Event, exchange all or part of the then outstanding and exercisable Rights (which shall not include Rights that have become void pursuant to the provisions of Section 11(a)(ii) hereof) for Common Stock at an exchange ratio of one share of Common Stock per Right, appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring in respect of the Common Stock after the date hereof (such amount per Right being hereinafter referred to as the "Exchange Ratio"). Notwithstanding the foregoing, the Board of Directors shall not be empowered to effect such exchange at any time after an Acquiring Person shall have become the Beneficial Owner of shares of Common Stock aggregating 50% or more of the shares of Common Stock then outstanding. From and after the occurrence of an event specified in Section 13(a) hereof, any Rights that theretofore have not been exchanged pursuant to this Section 24(a) shall thereafter be exercisable only in accordance with Section 13 and may not be exchanged pursuant to this Section 24(a). The exchange of the Rights by the Board of Directors may be made effective at such time, on such basis and with such conditions as the Board of Directors in its sole discretion may establish.

(b) Immediately upon the effectiveness of the action of the Board of Directors of the Company ordering the exchange of any Rights pursuant to paragraph (a) of this Section 24 and without any further action and without any notice, the right to exercise such Rights shall terminate and the only right thereafter of a holder of such Rights shall be to receive that number of shares of Common Stock equal to the number of such Rights held by such holder multiplied by the Exchange Ratio. The Company shall promptly give public notice of any such exchange; *provided, however,* that the failure to give, or any defect in, such notice shall not affect the validity of such exchange. The Company shall promptly mail a notice of any such exchange to all of the holders of the Rights so exchanged at their last addresses as they appear upon the registry books of the Rights Agent. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of exchange will state the method by which the exchange of the shares of Common Stock for Rights will be effected and, in the event of any partial exchange, the number of Rights which will be exchanged. Any partial exchange shall be effected pro rata based on the number of Rights (other than Rights which have become void pursuant to the provisions of Section 11(a)(ii) hereof) held by each holder of Rights.

(c) The Company may at its option substitute, and, in the event that there shall not be sufficient shares of Common Stock issued but not outstanding or authorized but unissued to permit an exchange of Rights for Common Stock as contemplated in accordance with this Section 24, the Company shall substitute to the extent of such insufficiency, for each share of Common Stock that would otherwise be issuable upon exchange of a Right, a number of shares of Preferred Stock or fraction thereof (or Equivalent Preferred Shares, as such term is defined in Section 11(b)) such that the current per share market price (determined pursuant to Section 11(d) hereof) of one share of Preferred Stock (or Equivalent Preferred Share) multiplied by such number or fraction is equal to the current per share market price of one share of Common Stock (determined pursuant to Section 11(d) hereof) as of the date of such exchange.

Section 25. *Notice of Certain Events.*

(a) In case the Company shall at any time after the earlier of the Distribution Date or the Stock Acquisition Date propose (i) to pay any dividend payable in stock of any class to the holders of its

Preferred Stock or to make any other distribution to the holders of its Preferred Stock (other than a regular quarterly cash dividend), (ii) to offer to the holders of its Preferred Stock rights or warrants to subscribe for or to purchase any additional shares of Preferred Stock or shares of stock of any class or any other securities, rights or options, (iii) to effect any reclassification of its Preferred Stock (other than a reclassification involving only the subdivision or combination of outstanding Preferred Stock), (iv) to effect the liquidation, dissolution or winding up of the Company, or (v) to pay any dividend on the Common Stock payable in Common Stock or to effect a subdivision, combination or consolidation of the Common Stock (by reclassification or otherwise than by payment of dividends in Common Stock), then, in each such case, the Company shall give to each holder of a Right Certificate, in accordance with Section 26 hereof, a notice of such proposed action, which shall specify the record date for the purposes of such dividend or distribution or offering of rights or warrants, or the date on which such liquidation, dissolution, winding up, reclassification, subdivision, combination or consolidation is to take place and the date of participation therein by the holders of the Common Stock and/or Preferred Stock, if any such date is to be fixed, and such notice shall be so given in the case of any action covered by clause (i) or (ii) above at least 10 days prior to the record date for determining holders of the Preferred Stock for purposes of such action, and in the case of any such other action, at least 10 days prior to the date of the taking of such proposed action or the date of participation therein by the holders of the Common Stock and/or Preferred Stock, whichever shall be the earlier.

(b) In case any event described in Section 11(a)(ii) or Section 13 shall occur then the Company shall as soon as practicable thereafter give to each holder of a Right Certificate (or if occurring prior to the Distribution Date, the holders of the Common Stock) in accordance with Section 26 hereof, a notice of the occurrence of such event, which notice shall describe such event and the consequences of such event to holders of Rights under Section 11(a)(ii) and Section 13 hereof.

Section 26. *Notices.* Notices or demands authorized by this Agreement to be given or made by the Rights Agent or by the holder of any Right Certificate to or on the Company shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed (until another address is filed in writing with the Rights Agent) as follows:

Theravance, Inc.
901 Gateway Boulevard
South San Francisco, California 94080
Attention: Chief Executive Officer

Subject to the provisions of Section 21 hereof, any notice or demand authorized by this Agreement to be given or made by the Company or by the holder of any Right Certificate to or on the Rights Agent shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed (until another address is filed in writing with the Company) as follows:

_____

_____

_____

Attention: _____

Notices or demands authorized by this Agreement to be given or made by the Company or the Rights Agent to the holder of any Right Certificate shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed to such holder at the address of such holder as shown on the registry books of the Company.

Section 27. *Supplements and Amendments.* Except as provided in the penultimate sentence of this Section 27, for so long as the Rights are then redeemable, the Company may in its sole and absolute discretion, and the Rights Agent shall if the Company so directs, supplement or amend any provision of this Agreement in any respect without the approval of any holders of the Rights. At any time when the Rights are no longer redeemable, except as provided in the penultimate sentence of this Section 27, the Company may, and the Rights Agent shall, if the Company so directs, supplement or

amend this Agreement without the approval of any holders of Rights, *provided* that no such supplement or amendment may (a) adversely affect the interests of the holders of Rights as such (other than an Acquiring Person or an Affiliate or Associate of an Acquiring Person), (b) cause this Agreement again to become amendable other than in accordance with this sentence or (c) cause the Rights again to become redeemable. Notwithstanding anything contained in this Agreement to the contrary, no supplement or amendment shall be made which changes the Redemption Price. Upon the delivery of a certificate from an appropriate officer of the Company which states that the supplement or amendment is in compliance with the terms of this Section 27, the Rights Agent shall execute such supplement or amendment, *provided* that any supplement or amendment that does not amend Sections 18, 19, 20 or 21 hereof in a manner adverse to the Rights Agent shall become effective immediately upon execution by the Company, whether or not also executed by the Rights Agent.

Section 28. *Successors.* All the covenants and provisions of this Agreement by or for the benefit of the Company or the Rights Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

Section 29. *Benefits of this Agreement.* Nothing in this Agreement shall be construed to give to any Person other than the Company, the Rights Agent and the registered holders of the Right Certificates (and, prior to the Distribution Date, the Common Stock) any legal or equitable right, remedy or claim under this Agreement; but this Agreement shall be for the sole and exclusive benefit of the Company, the Rights Agent and the registered holders of the Right Certificates (and, prior to the Distribution Date, the Common Stock).

Section 30. *Determinations and Actions by the Board of Directors.* The Board of Directors of the Company shall have the exclusive power and authority to administer this Agreement and to exercise the rights and powers specifically granted to the Board of Directors of the Company or to the Company, or as may be necessary or advisable in the administration of this Agreement, including, without limitation, the right and power to (i) interpret the provisions of this Agreement and (ii) make all determinations deemed necessary or advisable for the administration of this Agreement (including, without limitation, a determination to redeem or not redeem the Rights or to amend or not amend this Agreement). All such actions, calculations, interpretations and determinations that are done or made by the Board of Directors of the Company in good faith shall be final, conclusive and binding on the Company, the Rights Agent, the holders of the Rights, as such, and all other parties.

Section 31. *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 32. *Governing Law.* This Agreement and each Right Certificate issued hereunder shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with the laws of such State applicable to contracts to be made and performed entirely within such State.

Section 33. *Counterparts.* This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

Section 34. *Descriptive Headings.* Descriptive headings of the several Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, all as of the day and year first above written.

THERAVANCE, INC.

By: _____

Name: _____

Title: _____

_____,

as Rights Agent

By: _____

Name: _____

Title: _____

Amended and Restated Certificate of Incorporation

Form of Right Certificate

Certificate No. R-_____

NOT EXERCISABLE AFTER _____, 200_____ OR EARLIER IF REDEMPTION OR EXCHANGE OCCURS. THE RIGHTS ARE SUBJECT TO REDEMPTION AT $.01 PER RIGHT AND TO EXCHANGE ON THE TERMS SET FORTH IN THE RIGHTS AGREEMENT. UNDER CERTAIN CIRCUMSTANCES, AS SET FORTH IN THE RIGHTS AGREEMENT, RIGHTS OWNED BY OR TRANSFERRED TO ANY PERSON WHO IS OR BECOMES AN ACQUIRING PERSON (AS DEFINED IN THE RIGHTS AGREEMENT) AND CERTAIN TRANSFEREES THEREOF WILL BECOME NULL AND VOID AND WILL NO LONGER BE TRANSFERABLE.

RIGHT CERTIFICATE

THERAVANCE, INC.

This certifies that _____ or registered assigns, is the registered owner of the number of Rights set forth above, each of which entitles the owner thereof, subject to the terms, provisions and conditions of the Rights Agreement, dated as of _____, 2004, as the same may be amended from time to time (the "Rights Agreement"), between Theravance, Inc., a Delaware corporation (the "Company"), and _____, as Rights Agent (the "Rights Agent"), to purchase from the Company at any time after the Distribution Date (as such term is defined in the Rights Agreement) and prior to 5:00 P.M., New York City time, on _____, 200_ at the office or agency of the Rights Agent designated for such purpose, or of its successor as Rights Agent, one one-thousandth of a fully paid non-assessable share of Series A Junior Participating Preferred Stock, par value $0.01 per share (the "Preferred Stock"), of the Company at a purchase price of $[_____] per one one-thousandth of a share of Preferred Stock (the "Purchase Price"), upon presentation and surrender of this Right Certificate with the Form of Election to Purchase duly executed. The number of Rights evidenced by this Rights Certificate (and the number of one one-thousandths of a share of Preferred Stock which may be purchased upon exercise hereof) set forth above, and the Purchase Price set forth above, are the number and Purchase Price as of _____, 200_, based on the Preferred Stock as constituted at such date. As provided in the Rights Agreement, the Purchase Price, the number of one one-thousandths of a share of Preferred Stock (or other securities or property) which may be purchased upon the exercise of the Rights and the number of Rights evidenced by this Right Certificate are subject to modification and adjustment upon the happening of certain events.

This Right Certificate is subject to all of the terms, provisions and conditions of the Rights Agreement, which terms, provisions and conditions are hereby incorporated herein by reference and made a part hereof and to which Rights Agreement reference is hereby made for a full description of the rights, limitations of rights, obligations, duties and immunities hereunder of the Rights Agent, the Company and the holders of the Right Certificates. Copies of the Rights Agreement are on file at the principal executive offices of the Company and the above-mentioned office or agency of the Rights Agent. The Company will mail to the holder of this Right Certificate a copy of the Rights Agreement without charge after receipt of a written request therefor.

This Right Certificate, with or without other Right Certificates, upon surrender at the office or agency of the Rights Agent designated for such purpose, may be exchanged for another Right

Certificate or Right Certificates of like tenor and date evidencing Rights entitling the holder to purchase a like aggregate number of shares of Preferred Stock as the Rights evidenced by the Right Certificate or Right Certificates surrendered shall have entitled such holder to purchase. If this Right Certificate shall be exercised in part, the holder shall be entitled to receive upon surrender hereof another Right Certificate or Right Certificates for the number of whole Rights not exercised.

Subject to the provisions of the Rights Agreement, the Rights evidenced by this Certificate (i) may be redeemed by the Company at a redemption price of $.01 per Right or (ii) may be exchanged in whole or in part for shares of the Company's Common Stock, par value $0.01 per share, or shares of Preferred Stock.

No fractional shares of Preferred Stock or Common Stock will be issued upon the exercise or exchange of any Right or Rights evidenced hereby (other than fractions of Preferred Stock which are integral multiples of one one-thousandth of a share of Preferred Stock, which may, at the election of the Company, be evidenced by depository receipts), but in lieu thereof a cash payment will be made, as provided in the Rights Agreement.

No holder of this Right Certificate, as such, shall be entitled to vote or receive dividends or be deemed for any purpose the holder of the Preferred Stock or of any other securities of the Company which may at any time be issuable on the exercise or exchange hereof, nor shall anything contained in the Rights Agreement or herein be construed to confer upon the holder hereof, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in the Rights Agreement) or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by this Right Certificate shall have been exercised or exchanged as provided in the Rights Agreement.

This Right Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by the Rights Agent.

WITNESS the facsimile signature of the proper officers of the Company and its corporate seal. Dated as of _____, 200_.

THERAVANCE, INC.

By: _____

[Title]

ATTEST:

_____

[Title]

Countersigned:

_____, as Rights Agent

By _____

[Title]

Form of Reverse Side of Right Certificate

FORM OF ASSIGNMENT

(To be executed by the registered holder if such
holder desires to transfer the Right Certificate)

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto _____

(Please print name and address of transferee)

_____ Rights represented by this Right Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint _____ Attorney, to transfer said Rights on the books of the within-named Company, with full power of substitution.

Dated:

Signature

Signature Guaranteed:

Signatures must be guaranteed by a bank, trust company, broker, dealer or other eligible institution participating in a recognized signature guarantee medallion program.

(To be completed)

The undersigned hereby certifies that the Rights evidenced by this Right Certificate are not beneficially owned by, were not acquired by the undersigned from, and are not being assigned to an Acquiring Person or an Affiliate or Associate thereof (as defined in the Rights Agreement).

Signature

FORM OF ELECTION TO PURCHASE

(To be executed if holder desires to exercise
Rights represented by the Rights Certificate)

To THERAVANCE, INC.:

The undersigned hereby irrevocably elects to exercise _____ Rights represented by this Right Certificate to purchase the shares of Preferred Stock (or other securities or property) issuable upon the exercise of such Rights and requests that certificates for such shares of Preferred Stock (or such other securities) be issued in the name of:

(Please print name and address)

If such number of Rights shall not be all the Rights evidenced by this Right Certificate, a new Right Certificate for the balance remaining of such Rights shall be registered in the name of and delivered to:

Please insert social security
or other identifying number

(Please print name and address)

Dated: _____

_____

Signature
(Signature must conform to holder specified on Right Certificate)

Signature Guaranteed:

Signature must be guaranteed by a bank, trust company, broker, dealer or other eligible institution participating in a recognized signature guarantee medallion program.

(To be completed)

The undersigned certifies that the Rights evidenced by this Right Certificate are not beneficially owned by, and were not acquired by the undersigned from, an Acquiring Person or an Affiliate or Associate thereof (as defined in the Rights Agreement).

Signature

NOTICE

The signature in the Form of Assignment or Form of Election to Purchase, as the case may be, must conform to the name as written upon the face of this Right Certificate in every particular, without alteration or enlargement or any change whatsoever.

In the event the certification set forth above in the Form of Assignment or the Form of Election to Purchase, as the case may be, is not completed, such Assignment or Election to Purchase will not be honored.

UNDER CERTAIN CIRCUMSTANCES, AS SET FORTH IN THE RIGHTS AGREEMENT, RIGHTS OWNED BY OR TRANSFERRED TO ANY PERSON WHO IS OR BECOMES AN ACQUIRING PERSON (AS DEFINED IN THE RIGHTS AGREEMENT) AND CERTAIN TRANSFEREES THEREOF WILL BECOME NULL AND VOID AND WILL NO LONGER BE TRANSFERABLE.

SUMMARY OF RIGHTS TO PURCHASE
SHARES OF PREFERRED STOCK OF
THERAVANCE, INC.

On _____, 200_, the Board of Directors of Theravance, Inc. (the "Company") declared a dividend of one preferred share purchase right (a "Right") for each outstanding share of common stock, par value $0.01 per share, of the Company (the "Common Stock"). The dividend is payable on _____, 200_ (the "Record Date") to the stockholders of record on that date. Each Right entitles the registered holder to purchase from the Company one one-thousandth of a share of Series A Junior Participating Preferred Stock, par value $0.01 per share, of the Company (the "Preferred Stock") at a price of $[_____] per one one-thousandth of a share of Preferred Stock (the "Purchase Price"), subject to adjustment. The description and terms of the Rights are set forth in a Rights Agreement dated as of _____, 2004, as the same may be amended from time to time (the "Rights Agreement"), between the Company and _____, as Rights Agent (the "Rights Agent").

Until the earlier to occur of (i) 10 days following a public announcement that a person or group of affiliated or associated persons (with certain exceptions, an "Acquiring Person") has acquired beneficial ownership of 15% or more of the outstanding shares of Common Stock or (ii) 10 business days (or such later date as may be determined by action of the Board of Directors prior to such time as any person or group of affiliated persons becomes an Acquiring Person) following the commencement of, or announcement of an intention to make, a tender offer or exchange offer the consummation of which would result in the beneficial ownership by a person or group of 15% or more of the outstanding shares of Common Stock (the earlier of such dates being called the "Distribution Date"), the Rights will be evidenced, with respect to any of the Common Stock certificates outstanding as of the Record Date, by such Common Stock certificate together with this Summary of Rights.

The Rights Agreement provides that, until the Distribution Date (or earlier expiration of the Rights), the Rights will be transferred with and only with the Common Stock. Until the Distribution Date (or earlier expiration of the Rights), new Common Stock certificates issued after the Record Date upon transfer or new issuances of Common Stock will contain a notation incorporating the Rights Agreement by reference. Until the Distribution Date (or earlier expiration of the Rights), the surrender for transfer of any certificates for shares of Common Stock outstanding as of the Record Date, even without such notation or a copy of this Summary of Rights, will also constitute the transfer of the Rights associated with the shares of Common Stock represented by such certificate. As soon as practicable following the Distribution Date, separate certificates evidencing the Rights ("Right Certificates") will be mailed to holders of record of the Common Stock as of the close of business on the Distribution Date and such separate Right Certificates alone will evidence the Rights.

The Rights are not exercisable until the Distribution Date. The Rights will expire on _____, 200_ (the "Final Expiration Date"), unless the Final Expiration Date is advanced or extended or unless the Rights are earlier redeemed or exchanged by the Company, in each case as described below.

The Purchase Price payable, and the number of shares of Preferred Stock or other securities or property issuable, upon exercise of the Rights is subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision, combination or reclassification of, the Preferred Stock, (ii) upon the grant to holders of the Preferred Stock of certain rights or warrants to subscribe for or purchase Preferred Stock at a price, or securities convertible into Preferred Stock with a conversion price, less than the then-current market price of the Preferred Stock or (iii) upon the distribution to holders of the Preferred Stock of evidences of indebtedness or assets (excluding regular periodic cash dividends or dividends payable in Preferred Stock) or of subscription rights or warrants (other than those referred to above).

The number of outstanding Rights is subject to adjustment in the event of a stock dividend on the Common Stock payable in shares of Common Stock or subdivisions, consolidations or combinations of the Common Stock occurring, in any such case, prior to the Distribution Date.

Shares of Preferred Stock purchasable upon exercise of the Rights will not be redeemable. Each share of Preferred Stock will be entitled, when, as and if declared, to a minimum preferential quarterly dividend payment of the greater of (a) $[_____] per share, and (b) an amount equal to 1,000 times the dividend declared per share of Common Stock. In the event of liquidation, dissolution or winding up of the Company, the holders of the Preferred Stock will be entitled to a minimum preferential payment of the greater of (a) $[_____] per share (plus any accrued but unpaid dividends), and (b) an amount equal to 1,000 times the payment made per share of Common Stock. Each share of Preferred Stock will have 1,000 votes, voting together with the Common Stock. Finally, in the event of any merger, consolidation or other transaction in which outstanding shares of Common Stock are converted or exchanged, each share of Preferred Stock will be entitled to receive 1,000 times the amount received per share of Common Stock. These rights are protected by customary antidilution provisions.

Because of the nature of the Preferred Stock's dividend, liquidation and voting rights, the value of the one one-thousandth interest in a share of Preferred Stock purchasable upon exercise of each Right should approximate the value of one share of Common Stock.

In the event that any person or group of affiliated or associated persons becomes an Acquiring Person, each holder of a Right, other than Rights beneficially owned by the Acquiring Person (which will thereupon become void), will thereafter have the right to receive upon exercise of a Right that number of shares of Common Stock having a market value of two times the exercise price of the Right.

In the event that, after a person or group has become an Acquiring Person, the Company is acquired in a merger or other business combination transaction or 50% or more of its consolidated assets or earning power are sold, proper provisions will be made so that each holder of a Right (other than Rights beneficially owned by an Acquiring Person which will have become void) will thereafter have the right to receive upon the exercise of a Right that number of shares of common stock of the person with whom the Company has engaged in the foregoing transaction (or its parent) that at the time of such transaction have a market value of two times the exercise price of the Right.

At any time after any person or group becomes an Acquiring Person and prior to the earlier of one of the events described in the previous paragraph or the acquisition by such Acquiring Person of 50% or more of the outstanding shares of Common Stock, the Board of Directors of the Company may exchange the Rights (other than Rights owned by such Acquiring Person which will have become void), in whole or in part, for shares of Common Stock or Preferred Stock (or a series of the Company's preferred stock having equivalent rights, preferences and privileges), at an exchange ratio of one share of Common Stock, or a fractional share of Preferred Stock (or other preferred stock) equivalent in value thereto, per Right.

With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments require an adjustment of at least 1% in such Purchase Price. No fractional shares of

Preferred Stock or Common Stock will be issued (other than fractions of Preferred Stock which are integral multiples of one one-thousandth of a share of Preferred Stock, which may, at the election of the Company, be evidenced by depositary receipts), and in lieu thereof an adjustment in cash will be made based on the current market price of the Preferred Stock or the Common Stock.

At any time prior to the time an Acquiring Person becomes such, the Board of Directors of the Company may redeem the Rights in whole, but not in part, at a price of $.01 per Right (the "Redemption Price") payable, at the option of the Company, in cash, shares of Common Stock or such other form of consideration as the Board of Directors of the Company shall determine. The redemption of the Rights may be made effective at such time, on such basis and with such conditions as the Board of Directors in its sole discretion may establish. Immediately upon any redemption of the Rights, the right to exercise the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

For so long as the Rights are then redeemable, the Company may, except with respect to the Redemption Price, amend the Rights Agreement in any manner. After the Rights are no longer redeemable, the Company may, except with respect to the Redemption Price, amend the Rights Agreement in any manner that does not adversely affect the interests of holders of the Rights.

Until a Right is exercised or exchanged, the holder thereof, as such, will have no rights as a stockholder of the Company, including, without limitation, the right to vote or to receive dividends.

A copy of the Rights Agreement has been filed with the Securities and Exchange Commission as an Exhibit to a Registration Statement on Form 8-A dated _____, 200_. A copy of the Rights Agreement is available free of charge from the Company. This summary description of the Rights does not purport to be complete and is qualified in its entirety by reference to the Rights Agreement, as the same may be amended from time to time, which is hereby incorporated herein by reference.

QuickLinks

Exhibit 10.1

THERAVANCE, INC.

1997 STOCK PLAN

ADOPTED ON JUNE 23, 1997

TABLE OF CONTENTS

THERAVANCE, INC. 1997 STOCK PLAN

SECTION 1. ESTABLISHMENT AND PURPOSE.

The purpose of the Plan is to offer selected individuals an opportunity to acquire a proprietary interest in the success of the Company, or to increase such interest, by purchasing Shares of the Company's Stock. The Plan provides both for the direct award or sale of Shares and for the grant of Options to purchase Shares. Options granted under the Plan may include Nonstatutory Options as well as ISOs intended to qualify under Section 422 of the Code.

Capitalized terms are defined in Section 12.

SECTION 2. ADMINISTRATION.

(a) **Committees of the Board of Directors**. The Plan may be administered by one or more Committees. Each Committee shall consist of one or more members of the Board of Directors who have been appointed by the Board of Directors. Each Committee shall have such authority and be responsible for such functions as the Board of Directors has assigned to it. If no Committee has been appointed, the entire Board of Directors shall administer the Plan. Any reference to the Board of Directors in the Plan shall be construed as a reference to the Committee (if any) to whom the Board of Directors has assigned a particular function.

(b) **Authority of the Board of Directors**. Subject to the provisions of the Plan, the Board of Directors shall have full authority and discretion to take any actions it deems necessary or advisable for the administration of the Plan. All decisions, interpretations and other actions of the Board of Directors shall be final and binding on all Purchasers, all Optionees and all persons deriving their rights from a Purchaser or Optionee.

SECTION 3. ELIGIBILITY.

(a) **General Rule**. Only Employees, Outside Directors and Consultants shall be eligible for the grant of Options or the direct award or sale of Shares. Only Employees shall be eligible for the grant of ISOs.

(b) **Ten-Percent Stockholders**. An individual who owns more than 10% of the total combined voting power of all classes of outstanding stock of the Company, its Parent or any of its Subsidiaries shall not be eligible for designation as an Optionee or Purchaser unless (i) the Exercise Price is at least 110% of the Fair Market Value of a Share on the date of grant, (ii) the Purchase Price (if any) is at least 100% of the Fair Market Value of a Share and (iii) in the case of an ISO, such ISO by its terms is not exercisable after the expiration of five years from the date of grant. For purposes of this Subsection (b), in determining stock ownership, the attribution rules of Section 424(d) of the Code shall be applied.

SECTION 4. STOCK SUBJECT TO PLAN.

(a) **Basic Limitation**. Shares offered under the Plan may be authorized but unissued Shares or treasury Shares. The aggregate number of Shares that may be issued under the Plan (upon exercise of Options or other rights to acquire Shares) shall not exceed 18,641,395[1] Shares, subject to adjustment pursuant to Section 8. The number of Shares that are subject to Options or other rights outstanding at any time under the Plan shall not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan.

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1 Includes all share increases authorized by the Board of Directors through April 28, 2004 and approved by the stockholders through January 15, 2003.

(b) **Additional Shares**. In the event that any outstanding Option or other right for any reason expires or is canceled or otherwise terminated, the Shares allocable to the unexercised portion of such Option or other right shall again be available for the purposes of the Plan. In the event that Shares issued under the Plan are reacquired by the Company pursuant to any forfeiture provision, right of repurchase or right of first refusal, such Shares shall again be available for the purposes of the Plan, except that the aggregate number of Shares which may be issued upon the exercise of ISOs shall in no event exceed 18,641,395 Shares (subject to adjustment pursuant to Section 8).

SECTION 5. TERMS AND CONDITIONS OF AWARDS OR SALES.

(a) **Stock Purchase Agreement**. Each award or sale of Shares under the Plan (other than upon exercise of an Option) shall be evidenced by a Stock Purchase Agreement between the Purchaser and the Company. Such award or sale shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Board of Directors deems appropriate for inclusion in a Stock Purchase Agreement. The provisions of the various Stock Purchase Agreements entered into under the Plan need not be identical.

(b) **Duration of Offers and Nontransferability of Rights**. Any right to acquire Shares under the Plan (other than an Option) shall automatically expire if not exercised by the Purchaser within 30 days after the grant of such right was communicated to the Purchaser by the Company. Such right shall not be transferable and shall be exercisable only by the Purchaser to whom such right was granted.

(c) **Purchase Price**. The Purchase Price of Shares to be offered under the Plan shall not be less than 85% of the Fair Market Value of such Shares, and a higher percentage may be required by Section 3(b). Subject to the preceding sentence, the Purchase Price shall be determined by the Board of Directors at its sole discretion. The Purchase Price shall be payable in a form described in Section 7.

(d) **Withholding Taxes**. As a condition to the purchase of Shares, the Purchaser shall make such arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with such purchase.

(e) **Restrictions on Transfer of Shares and Minimum Vesting**. Any Shares awarded or sold under the Plan shall be subject to such special forfeiture conditions, rights of repurchase, rights of first refusal and other transfer restrictions as the Board of Directors may determine. Such restrictions shall be set forth in the applicable Stock Purchase Agreement and shall apply in addition to any restrictions that may apply to holders of Shares generally. In the case of a Purchaser who is not an officer of the Company, an Outside Director or a Consultant, any right to repurchase the Purchaser's Shares at the original Purchase Price (if any) upon termination of the Purchaser's Service shall lapse at least as rapidly as 20% per year over the five-year period commencing on the date of the award or sale of the Shares. Any such right may be exercised only within 90 days after the termination of the Purchaser's Service for cash or for cancellation of indebtedness incurred in purchasing the Shares.

(f) **Accelerated Vesting**. Unless the applicable Stock Purchase Agreement provides otherwise, any right to repurchase a Purchaser's Shares at the original Purchase Price (if any) upon termination of the Purchaser's Service shall lapse and all of such Shares shall become vested if (i) the Company is subject to a Change in Control before the Purchaser's Service terminates and (ii) the repurchase right is not assigned to the entity that employs the Purchaser immediately after the Change in Control or to its parent or subsidiary. Notwithstanding the foregoing, in the event that (i) there is an Involuntary Termination within twelve months after a Change in Control and (ii) the repurchase right had been assigned to the entity that employs the Purchaser immediately after the Change in Control or to its parent or subsidiary, then the repurchase right shall lapse and an additional number of the Purchaser's Shares shall vest, as if the Purchaser performed Service for an additional twelve months.

SECTION 6. TERMS AND CONDITIONS OF OPTIONS.

(a) **Stock Option Agreement**. Each grant of an Option under the Plan shall be evidenced by a Stock Option Agreement between the Optionee and the Company. Such Option shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Board of Directors deems appropriate for inclusion in a Stock Option Agreement. The provisions of the various Stock Option Agreements entered into under the Plan need not be identical.

(b) **Number of Shares**. Each Stock Option Agreement shall specify the number of Shares that are subject to the Option and shall provide for the adjustment of such number in accordance with Section 8. The Stock Option Agreement shall also specify whether the Option is an ISO or a Nonstatutory Option.

(c) **Exercise Price**. Each Stock Option Agreement shall specify the Exercise Price. The Exercise Price of an ISO shall not be less than 100% of the Fair Market Value of a Share on the date of grant, and a higher percentage may be required by Section 3(b). The Exercise Price of a Nonstatutory Option shall not be less than 85% of the Fair Market Value of a Share on the date of grant, and a higher percentage may be required by Section 3(b). Subject to the preceding two sentences, the Exercise Price under any Option shall be determined by the Board of Directors at its sole discretion. The Exercise Price shall be payable in a form described in Section 7.

(d) **Withholding Taxes**. As a condition to the exercise of an Option, the Optionee shall make such arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with such exercise. The Optionee shall also make such arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with the disposition of Shares acquired by exercising an Option.

(e) **Exercisability**. Each Stock Option Agreement shall specify the date when all or any installment of the Option is to become exercisable. In the case of an Optionee who is not an officer of the Company, an Outside Director or a Consultant, an Option shall become exercisable at least as rapidly as 20% per year over the five-year period commencing on the date of grant. Subject to the preceding sentence, the exercisability provisions of any Stock Option Agreement shall be determined by the Board of Directors at its sole discretion.

(f) **Accelerated Exercisability**. Unless the applicable Stock Option Agreement provides otherwise, all of an Optionee's Options shall become exercisable in full if (i) the Company is subject to a Change in Control before the Optionee's Service terminates, (ii) such Options do not remain outstanding, (iii) such Options are not assumed by the surviving corporation or its parent and (iv) the surviving corporation or its parent does not substitute options with substantially the same terms for such Options. Notwithstanding the foregoing, in the event that (i) there is an Involuntary Termination within twelve months after a Change in Control and (ii) the Options had been assumed or substituted by the surviving corporation or its parent, then the repurchase right with respect to the Options shall lapse and an additional number of Shares subject to the Optionee's Options shall become exercisable and vest, as if the Optionee performed Service for an additional twelve months.

(g) **Basic Term**. The Stock Option Agreement shall specify the term of the Option. The term shall not exceed 10 years from the date of grant, and a shorter term may be required by Section 3(b). Subject to the preceding sentence, the Board of Directors at its sole discretion shall determine when an Option is to expire.

(h) **Nontransferability**. No Option shall be transferable by the Optionee other than by beneficiary designation, will or the laws of descent and distribution. An Option may be exercised during

the lifetime of the Optionee only by the Optionee or by the Optionee's guardian or legal representative. No Option or interest therein may be transferred, assigned, pledged or hypothecated by the Optionee during the Optionee's lifetime, whether by operation of law or otherwise, or be made subject to execution, attachment or similar process.

(i) **Termination of Service (Except by Death)**. If an Optionee's Service terminates for any reason other than the Optionee's death, then the Optionee's Options shall expire on the earliest of the following occasions, unless the periods of time for which the Options remain exercisable are otherwise extended by the Board of Directors or Committee:

(i) The expiration date determined pursuant to Subsection (g) above;

(ii) The date three months after the termination of the Optionee's Service for any reason other than Disability; or

(iii) The date six months after the termination of the Optionee's Service by reason of Disability.

The Optionee may exercise all or part of the Optionee's Options at any time before the expiration of such Options under the preceding sentence, but only to the extent that such Options had become exercisable before the Optionee's Service terminated (or became exercisable as a result of the termination) and the underlying Shares had vested before the Optionee's Service terminated (or vested as a result of the termination). The balance of such Options shall lapse when the Optionee's Service terminates. In the event that the Optionee dies after the termination of the Optionee's Service but before the expiration of the Optionee's Options, all or part of such Options may be exercised (prior to expiration) by the executors or administrators of the Optionee's estate or by any person who has acquired such Options directly from the Optionee by beneficiary designation, bequest or inheritance, but only to the extent that such Options had become exercisable before the Optionee's Service terminated (or became exercisable as a result of the termination) and the underlying Shares had vested before the Optionee's Service terminated (or vested as a result of the termination).

(j) **Leaves of Absence**. For purposes of Subsection (i) above, Service shall be deemed to continue while the Optionee is on a bona fide leave of absence, if such leave was approved by the Company in writing and if continued crediting of Service for this purpose is expressly required by the terms of such leave or by applicable law (as determined by the Company).

(k) **Death of Optionee**. If an Optionee dies while the Optionee is in Service, then the Optionee's Options shall expire on the earlier of the following dates, unless the periods of time for which the Options remain exercisable are otherwise extended by the Board of Directors or Committee:

(i) The expiration date determined pursuant to Subsection (g) above; or

(ii) The date 12 months after the Optionee's death.

All or part of the Optionee's Options may be exercised at any time before the expiration of such Options under the preceding sentence by the executors or administrators of the Optionee's estate or by any person who has acquired such Options directly from the Optionee by beneficiary designation, bequest or inheritance, but only to the extent that such Options had become exercisable before the Optionee's death or became exercisable as a result of the death. The balance of such Options shall lapse when the Optionee dies.

(l) **No Rights as a Stockholder**. An Optionee, or a transferee of an Optionee, shall have no rights as a stockholder with respect to any Shares covered by the Optionee's Option until such person becomes entitled to receive such Shares by filing a notice of exercise and paying the Exercise Price pursuant to the terms of such Option.

(m) **Modification, Extension and Assumption of Options**. Within the limitations of the Plan, the Board of Directors may modify, extend or assume outstanding Options or may accept the cancellation of outstanding Options (whether granted by the Company or another issuer) in return for the grant of new Options for the same or a different number of Shares and at the same or a different Exercise Price. The foregoing notwithstanding, no modification of an Option shall, without the consent of the Optionee, impair the Optionee's rights or increase the Optionee's obligations under such Option.

(n) **Restrictions on Transfer of Shares and Minimum Vesting**. Any Shares issued upon exercise of an Option shall be subject to such special forfeiture conditions, rights of repurchase, rights of first refusal and other transfer restrictions as the Board of Directors may determine. Such restrictions shall be set forth in the applicable Stock Option Agreement and shall apply in addition to any restrictions that may apply to holders of Shares generally. In the case of an Optionee who is not an officer of the Company, an Outside Director or a Consultant, any right to repurchase the Optionee's Shares at the original Exercise Price upon termination of the Optionee's Service shall lapse at least as rapidly as 20% per year over the five-year period commencing on the date of the option grant. Any such repurchase right may be exercised only within 90 days after the termination of the Optionee's Service for cash or for cancellation of indebtedness incurred in purchasing the Shares.

(o) **Accelerated Vesting**. Unless the applicable Stock Option Agreement provides otherwise, any right to repurchase an Optionee's Shares at the original Exercise Price upon termination of the Optionee's Service shall lapse and all of such Shares shall become vested if (i) the Company is subject to a Change in Control before the Optionee's Service terminates and (ii) the repurchase right is not assigned to the entity that employs the Optionee immediately after the Change in Control or to its parent or subsidiary. Notwithstanding the foregoing, in the event that (i) there is an Involuntary Termination within twelve months after a Change in Control and (ii) the repurchase right had been assigned to the entity that employs the Optionee immediately after the Change in Control or to its parent or subsidiary, then the repurchase right shall lapse and an additional number of Shares shall become vested as if the Optionee performed Service for an additional twelve months.

SECTION 7. PAYMENT FOR SHARES.

(a) **General Rule**. The entire Purchase Price or Exercise Price of Shares issued under the Plan shall be payable in cash or cash equivalents at the time when such Shares are purchased, except as otherwise provided in this Section 7.

(b) **Surrender of Stock**. To the extent that a Stock Option Agreement so provides, all or any part of the Exercise Price may be paid by surrendering, or attesting to the ownership of, Shares that are already owned by the Optionee. Such Shares shall be surrendered to the Company in good form for transfer and shall be valued at their Fair Market Value on the date when the Option is exercised. The Optionee shall not surrender, or attest to the ownership of, Shares in payment of the Exercise Price if such action would cause the Company to recognize compensation expense (or additional compensation expense) with respect to the Option for financial reporting purposes.

(c) **Services Rendered**. At the discretion of the Board of Directors, Shares may be awarded under the Plan in consideration of services rendered to the Company, a Parent or a Subsidiary prior to the award. At the discretion of the Board of Directors, Shares may also be awarded under the Plan in consideration of services to be rendered to the Company, a Parent or a Subsidiary after the award, except that the par value of such Shares, if newly issued, shall be paid in cash or cash equivalents.

(d) **Promissory Note**. To the extent that a Stock Option Agreement or Stock Purchase Agreement so provides, all or a portion of the Exercise Price or Purchase Price (as the case may be) of Shares issued under the Plan may be paid with a full-recourse promissory note. However, the par value of the Shares, if newly issued, shall be paid in cash or cash equivalents. The Shares shall be pledged as

security for payment of the principal amount of the promissory note and interest thereon. The interest rate payable under the terms of the promissory note shall not be less than the minimum rate (if any) required to avoid the imputation of additional interest under the Code. Subject to the foregoing, the Board of Directors (at its sole discretion) shall specify the term, interest rate, amortization requirements (if any) and other provisions of such note.

(e) **Exercise/Sale**. To the extent that a Stock Option Agreement so provides, and if Stock is publicly traded, payment may be made all or in part by the delivery (on a form prescribed by the Company) of an irrevocable direction to a securities broker approved by the Company to sell Shares and to deliver all or part of the sales proceeds to the Company in payment of all or part of the Exercise Price and any withholding taxes.

(f) **Exercise/Pledge**. To the extent that a Stock Option Agreement so provides, and if Stock is publicly traded, payment may be made all or in part by the delivery (on a form prescribed by the Company) of an irrevocable direction to pledge Shares to a securities broker or lender approved by the Company, as security for a loan, and to deliver all or part of the loan proceeds to the Company in payment of all or part of the Exercise Price and any withholding taxes.

SECTION 8. ADJUSTMENT OF SHARES.

(a) **General**. In the event of a subdivision of the outstanding Stock, a declaration of a dividend payable in Shares, a declaration of an extraordinary dividend payable in a form other than Shares in an amount that has a material effect on the Fair Market Value of the Stock, a combination or consolidation of the outstanding Stock into a lesser number of Shares, a recapitalization, a spin-off, a reclassification or a similar occurrence, the Board of Directors shall make appropriate adjustments in one or more of (i) the number of Shares available for future grants under Section 4, (ii) the number of Shares covered by each outstanding Option or (iii) the Exercise Price under each outstanding Option.

(b) **Mergers and Consolidations**. In the event that the Company is a party to a merger or consolidation, outstanding Options shall be subject to the agreement of merger or consolidation. Such agreement, without the Optionees' consent, may provide for:

(i) The continuation of such outstanding Options by the Company (if the Company is the surviving corporation);

(ii) The assumption of the Plan and such outstanding Options by the surviving corporation or its parent;

(iii) The substitution by the surviving corporation or its parent of options with substantially the same terms for such outstanding Options; or

(iv) The cancellation of such outstanding Options without payment of any consideration.

(c) **Reservation of Rights**. Except as provided in this Section 8, an Optionee or Purchaser shall have no rights by reason of (i) any subdivision or consolidation of shares of stock of any class, (ii) the payment of any dividend or (iii) any other increase or decrease in the number of shares of stock of any class. Any issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number or Exercise Price of Shares subject to an Option. The grant of an Option pursuant to the Plan shall not affect in any way the right or power of the Company to make adjustments, reclassifications, reorganizations or changes of its capital or business structure, to merge or consolidate or to dissolve, liquidate, sell or transfer all or any part of its business or assets.

SECTION 9. SECURITIES LAW REQUIREMENTS.

(a) **General**. Shares shall not be issued under the Plan unless the issuance and delivery of such Shares comply with (or are exempt from) all applicable requirements of law, including (without limitation) the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder, state securities laws and regulations, and the regulations of any stock exchange or other securities market on which the Company's securities may then be traded.

(b) **Financial Reports**. The Company each year shall furnish to Optionees, Purchasers and stockholders who have received Stock under the Plan its balance sheet and income statement, unless such Optionees, Purchasers or stockholders are key Employees whose duties with the Company assure them access to equivalent information. Such balance sheet and income statement need not be audited.

SECTION 10. NO RETENTION RIGHTS.

Nothing in the Plan or in any right or Option granted under the Plan shall confer upon the Purchaser or Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Parent or Subsidiary employing or retaining the Purchaser or Optionee) or of the Purchaser or Optionee, which rights are hereby expressly reserved by each, to terminate his or her Service at any time and for any reason, with or without cause.

SECTION 11. DURATION AND AMENDMENTS.

(a) **Term of the Plan**. The Plan, as set forth herein, shall become effective on the date of its adoption by the Board of Directors, subject to the approval of the Company's stockholders. In the event that the stockholders fail to approve the Plan within 12 months after its adoption by the Board of Directors, any grants of Options or sales or awards of Shares that have already occurred shall be rescinded, and no additional grants, sales or awards shall be made thereafter under the Plan. The Plan shall terminate automatically 10 years after its adoption by the Board of Directors and may be terminated on any earlier date pursuant to Subsection (b) below.

(b) **Right to Amend or Terminate the Plan**. The Board of Directors may amend, suspend or terminate the Plan at any time and for any reason; provided, however, that any amendment of the Plan which increases the number of Shares available for issuance under the Plan (except as provided in Section 8), or which materially changes the class of persons who are eligible for the grant of ISOs, shall be subject to the approval of the Company's stockholders. Stockholder approval shall not be required for any other amendment of the Plan.

(c) **Effect of Amendment or Termination**. No Shares shall be issued or sold under the Plan after the termination thereof, except upon exercise of an Option granted prior to such termination. The termination of the Plan, or any amendment thereof, shall not affect any Share previously issued or any Option previously granted under the Plan.

SECTION 12. DEFINITIONS.

(a) "**Board of Directors**" shall mean the Board of Directors of the Company, as constituted from time to time.

(b) **"Cause"** shall mean (i) the unauthorized use or disclosure of the confidential information or trade secrets of the Company, which use causes material harm to the Company, (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.

(c) "**Change in Control**" shall mean:

(i) The consummation of a merger or consolidation of the Company with or into another entity or any other corporate reorganization, if more than 50% of the combined voting power of the continuing or surviving entity's securities outstanding immediately after such merger, consolidation or other reorganization is owned by persons who were not stockholders of the Company immediately prior to such merger, consolidation or other reorganization;

(ii) The acquisition, directly or indirectly, by any person or related group of persons (other than the Company or a person that directly or indirectly controls, is controlled by, or is under common control with, the Company) of beneficial ownership (within the meaning of Rule 13d-3 of the Securities Exchange Act of 1934, as amended) of securities possessing more than 50% of the total combined voting power of the Company's outstanding securities pursuant to a tender or exchange offer made directly to the Company's stockholders; or

(iii) The sale, transfer or other disposition of all or substantially all of the Company's assets.

A transaction shall not constitute a Change in Control if its sole purpose is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(d) "**Code**" shall mean the Internal Revenue Code of 1986, as amended.

(e) "**Committee**" shall mean a committee of the Board of Directors, as described in Section 2(a).

(f) "**Company**" shall mean Theravance, Inc., a Delaware corporation.

(g) "**Consultant**" shall mean an individual who performs bona fide services for the Company, a Parent or a Subsidiary as a consultant or advisor, excluding Employees and Outside Directors.

(h) "**Disability**" shall mean that the Optionee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment.

(i) "**Employee**" shall mean any individual who is a common-law employee of the Company, a Parent or a Subsidiary.

(j) "**Exercise Price**" shall mean the amount for which one Share may be purchased upon exercise of an Option, as specified by the Board of Directors in the applicable Stock Option Agreement.

(k) "**Fair Market Value**" shall mean the fair market value of a Share, as determined by the Board of Directors in good faith. Such determination shall be conclusive and binding on all persons.

(l) **"Involuntary Termination"** shall mean the termination of Service which occurs by reason of:

(i) an involuntary dismissal or discharge by the Company for reasons other than for Cause; or

(ii) a voluntary resignation following (i) a change in Optionee's or Purchaser's position with the Company (or Parent or Subsidiary employing Optionee or Purchaser) which materially reduces Optionee's or Purchaser's level of responsibility, (ii) a reduction in Optionee's or Purchaser's level of compensation (including base salary, fringe benefits and participation in corporate-performance based bonus or incentive programs) by more than fifteen percent or (iii) a relocation of the workplace of Optionee or Purchaser more than fifty miles away from the workplace designated by the Company on Optionee's or Purchaser's initial date of service.

(m) "**ISO**" shall mean an employee incentive stock option described in Section 422(b) of the Code.

(n) "**Nonstatutory Option**" shall mean a stock option not described in Sections 422(b) or 423(b) of the Code.

(o) "**Option**" shall mean an ISO or Nonstatutory Option granted under the Plan and entitling the holder to purchase Shares.

(p) "**Optionee**" shall mean an individual who holds an Option.

(q) "**Outside Director**" shall mean a member of the Board of Directors who is not an Employee.

(r) "**Parent**" shall mean any corporation (other than the Company) in an unbroken chain of corporations ending with the Company, if each of the corporations other than the Company 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.

(s) "**Plan**" shall mean this Theravance, Inc. 1997 Stock Plan.

(t) "**Purchase Price**" shall mean the consideration for which one Share may be acquired under the Plan (other than upon exercise of an Option), as specified by the Board of Directors.

(u) "**Purchaser**" shall mean an individual to whom the Board of Directors has offered the right to acquire Shares under the Plan (other than upon exercise of an Option).

(v) "**Service**" shall mean service as an Employee, Outside Director or Consultant.

(w) "**Share**" shall mean one share of Stock, as adjusted in accordance with Section 8 (if applicable).

(x) "**Stock**" shall mean the Common Stock of the Company, with a par value of $0.01 per Share.

(y) "**Stock Option Agreement**" shall mean the agreement between the Company and an Optionee which contains the terms, conditions and restrictions pertaining to the Optionee's Option.

(z) "**Stock Purchase Agreement**" shall mean the agreement between the Company and a Purchaser who acquires Shares under the Plan which contains the terms, conditions and restrictions pertaining to the acquisition of such Shares.

(aa) "**Subsidiary**" means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company, 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.

QuickLinks

Exhibit 10.2

THERAVANCE, INC.

LONG-TERM STOCK OPTION PLAN

ADOPTED ON JUNE 27, 1998

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THERAVANCE, INC. LONG-TERM STOCK OPTION PLAN

SECTION 1. ESTABLISHMENT AND PURPOSE.

The purpose of the Plan is to offer selected individuals an opportunity to acquire a proprietary interest in the success of the Company, or to increase such interest, by purchasing Shares of the Company's Stock. Participation in the Plan is limited to individuals to whom the Company may offer and sell securities pursuant to the exemption from qualification afforded by Section 25102(f) of the California Corporations Code or who do not reside in the State of California. The Plan provides both for the direct award or sale of Shares and for the grant of Options to purchase Shares. Options granted under the Plan may include Nonstatutory Options as well as ISOs intended to qualify under Section 422 of the Code.

Capitalized terms are defined in Section 12.

SECTION 2. ADMINISTRATION.

(a) **Committees of the Board of Directors**. The Plan may be administered by one or more Committees. Each Committee shall consist of one or more members of the Board of Directors who have been appointed by the Board of Directors. Each Committee shall have such authority and be responsible for such functions as the Board of Directors has assigned to it. If no Committee has been appointed, the entire Board of Directors shall administer the Plan. Any reference to the Board of Directors in the Plan shall be construed as a reference to the Committee (if any) to whom the Board of Directors has assigned a particular function.

(b) **Authority of the Board of Directors**. Subject to the provisions of the Plan, the Board of Directors shall have full authority and discretion to take any actions it deems necessary or advisable for the administration of the Plan. All decisions, interpretations and other actions of the Board of Directors shall be final and binding on all Purchasers, all Optionees and all persons deriving their rights from a Purchaser or Optionee.

SECTION 3. ELIGIBILITY.

(a) **General Rule**. Only Employees, Outside Directors and Consultants shall be eligible for the grant of Options or the direct award or sale of Shares. Only Employees shall be eligible for the grant of ISOs. Participation in the Plan shall be limited to individuals to whom the Company may offer and sell securities pursuant to the exemption from qualification afforded by Section 25102(f) of the California Corporations Code or who do not reside in the State of California.

(b) **Ten-Percent Stockholders**. An individual who owns more than 10% of the total combined voting power of all classes of outstanding stock of the Company, its Parent or any of its Subsidiaries shall not be eligible for the grant of an ISO unless (i) the Exercise Price is at least 110% of the Fair Market Value of a Share on the date of grant and (ii) such ISO by its terms is not exercisable after the expiration of five years from the date of grant. For purposes of this Subsection (b), in determining stock ownership, the attribution rules of Section 424(d) of the Code shall be applied.

SECTION 4. STOCK SUBJECT TO PLAN.

(a) **Basic Limitation**. Shares offered under the Plan may be authorized but unissued Shares or treasury Shares. The aggregate number of Shares that may be issued under the Plan (upon exercise of Options or other rights to acquire Shares) shall not exceed 2,265,000 Shares, subject to adjustment pursuant to Section 8. The number of Shares that are subject to Options or other rights outstanding at

any time under the Plan shall not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan.

(b) **Additional Shares**. In the event that any outstanding Option or other right for any reason expires or is canceled or otherwise terminated, the Shares allocable to the unexercised portion of such Option or other right shall again be available for the purposes of the Plan. In the event that Shares issued under the Plan are reacquired by the Company pursuant to any forfeiture provision, right of repurchase or right of first refusal, such Shares shall again be available for the purposes of the Plan, except that the aggregate number of Shares which may be issued upon the exercise of ISOs shall in no event exceed 2,265,000 Shares (subject to adjustment pursuant to Section 8).

SECTION 5. TERMS AND CONDITIONS OF AWARDS OR SALES.

(a) **Stock Purchase Agreement**. Each award or sale of Shares under the Plan (other than upon exercise of an Option) shall be evidenced by a Stock Purchase Agreement between the Purchaser and the Company. Such award or sale shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Board of Directors deems appropriate for inclusion in a Stock Purchase Agreement. The provisions of the various Stock Purchase Agreements entered into under the Plan need not be identical.

(b) **Duration of Offers and Nontransferability of Rights**. Any right to acquire Shares under the Plan (other than an Option) shall automatically expire if not exercised by the Purchaser within 30 days after the grant of such right was communicated to the Purchaser by the Company. Such right shall not be transferable and shall be exercisable only by the Purchaser to whom such right was granted.

(c) **Purchase Price**. The Purchase Price of Shares to be offered under the Plan, if newly issued, shall not be less than the par value of such Shares. Subject to the preceding sentence, the Purchase Price shall be determined by the Board of Directors at its sole discretion. The Purchase Price shall be payable in a form described in Section 7.

(d) **Withholding Taxes**. As a condition to the purchase of Shares, the Purchaser shall make such arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with such purchase.

(e) **Restrictions on Transfer of Shares**. Any Shares awarded or sold under the Plan shall be subject to such special forfeiture conditions, rights of repurchase, rights of first refusal and other transfer restrictions as the Board of Directors may determine. Such restrictions shall be set forth in the applicable Stock Purchase Agreement and shall apply in addition to any restrictions that may apply to holders of Shares generally.

(f) **Accelerated Vesting**. Unless the applicable Stock Purchase Agreement provides otherwise, any right to repurchase a Purchaser's Shares at the original Purchase Price (if any) upon termination of the Purchaser's Service shall lapse and all of such Shares shall become vested if (i) the Company is subject to a Change in Control before the Purchaser's Service terminates and (ii) the repurchase right is not assigned to the entity that employs the Purchaser immediately after the Change in Control or to its parent or subsidiary. The foregoing notwithstanding, if (i) the repurchase right has been assigned to the entity that employs the Purchaser immediately after the Change in Control or to its parent or subsidiary and (ii) the Purchaser is subject to an Involuntary Termination within 12 months after the Change in Control, then the repurchase right shall lapse and an additional number of the Purchaser's Shares shall vest, calculated as if the Purchaser's Service had continued for an additional 12 months.

SECTION 6. TERMS AND CONDITIONS OF OPTIONS.

(a) **Stock Option Agreement**. Each grant of an Option under the Plan shall be evidenced by a Stock Option Agreement between the Optionee and the Company. Such Option shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Board of Directors deems appropriate for inclusion in a Stock Option Agreement. The provisions of the various Stock Option Agreements entered into under the Plan need not be identical.

(b) **Number of Shares**. Each Stock Option Agreement shall specify the number of Shares that are subject to the Option and shall provide for the adjustment of such number in accordance with Section 8. The Stock Option Agreement shall also specify whether the Option is an ISO or a Nonstatutory Option.

(c) **Exercise Price**. Each Stock Option Agreement shall specify the Exercise Price. The Exercise Price of an ISO shall not be less than 100% of the Fair Market Value of a Share on the date of grant, and a higher percentage may be required by Section 3(b). The Exercise Price of a Nonstatutory Option to purchase newly issued Shares shall not be less than the par value of such Shares. Subject to the preceding two sentences, the Exercise Price under an Option shall be determined by the Board of Directors at its sole discretion. The Exercise Price shall be payable in a form described in Section 7.

(d) **Withholding Taxes**. As a condition to the exercise of an Option, the Optionee shall make such arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with such exercise. The Optionee shall also make such arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with the disposition of Shares acquired by exercising an Option.

(e) **Exercisability**. Each Stock Option Agreement shall specify the date when all or any installment of the Option is to become exercisable. The exercisability provisions of a Stock Option Agreement shall be determined by the Board of Directors at its sole discretion.

(f) **Accelerated Exercisability**. Unless the applicable Stock Option Agreement provides otherwise, all of an Optionee's Options shall become exercisable in full if (i) the Company is subject to a Change in Control before the Optionee's Service terminates, (ii) such Options do not remain outstanding, (iii) such Options are not assumed by the surviving corporation or its parent and (iv) the surviving corporation or its parent does not substitute options with substantially the same terms for such Options. The foregoing notwithstanding, if (i) the Optionee's Options do not become exercisable in full under the preceding sentence and (ii) the Optionee is subject to an Involuntary Termination within 12 months after the Change in Control, then the Optionee's Options shall become exercisable with respect to an additional number of Shares, calculated as if the Optionee's Service had continued for an additional 12 months.

(g) **Basic Term**. The Stock Option Agreement shall specify the term of the Option. The term shall not exceed 10 years from the date of grant, and in the case of an ISO a shorter term may be required by Section 3(b). Subject to the preceding sentence, the Board of Directors at its sole discretion shall determine when an Option is to expire. A Stock Option Agreement may provide for expiration prior to the end of its term in the event of the termination of the Optionee's Service or death.

(h) **Nontransferability**. No Option shall be transferable by the Optionee other than by beneficiary designation, will or the laws of descent and distribution. An Option may be exercised during the lifetime of the Optionee only by the Optionee or by the Optionee's guardian or legal representative. No Option or interest therein may be transferred, assigned, pledged or hypothecated by

the Optionee during the Optionee's lifetime, whether by operation of law or otherwise, or be made subject to execution, attachment or similar process.

(i) **No Rights as a Stockholder**. An Optionee, or a transferee of an Optionee, shall have no rights as a stockholder with respect to any Shares covered by the Optionee's Option until such person becomes entitled to receive such Shares by filing a notice of exercise and paying the Exercise Price pursuant to the terms of such Option.

(j) **Modification, Extension and Assumption of Options**. Within the limitations of the Plan, the Board of Directors may modify, extend or assume outstanding Options or may accept the cancellation of outstanding Options (whether granted by the Company or another issuer) in return for the grant of new Options for the same or a different number of Shares and at the same or a different Exercise Price. The foregoing notwithstanding, no modification of an Option shall, without the consent of the Optionee, impair the Optionee's rights or increase the Optionee's obligations under such Option.

(k) **Restrictions on Transfer of Shares**. Any Shares issued upon exercise of an Option shall be subject to such special forfeiture conditions, rights of repurchase, rights of first refusal and other transfer restrictions as the Board of Directors may determine. Such restrictions shall be set forth in the applicable Stock Option Agreement and shall apply in addition to any restrictions that may apply to holders of Shares generally.

(l) **Accelerated Vesting**. Unless the applicable Stock Option Agreement provides otherwise, any right to repurchase an Optionee's Shares at the original Exercise Price upon termination of the Optionee's Service shall lapse and all of such Shares shall become vested if (i) the Company is subject to a Change in Control before the Optionee's Service terminates and (ii) the repurchase right is not assigned to the entity that employs the Optionee immediately after the Change in Control or to its parent or subsidiary. A Stock Option Agreement may also provide for accelerated vesting in the event of the Optionee's death or disability or other events. The foregoing notwithstanding, if (i) the repurchase right has been assigned to the entity that employs the Optionee immediately after the Change in Control or to its parent or subsidiary and (ii) the Optionee is subject to an Involuntary Termination within 12 months after the Change in Control, then the repurchase right shall lapse and an additional number of the Optionee's Shares shall vest, calculated as if the Optionee's Service had continued for an additional 12 months.

SECTION 7. PAYMENT FOR SHARES.

(a) **General Rule**. The entire Purchase Price or Exercise Price of Shares issued under the Plan shall be payable in cash or cash equivalents at the time when such Shares are purchased, except as otherwise provided in this Section 7.

(b) **Surrender of Stock**. To the extent that a Stock Option Agreement so provides, all or any part of the Exercise Price may be paid by surrendering, or attesting to the ownership of, Shares that are already owned by the Optionee. Such Shares shall be surrendered to the Company in good form for transfer and shall be valued at their Fair Market Value on the date when the Option is exercised. The Optionee shall not surrender, or attest to the ownership of, Shares in payment of the Exercise Price if such action would cause the Company to recognize compensation expense (or additional compensation expense) with respect to the Option for financial reporting purposes.

(c) **Services Rendered**. At the discretion of the Board of Directors, Shares may be awarded under the Plan in consideration of services rendered to the Company, a Parent or a Subsidiary prior to the award. At the discretion of the Board of Directors, Shares may also be awarded under the Plan in consideration of services to be rendered to the Company, a Parent or a Subsidiary after the award, except that the par value of such Shares, if newly issued, shall be paid in cash or cash equivalents.

(d) **Promissory Note**. To the extent that a Stock Option Agreement or Stock Purchase Agreement so provides, all or a portion of the Exercise Price or Purchase Price (as the case may be) of Shares issued under the Plan may be paid with a full-recourse promissory note. However, the par value of the Shares, if newly issued, shall be paid in cash or cash equivalents. The Shares shall be pledged as security for payment of the promissory note. Subject to the foregoing, the Board of Directors (at its sole discretion) shall specify the term, interest rate (if any), amortization requirements (if any) and other provisions of such note.

(e) **Exercise/Sale**. To the extent that a Stock Option Agreement so provides, and if Stock is publicly traded, payment may be made all or in part by the delivery (on a form prescribed by the Company) of an irrevocable direction to a securities broker approved by the Company to sell Shares and to deliver all or part of the sales proceeds to the Company in payment of all or part of the Exercise Price and any withholding taxes.

(f) **Exercise/Pledge**. To the extent that a Stock Option Agreement so provides, and if Stock is publicly traded, payment may be made all or in part by the delivery (on a form prescribed by the Company) of an irrevocable direction to pledge Shares to a securities broker or lender approved by the Company, as security for a loan, and to deliver all or part of the loan proceeds to the Company in payment of all or part of the Exercise Price and any withholding taxes.

SECTION 8. ADJUSTMENT OF SHARES.

(a) **General**. In the event of a subdivision of the outstanding Stock, a declaration of a dividend payable in Shares, a declaration of an extraordinary dividend payable in a form other than Shares in an amount that has a material effect on the Fair Market Value of the Stock, a combination or consolidation of the outstanding Stock into a lesser number of Shares, a recapitalization, a spin-off, a reclassification or a similar occurrence, the Board of Directors shall make appropriate adjustments in one or more of (i) the number of Shares available for future grants under Section 4, (ii) the number of Shares covered by each outstanding Option or (iii) the Exercise Price under each outstanding Option.

(b) **Mergers and Consolidations**. In the event that the Company is a party to a merger or consolidation, outstanding Options shall be subject to the agreement of merger or consolidation. Such agreement, without the Optionees' consent, may provide for:

(i) The continuation of such outstanding Options by the Company (if the Company is the surviving corporation);

(ii) The assumption of the Plan and such outstanding Options by the surviving corporation or its parent;

(iii) The substitution by the surviving corporation or its parent of options with substantially the same terms for such outstanding Options; or

(iv) The cancellation of such outstanding Options without payment of any consideration.

(c) **Reservation of Rights**. Except as provided in this Section 8, an Optionee or Purchaser shall have no rights by reason of (i) any subdivision or consolidation of shares of stock of any class, (ii) the payment of any dividend or (iii) any other increase or decrease in the number of shares of stock of any class. Any issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number or Exercise Price of Shares subject to an Option. The grant of an Option pursuant to the Plan shall not affect in any way the right or power of the Company to make adjustments, reclassifications, reorganizations or changes of its capital or business structure, to merge or consolidate or to dissolve, liquidate, sell or transfer all or any part of its business or assets.

SECTION 9. SECURITIES LAW REQUIREMENTS.

Shares shall not be issued under the Plan unless the issuance and delivery of such Shares comply with (or are exempt from) all applicable requirements of law, including (without limitation) the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder, state securities laws and regulations, and the regulations of any stock exchange or other securities market on which the Company's securities may then be traded.

SECTION 10. NO RETENTION RIGHTS.

Nothing in the Plan or in any right or Option granted under the Plan shall confer upon the Purchaser or Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Parent or Subsidiary employing or retaining the Purchaser or Optionee) or of the Purchaser or Optionee, which rights are hereby expressly reserved by each, to terminate his or her Service at any time and for any reason, with or without cause.

SECTION 11. DURATION AND AMENDMENTS.

(a) **Term of the Plan**. The Plan, as set forth herein, shall become effective on the date of its adoption by the Board of Directors. The Plan shall terminate automatically 10 years after its adoption by the Board of Directors and may be terminated on any earlier date pursuant to Subsection (b) below.

(b) **Right to Amend or Terminate the Plan**. The Board of Directors may amend, suspend or terminate the Plan at any time and for any reason. Stockholder approval shall not be required for any amendment of the Plan.

(c) **Effect of Amendment or Termination**. No Shares shall be issued or sold under the Plan after the termination thereof, except upon exercise of an Option granted prior to such termination. The termination of the Plan, or any amendment thereof, shall not affect any Share previously issued or any Option previously granted under the Plan.

SECTION 12. DEFINITIONS.

(a) "**Board of Directors**" shall mean the Board of Directors of the Company, as constituted from time to time.

(b) **"Cause"** shall mean (i) the unauthorized use or disclosure of the confidential information or trade secrets of the Company, which use causes material harm to the Company, (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 30 days after receiving written notification from the Board of Directors.

(c) **"Change in Control"** shall mean:

(i) The consummation of a merger or consolidation of the Company with or into another entity or any other corporate reorganization, if persons who were not shareholders of the Company 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 (A) the continuing or surviving entity and (B) any direct or indirect parent corporation of such continuing or surviving entity;

(ii) The acquisition, directly or indirectly, by any person or related group of persons (other than the Company or a person that directly or indirectly controls, is controlled by, or is under common control with, the Company) of beneficial ownership (within the meaning of Rule 13d-3

under the Securities Exchange Act of 1934, as amended) of securities possessing more than 50% of the total combined voting power of the Company's outstanding securities pursuant to a tender or exchange offer made directly to the Company's stockholders; or

(iii) The sale, transfer or other disposition of all or substantially all of the Company's assets.

A transaction shall not constitute a Change in Control if its sole purpose is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(d) "**Code**" shall mean the Internal Revenue Code of 1986, as amended.

(e) "**Committee**" shall mean a committee of the Board of Directors, as described in Section 2(a).

(f) "**Company**" shall mean Theravance, Inc., a Delaware corporation.

(g) "**Consultant**" shall mean a person who performs bona fide services for the Company, a Parent or a Subsidiary as a consultant or advisor, excluding Employees and Outside Directors.

(h) "**Employee**" shall mean any individual who is a common-law employee of the Company, a Parent or a Subsidiary.

(i) "**Exercise Price**" shall mean the amount for which one Share may be purchased upon exercise of an Option, as specified by the Board of Directors in the applicable Stock Option Agreement.

(j) "**Fair Market Value**" shall mean the fair market value of a Share, as determined by the Board of Directors in good faith. Such determination shall be conclusive and binding on all persons.

(k) **"Involuntary Termination"** shall mean the termination of the Optionee's or Purchaser's Service by reason of:

(i) The involuntary dismissal or discharge of the Optionee or Purchaser by the Company (or the Parent or Subsidiary employing him or her) for reasons other than for Cause; or

(ii) The voluntary resignation of the Optionee or Purchaser following (A) a change in his or her position with the Company (or the Parent or Subsidiary employing him or her) that materially reduces his or her level of responsibility, (B) a reduction in his or her level of compensation (including base salary, fringe benefits and participation in bonus or incentive programs based on corporate performance) by more than 15% or (C) a relocation of his or her workplace more than 50 miles from the workplace designated by the Company on his or her initial date of service.

(l) "**ISO**" shall mean an employee incentive stock option described in Section 422(b) of the Code.

(m) "**Nonstatutory Option**" shall mean a stock option not described in Sections 422(b) or 423(b) of the Code.

(n) "**Option**" shall mean an ISO or Nonstatutory Option granted under the Plan and entitling the holder to purchase Shares.

(o) "**Optionee**" shall mean an individual who holds an Option.

(p) "**Outside Director**" shall mean a member of the Board of Directors who is not an Employee.

(q) "**Parent**" shall mean any corporation (other than the Company) in an unbroken chain of corporations ending with the Company, if each of the corporations other than the Company 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.

(r) "**Plan**" shall mean this Theravance, Inc. Long-Term Stock Option Plan.

(s) "**Purchase Price**" shall mean the consideration for which one Share may be acquired under the Plan (other than upon exercise of an Option), as specified by the Board of Directors.

(t) "**Purchaser**" shall mean an individual to whom the Board of Directors has offered the right to acquire Shares under the Plan (other than upon exercise of an Option).

(u) "**Service**" shall mean service as an Employee, Outside Director or Consultant.

(v) "**Share**" shall mean one share of Stock, as adjusted in accordance with Section 8 (if applicable).

(w) "**Stock**" shall mean the Common Stock of the Company, with a par value of $0.01 per Share.

(x) "**Stock Option Agreement**" shall mean the agreement between the Company and an Optionee which contains the terms, conditions and restrictions pertaining to the Optionee's Option.

(y) "**Stock Purchase Agreement**" shall mean the agreement between the Company and a Purchaser who acquires Shares under the Plan which contains the terms, conditions and restrictions pertaining to the acquisition of such Shares.

(z) "**Subsidiary**" means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company, 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.

QuickLinks

Exhibit 10.3

THERAVANCE, INC.

2004 EQUITY INCENTIVE PLAN

(AS ADOPTED MAY 27, 2004)

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THERAVANCE, INC.
2004 EQUITY INCENTIVE PLAN

ARTICLE I. INTRODUCTION.

The Plan was adopted by the Board to be effective at the IPO. 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 Awards in the form of Restricted Shares, Stock Units, Options (which may constitute incentive stock options or nonstatutory stock options) or stock appreciation rights.

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 may also appoint a secondary committee of the Board, 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 awarded pursuant to Awards granted under the Plan shall not exceed (a) shares plus the number of shares remaining available for issuance under the 1997 Stock Plan and the Long-Term Stock

Option Plan and (b) the additional shares of Common Stock described in Sections 3.2 and 3.4. Not more than shares may be issued in the aggregate pursuant to SARs, Stock Units, and Restricted Share Awards. 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.

3.2 **Additional Shares**. If Restricted Shares or shares of Common Stock issued upon the exercise of Options under this Plan, the 1997 Stock Plan, or the Long-Term Stock Option Plan are forfeited or repurchased, then such shares of Common Stock shall again become available for Awards under this Plan. If Stock Units, Options or SARs under this Plan, the 1997 Stock Plan, or the Long-Term Stock Option Plan are forfeited or terminate for any other reason before being exercised, then the corresponding shares of Common Stock shall again become available for Awards under this Plan. If Stock Units are settled, then only the number of shares of Common Stock (if any) actually issued in settlement of such Stock Units shall reduce the number available under Section 3.1 and the balance shall again become available for Awards under the Plan. If SARs are exercised, then only the number of shares of Common Stock (if any) actually issued in settlement of such SARs shall reduce the number available under Section 3.1 and the balance shall again become available for Awards under the Plan.

3.3 **Dividend Equivalents**. Any dividend equivalents paid or credited under the Plan shall not be applied against the number of Restricted Shares, Stock Units, Options or SARs available for Awards, whether or not such dividend equivalents are converted into Stock Units.

3.4 **Shares Subject to Substituted Options**. The number of shares or Common Stock subject to Options granted by the Corporation shall not reduce the number of shares of Common Stock that may be issued under Section 3.1 if (a) the Corporation or a Subsidiary is a party to a transaction with another corporation described in section 424(a) of the Code, (b) employees or independent contractors of such corporation hold options to purchase shares of such corporation's stock that are cancelled as part of such transaction and (c) the Corporation grants Options under the Plan to such employees or independent contractors to replace the cancelled options in accordance with section 424(a) of the Code (whether or not such Options are ISOs).

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)(6) of the Code are satisfied.

4.2 **Other Grants**. Only Employees, Outside Directors and Consultants shall be eligible for the grant of Restricted Shares, Stock Units, NSOs or SARs.

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.

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. The Stock Option Agreement shall also specify the term of the Option; provided that the term of an ISO 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 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, reprice or assume outstanding options or may accept the cancellation of outstanding options (whether granted by the Corporation or by another issuer) in return for the grant of new options for the same or a different number of shares and at the same or a different exercise price. 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.

5.6 **Buyout Provisions**. 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.

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**. 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. However, the par value of the shares of Common Stock being purchased under the Plan, if newly issued, shall be paid in cash or cash equivalents.

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. 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. An SAR Agreement may provide for accelerated exercisability in the event of 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 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 or may accept the cancellation of outstanding SARs (whether granted by the Corporation or by another issuer) in return for the grant of new SARs for the same or a different number of shares and at the same or a different exercise price. 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.

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 two sentences, 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 and future services. To the extent that an Award consists of newly issued Restricted Shares, the consideration shall consist exclusively of cash, cash equivalents, property or past services rendered to the Corporation (or a Parent or Subsidiary) or, for the amount in excess of the par value of such newly issued Restricted Shares, full-recourse promissory notes. 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. A Restricted Stock Agreement may provide for accelerated vesting in the event of the Participant's death, disability or retirement or other events. 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 Corporation's independent auditors shall determine such performance. Such target shall be based on one or more of the criteria set forth in Section 9.2. 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 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 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.

ARTICLE IX. STOCK UNITS.

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. Stock Units granted to a recipient may in no event pertain to more than $10,000,000 in a single fiscal year.

9.d2 **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. Except in cases of certain terminations of employment or an extraordinary event, each grant of Stock Units shall be earned and vest over a period defined by the Committee at the time of grant and governed by such conditions, restrictions and contingencies as the Committee shall determine. These may include continuous service and/or the achievement of performance goals. The performance goals that may be used by the Committee for such awards shall consist of: operating profits (including EBITDA), net profits, earnings per share, profit returns and margins, revenues, shareholder return and/or value, stock price and working capital. Performance goals may be measured solely on a corporate, subsidiary or business unit basis, or a combination thereof. Further, performance criteria may reflect absolute entity performance or a relative comparison of entity performance to the performance of a peer group of entities or other external measure of the selected performance criteria. Profit, earnings and revenues used for any performance goal measurement shall exclude: gains or losses on operating asset sales or dispositions; asset write-downs; litigation or claim judgments or settlements; accruals for historic environmental obligations; effect of changes in tax law or rate on deferred tax liabilities; accruals for reorganization and restructuring programs; uninsured catastrophic property losses; the cumulative effect of changes in accounting principles; and any extraordinary non-recurring items as described in Accounting Principles Board Opinion No. 30 and/or in management's discussion and analysis of financial performance appearing in the Corporation's annual report to shareholders for the applicable year.

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. A Stock Unit Agreement may provide for accelerated vesting in the event of 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.

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.

9.7 **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.

ARTICLE X. CHANGE IN CONTROL.

10.1 **Effect of Change in Control**. In the event of any Change in Control, each outstanding Award shall automatically accelerate so that each such 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 Award and may be exercised for any or all of those shares as fully-vested shares of Common Stock. However, an outstanding Award shall **not** so accelerate if and to the extent such 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 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.

10.2 **Acceleration**. The Committee shall have the discretion, exercisable either at the time the Award is granted or at any time while the Award remains outstanding, to provide for the automatic acceleration of vesting upon the occurrence of a Change in Control, whether or not the 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 affect 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, the Committee shall make such adjustments as it, in its sole discretion, deems appropriate in one or more of:

(a) The number of Options, SARs, Restricted Shares and Stock Units available for future Awards under Article 3;

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

(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 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 Awards by the Corporation (if the Corporation is the surviving corporation).

(b) The assumption of such outstanding Awards by the surviving corporation or its parent (in a manner that complies with section 424(a) of the Code with respect to Options).

(c) The substitution by the surviving corporation or its parent of new awards for such outstanding Awards (in a manner that complies with section 424(a) of the Code with respect to Options).

(d) Full exercisability of such outstanding Awards and full vesting of the shares of Common Stock subject to such Awards, followed by the cancellation of such Awards. The full exercisability of such Awards and full vesting of the shares of Common Stock subject to such Awards may be contingent on the closing of such merger or consolidation. The Participants shall be able to exercise such 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 Awards. Any exercise of such Awards during such period may be contingent on the closing of such merger or consolidation.

(e) The cancellation of such outstanding 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 Awards (whether or not such 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 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 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 Awards exceeds the Fair Market Value of such shares of Common Stock, then such 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 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 **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 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.

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.

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, as set forth herein, shall become effective on the date of effectiveness of the IPO. 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 10thanniversary 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. The Plan shall serve as the successor to the Predecessor Plans, and no further option grants shall be made under the Predecessor Plans after the Plan effective date. All options outstanding under the Predecessor Plans as of such date shall, immediately upon effectiveness of the Plan, remain outstanding in accordance with their terms. Each outstanding option under the Predecessor Plans shall continue to be governed solely by the terms of the documents evidencing such option, and no provision of the Plan shall be deemed to affect or otherwise modify the rights or obligations of the holders of such options with respect to their acquisition of shares of Common Stock, except that the following vesting acceleration provisions relating to Change in Control shall be extended to the options outstanding under the Predecessor Plans at the IPO: if the optionee experiences an involuntary termination within three months before or twenty-four months following a Change in Control, each of such optionee's outstanding options shall automatically accelerate so that each such option shall, immediately prior to the effective date of the termination, become fully exercisable for all of the shares of Common Stock at the time subject to such option and may be exercised for any or all of those shares as fully-vested shares of Common Stock, provided that no options accelerated pursuant to the foregoing provision may become exercisable prior to September 1, 2007.

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.

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, section 162(m) of the Code may require that the Corporation's stockholders approve:

(a) The Plan not later than the first regular meeting of stockholders that occurs in the fourth calendar year following the calendar year in which the Corporation's initial public offering occurred; and

(b) The performance criteria set forth in Article 9.2 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 an Option, an SAR, a Restricted Share or a Stock Unit under the Plan.

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

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 35% 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.

Notwithstanding anything to the contrary herein, 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 Governance Agreement dated as of May 11, 2004 to representation on the Board (and its committees) or (iii) any acquisition by GSK of securities of the Company (whether by merger, tender offer, private or market purchases or otherwise) 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.

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 market price of one share of Common Stock, 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 "**IPO**" means the initial public offering of the Corporation's Common Stock.

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

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

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

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

18.19 "**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.

18.20 "**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 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.

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

18.22 "**Plan**" means this Theravance, Inc. 2004 Equity Incentive Plan, as amended from time to time.

18.23 "**Predecessor Plans**" means the Corporation's existing 1997 Stock Plan and Long-Term Stock Option 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 Option Agreement**" means the agreement between the Corporation and an Optionee that contains the terms, conditions and restrictions pertaining to his or her Option.

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

18.30 "**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.

18.31 "**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.

QuickLinks

Exhibit 10.4

THERAVANCE, INC.

2004 EMPLOYEE STOCK PURCHASE PLAN

(AS ADOPTED MAY 27, 2004)

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THERAVANCE, INC.

2004 EMPLOYEE STOCK PURCHASE PLAN

SECTION 1. PURPOSE OF THE PLAN.

The Board adopted the Plan effective as of the date of the IPO. The Plan shall be implemented on such date following its effectiveness as shall be determined by the Board in its discretion. The purpose of the Plan is to provide Eligible Employees with an opportunity to increase their proprietary interest in the success of the Company by purchasing Stock from the Company on favorable terms and to pay for such purchases through payroll deductions. The Plan is intended to qualify for favorable tax treatment under section 423 of the Code.

SECTION 2. ADMINISTRATION OF THE PLAN.

(a) **Committee Composition**. The Committee shall administer the Plan. The Committee shall consist exclusively of one or more directors of the Company, who shall be appointed by the Board.

(b) **Committee Responsibilities**. The Committee shall interpret the Plan and make all other policy decisions relating to the operation of the Plan. The Committee may adopt such rules, guidelines and forms as it deems appropriate to implement the Plan. The Committee's determinations under the Plan shall be final and binding on all persons.

SECTION 3. STOCK OFFERED UNDER THE PLAN.

(a) **Authorized Shares**. The number of shares of Stock available for purchase under the Plan shall be (subject to adjustment pursuant to Subsection (b) below).

(b) **Anti-Dilution Adjustments**. The aggregate number of shares of Stock offered under the Plan, the 2,500-share limitation described in Section 8(c) and the price of shares that any Participant has elected to purchase shall be adjusted proportionately for any increase or decrease in the number of outstanding shares of Stock resulting from a subdivision or consolidation of shares or the payment of a stock dividend, any other increase or decrease in such shares effected without receipt or payment of consideration by the Company, the distribution of the shares of a Subsidiary to the Company's stockholders, or a similar event.

(c) **Reorganizations**. Any other provision of the Plan notwithstanding, immediately prior to the effective time of a Corporate Reorganization, the Offering Period and Accumulation Period then in progress shall terminate and shares shall be purchased pursuant to Section 8, unless the Plan is continued or assumed by the surviving corporation or its parent corporation. The Plan shall in no event be construed to restrict in any way the Company's right to undertake a dissolution, liquidation, merger, consolidation or other reorganization.

SECTION 4. ENROLLMENT AND PARTICIPATION.

(a) **Offering Periods**. While the Plan is in effect, four overlapping Offering Periods shall commence in each calendar year. The Offering Periods shall consist of the 27-month periods commencing on each February 1, May 1, August 1, and November 1, except that:

(i) The first Offering Period under the Plan shall commence on the date designated by the Board and shall end on the date 27 months later.

(ii) The Committee may determine that the first Offering Period applicable to the Eligible Employees of a new Participating Company shall commence on any date specified by the Committee.

(iii) An Offering Period shall in no event be longer than 27 months.

(iv) The Committee may vary the beginning and ending dates of an Offering Period at any time prior to the commencement of an Offering Period or at any time during an Offering Period to be effective following the next purchase date.

(b) **Accumulation Periods**. While the Plan is in effect, four Accumulation Periods shall commence in each calendar year. The Accumulation Periods shall consist of the three-month periods commencing on each February 1, May 1, August 1, and November 1, except that:

(i) The first Accumulation Period shall commence on the date designated by the Board and end on the earliest of the next January 31, April 30, July 31, or October 31 unless otherwise provided by the Committee.

(ii) The Committee may determine that the first Accumulation Period applicable to the Eligible Employees of a new Participating Company shall commence on any date specified by the Committee.

(iii) The Committee may vary the beginning and ending dates of an Accumulation Period at any time to be effective following the next purchase date.

(c) **Enrollment at IPO**. If the Board elects to implement the Plan effective on the date of the IPO, then each individual who, on the day of the IPO, qualifies as an Eligible Employee shall automatically become a Participant on such day. Each Participant who was automatically enrolled on the day of the IPO shall file the prescribed enrollment form with the Company. The enrollment form shall be filed at the prescribed location within 10 business days after the Company files a registration statement on Form S-8 for the shares of Stock offered under the Plan. If a Participant who was automatically enrolled on the day of the IPO fails to file such form in a timely manner, then such Participant shall be deemed to have withdrawn from the Plan under Section 6(a). A former Participant who is deemed to have withdrawn from the Plan shall not be a Participant until he or she re-enrolls in the Plan under Subsection (d) below. Re-enrollment may be effective only at the commencement of an Offering Period.

(d) **Enrollment After IPO**. If the Plan is implemented subsequent to the date of the IPO, then each Eligible Employee may elect to become a Participant on the first day of the first Offering Period by filing the prescribed enrollment form with the Company. The enrollment form shall be filed at the prescribed location not later than the day designated by the Company but in any event prior to the commencement of the Offering Period. In the case of any individual who qualifies as an Eligible Employee on the first day of any Offering Period other than the first Offering Period, he or she may elect to become a Participant by filing the prescribed enrollment form with the Company.

(e) **Duration of Participation**. Once enrolled in the Plan, a Participant shall continue to participate in the Plan until he or she:

(i) Reaches the end of the Accumulation Period in which his or her employee contributions were discontinued under Section 5(d) or 9(b);

(ii) Is deemed to withdraw from the Plan under Subsection (c) above;

(iii) Withdraws from the Plan under Section 6(a); or

(iv) Ceases to be an Eligible Employee.

A Participant whose employee contributions were discontinued automatically under Section 9(b) shall automatically resume participation at the beginning of the earliest Accumulation Period ending in the next calendar year, if he or she then is an Eligible Employee. In all other cases, a former Participant may again become a Participant, if he or she then is an Eligible Employee, by following the procedure described in Subsection (d) above.

(f) **Applicable Offering Period**. For purposes of calculating the Purchase Price under Section 8(b), the applicable Offering Period shall be determined as follows:

(i) Once a Participant is enrolled in the Plan for an Offering Period, such Offering Period shall continue to apply to him or her until the earliest of (A) the end of such Offering Period, (B) the end of his or her participation under Subsection (e) above or (C) re-enrollment for a subsequent Offering Period under Paragraph (ii), (iii) or (iv) below.

(ii) In the event that the Fair Market Value of Stock on the last trading day before the commencement of the Offering Period for which the Participant is enrolled is higher than on the last trading day before the commencement of any subsequent Offering Period, the Participant shall automatically be re-enrolled for such subsequent Offering Period.

(iii) If Section 14(b) applies, the Participant shall automatically be re-enrolled for a new Offering Period.

(iv) Any other provision of the Plan notwithstanding, the Company (at its sole discretion) may determine prior to the commencement of any new Offering Period that all Participants shall be re-enrolled for such new Offering Period.

(v) When a Participant reaches the end of an Offering Period but his or her participation is to continue, then such Participant shall automatically be re-enrolled for the Offering Period that commences immediately after the end of the prior Offering Period.

SECTION 5. EMPLOYEE CONTRIBUTIONS.

(a) **Commencement of Payroll Deductions**. A Participant may purchase shares of Stock under the Plan solely by means of payroll deductions. Payroll deductions shall commence as soon as reasonably practicable after the Company has received the prescribed enrollment form.

(b) **Amount of Payroll Deductions**. An Eligible Employee shall designate on the enrollment form the portion of his or her Compensation that he or she elects to have withheld for the purchase of Stock. Such portion shall be a whole percentage of the Eligible Employee's Compensation, but not less than 1% nor more than 15%.

(c) **Changing Withholding Rate**. If a Participant wishes to change the rate of payroll withholding, he or she may do so by filing a new enrollment form with the Company at the prescribed location at any time. The new withholding rate shall be effective as soon as reasonably practicable after the Company has received such form. The new withholding rate shall be a whole percentage of the Eligible Employee's Compensation, but not less than 1% nor more than 15%.

(d) **Discontinuing Payroll Deductions**. If a Participant wishes to discontinue employee contributions entirely, he or she may do so by filing a new enrollment form with the Company at the prescribed location at any time. Payroll withholding shall cease at the date requested by the Participant or thereafter as soon as reasonably practicable after the Company has received such form. (In addition, employee contributions may be discontinued automatically pursuant to Section 9(b).) A Participant who has discontinued employee contributions may resume such contributions by filing a new enrollment form with the Company at the prescribed location. Payroll withholding shall resume as soon as reasonably practicable after the Company has received such form.

(e) **Limit on Number of Elections**. No Participant shall make more than 2 elections under Subsection (c) or (d) above during any Accumulation Period.

SECTION 6. WITHDRAWAL FROM THE PLAN.

(a) **Withdrawal**. A Participant may elect to withdraw from the Plan by filing the prescribed form with the Company at the prescribed location at any time before the last day of an Accumulation Period. As soon as reasonably practicable thereafter, payroll deductions shall cease and the entire amount credited to the Participant's Plan Account shall be refunded to him or her in cash. No partial withdrawals shall be permitted.

(b) **Re-Enrollment After Withdrawal**. A former Participant who has withdrawn from the Plan shall not be a Participant until he or she re-enrolls in the Plan under Section 4(d). Re-enrollment may be effective only at the commencement of an Offering Period.

SECTION 7. CHANGE IN EMPLOYMENT STATUS.

(a) **Termination of Employment**. Termination of employment as an Eligible Employee for any reason, including death, shall be treated as an automatic withdrawal from the Plan under Section 6(a). (A transfer from one Participating Company to another shall not be treated as a termination of employment.)

(b) **Leave of Absence**. For purposes of the Plan, employment shall not be deemed to terminate when the Participant goes on a military leave, a sick leave or another *bona fide* leave of absence, if the leave was approved by the Company in writing. Employment, however, shall be deemed to terminate 90 days after the Participant goes on a leave, unless a contract or statute guarantees his or her right to return to work. Employment shall be deemed to terminate in any event when the approved leave ends, unless the Participant immediately returns to work.

(c) **Death**. In the event of the Participant's death, the amount credited to his or her Plan Account shall be paid to a beneficiary designated by him or her for this purpose on the prescribed form or, if none, to the Participant's estate. Such form shall be valid only if it was filed with the Company at the prescribed location before the Participant's death.

SECTION 8. PLAN ACCOUNTS AND PURCHASE OF SHARES.

(a) **Plan Accounts**. The Company shall maintain a Plan Account on its books in the name of each Participant. Whenever an amount is deducted from the Participant's Compensation for purposes of the Plan, such amount shall be credited to the Participant's Plan Account. Amounts credited to Plan Accounts shall not be trust funds and may be commingled with the Company's general assets and applied to general corporate purposes. No interest shall be credited to Plan Accounts, except to the extent otherwise provided by the Committee.

(b) **Purchase Price**. The Purchase Price for each share of Stock purchased at the close of an Accumulation Period shall not be less than the lower of:

(i) 85% of the Fair Market Value of such share on the last trading day before the commencement of the applicable Offering Period (as determined under Section 4(f)) or, in the case of the first Offering Period under the Plan, 85% of the price at which one share of Stock is offered to the public in the IPO; or

(ii) 85% of the Fair Market Value of such share on the last trading day in such Accumulation Period.

The Committee may determine at any time prior to the start of an Accumulation Period that the Purchase Price will be such percentage of the Fair Market Value as the Committee shall determine provided that the price shall not be lower than 85% nor higher than 100% of the Fair Market Value of such share on the last trading day before the commencement of the applicable Offering Period or on the last trading day of an Accumulation Period (whichever of such days is selected by the Committee).

(c) **Number of Shares Purchased**. As of the last day of each Accumulation Period, each Participant shall be deemed to have elected to purchase the number of shares of Stock calculated in accordance with this Subsection (c), unless the Participant has previously elected to withdraw from the Plan in accordance with Section 6(a). The amount then in the Participant's Plan Account shall be divided by the Purchase Price, and the number of shares that results shall be purchased from the Company with the funds in the Participant's Plan Account. The foregoing notwithstanding, no Participant shall purchase more than 2,500 shares of Stock with respect to any Accumulation Period nor more than the amounts of Stock set forth in Sections 3(a) and 9(b). The Committee may determine with respect to all Participants that any fractional share, as calculated under this Subsection (c), shall be (i) rounded down to the next lower whole share or (ii) credited as a fractional share.

(d) **Available Shares Insufficient**. In the event that the aggregate number of shares that all Participants elect to purchase during an Accumulation Period exceeds the maximum number of shares remaining available for issuance under Section 3, then the number of shares to which each Participant is entitled shall be determined by multiplying the number of shares available for issuance by a fraction. The numerator of such fraction is the number of shares that such Participant has elected to purchase, and the denominator of such fraction is the number of shares that all Participants have elected to purchase.

(e) **Issuance of Stock**. Certificates representing the shares of Stock purchased by a Participant under the Plan shall be issued to him or her as soon as reasonably practicable after the close of the applicable Accumulation Period, except that the Committee may determine that such shares shall be held for each Participant's benefit by a broker designated by the Committee (unless the Participant has elected that certificates be issued to him or her). Shares may be registered in the name of the Participant or jointly in the name of the Participant and his or her spouse as joint tenants with right of survivorship or as community property.

(f) **Tax Withholding**. To the extent required by applicable federal, state, local or foreign law, a Participant shall make arrangements satisfactory to the Company for the satisfaction of any withholding tax obligations that arise in connection with the Plan. The Company shall not be required to issue any shares of Stock under the Plan until such obligations are satisfied.

(g) **Unused Cash Balances**. An amount remaining in the Participant's Plan Account that represents the Purchase Price for any fractional share shall be carried over in the Participant's Plan Account to the next Accumulation Period. Any amount remaining in the Participant's Plan Account that represents the Purchase Price for whole shares that could not be purchased by reason of Subsection (c) above, Section 3 or Section 9(b) shall be refunded to the Participant in cash, without interest.

(h) **Stockholder Approval**. Any other provision of the Plan notwithstanding, no shares of Stock shall be purchased under the Plan unless and until the Company's stockholders have approved the adoption of the Plan.

SECTION 9. LIMITATIONS ON STOCK OWNERSHIP.

(a) **Five Percent Limit**. Any other provision of the Plan notwithstanding, no Participant shall be granted a right to purchase Stock under the Plan if such Participant, immediately after his or her election to purchase such Stock, would own stock possessing more than 5% of the total combined voting power or value of all classes of stock of the Company or any parent or Subsidiary of the Company. For purposes of this Subsection (a), the following rules shall apply:

(i) Ownership of stock shall be determined after applying the attribution rules of section 424(d) of the Code;

(ii) Each Participant shall be deemed to own any stock that he or she has a right or option to purchase under this or any other plan; and

(iii) Each Participant shall be deemed to have the right to purchase 2,500 shares of Stock under this Plan with respect to each Accumulation Period.

(b) **Dollar Limit**. Any other provision of the Plan notwithstanding, no Participant shall purchase Stock with a Fair Market Value in excess of the following limit:

(i) In the case of Stock purchased during an Offering Period that commenced in the current calendar year, the limit shall be equal to (A) $25,000 minus (B) the Fair Market Value of the Stock that the Participant previously purchased in the current calendar year (under this Plan and all other employee stock purchase plans of the Company or any parent or Subsidiary of the Company).

(ii) In the case of Stock purchased during an Offering Period that commenced in the immediately preceding calendar year, the limit shall be equal to (A) $50,000 minus (B) the Fair Market Value of the Stock that the Participant previously purchased (under this Plan and all other employee stock purchase plans of the Company or any parent or Subsidiary of the Company) in the current calendar year and in the immediately preceding calendar year.

(iii) In the case of Stock purchased during an Offering Period that commenced in the second preceding calendar year, the limit shall be equal to (A) $75,000 minus (B) the Fair Market Value of the Stock that the Participant previously purchased (under this Plan and all other employee stock purchase plans of the Company or any parent or Subsidiary of the Company) in the current calendar year and in the two preceding calendar years.

For purposes of this Subsection (b), the Fair Market Value of Stock shall be determined in each case as of the beginning of the Offering Period in which such Stock is purchased. Employee stock purchase plans not described in section 423 of the Code shall be disregarded. If a Participant is precluded by this Subsection (b) from purchasing additional Stock under the Plan, then his or her employee contributions shall automatically be discontinued and shall automatically resume at the beginning of the earliest Accumulation Period ending in the next calendar year (if he or she then is an Eligible Employee).

SECTION 10. RIGHTS NOT TRANSFERABLE.

The rights of any Participant under the Plan, or any Participant's interest in any Stock or moneys to which he or she may be entitled under the Plan, shall not be transferable by voluntary or involuntary assignment or by operation of law, or in any other manner other than by beneficiary designation or the laws of descent and distribution. If a Participant in any manner attempts to transfer, assign or otherwise encumber his or her rights or interest under the Plan, other than by beneficiary designation or the laws of descent and distribution, then such act shall be treated as an election by the Participant to withdraw from the Plan under Section 6(a).

SECTION 11. NO RIGHTS AS AN EMPLOYEE.

Nothing in the Plan or in any right granted under the Plan shall confer upon the Participant any right to continue in the employ of a Participating Company for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Participating Companies or of the Participant, which rights are hereby expressly reserved by each, to terminate his or her employment at any time and for any reason, with or without cause.

SECTION 12. NO RIGHTS AS A STOCKHOLDER.

A Participant shall have no rights as a stockholder with respect to any shares of Stock that he or she may have a right to purchase under the Plan until such shares have been purchased on the last day of the applicable Accumulation Period.

SECTION 13. SECURITIES LAW REQUIREMENTS.

Shares of Stock shall not be issued under the Plan unless the issuance and delivery of such shares comply with (or are exempt from) all applicable requirements of law, including (without limitation) the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder, state securities laws and regulations, and the regulations of any stock exchange or other securities market on which the Company's securities may then be traded.

SECTION 14. AMENDMENT OR DISCONTINUANCE.

(a) **General Rule**. The Board shall have the right to amend, suspend or terminate the Plan at any time and without notice. Except as provided in Section 3, any increase in the aggregate number of shares of Stock that may be issued under the Plan shall be subject to the approval of the Company's stockholders. In addition, any other amendment of the Plan shall be subject to the approval of the Company's stockholders to the extent required by any applicable law or regulation. The Plan shall terminate automatically 20 years after its adoption by the Board, unless (a) the Plan is extended by the Board and (b) the extension is approved within 12 months by a vote of the stockholders of the Company.

(b) **Impact on Purchase Price**. This Subsection (b) shall apply in the event that (i) the Company's stockholders during an Accumulation Period approve an increase in the number of shares of Stock that may be issued under Section 3 and (ii) the aggregate number of shares to be purchased at the close of such Accumulation Period exceeds the number of shares that remained available under Section 3 before such increase. In such event, the Purchase Price for each share of Stock purchased at the close of such Accumulation Period shall be the lower of:

(i) The higher of (A) 85% of the Fair Market Value of such share on the last trading day before the commencement of the applicable Offering Period or, in the case of the first Offering Period under the Plan, 85% of the price at which one share of Stock is offered to the public in the IPO (if applicable) or (B) 85% of the Fair Market Value of such share on the last trading day before the date the Company's stockholders approve such increase; or

(ii) 85% of the Fair Market Value of such share on the last trading day in such Accumulation Period.

Immediately after the close of such Accumulation Period, a new Offering Period shall commence for all Participants.

SECTION 15. DEFINITIONS.

(a) "**Accumulation Period**" means a period during which contributions may be made toward the purchase of Stock under the Plan, as determined pursuant to Section 4(b).

(b) "**Board**" means the Board of Directors of the Company, as constituted from time to time.

(c) "**Code**" means the Internal Revenue Code of 1986, as amended.

(d) "**Committee**" means a committee of the Board, as described in Section 2.

(e) "**Company**" means Theravance, Inc., a Delaware corporation.

(f) "**Compensation**" means (i) the total compensation paid in cash to a Participant by a Participating Company, including salaries, wages, bonuses, incentive compensation, commissions, overtime pay and shift premiums, plus (ii) any pre-tax contributions made by the Participant under section 401(k) or 125 of the Code. "Compensation" shall exclude all non-cash items, moving or relocation allowances, cost-of-living equalization payments, car allowances, tuition reimbursements, imputed income attributable to cars or life insurance, severance pay, fringe benefits, contributions or benefits received under employee benefit plans, income attributable to the exercise of stock options, and similar items. The Committee shall determine whether a particular item is included in Compensation.

(g) "**Corporate Reorganization**" means:

(i) The consummation of a merger or consolidation of the Company with or into another entity or any other corporate reorganization; or

(ii) The sale, transfer or other disposition of all or substantially all of the Company's assets or the complete liquidation or dissolution of the Company.

(h) "**Eligible Employee**" means any employee of a Participating Company who meets both of the following requirements:

(i) His or her customary employment is for more than five months per calendar year and for more than 20 hours per week; and

(ii) He or she has been an employee of a Participating Company for such period (if any) as the Committee may determine before the beginning of the applicable Offering Period.

Officers of the Company shall not participate in the initial Offering Period or in any subsequent Offering Period unless the Committee announces prior to commencement of an Offering Period that officers shall be eligible to participate. The foregoing notwithstanding, an individual shall not be considered an Eligible Employee if his or her participation in the Plan is prohibited by the law of any country that has jurisdiction over him or her or if he or she is subject to a collective bargaining agreement that does not provide for participation in the Plan.

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

(j) "**Fair Market Value**" means the market price of Stock, determined by the Committee as follows:

(i) If the Stock was traded on The Nasdaq National Market or The Nasdaq Small Cap Market on the date in question, then the Fair Market Value shall be equal to the last-transaction price quoted for such date by such Market;

(ii) If the Stock was traded on a stock exchange on the date in question, then the Fair Market Value shall be equal to the closing price reported by the applicable composite transactions report for such date; or

(iii) If none of the foregoing provisions is applicable, then the Committee shall determine the Fair Market Value 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* or as reported directly to the Company by Nasdaq or a stock exchange. Such determination shall be conclusive and binding on all persons.

(k) "**IPO**" means the effective date of the registration statement filed by the Company with the Securities and Exchange Commission for its initial offering of Stock to the public.

(l) "**Offering Period**" means a period with respect to which the right to purchase Stock may be granted under the Plan, as determined pursuant to Section 4(a).

(m) "**Participant**" means an Eligible Employee who participates in the Plan, as provided in Section 4.

(n) "**Participating Company**" means (i) the Company and (ii) each present or future Subsidiary designated by the Committee as a Participating Company.

(o) "**Plan**" means this Theravance, Inc. 2004 Employee Stock Purchase Plan, as it may be amended from time to time.

(p) "**Plan Account**" means the account established for each Participant pursuant to Section 8(a).

(q) "**Purchase Price**" means the price at which Participants may purchase Stock under the Plan, as determined pursuant to Section 8(b).

(r) "**Stock**" means the Common Stock of the Company.

(s) "**Subsidiary**" means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company, 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.

Addendum for International Participants

The Committee may allow Participants who are employed by a Participating Company designated by the Committee, who are not employed by the Company and who work or reside outside of the United States an opportunity to acquire Common Stock pursuant to the Plan in accordance with such special terms and conditions as the Committee may designate with respect to each such Participating Company. Without limiting the authority of the Committee, the special terms and conditions which may be established with respect to each such Participating Company, and which need not be the same for all Participating Companies, include but are not limited to the right to participate, procedures for elections to participate, the payment of any interest with respect to amounts received from or credited to accounts held for the benefit of Participants, the purchase price of any shares to be acquired, the length of any purchase period, the maximum amount of contributions, credits or Stock which may be acquired by any Participant, and a Participant's rights in the event of his or her death, disability, withdrawal from the Plan, termination of employment on behalf of the Company and all matters related thereto. This Addendum is not subject to section 423 of the Code or any other provision of the Plan that refers to or is based upon such Section. For purposes of United States tax laws, this Addendum shall be treated as separate and apart from the balance of the Plan.

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Exhibit 10.5

THERAVANCE, INC.
CHANGE IN CONTROL SEVERANCE PLAN
AND
SUMMARY PLAN DESCRIPTION

The Theravance, Inc. Change in Control Severance Plan (the "Plan") is primarily designed to provide separation pay and other benefits to Theravance, Inc. (the "Corporation") executives who meet the eligibility requirements as set forth below (an "Eligible Executive") and whose employment is involuntarily terminated in connection with a change in control occurring after an initial public offering ("IPO").

This Plan is designed to be an "employee welfare benefit plan," as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). This Plan is governed by ERISA and, to the extent applicable, the laws of the State of California. This document constitutes both the official plan document and the required summary plan description under ERISA.

I. ELIGIBILITY

You will be an Eligible Executive for severance benefits under the Plan if:

- you are an officer of the Corporation;
- your active employment is Involuntarily Terminated other than for Misconduct within the designated period following a Change in Control;
- you execute a general release of all claims in a form provided by and acceptable to the Corporation as provided for in the section entitled "Release and Waiver of Claims," within the prescribed number of days following your date of termination, as set forth in such release; and
- you are not in one of the excluded categories listed below.

You will *not* be an Eligible Executive for severance benefits under this Plan if:

- you are an independent contractor, a temporary employee, part-time employee working fewer than 32 hours per week, probationary employee or student employee;
- you are employed with a successor employer following a Change in Control. However, you would be eligible for severance benefits pursuant to the terms of the Plan upon a subsequent Involuntary Termination other than for Misconduct within the designated period following a Change in Control; or
- you are dismissed for Misconduct.

II. HOW THE PLAN WORKS

1. Severance Guidelines

If you are an Eligible Executive and your employment is Involuntarily Terminated within three (3) months before or twenty-four (24) months after a Change in Control, you will be paid a Severance Payment calculated as follows:

If you were an officer of the Corporation immediately before the Change in Control:

- 100% of your combined Annual Base Pay and Target Bonus, plus
- A pro-rata portion of your current target bonus based on the number of full months of employment completed in the applicable period on the date of termination in such year of termination.

If you were senior vice president of the Corporation immediately before the Change in Control:

- 150% of your combined Annual Base Pay and Target Bonus, plus
- A pro-rata portion of your current target bonus based on the number of full months of employment completed in the applicable period on the date of termination in such year of termination.

If you were the chief executive officer or an executive vice president of the Corporation immediately before the Change in Control:

- 200% of your combined Annual Base Pay and Target Bonus, plus
- A pro-rata portion of your current target bonus based on the number of full months of employment completed in the applicable period on the date of termination in such year of termination.

Payments made under this Plan shall not be treated as "compensation" for purposes of the Advanced Medicine, Inc. 401(k) Profit Sharing Plan. An Eligible Executive will also receive his unpaid salary through his termination date and a lump sum payment for all accrued and unused vacation (through the termination date) in a final paycheck provided on his last day of work.

The full amount of any balance and accrued interest remaining on any outstanding loans owed by the Eligible Executive to the Corporation as of the date of termination shall be forgiven in full immediately upon the Eligible Executive's Involuntary Termination.

2. Group Insurance Coverage

If an Eligible Executive becomes entitled to a Severance Payment under this Plan, then the Corporation shall continue to provide all welfare benefits provided on the date of termination to the Eligible Executive and, if applicable, to the Eligible Executive's dependents for the following periods:

- 12 months if you were an officer of the Corporation immediately before the Change in Control
- 18 months if you were a senior vice president of the Corporation immediately before the Change in Control
- 24 months if you were the chief executive officer or an executive vice president of the Corporation immediately before the Change in Control

The Corporation's obligation to pay premiums or make contributions shall cease when the Eligible Executive obtains new employment offering comparable welfare benefits.

3. Equity

If an Eligible Executive becomes entitled to a Severance Payment under this Plan, then the Corporation shall fully vest the officer in all of his unvested shares and options, and such options shall become fully exercisable, as of the date of termination. To the extent that the foregoing results in acceleration of exercisability on or before September 1, 2007 as to options which otherwise would not have been exercisable on that date, then such accelerated options shall be treated as vested and exercisable as of September 1, 2007. To the extent necessary to effectuate the intent of the foregoing, each such option shall have an extended period of time to exercise following a cessation of service which shall not expire earlier than October 1, 2007.

4. Definitions

Annual Base Pay shall mean the Eligible Executive's base salary at the highest rate in effect at any regularly scheduled payroll period preceding the occurrence of the Change in Control and does not

include, for example, bonuses, overtime compensation, incentive pay, sales commissions or expense allowances.

Target Bonus shall mean the normal bonus amount that would be paid for achieving 100% of goals or MBOs as used in the applicable annual bonus plan.

Involuntary Termination shall mean the termination of the service of any individual which occurs by reason of:

A. such individual's involuntary dismissal or discharge by the Corporation for reasons other than Misconduct, or

B. such individual's voluntary resignation following (i) a change in his or her position with the Corporation which materially reduces his or her level of responsibility, (ii) a material reduction in his or her level of compensation (including base salary, fringe benefits and participation in bonus or incentive programs) or (iii) a relocation of such individual's place of employment by more than fifty (50) miles, provided and only if such change, reduction or relocation is effected by the Corporation without the individual's consent.

Misconduct shall mean the commission of any material act of fraud, embezzlement or dishonesty by an individual, any material unauthorized use or disclosure by such person of confidential information or trade secrets of the Corporation (or any Parent or Subsidiary), or any other intentional material misconduct by such person adversely affecting the business or affairs of the Corporation (or any Parent or Subsidiary).

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 clause (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 35% 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.

Notwithstanding anything to the contrary herein, 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 Governance Agreement dated as of May 11**,** 2004 to representation on the Board (and its committees) or (iii) any acquisition by GSK of securities of the Company (whether by merger, tender offer, private or market purchases or otherwise) 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.

5. Golden Parachute Tax Limitation

The Internal Revenue Code imposes a 20% excise tax on certain payments and other benefits received by certain officers and shareholders in connection with a change of control involving the Corporation. Such payments can include severance pay, loan forgiveness and acceleration of option vesting.

Gross-Up Payment.

In the event that it is determined that any payment or distribution of any type to or for the benefit of the Eligible Executive made by the Corporation, by any of its affiliates, by any person who acquires ownership or effective control of the Corporation or ownership of a substantial portion of the Corporation's assets (within the meaning of section 280G of the Code and the regulations thereunder) or by any affiliate of such person, whether paid or payable or distributed or distributable pursuant to the terms of this Plan or under any other agreement including an Eligible Executive's stock option agreement and including loan forgiveness (the "Total Payments"), would be subject to the excise tax imposed by section 4999 of the Code or any interest or penalties with respect to such excise tax (such excise tax, together with any such interest or penalties, are collectively referred to as the "Excise Tax"), then the Corporation shall pay Eligible Executive an additional amount (a "Gross-Up Payment") equal to the amount that shall fund the payment by the Eligible Executive of any Excise Tax on the Total Payments as well as all income taxes imposed on the Gross-Up Payment, any Excise Tax imposed on the Gross-Up Payment and any interest or penalties imposed with respect to taxes on the Gross-Up Payment or any Excise Tax.

Determination by Accountant.

All mathematical determinations and all determinations of whether any of the Total Payments are "parachute payments" (within the meaning of section 280G of the Code) that are required to be made under this Section 4, including all determinations of whether a Gross-Up Payment is required, of the amount of such Gross-Up Payment and of amounts relevant to the last sentence of this section, shall be made by an independent accounting firm selected by the Corporation (the "Accounting Firm"), which shall provide its determination (the "Determination"), together with detailed supporting calculations regarding the amount of any Gross-Up Payment and any other relevant matters, both to the Corporation and to the Eligible Executive within seven business days of the Eligible Executive's termination date, if applicable, or such earlier time as is requested by the Corporation or by the Eligible Executive (if the Eligible Executive reasonably believes that any of the Total Payments may be subject to the Excise Tax). If the Accounting Firm determines that no Excise Tax is payable by the Eligible Executive, it shall furnish the Eligible Executive with a written statement that such Accounting Firm has concluded that no Excise Tax is payable (including the reasons therefor) and that the Eligible Executive has substantial authority not to report any Excise Tax on the Eligible Executive's federal income tax return. If a Gross-Up Payment is determined to be payable, it shall be paid to the Eligible Executive within five business days after the Determination is delivered to the Corporation or the Eligible Executive. Any determination by the Accounting Firm shall be binding upon the Corporation and the Eligible Executive, absent manifest error.

Underpayments and Overpayments.

As a result of uncertainty in the application of section 4999 of the Code at the time of the initial Determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments not made by the Corporation should have been made ("Underpayments") or that Gross-Up Payments will have been made by the Corporation which should not have been made ("Overpayments"). In either event, the Accounting Firm shall determine the amount of the Underpayment or Overpayment that has occurred. In the case of an Underpayment, the amount of such Underpayment shall promptly be paid by the Corporation to or for the benefit of the Eligible Executive. In the case of an Overpayment, the Eligible Executive shall, at the direction and expense of the Corporation, take such steps as are reasonably necessary (including the filing of returns and claims for refund), follow reasonable instructions from, and procedures established by, the Corporation and otherwise reasonably cooperate with the Corporation to correct such Overpayment; *provided, however,* that (i) the Eligible Executive shall in no event be obligated to return to the Corporation an amount greater than the net after-tax portion of the Overpayment that the Eligible Executive has retained or has recovered as a refund from the applicable taxing authorities and (ii) this provision shall be interpreted in a manner consistent with the intent of this section, which is to make the Eligible Executive whole, on an after-tax basis, for the application of the Excise Tax, it being understood that the correction of an Overpayment may result in the Eligible Executive's repaying to the Corporation an amount which is less than the Overpayment.

III. OTHER IMPORTANT INFORMATION

1. ***Release and Waiver of Claims***. Any other provision of this Plan notwithstanding, an Eligible Executive shall not be entitled to receive any Severance Payment, other payment, or benefit under this Plan unless such Eligible Executive has executed a waiver of claims and a general release of all claims in favor of the Corporation and its affiliates. Such waiver and release shall be executed on a form provided by and acceptable to the Corporation. The form of the waiver and general release will specify how much time such Eligible Executive has to sign it and whether there is a revocation period.

2. ***Plan Administration***. As the Plan Administrator, the Corporation has full discretionary authority to administer and interpret the Plan, including discretionary authority to determine eligibility for benefits under the Plan and the amount of benefits (if any) payable per participant. Any determination by the Plan Administrator will be final and conclusive upon all persons. The Plan Administrator hereby delegates to the Chief Financial Officer all of its administrative duties. Accordingly, the Chief Financial Officer, on behalf of the Plan Administrator, has full discretionary authority to carry out its delegated duties. Any determination by the Chief Financial Officer will be final and conclusive upon all persons. The Corporation, as the Plan Administrator, will indemnify and hold harmless the Chief Financial Officer for carrying out the responsibilities of the Plan Administrator; *provided, however,* such person does not act with gross negligence or willful misconduct.

3. ***Benefits***. When benefits are due, they will be paid in one lump sum from the general assets of the Corporation on the first scheduled payroll date of the Corporation following the latest of the following dates: the Eligible Executive's last day of employment, the date the Company receives the Eligible Executive's signed general release of all claims, or the date the revocation period (if any) specified in the general release of all claims expires. The Corporation is not required to establish a trust to fund the Plan. The benefits provided under this Plan are not assignable and may be conditioned upon your compliance with any confidentiality agreement you have entered into with the Corporation.

4. ***Claims Procedure***. If you believe you are incorrectly denied a benefit or are entitled to a greater benefit than the benefit you receive under the Plan, you may submit a signed, written application

to the Plan Administrator within ninety (90) days of your Termination Date or, in the case of a dispute involving a Gross-Up Payment, the date on which a Determination is made regarding a Gross-Up Payment. You will be notified of the approval or denial of this claim within ninety (90) days of the date that the Plan Administrator receives the claim, unless special circumstances require an extension of time for processing the claim. If your claim is denied, the notification will state specific reasons for the denial and you will have sixty (60) days from receipt of the written notification of the denial of your claim to file a signed, written request for a review of the denial with the Plan Administrator. This request should include the reasons you are requesting a review, facts supporting your request and any other relevant comments. Pursuant to its discretionary authority to administer and interpret the Plan and to determine eligibility for benefits under the Plan, the Plan Administrator will generally make a final, written determination of your eligibility for benefits within sixty (60) days of receipt of your request for review.

5. ***Plan Terms.*** This Plan supersedes any and all prior separation, severance and salary continuation arrangements, programs and plans which were previously offered by the Corporation relating to a Change in Control event, for which you are eligible, but excluding terms of the Corporation's stock option plans and individual letter agreements which address the vesting of stock options or restricted stock. In no event shall an Eligible Executive receive cash severance benefits under this Plan following a Change in Control event and under any other Plan, program or arrangement.

6. ***Plan Amendment or Termination.*** The Corporation, acting through its Board of Directors or its Compensation Committee, reserves the right to terminate or amend the Plan at any time and in any manner. Any termination or amendment of the Plan may be made effective immediately with respect to any benefits not yet paid, whether or not prior notice of such amendment or termination has been given to affected employees. However, no amendment or termination may be approved following the execution of a definitive agreement to effect any Change in Control involving the Corporation without the consent of 75% of the then participating Eligible Executives.

7. ***Taxes.*** Except as set forth herein, the Corporation will withhold taxes and other payroll deductions from any severance payment.

8. ***No Right to Employment***. This Plan does not provide you with any right to continue employment with the Corporation or affect the Corporation's right, which right is hereby expressly reserved, to terminate the employment of any individual at any time for any reason with or without cause.

IV. STATEMENT OF ERISA RIGHTS

As a participant in the Plan, you are entitled to certain rights and protections under ERISA. ERISA provides that all Plan participants shall be entitled to:

1. Examine, without charge, at the Plan Administrator's office, all Plan documents, including all documents filed by the Plan with the U.S. Department of Labor.

2. Obtain copies of all Plan documents and other Plan information upon written request to the Plan Administrator. The Plan Administrator may make a reasonable charge for the copies.

3. File suit in a federal court, if you, as a participant, request materials and do not receive them within thirty (30) days of your request. In such a case, the court may require the Plan Administrator to provide the materials and to pay you a fine of up to $100 for each day's delay until the materials are received, unless the materials were not sent because of reasons beyond the control of the Plan Administrator.

In addition to creating rights for certain employees of the Corporation under the Plan, ERISA imposes obligations upon the people who are responsible for the operation of the Plan. The people

who operate the Plan (called "fiduciaries") have a duty to do so prudently and in the interest of the Corporation's employees who are covered by the Plan.

No one, including your employer or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a benefit to which you are entitled under the Plan or from exercising your rights under ERISA.

If your claim for a severance benefit is denied or ignored, in whole or in part, you have a right to file suit in a federal or a state court. If Plan fiduciaries are misusing the Plan's assets (if any) or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor or file suit in a federal court. The court will decide who will pay court costs and legal fees. If you are successful in your lawsuit, the court may, if it so decides, order the party you have sued to pay your legal costs, including attorney fees. However, if you lose, the court may order you to pay these costs and fees, for example, if it finds that your claim or suit is frivolous.

If you have any questions about the Plan, this statement or your rights under ERISA, you should contact the Plan Administrator or the nearest Area Office of the U.S. Labor-Management Services Administration, Department of Labor.

ADDITIONAL PLAN INFORMATION

Name of Plan:	Theravance, Inc. Change in Control Severance Plan
Corporation Sponsoring Plan:	Theravance, Inc. 901 Gateway Boulevard South San Francisco, CA 94080 650-808-6000
Employer Identification Number:	94-3265960
Plan Number:	506
Plan Year:	The calendar year; the first plan year shall end December 31, 2004
Plan Administrator:	Theravance, Inc. 901 Gateway Boulevard South San Francisco, CA 94080 650-808-6000
Agent for Service of Legal Process:	Plan Administrator
Type of Plan:	Severance Plan/Employee Welfare Benefit Plan
Plan Costs:	The cost of the Plan is paid by Theravance, Inc.

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Exhibit 10.6

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AS AMENDED, OR ANY STATE SECURITIES LAWS. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL (WHICH MAY BE COMPANY COUNSEL) REASONABLY SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY APPLICABLE STATE SECURITIES LAWS.

WARRANT AGREEMENT

To Purchase Shares of the Series B Preferred Stock of

ADVANCED MEDICINE, INC.

Dated as of April 27, 1998 (the "Effective Date")

WHEREAS, Advanced Medicine, Inc., a Delaware corporation (the "Company") has entered into a Master Lease Agreement dated as of May 7, 1997, Equipment Schedules No. VL-4 and VL-5 dated as of April 27, 1998, and related Summary Equipment Schedules (collectively, the "Leases") with Comdisco, Inc., a Delaware corporation (the "Warrantholder"); and

WHEREAS, the Company desires to grant to Warrantholder, in consideration for such Leases, the right to purchase shares of its Series B Preferred Stock;

NOW, THEREFORE, in consideration of the Warrantholder executing and delivering such Leases and in consideration of mutual covenants and agreements contained herein, the Company and Warrantholder agree as follows:

1. ***GRANT OF THE RIGHT TO PURCHASE PREFERRED STOCK.***

The Company hereby grants to the Warrantholder, and the Warrantholder is entitled, upon the terms and subject to the conditions hereinafter set forth, to subscribe to and purchase, from the Company, 24,000 fully paid and non-assessable shares of the Company's Series B Preferred Stock ("Preferred Stock") at a purchase price of $5.00 per share (the "Exercise Price"). The number, class and purchase price of such shares are subject to adjustment as provided in Section 8 hereof.

2. ***TERM OF THE WARRANT AGREEMENT.***

Except as otherwise provided for herein, the term of this Warrant Agreement and the right to purchase Preferred Stock as granted herein shall commence on the Effective Date and shall be exercisable for a period of seven years.

Notwithstanding the foregoing, this Warrant shall terminate, if not previously exercised immediately upon the consummation of (i) a consolidation or merger of the Company with or into any other corporation or corporations in which the shareholders of the Company immediately prior to such transaction own less than fifty percent (50%) of the shares of capital stock of the surviving corporation (other than a mere reincorporation transaction), or (ii) the sale of all or substantially all of the assets of the Company, or a series of related transactions in which more than fifty percent (50%) of the voting power of the Company is disposed, ("Change of Control"). The Company shall notify Warrantholder twenty (20) business days prior to the closing of such Change of Control, and if the Company fails to provide such notice, then notwithstanding anything to the contrary contained in this Warrant, the right to purchase Preferred Stock shall not expire until the Company complies with such notice provisions. Such notice shall contain details of the transaction as are reasonable under the circumstances. If such closing does not take place the Company shall notify Warrantholder that the proposed Change of Control has terminated and Warrantholder may rescind any exercise of its

purchase rights promptly after such notice of termination. In the event of such recession, the Warrant shall continue to be exercisable on the same terms and conditions contained herein.

3. *EXERCISE OF THE PURCHASE RIGHTS.*

The purchase rights set forth in this Warrant Agreement are exercisable by the Warrantholder, in whole or in part, at any time, or from time to time, prior to the expiration of the term set forth in Section 2 above, by tendering to the Company at its principal office a notice of exercise in the form attached hereto as Exhibit I (the "Notice of Exercise"), duly completed and executed. Promptly upon receipt of the Notice of Exercise and the payment of the purchase price in accordance with the terms set forth below, and in no event later than twenty-one (21) days thereafter, the Company shall issue to the Warrantholder a certificate for the number of shares of Preferred Stock purchased and shall execute the acknowledgment of exercise in the form attached hereto as Exhibit II (the "Acknowledgment of Exercise") indicating the number of shares which remain subject to future purchases, if any.

The Exercise Price may be paid at the Warrantholder's election either (i) by cash or check, or (ii) by surrender of Warrants ("Net Issuance") as determined below. If the Warrantholder elects the Net Issuance method, the Company will issue Preferred Stock in accordance with the following formula:

$$X = \frac{Y(A-B)}{A}$$

Where:
- X = the number of shares of Preferred Stock to be issued to the Warrantholder.
- Y = the number of shares of Preferred Stock requested to be exercised under this Warrant Agreement.
- A = the fair market value of one (1) share of Preferred Stock.
- B = the Exercise Price.

For purposes of the above calculation, current fair market value of Preferred Stock shall mean with respect to each share of Preferred Stock:

(i) if the exercise is in connection with an initial public offering of the Company's Common Stock, and if the Company's Registration Statement relating to such public offering has been declared effective by the SEC, then the fair market value per share shall be the product of (x) the initial "Price to Public" specified in the final prospectus with respect to the offering and (y) the number of shares of Common Stock into which each share of Preferred Stock is convertible at the time of such exercise;

(ii) if this Warrant is exercised after, and not in connection with the Company's initial public offering, and:

(a) if traded on a securities exchange, the fair market value shall be deemed to be the product of (x) the average of the closing prices over a twenty-one (21) day period ending three days before the day the current fair market value of the securities is being determined and (y) the number of shares of Common Stock into which each share of Preferred Stock is convertible at the time of such exercise; or

(b) if actively traded over-the-counter, the fair market value shall be deemed to be the product of (x) the average of the closing bid and asked prices quoted on the NASDAQ system (or similar system) over the twenty-one (21) day period ending three days before the day the

current fair market value of the securities is being determined and (y) the number of shares of Common Stock into which each share of Preferred Stock is convertible at the time of such exercise;

(iii) if at any time the Common Stock is not listed on any securities exchange or quoted in the NASDAQ System or the over-the-counter market, the current fair market value of Preferred Stock shall be the product of (x) the highest price per share which the Company could obtain from a willing buyer (not a current employee or director) for shares of Common Stock sold by the Company, from authorized but unissued shares, as determined in good faith by its Board of Directors and (y) the number of shares of Common Stock into which each share of Preferred Stock is convertible at the time of such exercise, unless the Company shall become subject to a merger, acquisition or other consolidation pursuant to which the Company is not the surviving party, in which case the fair market value of Preferred Stock shall be deemed to be the value received by the holders of the Company's Preferred Stock on a common equivalent basis pursuant to such merger or acquisition.

Upon partial exercise by either cash or Net Issuance, the Company shall promptly issue an amended Warrant Agreement representing the remaining number of shares purchasable hereunder. All other terms and conditions of such amended Warrant Agreement shall be identical to those contained herein, including, but not limited to the Effective Date hereof.

4. ***RESERVATION OF SHARES.***

(a) *Authorization and Reservation of Shares.* During the term of this Warrant Agreement, the Company will at all times have authorized and reserved a sufficient number of shares of its Preferred Stock to provide for the exercise of the rights to purchase Preferred Stock as provided for herein.

5. ***NO FRACTIONAL SHARES OR SCRIP.***

No fractional shares or scrip representing fractional shares shall be issued upon the exercise of the Warrant, but in lieu of such fractional shares the Company shall make a cash payment therefor upon the basis of the Exercise Price then in effect.

6. ***NO RIGHTS AS SHAREHOLDER.***

This Warrant Agreement does not entitle the Warrantholder to any voting rights or other rights as a shareholder of the Company prior to the exercise of the Warrant.

7. ***WARRANTHOLDER REGISTRY.***

The Company shall maintain a registry showing the name and address of the registered holder of this Warrant Agreement.

8. ***ADJUSTMENT RIGHTS.***

The purchase price per share and the number of shares of Preferred Stock purchasable hereunder are subject to adjustment, as follows:

(a) *Merger and Sale of Assets.* Subject to Section 2 hereof, if at any time there shall be a capital reorganization of the shares of the Company's stock (other than a combination, reclassification, exchange or subdivision of shares otherwise provided for herein), or a merger or consolidation of the Company with or into another corporation whether or not the Company is the surviving corporation, or the sale of all or substantially all of the Company's properties and assets to any other person (hereinafter referred to as a "Merger Event"), then, as a part of such Merger Event, lawful provision shall be made so that the Warrantholder shall thereafter be entitled to receive, upon exercise of the

Warrant, the number of shares of preferred stock or other securities of the successor corporation resulting from such Merger Event, equivalent in value to that which would have been issuable if Warrantholder had exercised this Warrant immediately prior to the Merger Event. In any such case, appropriate adjustment (as determined in good faith by the Company's Board of Directors) shall be made in the application of the provisions of this Warrant Agreement with respect to the rights and interest of the Warrantholder after the Merger Event to the end that the provisions of this Warrant Agreement (including adjustments of the Exercise Price and number of shares of Preferred Stock purchasable) shall be applicable to the greatest extent possible.

(b) *Reclassification of Shares.* If the Company at any time shall, by combination, reclassification, exchange or subdivision of securities, mandatory conversion pursuant to the Company's Certificate of Incorporation or otherwise, change any of the securities as to which purchase rights under this Warrant Agreement exist into the same or a different number of securities of any other class or classes, this Warrant Agreement shall thereafter represent the right to acquire such number and kind of securities as would have been issuable as the result of such change with respect to the securities which were subject to the purchase rights under this Warrant Agreement immediately prior to such combination, reclassification, exchange, subdivision, mandatory conversion or other change.

(c) *Subdivision or Combination of Shares.* If the Company at any time shall combine or subdivide its Preferred Stock, the Exercise Price shall be proportionately decreased in the case of a subdivision, or proportionately increased in the case of a combination.

(d) *Stock Dividends.* If the Company at any time shall pay a dividend payable in, or make any other distribution (except any distribution specifically provided for in the foregoing subsections (a) or (b)) of the Company's stock, then the Exercise Price shall be adjusted, from and after the record date of such dividend or distribution, to that price determined by multiplying the Exercise Price in effect immediately prior to such record date by a fraction (i) the numerator of which shall be the total number of all shares of the Company's stock outstanding immediately prior to such dividend or distribution, and (ii) the denominator of which shall be the total number of all shares of the Company's stock outstanding immediately after such dividend or distribution. The Warrantholder shall thereafter be entitled to purchase, at the Exercise Price resulting from such adjustment, the number of shares of Preferred Stock (calculated to the nearest whole share) obtained by multiplying the Exercise Price in effect immediately prior to such adjustment by the number of shares of Preferred Stock issuable upon the exercise hereof immediately prior to such adjustment and dividing the product thereof by the Exercise Price resulting from such adjustment. The application of Section 8(d) is not intended to result in a double adjustment and if an adjustment is contemplated by the Certificate of Incorporation no adjustment will be implemented pursuant to this Section 8(d).

(e) *Antidilution Riqhts.* Additional antidilution rights applicable to the Preferred Stock purchasable hereunder are as set forth in the Company's Certificate of Incorporation, as amended through the Effective Date, a true and complete copy of which is attached hereto as Exhibit *IV* (the "Charter"). The Company shall promptly provide the Warrantholder with any restatement, amendment, modification or waiver of the Charter. The Company shall provide Warrantholder with written notice of any issuance of its stock or other equity security to occur after the Effective Date of this Warrant, which notice shall include (a) the price at which such stock or security is to be sold, (b) the number of shares to be issued, and (c) such other information as necessary for Warrantholder to determine if a dilutive event has occurred.

(f) *Notice of Adjustments.* If: (i) the Company shall declare any dividend or distribution upon its stock, whether in cash, property, stock or other securities; (ii) the Company shall offer for subscription prorata to the holders of any class of its Preferred or other convertible stock any additional shares of stock of any class or other rights; (iii) there shall be any Merger Event; (iv) there shall be an initial public offering; or (v) there shall be any voluntary dissolution, liquidation or winding up of the

Company; then, in connection with each such event, the Company shall send to the Warrantholder: (A) at least twenty (20) days' prior written notice of the date on which the books of the Company shall close or a record shall be taken for such dividend, distribution, subscription rights (specifying the date on which the holders of Preferred Stock shall be entitled thereto) or for determining rights to vote in respect of such Merger Event, dissolution, liquidation or winding up; (B) in the case of any such Merger Event, dissolution, liquidation or winding up, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Preferred Stock shall be entitled to exchange their Preferred Stock for securities or other property deliverable upon such Merger Event, dissolution, liquidation or winding up); and (C) in the case of a public offering, the Company shall give the Warrantholder at least twenty (20) days written notice prior to the effective date thereof.

Each such written notice shall set forth, in reasonable detail, (i) the event requiring the adjustment, (ii) the amount of the adjustment, (iii) the method by which such adjustment was calculated, (iv) the Exercise Price, and (v) the number of shares subject to purchase hereunder after giving effect to such adjustment, and shall be given by first class mail, postage prepaid, addressed to the Warrantholder, at the address as shown on the books of the Company.

(g) *Timely Notice.* Failure to timely provide such notice required by subsection (f) above shall entitle Warrantholder to retain the benefit of the applicable notice period notwithstanding anything to the contrary contained in any insufficient notice received by Warrantholder. The notice period shall begin on the date Warrantholder actually receives a written notice containing all the information specified above.

9. *REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY.*

(a) *Reservation of Preferred Stock.* The Preferred Stock issuable upon exercise of the Warrantholder's rights has been duly and validly reserved and, when issued in accordance with the provisions of this Warrant Agreement, will be validly issued, fully paid and non-assessable, and will be free of any taxes, liens, charges or encumbrances of any nature whatsoever; provided, however, that the Preferred Stock issuable pursuant to this Warrant Agreement may be subject to restrictions on transfer under state and/or Federal securities laws. The Company has made available to the Warrantholder true, correct and complete copies of its Charter and Bylaws, as amended. The issuance of certificates for shares of Preferred Stock upon exercise of the Warrant Agreement shall be made without charge to the Warrantholder for any issuance tax in respect thereof, or other cost incurred by the Company in connection with, such exercise and the related issuance of shares of Preferred Stock. The Company shall not be required to pay any tax which may be payable in respect of any transfer involved and the issuance and delivery of any certificate in a name other than that of the Warrantholder.

(b) *Due Authority.* The execution and delivery by the Company of this Warrant Agreement and the performance of all obligations of the Company hereunder, including the issuance to Warrantholder of the right to acquire the shares of Preferred Stock, have been duly authorized by all necessary corporate action on the part of the Company, and the Leases and this Warrant Agreement are not inconsistent with the Company's Charter or Bylaws, do not contravene any law or governmental rule, regulation or order applicable to it, do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound, and the Leases and this Warrant Agreement constitute legal, valid and binding agreements of the Company, enforceable in accordance with their respective terms.

(c) *Consents and Approvals.* No consent or approval of, giving of notice to, registration with, or taking of any other action in respect of any state, Federal or other governmental authority or agency is required with respect to the execution, delivery and performance by the Company of its obligations under this Warrant Agreement, except for the filing of notices pursuant to Regulation D under the

1933 Act and any filing required by applicable state securities law, which filings will be effective by the time required thereby.

(d) *Issued Securities.* All issued and outstanding shares of Common Stock, Preferred Stock or any other securities of the Company have been duly authorized and validly issued and are fully paid and nonassessable. All outstanding shares of Common Stock, Preferred Stock and any other securities were issued in full compliance with all Federal and state securities laws. In addition:

(i) The authorized capital of the Company consists of (A) 20,000,000 shares of Common Stock, of which 4,285,000 shares are issued and outstanding, and (B) 11,000,000 shares of preferred stock, of which 10,012,000 shares are issued and outstanding and are convertible into 10,012,000 shares of Common Stock.

(ii) Except as set forth in the Company's Certificate of Incorporation and Investors' Rights Agreement, no shareholder of the Company has preemptive rights to purchase new issuances of the Company's capital stock.

(e) *Other Commitments to Register Securities.* Except as set forth in the Company's Investors' Rights Agreement, dated as of March 4, 1998, the Company is not, pursuant to the terms of any other agreement currently in existence, under any obligation to register under the 1933 Act any of its presently outstanding securities or any of its securities which may hereafter be issued.

(f) *Exempt Transaction.* Subject to the accuracy of the Warrantholder's representations in Section 10 hereof, the issuance of the Preferred Stock upon exercise of this Warrant will constitute a transaction exempt from (1) the registration requirements of Section 5 of the 1933 Act, in reliance upon Section 4(2) thereof, and (ii) the qualification requirements of the applicable state securities laws.

(g) *Compliance with Rule 144.* At the written request of the Warrantholder, who proposes to sell Preferred Stock issuable upon the exercise of the Warrant in compliance with Rule 144 promulgated by the Securities and Exchange Commission, the Company shall furnish to the Warrantholder, promptly after receipt of such request, a written statement confirming the Company's compliance with the filing requirements of the Securities and Exchange Commission as set forth in such Rule, as such Rule may be amended from time to time.

10. *REPRESENTATIONS AND COVENANTS OF THE WARRANTHOLDER.*

This Warrant Agreement has been entered into by the Company in reliance upon the following representations and covenants of the Warrantholder:

(a) *Investment Purpose.* The right to acquire Preferred Stock or the Preferred Stock issuable upon exercise of the Warrantholders' rights contained herein will be acquired for investment and not with a view to the sale or distribution of any part thereof, and the Warrantholder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration or exemption.

(b) *Private Issue.* The Warrantholder understands (i) that the Preferred Stock issuable upon exercise of this Warrant is not registered under the 1933 Act or qualified under applicable state securities laws on the ground that the issuance contemplated by this Warrant Agreement will be exempt from the registration and qualifications requirements thereof, and (ii) that the Company's reliance on such exemption is predicated on the representations set forth in this Section 10.

(c) *Disposition of Warrantholder's Rights.* In no event will the Warrantholder make a disposition of any of its rights to acquire Preferred Stock or Preferred Stock issuable upon exercise of such rights unless and until (i) it shall have notified the Company of the proposed disposition, and (ii) if requested by the Company, it shall have furnished the Company with an opinion of counsel (which counsel may either be inside or outside counsel to the Warrantholder) satisfactory to the Company and its counsel

to the effect that (A) appropriate action necessary for compliance with the 1933 Act has been taken, or (B) an exemption from the registration requirements of the 1933 Act is available. Notwithstanding the foregoing, the restrictions imposed upon the transferability of any of its rights to acquire Preferred Stock or Preferred Stock issuable on the exercise of such rights do not apply to transfers from the beneficial owner of any of the aforementioned securities to its nominee or from such nominee to its beneficial owner, and shall terminate as to any particular share of Preferred Stock when (1) such security shall have been effectively registered under the 1933 Act and sold by the holder thereof in accordance with such registration or (2) such security shall have been sold without registration in compliance with Rule 144 under the 1933 Act, or (3) a letter shall have been issued to the Warrantholder at its request by the staff of the Securities and Exchange Commission or a ruling shall have been issued to the Warrantholder at its request by such Commission stating that no action shall be recommended by such staff or taken by such Commission, as the case may be, if such security is transferred without registration under the 1933 Act in accordance with the conditions set forth in such letter or ruling and such letter or ruling specifies that no subsequent restrictions on transfer are required. Whenever the restrictions imposed hereunder shall terminate, as hereinabove provided, the Warrantholder or holder of a share of Preferred Stock then outstanding as to which such restrictions have terminated shall be entitled to receive from the Company, without expense to such holder, one or more new certificates for the Warrant or for such shares of Preferred Stock not bearing any restrictive legend.

(d) *Financial Risk.* The Warrantholder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment, and has the ability to bear the economic risks of its investment.

(e) *Risk of No Registration.* The Warrantholder understands that if the Company does not register with the Securities and Exchange Commission pursuant to Section 12 of the 1934 Act (the "1934 Act"), or file reports pursuant to Section 15(d), of the 1934 Act", or if a registration statement covering the securities under the 1933 Act is not in effect when it desires to sell (i) the rights to purchase Preferred Stock pursuant to this Warrant Agreement, or (ii) the Preferred Stock issuable upon exercise of the right to purchase, it may be required to hold such securities for an indefinite period. The Warrantholder also understands that any sale of its rights of the Warrantholder to purchase Preferred Stock or Preferred Stock which might be made by it in reliance upon Rule 144 under the 1933 Act may be made only in accordance with the terms and conditions of that Rule.

(f) *Accredited Investor.* Warrantholder is an "accredited investor" within the meaning of the Securities and Exchange Rule 501 of Regulation D, as presently in effect.

11. *TRANSFERS.*

Subject to the terms and conditions contained in Section 10 hereof, this Warrant Agreement and all rights hereunder are transferable in whole or in part by the Warrantholder and any successor transferee, provided, however, in no event shall the number of transfers of the rights and interests in all of the Warrants exceed three (3) transfers. The transfer shall be recorded on the books of the Company upon receipt by the Company of a notice of transfer in the form attached hereto as Exhibit III (the "Transfer Notice"), at its principal offices and the payment to the Company of all transfer taxes and other governmental charges imposed on such transfer and subject to the transferee agreeing in writing to be subject to the terms hereof.

12. *MISCELLANEOUS.*

(a) *Effective Date*. The provisions of this Warrant Agreement shall be construed and shall be given effect in all respects as if it had been executed and delivered by the Company on the date hereof. This Warrant Agreement shall be binding upon any successors or assigns of the Company.

(b) *Attorney's Fees.* In any litigation, arbitration or court proceeding between the Company and the Warrantholder relating hereto, the prevailing party shall be entitled to attorneys' fees and expenses and all costs of proceedings incurred in enforcing this Warrant Agreement.

(c) *Governing Law.* This Warrant Agreement shall be governed by and construed for all purposes under and in accordance with the laws of the State of Illinois.

(d) *Counterparts.* This Warrant Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(e) *Notices.* Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery, facsimile transmission (provided that the original is sent by personal delivery or mail as hereinafter set forth) or seven (7) days after deposit in the United States mail, by registered or certified mail, addressed (i) to the Warrantholder at 6111 North River Road, Rosemont, Illinois 60018, attention: James Labé, Venture Group, cc: Legal Department, attn: General Counsel, (and/or, if by facsimile, (847) 518-5465 and (847) 518-5088) and (ii) to the Company at 270-B Littlefield Avenue, South San Francisco, CA 94080, attention: and/or if by facsimile, (415) 827-8690 such other address as any such party may subsequently designate by written notice to the other party.

(f) *Remedies.* In the event of any default hereunder, the non-defaulting party may proceed to protect and enforce its rights either by suit in equity and/or by action at law, including but not limited to an action for damages as a result of any such default, and/or an action for specific performance for any default where Warrantholder will not have an adequate remedy at law and where damages will not be readily ascertainable. The Company expressly agrees that it shall not oppose an application by the Warrantholder or any other person entitled to the benefit of this Agreement requiring specific performance of any or all provisions hereof or enjoining the Company from continuing to commit any such breach of this Agreement.

(g) *No Impairment of Riqhts.* The Company will not, by amendment of its Charter or through any other means, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate in order to protect the rights of the Warrantholder against impairment.

(h) *Survival.* The representations, warranties, covenants and conditions of the respective parties contained herein or made pursuant to this Warrant Agreement shall survive the execution and delivery of this Warrant Agreement.

(i) *Severability.* In the event any one or more of the provisions of this Warrant Agreement shall for any reason be held invalid, illegal or unenforceable, the remaining provisions of this Warrant Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable valid, legal and enforceable provision, which comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.

(j) *Amendments.* Any provision of this Warrant Agreement may be amended by a written instrument signed by the Company and by the Warrantholder.

(k) *Additional Documents.* The Company, upon execution of this Warrant Agreement, shall provide the Warrantholder with certified resolutions with respect to the representations, warranties and covenants set forth in subparagraphs (a) through (d), (f) and (g) of Section 9 above. If the purchase price for the Leases referenced in the preamble of this Warrant Agreement exceeds $1,000,000, the Company will also provide Warrantholder with an opinion from the Company's counsel with respect to those same representations, warranties and covenants. The Company shall also supply such other documents as the Warrantholder may from time to time reasonably request.

IN WITNESS WHEREOF, the parties hereto have caused this Warrant Agreement to be executed by its officers thereunto duly authorized as of the Effective Date.

Company: ADVANCED MEDICINE, INC.

By: /s/ JAMES TANANBAUM

Title: President and CEO

Warrantholder: COMDISCO, INC.

By: /s/ JAMES P. LABE

Title: President, Comdisco Ventures Division

QuickLinks

Exhibit 10.7

THIS WARRANT AND THE SECURITIES ISSUABLE UPON THE EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER SUCH ACT OR UNLESS SOLD PURSUANT TO RULE 144 UNDER SUCH ACT.

WARRANT TO PURCHASE
SERIES D-1 PREFERRED STOCK
of
THERAVANCE, INC.

Void after November 26, 2007

Warrant No. *WPD1-1*

This Warrant is issued to Silicon Valley Bank, or its registered assigns ("Holder") by Theravance, Inc., a Delaware corporation (the "Company"), on November 26, 2002 (the "Warrant Issue Date").

1. *Purchase Shares*. Subject to the terms and conditions hereinafter set forth, the Holder is entitled, upon surrender of this Warrant at the principal office of the Company (or at such other place as the Company shall notify the holder hereof in writing), to purchase from the Company up to 48,611 fully paid and nonassessable shares of Series D-1 Preferred Stock of the Company, as constituted on the Warrant Issue Date (the "Preferred Stock"). The number of shares of Preferred Stock issuable pursuant to this Section 1 (the "Shares") shall be subject to adjustment pursuant to Section 9 hereof.

2. *Exercise Price*. The purchase price for the Shares shall be $9.00, as adjusted from time to time pursuant to Section 9 hereof (the "Exercise Price").

3. *Exercise Period*. This Warrant shall be exercisable, in whole or in part, during the term commencing on the Warrant Issue Date and ending at 5:00 p.m. San Francisco time on November 26, 2007; provided, however, that in the event of (a) the closing of the Company's sale, license or transfer of all or substantially all of its assets, or (b) the closing of the acquisition of the Company by another entity by means of merger, reorganization, consolidation or other transaction or series of related transactions, resulting in the exchange of the outstanding shares of the Company's capital stock such that the stockholders of the Company prior to such transaction own, directly or indirectly, less than 50% of the voting power of the surviving entity (any such transaction, an "Acquisition"), the successor entity shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities, cash and property as would be payable for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on the record date for the Acquisition and subsequent closing. The Exercise Price and/or number of Shares shall be adjusted accordingly. In the event of a proposed Acquisition of the kind described above, the Company shall notify the holder of the Warrant at least fifteen (15) days prior to the consummation of such Acquisition.

4. *Method of Exercise*. While this Warrant remains outstanding and exercisable in accordance with Section 3 above, the Holder may exercise, in whole or in part, the purchase rights evidenced hereby. Such exercise shall be effected by:

(a) the surrender of the Warrant, together with a duly executed copy of the form of Notice of Election attached hereto, to the Secretary of the Company at its principal offices; and

(b) the payment to the Company of an amount equal to the aggregate Exercise Price for the number of Shares being purchased.

5. *Net Exercise*. In lieu of exercising this Warrant pursuant to Section 4, the Holder may elect to receive, without the payment by the Holder of any additional consideration, shares of Preferred Stock equal to the value of this Warrant (or the portion thereof being canceled) by surrender of this Warrant at the principal office of the Company together with notice of such election, in which event the Company shall issue to the holder hereof a number of shares of Preferred Stock computed using the following formula:

$$X = \frac{Y(A-B)}{A}$$

Where:	X	=	The number of shares of Preferred Stock to be issued to the Holder pursuant to this net exercise;
	Y	=	The number of Shares in respect of which the net issue election is made;
	A	=	The fair market value of one share of the Preferred Stock at the time the net issue election is made;
	B	=	The Exercise Price (as adjusted to the date of the net issuance).

For purposes of this Section 5, the fair market value of one share of Preferred Stock (or, to the extent all such Preferred Stock has been converted into the Company's Common Stock) as of a particular date shall be determined as follows: (i) if traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the ten (10) day period ending three (3) days prior to the net exercise election; (ii) if traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the ten (10) day period ending three (3) days prior to the net exercise; and (iii) if there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors of the Company; provided, that, if the Warrant is being exercised upon the closing of the issuance and sale of shares of Common Stock of the Company in the Company's first underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "IPO"), the value will be the initial "Price to Public" of one share of Common Stock specified in the final prospectus with respect to such offering multiplied by the number of shares of Common Stock issuable upon conversion of one share of Preferred Stock as of the closing of the IPO.

6. *Representations and Warranties of Holder*. The Holder hereby represents and warrants that:

(a) *Authorization*. The Holder has full power and authority to enter into this Warrant, and this Warrant constitutes its valid and legally binding obligation, enforceable in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

(b) *Purchase Entirely for Own Account*. This Warrant is being issued to such Holder in reliance upon such Holder's representation to the Company, which by such Holder's execution of this Warrant such Holder hereby confirms, that this Warrant, the Preferred Stock to be received by such Holder upon exercise of this Warrant and the Common Stock issuable upon conversion thereof (collectively, the "Securities") will be acquired for investment for such Holder's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that such Holder has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Warrant, such Holder further represents that such Holder does not have any contract, undertaking, agreement or arrangement with any person

to sell, transfer or grant participations to such person or to any third person, with respect to any of the Securities.

(c) *Disclosure of Information*. Such Holder further represents that it has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Securities and the business, properties, prospects and financial condition of the Company. The Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities.

(d) *Investment Experience*. Such Holder is an investor in securities of companies in the development stage and acknowledges that it is able to fend for itself, can bear the economic risk of its investment, and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Securities. If other than an individual, Holder also represents it has not been organized for the purpose of acquiring the Securities.

(e) *Accredited Investor*. Such Holder is an "accredited investor" within the meaning of Securities and Exchange Commission ("SEC") Rule 501 of Regulation D, as presently in effect.

(f) *Restricted Securities*. Such Holder understands that the Securities it is purchasing are characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the Act, only in certain limited circumstances. In this connection, such Holder represents that it is familiar with SEC Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Act.

(g) *Further Limitations on Disposition*. Without in any way limiting the representations set forth above, such Holder further agrees not to make any disposition of all or any portion of the Securities unless and until the transferee has agreed in writing for the benefit of the Company to be bound by this Section 6, provided and to the extent this Section is then applicable, and:

(i) There is then in effect a Registration Statement under the Act covering such proposed disposition and such disposition is made in accordance with such Registration Statement; or

(ii) (A) Such Holder shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and (B) if reasonably requested by the Company, such Holder shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company that such disposition will not require registration of such securities under the Act. It is agreed that the Company will not require opinions of counsel for transactions made pursuant to Rule 144 except in unusual circumstances.

(iii) Notwithstanding the provisions of Paragraphs (i) and (ii) above, no such registration statement or opinion of counsel shall be necessary for a transfer by a Holder (A) that is a partnership to a partner of such partnership or a retired partner of such partnership who retires after the date hereof, or to the estate of any such partner or retired partner or the transfer by gift, will or intestate succession of any partner to his or her spouse or to the siblings, lineal descendants or ancestors of such partner or his or her spouse, or (B) to any entity that is controlled by, controls or is under common control with the Holder, including without limitation Silicon Valley Bancshares (Holder's parent company) and The Silicon Valley Bank Foundation, if the transferee agrees in writing to be subject to the terms hereof to the same extent as if he or she were an original Holder hereunder.

(h) *Legends*. It is understood that the certificates evidencing the Securities may bear one or all of the following legends:

(i) "These securities have not been registered under the Securities Act of 1933, as amended. They may not be sold, offered for sale, pledged or hypothecated in the absence of a registration statement in effect with respect to the securities under such Act or an opinion of counsel satisfactory to the Company that such registration is not required or unless sold pursuant to Rule 144 of such Act."

(ii) Any legend required by the laws of the State of California, including any legend required by the California Department of Corporations and Sections 417 and 418 of the California Corporations Code.

7. *Certificates for Shares*. Upon the exercise of the purchase rights evidenced by this Warrant, one or more certificates for the number of Shares so purchased shall be issued as soon as practicable thereafter (with appropriate restrictive legends, if applicable), and in any event within thirty (30) days of the delivery of the subscription notice.

8. *Issuance of Shares*. The Company covenants that the Shares, when issued pursuant to the exercise of this Warrant, will be duly and validly issued, fully paid and nonassessable and free from all taxes, liens, and charges with respect to the issuance thereof.

9. *Adjustment of Exercise Price and Number of Shares*. The number of and kind of securities purchasable upon exercise of this Warrant and the Exercise Price shall be subject to adjustment from time to time as follows:

(a) *Subdivisions, Combinations and Other Issuances*. If the Company shall at any time prior to the expiration of this Warrant subdivide its Preferred Stock, by split-up or otherwise, or combine its Preferred Stock, or issue additional shares of its Preferred Stock or Common Stock as a dividend with respect to any shares of its Preferred Stock, the number of Shares issuable on the exercise of this Warrant shall forthwith be proportionately increased in the case of a subdivision or stock dividend, or proportionately decreased in the case of a combination. Appropriate adjustments shall also be made to the purchase price payable per share, but the aggregate purchase price payable for the total number of Shares purchasable under this Warrant (as adjusted) shall remain the same. Any adjustment under this Section 9(a) shall become effective at the close of business on the date the subdivision or combination becomes effective, or as of the record date of such dividend, or in the event that no record date is fixed, upon the making of such dividend.

(b) *Reclassification, Reorganization and Consolidation*. In case of any reclassification, capital reorganization, or change in the Preferred Stock of the Company (other than as a result of a subdivision, combination, or stock dividend provided for in Section 9(a) above), then, as a condition of such reclassification, reorganization, or change, lawful provision shall be made, and duly executed documents evidencing the same from the Company or its successor shall be delivered to the Holder, so that the Holder shall have the right at any time prior to the expiration of this Warrant to purchase, at a total price equal to that payable upon the exercise of this Warrant, the kind and amount of shares of stock and other securities and property receivable in connection with such reclassification, reorganization, or change by a holder of the same number of shares of Preferred Stock as were purchasable by the Holder immediately prior to such reclassification, reorganization, or change. In any such case appropriate provisions shall be made with respect to the rights and interest of the Holder so that the provisions hereof shall thereafter be applicable with respect to any shares of stock or other securities and property deliverable upon exercise hereof, and appropriate adjustments shall be made to the purchase price per share payable hereunder, provided the aggregate purchase price shall remain the same.

(c) *Notice of Adjustmen*t. When any adjustment is required to be made in the number or kind of shares purchasable upon exercise of the Warrant, or in the Exercise Price, the Company shall promptly notify the holder of such event and of the number of shares of Preferred Stock or other securities or property thereafter purchasable upon exercise of this Warrant, and furnish Holder with a certificate of its Chief Financial Officer setting forth such adjustment and the facts upon which such adjustment is based.

(d) *Dilutive Issuances*. The number of shares of Common Stock issuable on conversion of the Shares shall be subject to adjustment from time to time in the manner set forth in the Company's Certificate of Incorporation, as amended and/or restated from time to time, with respect to certain dilutive issuances. The provisions set forth for the Shares in the Company's Certificate of Incorporation relating to dilutive issuances in effect as of the Warrant Issue Date may not be amended, modified or waived without the prior written consent of Holder unless such amendment, modification or waiver affects all other shares of the same series as the Shares granted to Holder.

10. *No Fractional Shares or Scrip*. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant, but in lieu of such fractional shares the Company shall make a cash payment therefor on the basis of the Exercise Price then in effect.

11. *No Stockholder Rights*. Prior to exercise of this Warrant, the Holder shall not be entitled to any rights of a stockholder with respect to the Shares, including (without limitation) the right to vote such Shares, receive dividends or other distributions thereon, exercise preemptive rights or be notified of stockholder meetings, and such holder shall not be entitled to any notice or other communication concerning the business or affairs of the Company. However, nothing in this Section 11 shall limit the right of the Holder to be provided the Notices required under this Warrant.

12. *Transfers of Warrant*. Subject to compliance with applicable federal and state securities laws, this Warrant and all rights hereunder are transferable (together with any obligations hereunder) in whole or in part by the Holder to any person or entity upon written notice to the Company. The transfer shall be recorded on the books of the Company upon the surrender of this Warrant, properly endorsed, to the Company at its principal offices, and the payment to the Company of all transfer taxes and other governmental charges imposed on such transfer. In the event of a partial transfer, the Company shall issue to the holders one or more appropriate new warrants. Any transferee shall be required to execute an agreement in form and substance reasonably satisfactory to the Company agreeing to be bound by the terms of this Warrant, including, but not limited to Section 13 hereof

13. *Market Standoff*. The Holder hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the Company's initial public offering and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (180) days) (i) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock (whether such shares or any such securities are then owned by the Holder or are thereafter acquired), or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. This Section 13 shall not apply to transactions relating to shares of Common Stock acquired in open market transactions after completion of the Company's IPO. The foregoing provisions of this Section 13 shall only be applicable to the Holders if all non-selling officers and directors and greater than two percent (2%) stockholders of the Company enter into similar agreements. The underwriters in connection with the Company's initial

public offering are intended third party beneficiaries of this Section 13 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to the securities of the Holder (and the shares or securities of every other person subject to the foregoing restriction) until the end of such period.

14. *Successors and Assigns*. The terms and provisions of this Warrant shall inure to the benefit of, and be binding upon, the Company and the Holders hereof and their respective successors and assigns.

15. *Amendments and Waivers*. Any term of this Warrant may be amended and the observance of any term of this Warrant may be waived (either generally or in a particular instance and either retroactively or prospectively), with the written consent of the Company and the Holder. Any waiver or amendment effected in accordance with this Section shall be binding upon each holder of any Shares purchased under this Warrant at the time outstanding (including securities into which such Shares have been converted), each future holder of all such Shares, and the Company.

16. *Notices*. All notices required under this Warrant and shall be deemed to have been given or made for all purposes (i) upon personal delivery, (ii) upon confirmation receipt that the communication was successfully sent to the applicable number if sent by facsimile; (iii) one day after being sent, when sent by professional overnight courier service, or (iv) five days after posting when sent by registered or certified mail. Notices to the Company shall be sent to the principal office of the Company (or at such other place as the Company shall notify the Holder hereof in writing). Notices to the Holder shall be sent to: Silicon Valley Bancshares, Treasury Department, 3003 Tasman Drive HA200, Santa Clara, California 95054 (or at such other place as the Holder shall notify the Company hereof in writing).

17. *Attorneys' Fees*. If any action of law or equity is necessary to enforce or interpret the terms of this Warrant, the prevailing party shall be entitled to its reasonable attorneys' fees, costs and disbursements in addition to any other relief to which it may be entitled.

18. *Captions*. The section and subsection headings of this Warrant are inserted for convenience only and shall not constitute a part of this Warrant in construing or interpreting any provision hereof.

19. *Governing Law*. This Warrant shall be governed by the laws of the State of California as applied to agreements among California residents made and to be performed entirely within the State of California.

IN WITNESS WHEREOF, the parties have executed this Warrant as of the 26th day of November, 2002.

THERAVANCE, INC.

By: /s/ BRAD SHAFER

Name: Brad Shafer

Title: Senior Vice President

SILICON VALLEY BANK

By: /s/ D. EDWARD WOHLLEB

Name: D. Edward Wohlleb

Title: Vice President

NOTICE OF EXERCISE

To: THERAVANCE, INC.

The undersigned hereby elects to [*check applicable subsection*]:

_____ (a) Purchase shares of Series D-l Preferred Stock of Theravance, Inc., pursuant to the terms of the attached Warrant and payment of the Exercise Price per share required under such Warrant accompanies this notice;

OR

_____ (b) Exercise the attached Warrant for [all of the shares] [of the shares] [*cross out inapplicable phrase*] purchasable under the Warrant pursuant to the net exercise provisions of Section 5 of such Warrant.

The undersigned hereby represents and warrants that the undersigned is acquiring such shares for its own account for investment purposes only, and not for resale or with a view to distribution of such shares or any part thereof.

WARRANTHOLDER:

SILICON VALLEY BANK

By: _____

Name: _____

Its: _____

Address: _____

_____

Date: _____

Name in which shares should be registered:

_____

_____

QuickLinks

Exhibit 10.8

AMENDED AND RESTATED LEASE AGREEMENT

BY AND BETWEEN

HMS GATEWAY OFFICE L.P., a Delaware limited partnership
AS LANDLORD

and

ADVANCED MEDICINE, INC.,
a Delaware corporation

AS TENANT

DATED January 1, 2001

TABLE OF CONTENTS

Exhibit

AMENDED AND RESTATED LEASE AGREEMENT

BASIC LEASE INFORMATION

Lease Date:	January 1, 2001
Landlord:	HMS Gateway Office, L.P. a Delaware limited partnership
Landlord's Address:	c/o Hines 101 California Street, Suite 1000 San Francisco, California 94111-5848 Attention: Tom Kruggel *All notices sent to Landlord under this Lease shall be sent to the above address, with copies to:* Hines 651 Gateway Boulevard, Suite 1140 South San Francisco, California 94080 Attention: Catherine Fogelman
Tenant:	Advanced Medicine, Inc., a Delaware corporation
Tenant's Contact Person:	Marty Glick
Tenant's Address:	901 Gateway Boulevard South San Francisco, California 94080
Premises Square Footage:	Sixty thousand (60,000) square feet, subject to final determination by Landlord's Architect upon the commencement of the Term, such measurement to be made in accordance with BOMA standard definition of gross square footage.
Premises Address:	951 Gateway Boulevard South San Francisco, California
Project:	Parcel B as shown on the Final Parcel Map 99-095 dated March 2000, prepared by Kier & Wright, together with all improvements constructed thereon.
Building (if not the same as the Project):	951 Gateway Boulevard South San Francisco, California
Tenant's Proportionate Share of Project:	100%
Tenant's Proportionate Share of Building:	100%
Commencement Date:	November 1, 2001
Expiration Date:	March 31, 2012
Monthly Base Rent:	1. Monthly Base Rent for the period commencing on the Commencement Date and ending March 31, 2002 shall be $159,168.41 2. Monthly Base Rent for the period commencing April 1, 2002 and ending March 31, 2003 shall be $163,231.76;

3. Monthly Base Rent for the period commencing April 1, 2003 and ending March 31, 2004 shall be $167,417.01;

4. Monthly Base Rent for the period commencing April 1, 2004 and ending March 31, 2005 shall be $171,727.82;

5. Monthly Base Rent for the period commencing April 1, 2005 and ending March 31, 2006 shall be $176,167.95;

6. Monthly Base Rent for the period commencing April 1, 2006 and ending March 31, 2007 shall be $180,741.28;

7. Monthly Base Rent for the period commencing April 1, 2007 and ending March 31, 2008 shall be $185,451.82;

8. Monthly Base Rent for the period commencing April 1, 2008 and ending March 31, 2009 shall be $190,303.67;

9. Monthly Base Rent for the period commencing April 1, 2009 and ending March 31, 2010 shall be $195,301.08;

10. Monthly Base Rent for the period commencing April 1, 2010 through March 31, 2011 shall be $200,448.41;

11. Monthly Base Rent for the period commencing April 1, 2011 and ending March 31, 2012 shall be $205,750.16.

The above monthly Base Rent calculations are subject to change after final determination of the Premises square footage by Landlord's Architect and any such adjustment shall be based on a monthly base rate calculated from time to time by dividing the applicable monthly Base Rent specified above by 60,000, and multiplying such monthly base rate by the actual square footage of the Premises.

Permitted Use: General office and research and development activities associated with biotechnology/pharmaceutical services. All uses must be in accordance with all applicable Laws.

Unreserved Parking Spaces: One hundred sixty (160) non-exclusive and undesignated parking spaces.

Except as otherwise provided in this Lease to the contrary, the foregoing parking calculation shall remain fixed and shall not be adjusted based upon the final determination of the Premises gross square footage.

Tenant Improvement Allowance: Four Million Three Hundred Fifty-Eight Thousand Four Hundred Dollars ($4,358,400.00) (*viz.*, $72.64 per square foot), subject to adjustment following the final determination of the Premises square footage by Landlord's Architect upon the commencement of the Term, and any such adjustment shall be based on an amount equal to $72.64 multiplied by the applicable number of square feet involved.

Deferred Allowance:	Up to Nine Hundred Thousand Dollars ($900,000.00) (*viz.*, $15.00 per square foot), subject to adjustment upon the final determination of the Premises square footage by Landlord's Architect. Subject to the right of Tenant to prepay the Deferred Allowance in accordance with and to the extent provided in Section D of ***Exhibit B***, the Deferred Allowance shall be amortized over the initial Term and repaid, together with accrued interest thereon, in accordance with said Section D of ***Exhibit B***. Interest shall accrue on the initial Four Hundred Fifty Thousand Dollars ($450,000.00) disbursed by Landlord at the per annum rate of 14% and on the second Four Hundred Fifty Thousand Dollars ($450,000.00) disbursed by Landlord at the per annum rate of 15%.

AMENDED AND RESTATED LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT is made and entered into by and between Landlord and Tenant as of the Lease Date.

R E C I T A L S

A. Landlord and Tenant are parties to that certain Lease Agreement, dated July 11, 2000 ("**Original 951 Lease**") pursuant to which Landlord agreed to lease to Tenant, and Tenant agreed to lease from Landlord, the Premises which was contemplated to be comprised of a 50,000 square foot building to be constructed on the Project.

B. Tenant has requested that Landlord construct a larger Premises consisting of an approximately 60,000 square foot building.

C. Landlord and Tenant now wish to amend and restate the Original 951 Lease to accommodate Tenant's request for an enlarged Premises, to make corresponding adjustments to the Tenant Improvement Allowance and Rent and to amend other matters as set forth herein.

The defined terms used in this Amended and Restated Lease Agreement which are defined in the Basic Lease Information attached to this Amended and Restated Lease Agreement ("**Basic Lease Information**") shall have the meaning and definition given them in the Basic Lease Information. The Basic Lease Information, the exhibits, the addendum or addenda described in the Basic Lease Information, and this Amended and Restated Lease Agreement are and shall be construed as a single instrument and are referred to herein as the "**Lease**".

OPERATIVE PROVISIONS

1. AMENDMENT, RESTATEMENT, SUPERSESSION AND DEMISE

This Lease shall amend and restate the Original 951 Lease in its entirety and shall supersede all provisions thereof. Landlord and Tenant hereby acknowledge and agree that from and after the date of this Lease, the Original 951 Lease is hereby null, void and of no further force or affect.

In consideration for the rents and all other charges and payments payable by Tenant, and for the agreements, terms and conditions to be performed by Tenant in this Lease, LANDLORD DOES HEREBY LEASE TO TENANT, AND TENANT DOES HEREBY HIRE AND TAKE FROM LANDLORD, the Premises described below (the "**Premises**"), upon the agreements, terms and conditions of this Lease for the Term hereinafter stated.

2. PREMISES

2.1 Definition of Premises, Building, Project, Parking Areas, Common Areas

The "Premises" demised by this Lease consist of that certain building (the "**Building**") to be constructed in accordance with the provisions hereof in the area shown on the Site Plan attached hereto as ***Exhibit A-2***, which Building is to be located in that certain real estate development (the "**Project**") specified in the Basic Lease Information. Subject to the provisions of this Lease, Landlord shall have the right to revise the definition of "Project" from time to time as Landlord develops and improves the Project and surrounding real property now or hereafter owned by Landlord or its Affiliates (as hereinafter defined), or sells to third parties portions of the Project or such adjacent properties. If at any time during the Term, Tenant is leasing, in accordance with the terms and conditions of this Lease, less than the entire Building, the "Premises" shall be deemed to include only that portion of the Building then leased by Tenant pursuant to this Lease. Tenant shall have the non-exclusive right (in common with the other tenants, Landlord and any other person granted use by

Landlord) to use the Common Areas (as hereinafter defined), except that, with respect to the Project's parking areas (the "**Parking Areas**"), Tenant shall have only the rights set forth in Paragraph 50 below. No easement for light or air is incorporated in the Premises. For purposes of this Lease, the term "**Common Areas**" shall mean all areas and facilities (i) outside the Premises and outside other buildings occupied or intended to be occupied by tenants, and (ii) either within the exterior boundary line of the Project or within the exterior boundary lines of properties abutting the Project, which areas and facilities are from time to time provided and designated by Landlord for the non-exclusive use of Landlord, Tenant and other tenants of the Project or of the properties abutting the Project and their respective employees, guests and invitees, including, without limitation, the Parking Areas.

2.2 Construction of Base Building Improvements and Tenant Improvements; Special Provisions Relating to Expansion Approvals

(a) Landlord shall cause the construction of the Base Building Improvements in accordance with the terms and conditions of the Base Building Construction Agreement attached hereto as ***Exhibit A***. The Base Building Improvements are generally described on ***Exhibit A-1*** hereto. Additionally, Tenant shall cause the construction of certain tenant improvements in the interior of the Premises in accordance with the terms and conditions of the Premises Construction Agreement attached hereto as ***Exhibit B***.

(b) Notwithstanding anything to the contrary contained in this Lease or the Exhibits hereto, Tenant shall be solely responsible for all costs and expenses incurred by Landlord in connection with the increase in the square footage of the Premises from approximately 50,000 square feet (as contemplated under the Original 951 Lease) to approximately 60,000 square feet (as provided for hereunder) (the "**Additional Expansion Costs**"), excluding, however, the costs of constructing the Base Building Improvements to be paid by Landlord pursuant to ***Exhibit A*** hereto. The "Additional Expansion Costs" shall include, without limitation, all architectural and engineering fees and expenses incurred by Landlord in connection with the expansion of the Premises (including, without limitation, all costs of preparing the Base Building Plans and Specifications (as defined within ***Exhibit A*** attached hereto)), all permitting fees, levies, assessments and other fees imposed by the City, the costs and expenses of preparing all submissions required to be made to the City, all costs of preparing and implementing any transportation demand management plan, and all other fees, costs and expenses incurred in connection with the obtaining of the Expansion Approvals. The Additional Expansion Costs shall be deemed "Additional Rent" hereunder and shall be due and payable by Tenant to Landlord within ten (10) days following demand.

(c) Without limiting the terms of Paragraph 2.2(b) above, Tenant shall be solely responsible for performing all obligations required by the City to be performed by Landlord or Tenant prior to or during the Term under the Revised Conditions of Approval (as hereinafter defined), all to the extent that such obligations were not imposed by the Original Conditions of Approval (as hereinafter defined). Without limiting the generality of the foregoing, Tenant shall (i) implement the Transportation Demand Management Program, dated December 4, 2000, prepared by Sequoia Solutions Consulting (the "**TDM**"), including, without limitation, conducting quarterly employee surveys, preparing and submitting to the City an annual TDM Report and, if necessary, cooperating with the City and the Peninsula Congestion Relief Alliance in identifying and implementing changes to the TDM Program from time to time, all as required by Section A.4 of the Revised Conditions of Approval, (ii) pay all costs associated with the TDM, including, without limitation, the actual costs of preparing the TDM and the costs of installing an electric vehicle charging station and designated and protected motorcycle parking, and (iii) pay any additional Oyster Point Overpass fees assessed by the City in connection with the issuance of the Expansion Approvals, including, without limitation, Oyster Point Overpass fees assessed pursuant to Section B.3 of the Revised Conditions of Approval. Tenant shall pay all costs due under this Paragraph 2.2(c) directly to the party or parties to whom said amounts are owed. In the event that

Landlord shall pay any such amounts, then said sums shall be deemed Additional Rent hereunder and shall be paid to Landlord within ten (10) days of demand. As used herein, "**Original Conditions of Approval**" means the "Proposed Conditions of Approval," PP-97-063/Mod 1; Neg. Dec. No. ND-97-063/Mod 1, adopted at the September 9, 1998 Redevelopment Agency meeting, and "**Revised Conditions of Approval**" means the "Proposed Conditions of Approval," PP-97-063/Mod 3 & V-97-063/Mod 3, adopted at the December 13, 2000 Redevelopment Agency meeting.

2.3 Changes to Common Area

(a) Landlord has the right, in its sole and absolute discretion, from time to time, to: (i) make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces (provided, however, that Landlord shall not have the right, except as otherwise provided herein, to reduce the total number of parking spaces below the number allocated to Tenant in the Basic Lease Information), Parking Areas, ingress, egress, direction of driveways, entrances, corridors and walkways; (ii) close temporarily any of the Common Areas for maintenance or construction purposes so long as reasonable access to the Premises remains available; (iii) add additional buildings and improvements to the Common Areas or remove existing buildings or improvements therefrom; (iv) use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project or any portion thereof so long as reasonable access to the Premises and the loading area serving the Premises remains available; and (v) do and perform any other acts or make any other changes in, to or with respect to the Common Areas and the Project as Landlord may, in its sole and absolute discretion, deem to be appropriate.

(b) Notwithstanding the terms of Paragraph 2.3 (a) above, Tenant understands and acknowledges that Landlord will during the Term be developing the Project and other lands owned by Landlord for Tenant and other tenants or occupants and that from time to time, whether during periods of construction or otherwise, Landlord may be unable to provide the full number of parking spaces allocated to Tenant under this Lease in the Parking Areas. During such periods, Landlord shall have the right to provide parking to Tenant on properties reasonably proximate to the Project (the "**Adjacent Properties**") or through the use of valets or parking attendants on the Parking Areas or the Adjacent Properties, provided only that Tenant shall at all times have parking for the number of automobiles contemplated under this Lease.

3. TERM

3.1 Commencement Date

The term of this Lease (the "**Term**") shall commence on November 1, 2001 (the "**Commencement Date**") and shall expire on March 31, 2012 (the "**Expiration Date**").

4. RENT

4.1 Monthly Base Rent

Commencing on the Commencement Date Tenant shall pay to Landlord, in advance on the first day of each month, without further notice or demand and without offset or deduction, the monthly installments of rent specified in the Basic Lease Information (the "**Monthly Base Rent**"). If the actual expiration or termination of the Term of this Lease is not the last day of a calendar month, a prorated installment of Rent based on a per diem calculation shall be paid for the fractional calendar month during which the Rent commences or the Term expires or terminates.

4.2 Additional Rent

This Lease is intended to be a triple-net Lease with respect to Landlord; and subject to Paragraph 13.2 below, the Base Rent owing hereunder is (1) to be paid by Tenant absolutely net of all costs and expenses relating to Landlord's ownership and operation of the Project and the Building, and (2) not to be reduced, offset or diminished, directly or indirectly, by any cost, charge or expense payable hereunder by Tenant or by others in connection with the Premises, the Building and/or the Project or any part thereof. The provisions of this Paragraph 4.2 for the payment of Tenant's Proportionate Share(s) of Expenses (as hereinafter defined) are intended to pass on to Tenant its share of all such costs and expenses. In addition to the Base Rent, Tenant shall pay to Landlord, in accordance with this Paragraph 4, Tenant's Proportionate Share(s) of all costs and expenses paid or incurred by Landlord in connection with the ownership, operation, maintenance, management and repair of the Premises, the Building and/or the Project or any part thereof (collectively, the "**Expenses**"), including, without limitation, all the following items (the "**Additional Rent**"):

1. *Taxes and Assessments.* All real estate taxes and assessments, which shall include any form of tax, assessment, fee, license fee, business license fee, levy, penalty (if a result of Tenant's delinquency), or tax (other than net income, estate, succession, inheritance, transfer or franchise taxes), imposed by any authority having the direct or indirect power to tax, or by any city, county, state or federal government or any improvement or other district or division thereof, whether such tax is (i) determined by the area of the Premises, the Building and/or the Project or any part thereof, or the Rent and other sums payable hereunder by Tenant or by other tenants, including, but not limited to, any gross income or excise tax levied by any of the foregoing authorities with respect to receipt of Rent and/or other sums due under this Lease; (ii) upon any legal or equitable interest of Landlord in the Premises, the Building and/or the Project or any part thereof; (iii) upon this transaction or any document to which Tenant is a party creating or transferring any interest in the Premises, the Building and/or the Project; (iv) levied or assessed in lieu of, in substitution for, or in addition to, existing or additional taxes against the Premises, the Building and/or the Project, whether or not now customary or within the contemplation of the parties; or (v) surcharged against the parking area. Tenant and Landlord acknowledge that Proposition 13 was adopted by the voters of the State of California in the June, 1978 election and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such purposes as fire protection, street, sidewalk, road, utility construction and maintenance, refuse removal and for other governmental services which may formerly have been provided without charge to property owners or occupants. It is the intention of the parties that all new and increased assessments, taxes, fees, levies and charges due to any cause whatsoever are to be included within the definition of real property taxes for purposes of this Lease. "Taxes and assessments" shall also include legal and consultants' fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce taxes, Landlord specifically reserving the right, but not the obligation, to contest by appropriate legal proceedings the amount or validity of any taxes. In the event Landlord elects not to contest the real property taxes and assessments levied against the Building with respect to any calendar year during the Term, and if Tenant demonstrates to Landlord's reasonable satisfaction that such a contest would likely result in a reduction of such taxes and assessments, then Tenant shall have the right to retain a consultant to prosecute such contest, subject to Landlord's reasonable approval of the identity of such consultant. Such contest shall be conducted at Tenant's sole cost and expense, provided that if Tenant prevails in such contest, the reasonable fees and costs of Tenant's consultants shall, to the extent of any actual savings resulting from such contest, be equitably shared by Tenant and other tenant(s) who receive the benefit of such savings. Tenant shall have the right to deduct from its payments of Additional Rent the shares of such fees and costs to be charged to other tenants, as reasonably determined by Landlord, and Landlord shall cause such amounts to be billed or charged to the other benefited tenant(s).

2. *Insurance.* All insurance premiums for the Building and/or the Project or, subject to clause (i) of the paragraph immediately following Paragraph 4.2(8) below, any part thereof, including premiums for "all risk" fire and extended coverage insurance, commercial general liability insurance, rent loss or abatement insurance, earthquake insurance, flood or surface water coverage, and other insurance as Landlord deems necessary in its sole discretion, and any deductibles paid under policies of any such insurance.

3. *Utilities.* The cost of all Utilities (as hereinafter defined) serving the Premises, the Building and the Common Areas that are not separately metered to Tenant, any assessments or charges for Utilities or similar purposes included within any tax bill for the Building or the Common Areas, including, without limitation, entitlement fees, allocation unit fees, and/or any similar fees or charges and any penalties (if a result of Tenant's delinquency) related thereto, and any amounts, taxes, charges, surcharges, assessments or impositions levied, assessed or imposed upon the Building or the Common Areas, or any part thereof, or upon Tenant's use and occupancy thereof, as a result of any rationing of Utility services or restriction on Utility use affecting the Building and/or the Common Areas, as contemplated in Paragraph 5 below (collectively, "**Utility Expenses**").

4. *Common Area Expenses.* All costs to operate, maintain, repair, replace, supervise, insure and administer the Common Areas, including supplies, materials, labor and equipment used in or related to the operation and maintenance of the Common Areas, including parking areas (including, without limitation, all costs of resurfacing and restriping parking areas), signs and directories on the Building and/or the Project, landscaping (including maintenance contracts and fees payable to landscaping consultants), amenities, sprinkler systems, sidewalks, walkways, driveways, curbs, lighting systems and security services, if any, provided by Landlord for the Common Areas.

5. *Parking Charges.* Any parking charges or other costs levied, assessed or imposed by, or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by any governmental authority or insurer in connection with the use or occupancy of the Building or the Project.

6. *Maintenance and Repair Costs.* Except for costs which are the responsibility of Landlord pursuant to Paragraph 13.2 below, all costs to maintain, repair, and replace the Premises, the Building and/or the Common Areas or any part thereof, including, without limitation, (i) all costs paid under maintenance, management and service agreements such as contracts for janitorial, security and refuse removal, (ii) all costs to maintain, repair and replace the roof coverings of the Building, (iii) all costs to maintain, repair and replace the heating, ventilating, air conditioning, plumbing, sewer, drainage, electrical, fire protection, life safety and security systems and other mechanical and electrical systems and equipment serving the Premises, the Building and/or the Common Areas or any part thereof (collectively, the "Systems"), all to the extent that Landlord or Landlord's Agents perform such tasks.

7. *Life Safety Costs.* All costs to install, maintain, repair and replace all life safety systems, including, without limitation, all fire alarm systems, serving the Premises, the Building and/or the Common Areas or any part thereof (including all maintenance contracts and fees payable to life safety consultants) whether such systems are or shall be required by Landlord's insurance carriers, Laws (as hereinafter defined) or otherwise, all to the extent that Landlord or Landlord's Agents perform such tasks.

8. *Management and Administration.* All costs for management and administration of the Premises, the Building and/or the Project or any part thereof, including, without limitation, a property management fee equal to two percent (2%) of the annual Rent derived from the Building, accounting, auditing, billing, postage, legal and accounting costs and fees for licenses and

permits related to the ownership and operation of the Project (but specifically excluding any salaries and benefits of employees of Landlord or the property manager of the Building).

9. *Operational Fees Related To Expansion Approvals.* Any charges or other costs which are paid or incurred by Landlord during the Term in relation to, as a result of, or as a condition to obtaining the Expansion Approvals (as defined in ***Exhibit A*** attached hereto), including, without limitation, (i) any fees, levies or assessments charged by the City, (ii) the salaries of any parking administrators or managers and all other employees or independent contractors who have been hired in response to any condition or obligation imposed in connection with the issuance of the Expansion Approvals, (iii) the costs and expenses incurred in the establishment, management and administration of any transportation demand management plan, (iv) the costs and expenses incurred in the management, administration and operation of any shuttle service, and (v) any similar costs and expenses incurred in relation to any program instituted as a result of, or as a condition to, obtaining the Expansion Approvals, whether or not such charges, costs and/or expenses relate solely to the Project.

10. *Gateway Operational Expenses.* All charges, assessments, costs or fees levied by any association or entity of which the Project or any part thereof is a member or to which the Project or any part thereof is subject (including, without limitation, the Gateway Property Owners' Association), or levied under or imposed by any reciprocal easement agreement, joint operating agreement or other document, instrument or agreement to which the Project or any part thereof is subject.

Notwithstanding anything in this Paragraph 4.2 to the contrary, (i) Tenant shall not be responsible for the payment of any Expenses which relate to or benefit solely another building within the Project occupied or intended to be occupied by tenants or for which Landlord receives full reimbursement from other tenants, and (ii) with respect to all sums payable by Tenant as Additional Rent under this Paragraph 4.2 for the replacement of any item or the construction of any new item in connection with the physical operation of the Premises, the Building or the Project (i.e., HVAC, roof membrane or coverings and parking area) which is a capital item the replacement of which would be capitalized under generally accepted accounting principles consistently applied, Tenant shall be required to pay only the prorata share of the cost of the item falling due within the Term (including any Renewal Term) based upon the amortization of the same over the useful life of such item, as reasonably determined by Landlord. Such share shall be paid by Tenant on a monthly basis throughout the Term (rather than in a lump sum when incurred by Landlord).

4.3 Adjustment to Additional Rent

Notwithstanding any other provision herein to the contrary, if the Building is not fully occupied during any year of the Term, an adjustment shall be made in computing Additional Rent for such year so that Additional Rent shall be computed as though the Building had been fully occupied during such year; provided, however, that in no event shall Landlord collect in total, from Tenant and all other tenants of the Building, an amount greater than one hundred percent (100%) of the actual Expenses during any year of the Term.

4.4 Payment of Additional Rent

4.4.1 Expense Statement

Upon the Commencement Date, Landlord shall submit to Tenant an estimate of monthly Additional Rent for the period between the Commencement Date and the following December 31 and Tenant shall pay such estimated Additional Rent on a monthly basis, in advance, on the first day of each month. Tenant shall continue to make said monthly payments until notified by Landlord of a change therein. By April 1 of each calendar year, Landlord shall endeavor to provide to Tenant a statement (the "**Expense Statement**") showing the actual Additional Rent due to Landlord for the prior

calendar year, to be prorated during the first year from the Commencement Date. If the total of the monthly payments of Additional Rent that Tenant has made for the prior calendar year is less than the actual Additional Rent chargeable to Tenant for such prior calendar year, then Tenant shall pay the difference in a lump sum within ten (10) days after receipt of such statement from Landlord. Any overpayment by Tenant of Additional Rent for the prior calendar year shall be credited towards the Additional Rent next due.

4.4.2 Calculation of Additional Rent

Landlord's then-current annual operating and capital budgets for the Building and the Project shall be used for purposes of calculating Tenant's monthly payment of estimated Additional Rent for the current year. Landlord shall make the final determination of Additional Rent for the year in which this Lease terminates as soon as possible after termination of such year. Even though the Term has expired and Tenant has vacated the Premises, Tenant shall remain liable for payment of any amount due to Landlord in excess of the estimated Additional Rent previously paid by Tenant, and, conversely, Landlord shall promptly return to Tenant any overpayment. Failure of Landlord to submit statements as called for herein shall not be deemed a waiver of Tenant's obligation to pay Additional Rent as herein provided.

4.4.3 Tenant's Proportionate Share(s)

With respect to Expenses which Landlord allocates to the Building, Tenant's "**Proportionate Share**" shall be the percentage set forth in the Basic Lease Information as Tenant's Proportionate Share of the Building, as adjusted by Landlord from time to time for a remeasurement of or changes in the physical size of the Premises or the Building. With respect to Expenses which Landlord allocates to the Project, Tenant's "**Proportionate Share**" shall be the percentage set forth in the Basic Lease Information as Tenant's Proportionate Share of the Project as adjusted by Landlord from time to time in connection with the construction of additional buildings within the Project or a remeasurement of or changes in the physical size of the Premises or the Project, whether such changes in size are due to an addition to or a sale or conveyance of a portion of the Project or otherwise. Notwithstanding the foregoing, Landlord may equitably adjust Tenant's Proportionate Share(s) for all or part of any item of expense or cost reimbursable by Tenant that relates to a repair, replacement, or service that benefits only the Premises or only a portion of the Building and/or the Project or that varies with the occupancy of the Building and/or the Project; provided, however, that Tenant's prorata allocation of any such Expense shall not be disproportionate to any other tenant's prorata allocation of such Expense.

4.4.4 Tenant's Audit Rights

Provided that Tenant is not in Default under the terms of this Lease, Tenant, at its sole cost and expense, shall have the right within sixty (60) days after the delivery of each Expense Statement to review and audit Landlord's books and records regarding such Expense Statement for the sole purpose of determining the accuracy of such Expense Statement. Such review or audit shall be performed by a nationally recognized accounting firm that calculates its fees with respect to hours actually worked and that does not discount its time or rate (as opposed to a calculation based upon percentage of recoveries or other incentive arrangement), shall take place during normal business hours in the office of Landlord or Landlord's property manager and shall be completed within three (3) business days after the commencement thereof. If Tenant does not so review or audit Landlord's books and records, Landlord's Expense Statement shall be final and binding upon Tenant. In the event that Tenant determines on the basis of its review of Landlord's books and records that the amount of Expenses paid by Tenant pursuant to this Paragraph 4 for the period covered by such Expense Statement is less than or greater than the actual amount properly payable by Tenant under the terms of this Lease, Tenant shall promptly pay any deficiency to Landlord or, if Landlord concurs with the results of Tenant's audit, Landlord shall promptly refund any excess payment to Tenant, as the case may be.

Landlord shall pay for any reasonable audit expenses if such excess payment exceeds the aggregate Expenses in Landlord's Expense Statement by seven percent (7%).

4.5 General Payment Terms

The Base Rent, Additional Rent and all other sums payable by Tenant to Landlord hereunder, including, without limitation, any Late Charges, as defined below, assessed pursuant to Paragraph 6 below, any interest assessed pursuant to Paragraph 44 below, and any repayments of the Deferred Allowance, are referred to collectively as the "**Rent**." All Rent shall be paid without deduction, offset or abatement (except as specifically provided in this Lease) in lawful money of the United States of America. Checks are to be made payable to HMS Gateway Office, L.P. and shall be mailed: c/o Hines, 101 California Street, Suite 1000, San Francisco, California 94111-5848, Attention: Tom Kruggel, or to such other person or place as Landlord may, from time to time, designate to Tenant in writing. The Rent for any fractional part of a calendar month at the commencement or termination of the Lease term shall be a prorated amount of the Rent for a full calendar month based upon the number of days in the month of the commencement or termination of the Lease term, as applicable.

4.6 Special Provisions regarding Bridge

Notwithstanding anything in this Section 4 to the contrary, Tenant shall not be required to pay Base Rent or Additional Rent on the Bridge (as defined in ***Exhibit A*** hereto), if any, and the square footage of the Bridge shall not be taken into account in determining Tenant's Proportionate Shares of the Building and the Project.

5. UTILITY EXPENSES

5.1 Tenant's Obligation to Pay

Tenant shall pay the cost of all water, sewer use, sewer discharge fees, gas, heat, electricity, refuse pick-up, janitorial service (including, without limitation, exterior and interior window washing), telephone, cable T.V., telecommunications facilities and all materials and services or other utilities (collectively, "**Utilities**") billed or metered separately to the Premises and/or Tenant, together with all taxes, assessments, charges and penalties added to or included within such cost. Tenant acknowledges that the Premises, the Building and/or the Project may become subject to the rationing of Utility services or restrictions on Utility use as required by a public utility company, governmental agency or other similar entity having jurisdiction thereof. Tenant acknowledges and agrees that its tenancy and occupancy hereunder shall be subject to such rationing or restrictions as may be imposed upon Landlord, Tenant, the Premises, the Building and/or the Project, and Tenant shall in no event be excused or relieved from any covenant or obligation to be kept or performed by Tenant by reason of any such rationing or restrictions. Tenant agrees to comply with energy conservation programs implemented by Landlord by reason of rationing, restrictions or Laws.

5.2 Limitation of Landlord's Liability for Interruption of Utilities

(a) Landlord shall not be liable for any loss, injury or damage to property caused by or resulting from any variation, interruption, or failure of Utilities due to any cause whatsoever, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations, improvements, or due to accident, strike, or conditions or other events shall be deemed an eviction of Tenant or relieve Tenant from any of its obligations hereunder; provided, however, that Landlord shall give Tenant not less than forty-eight (48) hours' notice of any interruption of Utilities planned in advance by Landlord. Landlord shall also use reasonable efforts to notify Tenant of any planned interruption of Utilities by any Utility service provider, provided that Landlord obtains actual knowledge of such planned interruption. In no event shall Landlord be liable to Tenant for any damage to the Premises or for any loss, damage or injury to any property therein or thereon occasioned by

bursting, rupture, leakage, failure or overflow of any plumbing or other pipes (including, without limitation, water, steam, and/or refrigerant lines), sprinklers, tanks, drains, drinking fountains or washstands, or other similar cause in, above, upon or about the Premises, the Building or the Project.

(b) Notwithstanding the provisions of Paragraph 5.2(a) above, if any Utility Services to the Premises are interrupted or interfered with as the result of the negligence or willful misconduct of any contractors engaged by Landlord to perform services at the Project, then Landlord shall use commercially reasonable efforts to pursue any claims for compensation or reimbursement available to Landlord against such contractors to the extent of any losses suffered by Tenant and shall make any monies received available to Tenant after allowance for Landlord's costs of collection. In addition to the foregoing, if any policy of insurance maintained by Landlord with respect to the Premises provides coverage for losses incurred due to the failure of Utilities, then Landlord shall make a claim under such policy to the extent of any losses suffered by Tenant, and shall make the proceeds received, if any, available to Tenant after allowance for Landlord's costs of collection.

6. LATE CHARGE

Notwithstanding any other provision of this Lease, Tenant hereby acknowledges that late payment to Landlord of Rent, or other amounts due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. If any Rent or other sums due from Tenant are not received by Landlord or by Landlord's designated agent when due, and if Tenant does not cure such failure within five (5) days after the due date (the "**Grace Period**"), then Tenant shall pay to Landlord a late charge equal to five percent (5%) of such overdue amount (the "**Late Charge**"), plus any costs and reasonable attorneys' fees incurred by Landlord by reason of Tenant's failure to pay Rent and/or other charges when due hereunder; provided, however, that Tenant shall have the right to pay Rent during the Grace Period only five (5) times during the Term and, after Tenant has paid Rent during the Grace Period an aggregate of five (5) times, Tenant shall pay to Landlord a Late Charge on any Rent or other sums due hereunder that are not received by Landlord or Landlord's designated agent when due. Notwithstanding the foregoing, if Tenant establishes and maintains throughout the Term a direct payment or debit arrangement with a bank or financial institution pursuant to which the Rent due hereunder is automatically paid to Landlord by electronic transfer on the first day of each month, and if Tenant provides Landlord with evidence of such arrangement, then Landlord shall provide Tenant with notice of any late payment of Rent prior to the imposition of a Late Charge. Landlord and Tenant hereby agree that such Late Charge represent a fair and reasonable estimate of the cost that Landlord will incur by reason of Tenant's late payment and shall not be construed as a penalty. Landlord's acceptance of such Late Charge shall not constitute a waiver of Tenant's default with respect to such overdue amount or estop Landlord from exercising any of the other rights and remedies granted under this Lease.

INITIALS: _____ _____

Landlord Tenant

7. LETTER OF CREDIT

(a) *Delivery of Letter of Credit.* Tenant has previously delivered to Landlord the letter of credit (the "**Letter of Credit**") in the amount of Three Million Seven Hundred Fifty Thousand Dollars ($3,750,000.00) described in the 901 Gateway Lease (as hereinafter defined). As more particularly described in the 901 Gateway Lease, the Letter of Credit serves as security for the full and faithful performance of Tenant's covenants and obligations under the 901 Gateway Lease and this Lease. Landlord shall have the right to draw upon the Letter of Credit and use the proceeds therefrom for the purposes specified in the 901 Gateway Lease. The rights and obligations of the parties with respect to the Letter of Credit shall be as set forth in the 901 Gateway Lease. As used herein, the "**901 Gateway Lease**" means the Lease Agreement by and between Landlord and Tenant, dated as of January 1, 2001, relating to certain premises (the "901 Gateway Premises") commonly known as 901 Gateway Boulevard, South San Francisco, California, as more particularly described therein.

(b) *Bifurcation of Letter of Credit.* Notwithstanding anything to the contrary contained herein or in the 901 Gateway Lease, if requested by Landlord at any time following the date of this Lease, Tenant shall cause the LC Issuing Bank (as defined in the 901 Gateway Lease) to bifurcate the Letter of Credit into two separate letters of credit, one securing Tenant's obligations under the 901 Gateway Lease and the other securing Tenant's obligations under this Lease. Such bifurcated letters of credit shall each be in an amount specified by Landlord, provided that the aggregate amount of such letters of credit shall equal the amount of the Letter of Credit immediately prior to such bifurcation. Concurrently with the bifurcation of the Letter of Credit, Landlord and Tenant shall enter into a modification of the 901 Gateway Lease and a modification of this Lease, which modifications shall amend Paragraph 7 of the 901 Gateway Lease and this Paragraph 7 to provide for separate, stand-alone letter of credit provisions in the 901 Gateway Lease and this Lease.

8. POSSESSION

8.1 Tenant's Right of Possession

Subject to Paragraph 8.2, Tenant shall be entitled to possession of the Premises upon the substantial completion of the Base Building Improvements.

For the purposes of this Lease, the Base Building Improvements shall be deemed to be "substantially completed" when Landlord's Architect and Contractor have both certified in writing that the Base Building Improvements have been substantially completed in accordance with the plans and specifications therefor, subject only to items of a "punch-list" nature which do not materially affect the use or functionality of the space.

8.2 Delay in Performance of Covenants Related to Base Building Improvements

Except as expressly provided in Paragraph 8.3 below, if for any reason whatsoever Landlord cannot perform any covenant contained in this Lease or in any exhibit hereto relating to the design and construction of the Base Building Improvements, this Lease shall not be void or voidable and shall not entitle Tenant to terminate this Lease, nor shall Landlord, or Landlord's agents, advisors, employees, partners, shareholders, directors, invitees or independent contractors (collectively, "**Landlord's Agents**"), be liable to Tenant for any loss or damage resulting therefrom, nor shall such failure affect the obligations of Tenant under this Lease, including, without limitation, the obligation to pay Rent commencing on the Commencement Date.

8.3 Tenant's Right to Rent Abatement

(a) Subject to Paragraph 8.3(b) below, if for any reason Landlord fails to complete the milestones set forth below (each, a "**Milestone**") on or before the outside date for performance specified below (each, a "**Milestone Date**"), and if as a direct result of such failure, Tenant's Contractor is delayed in the substantial completion of the Tenant Improvements (as defined within ***Exhibit B*** attached hereto) which delay would not have occurred but for Landlord's failure to meet such Milestone Date, then Tenant shall be entitled to an abatement of Monthly Base Rent in an amount equal to the proportionate Monthly Base Rent payable per day, multiplied by a number equal to one day for each day that Tenant's Contractor has been so delayed by Landlord's failure to meet such Milestone Dates. For the purposes herein, the Tenant Improvements shall be deemed to be substantially completed on the earlier date to occur of (i) the date Tenant occupies any portion of the Building, (ii) the date when the Tenant Improvements have been approved by the appropriate governmental agency as being in accordance with its building code and the building permit issued for such improvements, as evidenced by the issuance of a certificate of occupancy or final building inspection approval, as applicable, and (iii) the date that Tenant's Architect and Tenant's Contractor have both certified in writing that the Tenant Improvements have been substantially completed in accordance with the plans and specifications therefor, subject only to

items of a "punch-list" nature which do not materially affect the use or functionality of the space. The Milestones and Milestone Dates are as follows:

Milestone	Milestone Date
Certificate from Landlord's Architect that the foundation of the Building has been completed ("**Initial Milestone**").	September 8, 2001
Concrete for the metal deck located on the top floor of the Building has been poured ("**Secondary Milestone**").	November 22, 2001

(b) Notwithstanding anything to the contrary contained in Paragraph 8.3(a) above, if Landlord is delayed in completing any Milestone due to Tenant Delays or Force Majeure Events (as hereinafter defined), the Milestone Dates shall be extended for a period equal to the length of such delay. As used herein, "**Tenant Delays**" means any delays caused by Tenant or any employee, agent or representative of Tenant, including, without limitation, delays caused by (i) failure to furnish information in accordance with ***Exhibit A*** and/or ***Exhibit B*** of this Lease, whichever is applicable; (ii) Tenant's request for any special, long lead time materials or installations as part of the Tenant Improvements or the Tenant Requested Base Building Improvements (as defined in ***Exhibit A*** hereto); (iii) Tenant's changes in the Approved Plans (as defined in ***Exhibit B*** hereto); (iv) any changes initiated by reason of the disapproval of any plans or drawings or any cost proposals or authorizations resulting in the preparation of revised plans, drawings, cost proposals or authorizations; (v) field changes to construction work; (vi) the delivery, installation or completion of the Tenant Improvements work performed by Contractor (as defined in ***Exhibit B*** hereto); (vii) Tenant's request for any Tenant Requested Base Building Improvements; or (viii) any other act or omission of Tenant. As used herein, "**Force Majeure Events**" means strikes, embargoes, governmental regulations, acts of God, war, civil commotion or other strife, and other events beyond the reasonable control of the party whose performance is affected thereby.

9. USE OF PREMISES

9.1 Permitted Use

(a) The use of the Premises by Tenant and Tenant's agents, advisors, employees, partners, shareholders, directors, invitees and independent contractors (collectively, "**Tenant's Agents**") shall be solely for the Permitted Use specified in the Basic Lease Information and for no other use. Tenant shall not permit any objectionable or unpleasant smoke, dust, gas, noise or vibration to emanate from or near the Premises, and shall use its best efforts to prevent any objectionable odor from emanating from or near the Premises. Tenant shall strictly comply with the measures set forth on ***Exhibit C*** hereto and any additional measures reasonably required by Landlord from time to time to eliminate the emanation of objectionable odors. Tenant shall promptly provide Landlord with copies of all permits issued to Tenant by the Bay Area Air Quality Management District (the "**Air Management District**") and any other governmental agency responsible for or having jurisdiction over matters related to air quality, together with copies of all correspondence between Tenant and the Air Management District or such other agencies. Tenant acknowledges that The Gateway, the real estate development in which the Project is located, is a first-class office and R&D campus and that "objectionable odors" is a subjective standard. Accordingly, Tenant agrees that if odors in the area of the Building lead to complaints from other tenants and occupants of The Gateway, and if Landlord reasonably determines, based upon observation and/or a review of Tenant's records, that such odors emanated from the Premises, Tenant shall promptly use its best efforts to correct the situation at Tenant's sole cost and expense. Such measures to be taken by Tenant shall include, without limitation, the hiring of special consultants and the making of capital improvements to the Premises. Tenant shall make its laboratory records available to Landlord for review in connection with any complaints by tenants or occupants of the Gateway and as otherwise

reasonably requested by Landlord. Any failure of Tenant to comply with its obligations under this Paragraph 9.1(a) shall constitute an immediate Default under this Lease.

(b) The Premises shall not be used to create any nuisance or trespass, for any illegal purpose, for any purpose not permitted by Laws, for any purpose that would invalidate the insurance or increase the premiums for insurance on the Premises, the Building or the Project or for any purpose or in any manner that would unreasonably interfere with other tenants' use or occupancy of the Project. Tenant agrees to pay to Landlord, as Additional Rent, any increases in premiums on policies resulting from Tenant's Permitted Use or any other use or action by Tenant or Tenant's Agents which increases Landlord's premiums or requires additional coverage by Landlord to insure the Premises. Tenant agrees not to overload the floor(s) of the Building.

9.2 Compliance with Governmental Regulations and Private Restrictions

(a) Subject to the terms and conditions of the Lease, Landlord covenants that the Base Building Improvements shall be constructed in compliance with all applicable building code requirements in effect and actively being enforced by the City of South San Francisco (the "**City**") on the date the building permits are issued to the Contractor therefor and substantially in accordance with the Base Building Plans and Specifications. Any claims by Tenant under this Paragraph 9.2 shall be made in writing not later than one (1) year after the Commencement Date of the Lease. In the event Tenant fails to deliver a written claim to Landlord on or before such date, then Landlord shall be conclusively deemed to have satisfied its obligations under this paragraph. The covenants contained in this paragraph are subject to Paragraph 39 below of the Lease and are made specifically and exclusively for the benefit of the original Tenant and any assignee or sublessee under a Permitted Transfer pursuant to Paragraph 23.4 below.

(b) Tenant and Tenant's Agents shall, at Tenant's expense, faithfully observe and comply with (1) all municipal, state and federal laws, statutes, codes, rules, regulations, ordinances, requirements, and orders (collectively, "**Laws**"), now in force or which may hereafter be in force pertaining to the Premises or Tenant's use of the Premises, the Building or the Project, including, without limitation, any Laws requiring installation of fire sprinkler systems, seismic reinforcement and related alterations, whether substantial in cost or otherwise; provided, however, that except as provided in Paragraph 9.3 below, Tenant shall not be required to make or, except as provided in Paragraph 4 above, pay for, structural changes to the Premises or the Building not related to Tenant's specific use of the Premises unless the requirement for such changes is imposed as a result of any improvements or additions made or proposed to be made at Tenant's request; (2) all recorded covenants, conditions and restrictions affecting the Project ("**Private Restrictions**") now in force or which may hereafter be in force, Landlord hereby specifically reserving the right to hereafter adopt such Private Restrictions and to impose the same on the Project or any portion thereof, provided that such Private Restrictions adopted after the date hereof shall not unreasonably impair Tenant's use of the Premises for any Permitted Use; and (3) any and all rules and regulations set forth in ***Exhibit D*** and any other rules and regulations now or hereafter promulgated by Landlord (collectively, the **"Rules and Regulations"**). Without limiting the generality of the foregoing, Tenant hereby covenants and agrees for itself, its successors and assigns, and all persons claiming under or through it, that this Lease is made and accepted upon and subject to the condition that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises herein leased, nor shall Tenant, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein leased. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord be a party

thereto or not, that Tenant has violated any such Laws or Private Restrictions, shall be conclusive of that fact as between Landlord and Tenant.

9.3 Compliance with Americans with Disabilities Act

Landlord and Tenant hereby agree and acknowledge that the Premises, the Building and/or the Project may be subject to, among other Laws, the requirements of the Americans with Disabilities Act, a federal law codified at 42 U.S.C. 12101 *et seq.*, including, but not limited to, Title III thereof, and all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including all requirements of Title 24 of the State of California, as the same may be in effect on the date of this Lease and may be hereafter modified, amended or supplemented (collectively, the "**ADA**"). Landlord shall cause the Base Building Improvements to be constructed in compliance with the ADA as currently administered by the City. Any Tenant Improvements to be constructed hereunder or Alterations (as hereinafter defined) made during the Term shall be in compliance with the requirements of the ADA, and all costs incurred for purposes of compliance therewith shall be a part of and included in the costs of the Tenant Improvements or the Alterations, as applicable. Tenant shall be solely responsible for conducting its own independent investigation of this matter and for ensuring that the design of all Tenant Improvements strictly complies with all requirements of the ADA. Subject to reimbursement pursuant to Paragraph 4 above, if any barrier removal work or other work is required to the Building, the Common Areas or the Project under the ADA, then such work shall be the responsibility of Landlord; provided, however, that if such work is required under the ADA as a result of Tenant's use of the Premises or any work or Alteration made to the Premises by or on behalf of Tenant, then such work shall be performed by Landlord at the sole cost and expense of Tenant; and provided, further, that if any such work is required under the ADA as a result of another tenant's specific use of its premises or improvements made by another tenant to its premises, then the cost of such work shall be solely chargeable to such tenant and Tenant shall have no responsibility therefor. Except as otherwise expressly provided in this provision, Tenant shall be responsible at its sole cost and expense for fully and faithfully complying with all applicable requirements of the ADA, including, without limitation, not discriminating against any disabled persons in the operation of Tenant's business in or about the Premises, and offering or otherwise providing auxiliary aids and services as, and when, required by the ADA. Within ten (10) days after receipt, Tenant shall advise Landlord in writing, and provide Landlord with copies of (as applicable), any notices alleging violation of the ADA relating to any portion of the Premises, the Building or the Project; any claims made or threatened orally or in writing regarding noncompliance with the ADA and relating to any portion of the Premises, the Building or the Project; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Premises, the Building or the Project. Tenant shall and hereby agrees to protect, defend (with counsel acceptable to Landlord) and hold Landlord and Landlord's Agents harmless and indemnify Landlord and Landlord's Agents from and against all liabilities, damages, claims, losses, penalties, judgments, charges and expenses (including attorneys' fees, costs of court and expenses necessary in the prosecution or defense of any litigation including the enforcement of this provision) arising from or in any way related to, directly or indirectly, Tenant's or Tenant's Agents' violation or alleged violation of the ADA. Landlord shall and hereby agrees to protect, defend (with counsel acceptable to Tenant) and hold Tenant and Tenant's Agents harmless and indemnify Tenant and Tenant's Agents from and against all liabilities, damages, claims, losses, penalties, judgments, charges and expenses (including attorneys' fees, costs of court and expenses necessary in the prosecution or defense of any litigation including the enforcement of this provision) arising from or in any way related to, directly or indirectly, Landlord's failure to have the Base Building Improvements constructed in compliance with the ADA as currently administered by the City.

10. ACCEPTANCE OF PREMISES

By taking possession of the Premises hereunder Tenant accepts the Premises as suitable for Tenant's intended use and as being in good and sanitary operating order, condition and repair, AS IS, and without representation or warranty by Landlord as to the condition, use or occupancy which may be made thereof, except for Landlord's express obligations described in Exhibit A, and Landlord's covenant set forth in Paragraph 9.2(a) above. Any exceptions to the foregoing must be by written agreement executed by Landlord and Tenant.

11. SURRENDER

11.1 Surrender at Expiration or Termination

Tenant agrees that on the last day of the Term, or on the sooner termination of this Lease, Tenant shall surrender the Premises to Landlord (i) in good condition and repair (damage by acts of God, fire, and normal wear and tear excepted), but with all interior walls painted or cleaned so they appear painted and, where appropriate, patched, any carpets cleaned, all floors cleaned and waxed, and all plumbing fixtures in good condition and working order and, where appropriate, capped, and (ii) otherwise in accordance with Paragraph 32.9. Normal wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Lease.

11.2 Removal Obligations and Abandonment of Tenant's Property

On or before the expiration or sooner termination of this Lease, Tenant shall, in accordance with this Paragraph 11, and at Tenant's sole cost and expense, remove, and repair any damage caused by such removal, (A) all of Tenant's Property (as hereinafter defined) and Tenant's signage from the Premises, the Building and the Project, and (B) all Tenant Improvements and Alterations required to be removed pursuant to Paragraph 12 below and Section B.5 of ***Exhibit B*** hereto, whichever is applicable. In addition to the foregoing, upon the written request of Landlord, which request may be given at any time prior to the expiration or sooner termination of this Lease, Tenant shall, at its sole cost and expense, on the expiration or sooner termination of this Lease, remove the Bridge, if any, restore the facades of the Building and the 901 Gateway Premises to a condition required by Landlord, and repair any damage caused by such removal and restoration. Any of Tenant's Property not so removed by Tenant as required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention and disposition of such property; provided, however, that Tenant shall remain liable to Landlord for all costs incurred in storing and disposing of such abandoned property of Tenant. All Tenant Improvements and Alterations except those which Tenant is required to remove pursuant to Paragraph 12 below hereto shall remain in the Premises as the property of Landlord.

11.3 Indemnification

If the Premises are not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Paragraph 11 and Paragraph 32.9 below, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any loss or liability resulting from any claim against Landlord made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Landlord due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, reasonable attorneys' fees and costs.

12. ALTERATIONS AND ADDITIONS

12.1 Landlord's Consent Required

Tenant shall not make, or permit to be made, any alteration, addition or improvement (hereinafter referred to individually as an "**Alteration**" and collectively as the "**Alterations**") to the Premises or any part thereof without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Landlord shall have the right in its sole and absolute discretion to consent or to withhold its consent to any Alteration which affects the structural portions of the Premises, the Building or the Project or the Systems serving the Premises, the Building and/or the Project or any portion thereof.

12.2 Alterations Permitted Without Landlord's Consent; Removal Requirements

Notwithstanding the foregoing, but subject to the conditions set forth below, Tenant may, without Landlord's consent, make Alterations within the Premises, provided that (i) such Alterations do not affect the structural portions of the Premises, the Building or the Project or the Systems, and (ii) the cost, on an individual project basis, of any Alteration or related series of Alterations is less than Thirty Thousand Dollars ($30,000.00), and all Alterations in the aggregate do not exceed Two Hundred Thirty Thousand Dollars ($230,000.00) over the Term. The Alterations made by Tenant without the consent of Landlord in accordance with this Paragraph 12.2 shall be herein referred to as the "**Permitted Alterations**."

12.3 Alterations at Tenant's Expense

Any Alteration to the Premises shall be at Tenant's sole cost and expense, in compliance with all applicable Laws and all requirements requested by Landlord, including, without limitation, the requirements of any insurer providing coverage for the Premises or the Project or any part thereof, and in accordance with plans and specifications approved in writing by Landlord (except for Permitted Alterations), which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, with respect to Alterations that may be made without Landlord's prior consent as permitted above, Landlord agrees that Tenant shall not be required to submit plans and specifications for prior approval of the Landlord and that Landlord shall not require prior approval of the installing contractor; provided, however, that if Tenant does not obtain the prior approval of plans and specifications for any Alteration, then subject to the terms of Paragraph 12.4(b) below, Landlord may, by notice to Tenant given not later than ninety (90) days prior to the Expiration Date (except in the event of a termination of this Lease prior to the scheduled Expiration Date, in which event no advance notice shall be required), require Tenant, at Tenant's expense, to remove, and repair any damage caused by removal of, any and all such Alterations. If Tenant does not obtain Landlord's prior consent as to the installing contractor, Tenant shall be responsible for maintaining harmonious labor relations with all contractors and service providers servicing the Premises, Building and/or Project. In addition, with respect to any Permitted Alterations made without Landlord's prior consent as permitted above, Tenant agrees to meet with Landlord, at Landlord's request, not more than once in every calendar year, to discuss any such Permitted Alterations that have been made to the Premises (each such meeting being herein referred to as an "**Alterations Meeting**"). Tenant shall provide to Landlord within forty five (45) days after written request as-built plans and specifications for any Alterations (including, without limitation, any Permitted Alterations) made by Tenant to the Premises. Notwithstanding anything in this Lease to the contrary, any approval by Landlord of any drawings, plans or specifications prepared on behalf of Tenant shall not in any way bind Landlord, create any responsibility or liability on the part of Landlord for the completeness of the same, their design sufficiency or compliance with applicable statutes, ordinances or regulations or constitute a representation or warranty by Landlord as to the adequacy or sufficiency of such drawings, plans or specifications, or the improvements to which they relate, but such approval shall merely evidence the consent of Landlord to such drawings, plans or specifications.

12.4 Requirements of Request for Approval

(a) Any Alterations requiring the prior consent of Landlord shall contain a request that Landlord specify in writing to Tenant those Alterations that Tenant will be required to remove in accordance with Paragraph 11.1 upon expiration or sooner termination of this Lease. Upon receipt of such request, Landlord shall make such determination and respond to Tenant within twenty (20) business days of such request. Landlord's failure to respond within such time shall be deemed to mean that Tenant shall not be required to remove such Alterations upon the expiration or sooner termination of this Lease.

(b) In the event Tenant constructs or installs any Permitted Alterations without the consent of Landlord, then Tenant shall have the right at the next succeeding Alterations Meeting to request that Landlord specify in writing whether Tenant will be required to remove all or any portion of such Permitted Alterations upon expiration or sooner termination of this Lease. Upon receipt of such request, Landlord shall make such determination and respond to Tenant within twenty (20) business days of such request. Landlord's failure to respond within such time shall conclusively be deemed to be an irrevocable waiver of Landlord's right to demand their removal.

12.5 Permits Required; Insurance Required

12.5.1 Permits

Before Alterations may begin, valid building permits or other permits or licenses required must be furnished to Landlord, and, once the Alterations begin, Tenant will diligently and continuously pursue their completion. Landlord may monitor construction of the Alterations, either through its own employees or through a construction manager retained by Landlord.

12.5.2 Insurance

Tenant shall maintain during the course of any construction (including, without limitation, during the construction of the Tenant Improvements and any Alterations), at its sole cost and expense, builders' risk insurance for the amount of the completed value of the Alterations and Tenant Improvements on an all-risk non-reporting form covering all improvements under construction, including building materials, and other insurance in amounts and against such risks as Landlord shall reasonably require in connection with the Alterations and Tenant Improvements, including, without limitation, naming Landlord and Landlord's lender as loss payee under any such policy. In addition to and without limitation on the generality of the foregoing, Tenant shall ensure that its contractor(s) procure and maintain in full force and effect during the course of construction a "broad form" commercial general liability and property damage policy of insurance naming Landlord, Tenant and Landlord's lenders as additional insureds. The minimum limit of coverage of the aforesaid policy shall be in the amount of not less than Three Million Dollars ($3,000,000.00) for injury or death of one person in any one accident or occurrence and in the amount of not less than Three Million Dollars ($3,000,000.00) for injury or death of more than one person in any one accident or occurrence, and shall contain a severability of interest clause or a cross liability endorsement. Such insurance shall further insure Landlord and Tenant against liability for property damage of at least One Million Dollars ($1,000,000.00).

12.6 Title to Improvements; Removal Rights; Financing

Except as otherwise expressly stated herein or agreed to in writing between the parties, the Tenant Improvements actually paid for by Tenant and all Alterations, including, but not limited to, heating, lighting, electrical, air conditioning, fixed partitioning, drapery, wall covering and paneling, built-in cabinet work and carpeting installations made by Tenant, together with all property that has become an integral part of the Premises or the Building, shall upon installation become the property of Tenant; provided, however, that title to all such Tenant Improvements, Alterations and property shall

automatically transfer to Landlord upon the expiration of the Term or the sooner termination of this Lease without the payment of any consideration or the execution of any transfer documents. Notwithstanding the foregoing, Tenant shall retain title to and ownership of Tenant's Property at all times. For purposes of this Paragraph 12.6 and Paragraph 49.4.1 below, Landlord shall be deemed to have paid for those Tenant Improvements funded out of the Initial Tenant Improvement Allowance (as hereinafter defined) and Tenant shall be deemed to have paid for the remaining Tenant Improvements, including any Tenant Improvements funded out of the Deferred Allowance. As used herein, "**Initial Tenant Improvement Allowance**" means the initial $46.70 per square foot of the Tenant Improvement Allowance provided by Landlord hereunder.

12.7 Computer, Utility and Telecommunications Equipment

No private telephone systems, utilities and/or other related computer, utility or telecommunications equipment or lines may be installed without Landlord's prior written consent, which consent shall not be unreasonably withheld. If Landlord gives such consent, all equipment must be installed within the Premises and, unless Landlord, at the time of installation, notifies Tenant in writing that removal will be required, left in the Premises and surrendered to Landlord upon the expiration or sooner termination of this Lease.

12.8 Notice and Opportunity to Post Notice of Nonresponsibility

Tenant agrees not to proceed to make any Alterations, notwithstanding consent from Landlord to do so, without fifteen (15) days' prior written notice to Landlord, in order that Landlord may post appropriate notices to avoid any liability to contractors or material suppliers for payment for Tenant's improvements. Tenant will at all times permit such notices to be posted and to remain posted until the completion of work.

13. MAINTENANCE AND REPAIRS OF PREMISES

13.1 Maintenance by Tenant

Subject to the provisions of Paragraph 13.2, 21 and 22 below, throughout the Term, Tenant shall, at its sole expense, (1) keep and maintain in good order and condition the Building and the Premises and repair the Building and the Premises and every part thereof, including interior and exterior glass, windows, window frames and casements, interior and exterior doors and door frames and door closers; interior and exterior lighting (including, without limitation, light bulbs and ballasts), the roof covering; the Systems serving the Premises and the Building; interior and exterior signage, interior demising walls and partitions, equipment, interior painting and interior walls and floors, and the roll-up doors, ramps and dock equipment, including, without limitation, dock bumpers, dock plates, dock seals, dock levelers and dock lights located in or on the Premises (excepting only those portions of the Building or the Project to be maintained by Landlord, as provided in Paragraph 13.2 below), (2) furnish all expendables, including light bulbs, paper goods and soaps, used in the Premises, and (3) keep and maintain in good order and condition and repair and replace all of Tenant's security systems in or about or serving the Premises. Tenant shall not do nor shall Tenant allow Tenant's Agents to do anything to cause any damage, deterioration or unsightliness to the Premises, the Building or the Project. Tenant shall perform its obligations under this Paragraph 13.1 in accordance with maintenance and repair standards adopted by Landlord from time to time for the Project. Tenant shall cause to be furnished to Landlord on not less than a quarterly basis maintenance reports on all Systems and the roof of the Building prepared by a qualified vendor or consultant, and Tenant shall promptly perform any maintenance tasks recommended by such reports or otherwise required by Landlord to cause the Premises and the Systems to comply with Landlord's maintenance and repair standards.

13.2 Maintenance by Landlord

Subject to the provisions of Paragraphs 13.1, 21 and 22, and further subject to Tenant's obligation under Paragraph 4 to reimburse Landlord, in the form of Additional Rent, for Tenant's Proportionate Share(s) of the Project and the Building, as applicable, of the cost and expense of the following items, Landlord agrees to repair and maintain the Common Areas in good order and condition, including, without limitation, the Parking Areas, pavement, landscaping, sprinkler systems, sidewalks, driveways, curbs, and lighting systems in the Common Areas. Subject to the provisions of Paragraphs 13.1, 21 and 22, Landlord, at its own cost and expense, agrees to repair and maintain the following items: the structural portions of the roof (specifically excluding the roof coverings), the foundation, the footings, the floor slab, and the load bearing walls and exterior walls of the Building (excluding any glass and any routine maintenance, including, without limitation, any painting, sealing, patching and waterproofing of such walls).

13.3 Landlord's Right to Perform Tenant's Obligations

Notwithstanding anything in this Paragraph 13 to the contrary, Landlord shall have the right to either repair or to require Tenant to repair any damage to any portion of the Premises, the Building and/or the Project caused by or created due to any act, omission, negligence or willful misconduct of Tenant or Tenant's Agents and to restore the Premises, the Building and/or the Project, as applicable, to the condition existing prior to the occurrence of such damage; provided, however, that in the event Landlord elects to perform such repair and restoration work, Tenant shall reimburse Landlord upon demand for all costs and expenses incurred by Landlord in connection therewith. Landlord's obligation hereunder to repair and maintain is subject to the condition precedent that Landlord shall have received written notice of the need for such repairs and maintenance and a reasonable time to perform such repair and maintenance. Tenant shall promptly report in writing to Landlord any defective condition which Landlord is required to repair, and failure to so report such defects shall make Tenant responsible to Landlord for the costs and expenses of repairing any Preventable Damage occurring after the date Tenant obtains actual knowledge of such defective condition and any liability incurred by Landlord by reason of Tenant's failure to notify Landlord of such defective condition in a timely manner as provided herein. As used herein, "**Preventable Damage**" means any damage or deterioration which could have been prevented had Landlord received timely notice of the defective condition. Nothing contained herein shall be deemed or construed to limit Tenant's obligations under Paragraph 16 below.

13.4 Tenant's Waiver of Rights

Tenant hereby expressly waives all rights to make repairs at the expense of Landlord or to terminate this Lease, as provided for in California Civil Code Sections 1941 and 1942, and 1932(1), respectively, and any similar or successor statute or law in effect or any amendment thereof during the Term.

14. LANDLORD'S INSURANCE

At all times during the Term of this Lease, Landlord shall purchase and keep in force "all risk" property insurance covering the Base Building Improvements, the Tenant Improvements and all Alterations made to the Premises by Tenant in accordance with the terms of Paragraph 12 above, in accordance with Landlord's customary insurance program for comparable properties. Tenant shall provide Landlord with such information as may be requested by Landlord or its insurers concerning the value of the Tenant Improvements or any Alterations. Tenant acknowledges and agrees that Landlord shall have no obligation to maintain property insurance covering any alterations, additions or improvements made to the Premises other than Alterations made in strict accordance with Paragraph 12 (such other alterations, additions or improvements being herein referred to as "**Unpermitted Alterations**"), and Tenant hereby agrees to indemnify and hold harmless Landlord and Landlord's Agents from and against any and all Losses (as hereinafter defined) resulting from or arising out of the making of any such Unpermitted Alterations. Tenant shall, at its sole cost and expense, comply with any and all reasonable requirements pertaining to the Premises, the Building and the Project of any insurer necessary for the maintenance of reasonable property damage and commercial general liability insurance, covering the Building and the Project. Landlord, at Tenant's cost, may maintain "Loss of Rents" insurance, insuring that the Rent will be paid in a timely manner to Landlord for a period of at least twelve (12) months if the Building or any portion thereof are destroyed or rendered unusable or inaccessible by any cause insured against under this Lease.

15. TENANT'S INSURANCE

15.1 Commercial General Liability Insurance

At all times during the Term of this Lease, Tenant shall, at Tenant's expense, secure and keep in force a Commercial General Liability insurance policy covering the Premises, insuring Tenant, and naming Landlord and its lenders as additional insureds, against liability arising out of the ownership, use, occupancy or maintenance of the Premises. The minimum limit of coverage of such policy shall be in the amount of not less than Three Million Dollars ($3,000,000.00) for each occurrence combined single limit for bodily injury and property damage, shall include contractual liability coverage (which shall include coverage for Tenant's indemnification obligations in this Lease, provided that the amount of such coverage shall not be construed to limit Tenant's indemnification obligations hereunder), and shall contain severability of interests and cross liability coverage clauses and/or endorsements. Such insurance shall be endorsed to be primary and non-contributory to any insurance Landlord may carry. Landlord may from time to time require reasonable increases in any such limits if Landlord believes that additional coverage is necessary or desirable. The limit of any insurance shall not limit the liability of Tenant hereunder. No policy maintained by Tenant under this Paragraph 15.1 shall contain a deductible greater than Five Thousand Dollars ($5,000.00). Such policies of insurance shall be issued as primary policies and not contributing with or in excess of coverage that Landlord may carry.

15.2 Property Insurance

At all times during the Term of this Lease, Tenant shall, at Tenant's expense, maintain in full force and effect special form property insurance on all of its personal property, possessions, furniture, furnishings, trade or business fixtures, equipment and such other items listed on ***Exhibit F*** (collectively, "**Tenant's Property**") located on the Premises. Such special form property insurance shall be on a full replacement cost basis and shall be written to cover all risks of direct loss or damage, including, but not be limited to, theft, water damage and sprinkler leakage. No such policy shall contain a deductible greater than Five Thousand Dollars ($5,000.00). During the Term of this Lease the proceeds from any such policy or policies of insurance shall be used for the repair or replacement of Tenant's Property. Landlord shall have no interest in the insurance upon Tenant's Property and will sign all documents

reasonably necessary in connection with the settlement of any claim or loss by Tenant. Landlord will not carry insurance on Tenant's Property.

15.3 Worker's Compensation Insurance; Employer's Liability Insurance

At all times during the Term of this Lease, Tenant shall, at Tenant's expense, maintain in full force and effect worker's compensation insurance with not less than the minimum limits required by Law, and employer's liability insurance with a minimum limit of coverage of One Million Dollars ($1,000,000) per accident.

15.4 Business Interruption Insurance

Tenant shall, at all times during the Term of this Lease, maintain in full force and effect loss of income and extra expense insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings or extra expenses attributable to or resulting from all perils commonly insured under a special form policy of property insurance.

15.5 Insurance Standards and Evidence of Coverage

All insurance required to be carried by Tenant hereunder shall be maintained with insurance companies authorized to do business in the State of California for the issuance of the applicable type of insurance coverage and rated A:XIII or better in Best's Key Rating Guide. Notwithstanding the foregoing, Landlord hereby approves General Star Indemnity as the carrier of the insurance required under Paragraph 15.1 above, provided that General Star Indemnity shall at all times during the Term maintain a Best's Key Rating of not less than A++:VIII. Tenant shall deliver to Landlord certificates of insurance and true and complete copies of any and all endorsements required herein for all insurance required to be maintained by Tenant hereunder at the time of execution of this Lease by Tenant. Tenant shall, at least thirty (30) days prior to expiration of each policy, furnish Landlord and the other parties named as additional insureds with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable except after thirty (30) days' prior written notice to Landlord and the other parties named as additional insureds as required in this Lease (except for cancellation for nonpayment of premium, in which event cancellation shall not take effect until at least ten (10) days' notice has been given to Landlord and the parties named as additional insureds hereunder).

16. INDEMNIFICATION

16.1 Of Landlord

Tenant shall indemnify and hold harmless Landlord and Landlord's advisors, employees, partners, shareholders and directors against and from any and all claims, liabilities, judgments, costs, demands, causes of action and expenses (including, without limitation, reasonable attorneys' fees) (collectively, "**Losses**") arising from (1) the use of the Premises, the Building or the Project by Tenant or Tenant's Agents, or from any activity done, permitted or suffered by Tenant or Tenant's Agents in or about the Premises, the Building or the Project, and (2) any act, neglect, fault, willful misconduct or omission of Tenant or Tenant's Agents, or from any breach or default in the terms of this Lease by Tenant or Tenant's Agents, and (3) any action or. proceeding brought on account of any matter in items (1) or (2); provided, however, that in no event shall Tenant be required to indemnify Landlord against any claims, demands or losses resulting from any failure of Landlord to observe any of the terms and conditions of this Lease, including, without limitation, the covenant set forth in Paragraph 9.2(a) above, in each case to the extent such failure or breach has persisted for an unreasonable period of time after written notice of such failure or breach. If any action or proceeding is brought against Landlord by reason of any such claim, upon notice from Landlord, Tenant shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. As a material part of the consideration to Landlord, Tenant hereby releases Landlord and Landlord's Agents from responsibility for, waives its entire claim

of recovery for and assumes all risk of (i) damage to property or injury to persons in or about the Premises, the Building or the Project from any cause whatsoever (except that which is caused by the gross negligence or willful misconduct of Landlord or Landlord's Agents or by the failure of Landlord to observe any of the terms and conditions of this Lease, if such failure has persisted for an unreasonable period of time after written notice of such failure), or (ii) loss resulting from business interruption or loss of income at the Premises. The obligations of Tenant under this Paragraph 16.1 shall survive the expiration or earlier termination of this Lease.

16.2 Of Tenant

Landlord shall indemnify and hold harmless Tenant and Tenant's employees, partners, shareholders and directors against and from any and all Losses relating to the Project and arising from (1) the gross negligence or willful misconduct of Landlord or Landlord's Agents, (2) the failure of Landlord to observe any of the terms and conditions of this Lease, if such failure has persisted for an unreasonable period of time after written notice of such failure, and (3) any action or proceeding brought on account of any matter in items (1) or (2). If any action or proceeding is brought against Tenant by reason of any such claim, upon notice from Tenant, Landlord shall defend the same at Landlord's expense by counsel reasonably satisfactory to Landlord. The obligations of Landlord under this Paragraph 16.2 shall survive any termination of this Lease.

16.3 No Impairment of Insurance

The foregoing indemnity shall not relieve any insurance carrier of its obligations under any policies required to be carried by either party pursuant to this Lease, to the extent that such policies cover the peril or occurrence that results in the claim that is subject to the foregoing indemnity.

17. SUBROGATION

Landlord and Tenant hereby mutually waive any claim against the other and its Agents for any loss or damage to any of their property located on or about the Premises, the Building or the Project that is caused by or results from perils covered by the property insurance required to be carried by the respective parties in accordance with Paragraphs 14 and 15 of this Lease, whether or not due to the negligence of the other party or its Agents. Because the foregoing waivers will preclude the assignment of any claim by way of subrogation to an insurance company or any other person, each party now agrees to immediately give to its insurer written notice of the terms of these mutual waivers and shall have their insurance policies endorsed to prevent the invalidation of the insurance coverage because of these waivers. Nothing in this Paragraph 17 shall relieve a party of liability to the other for failure to carry insurance required by this Lease.

18. SIGNS

Tenant shall not place or permit to be placed in, upon, or about the Premises, the Building or the Project any exterior lights, decorations, balloons, flags, pennants, banners, advertisements or notices, or erect or install any signs, windows or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises without obtaining Landlord's prior written consent or without complying with Landlord's signage program, as the same may be modified by Landlord from time to time, and with all applicable Laws, and will not conduct, or permit to be conducted, any sale by auction on the Premises or otherwise on the Project. Tenant shall remove any sign, advertisement or notice placed on the Premises, the Building or the Project by Tenant upon the expiration of the Term or sooner termination of this Lease, and Tenant shall repair any damage or injury to the Premises, the Building or the Project caused thereby, all at Tenant's expense. If any signs are not removed, or necessary repairs not made, Landlord shall have the right to remove the signs and repair any damage or injury to the Premises, the Building or the Project at Tenant's sole cost and expense.

19. FREE FROM LIENS

Tenant shall keep the premises, the Building and the Project free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant in accordance with the provisions of this Paragraph 19. In the event that Tenant shall not, within ten (10) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Landlord shall have in addition to all other remedies provided herein and by law the right but not the obligation to cause same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Landlord by Tenant upon demand. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Landlord shall deem proper for the protection of Landlord, the Premises, the Building and the Project, from mechanics' and materialmen's liens. Tenant agrees not to proceed to perform any repairs or construction on the Premises without fifteen (15) days' prior written notice to Landlord in order that Landlord may post appropriate notices to avoid any liability to contractors or material suppliers for payment for Tenant's work.

20. ENTRY BY LANDLORD

Tenant shall permit Landlord and Landlord's Agents to enter into and upon the Premises at all reasonable times upon twenty-four (24) hours' notice (except in the case of an emergency, in which event no advance notice shall be required) for the purpose of inspecting the same or showing the Premises to prospective purchasers, lenders or tenants or to alter, improve, maintain and repair the Premises or the Building as required or permitted of Landlord under the terms hereof, or for any other reasonable business purpose, without any rebate of Rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises thereby occasioned; and Tenant shall permit Landlord to post notices of non-responsibility and ordinary "for sale" or "for lease" signs. Notwithstanding the foregoing, Landlord shall only enter the Premises for the purpose of showing the same to prospective tenants during the last ten (10) months of the Term. No such entry shall be construed to be a forcible or unlawful entry into, or a detailer of, the Premises, or an eviction of Tenant from the Premises. Tenant's representatives shall have the right to accompany Landlord on any inspection of the Premises, provided that Tenant's representatives are available at the time of such inspections. Landlord may temporarily close entrances, doors, corridors, elevators or other facilities without liability to Tenant by reason of such closure in the case of an emergency and when Landlord otherwise reasonably deems such closure necessary.

21. DESTRUCTION AND DAMAGE

21.1 Damage Covered by Extended Coverage Insurance

If the Premises are damaged by fire or other perils covered by extended coverage insurance, Landlord shall, at Landlord's option:

21.1.1 Material Damage; Insured Loss

In the event of material damage to the Premises (which shall mean damage or destruction of a nature such that all required permits cannot be reasonably obtained and/or the Premises can not be substantially repaired and restored to the condition existing immediately prior to such damage or destruction within three hundred sixty-five (365) days after the date Landlord obtains actual knowledge of such destruction (the "**Casualty Discovery Date**")), Landlord may elect either to commence promptly to repair and restore the Premises and prosecute the same diligently to completion, in which event this Lease shall remain in full force and effect; or not to repair or restore the Premises, in which event this Lease shall terminate. Landlord shall give Tenant written notice of its intention within sixty (60) days

after the Casualty Discovery Date. If Landlord elects in writing not to restore the Premises, this Lease shall be deemed to have terminated as of the date of such destruction.

21.1.2 Minor Damage; Insured Loss

In the event of minor damage to the Premises (which shall mean damage or destruction of a nature such that all required permits can be reasonably obtained and the Premises may be substantially repaired or restored to the condition existing immediately prior to such damage or destruction within three hundred sixty-five (365) days after the Casualty Discovery Date) for which Landlord will receive insurance proceeds sufficient to cover the cost to repair and restore such partial destruction, Landlord shall commence and proceed diligently with the work of repair and restoration, in which event this Lease shall continue in full force and effect. If the insurance proceeds (plus any amounts Tenant may elect or is obligated to contribute) are not sufficient to cover the cost of such repair and restoration, Landlord may elect either to so repair and restore, in which event this Lease shall continue in full force and effect, or not to repair or restore, in which event this Lease shall terminate. In either case, Landlord shall give written notice to Tenant of its intention within sixty (60) days after the Casualty Discovery Date. If Landlord elects, in writing, not to restore the Premises, this Lease shall be deemed to have terminated as of the date of such partial destruction.

21.1.3 Calculation of Restoration Period

Following the occurrence of any casualty event, Landlord shall obtain from a licensed general contractor selected by Landlord (the "**Restoration Contractor**") an estimate of the time required to obtain all permits and to fully repair and restore the Premises. In the event the Restoration Contractor determines that the work of repair and restoration shall require more than three hundred sixty-five (365) days to complete, Tenant shall have the right to discuss such timing with the Restoration Contractor and, with the approval of Landlord, to discuss modifications to the scope of work in an effort to reduce the repair and restoration time to a period of less than three hundred sixty-five days; provided, however, that in the event of any disagreement between the parties as to the estimated length of the restoration period or the scope of work required, the determination of Landlord and the Restoration Contractor shall control.

21.2 Uninsured Loss

If the Premises are damaged by any peril not covered by Landlord's property insurance, and the cost to repair such damage exceeds any amount Tenant may agree to contribute, Landlord may elect either to commence promptly to repair and restore the Premises and prosecute the same diligently to completion, in which event this Lease shall remain in full force and effect; or not to repair or restore the Premises, in which event this Lease shall terminate. Landlord shall give Tenant written notice of its intention within sixty (60) days after the Casualty Discovery Date. If Landlord elects, in writing, not to restore the Premises, this Lease shall be deemed to have terminated as of the date on which Tenant surrenders possession of the Premises to Landlord.

21.3 Casualty During Last Twelve Months of Term

If fifty percent (50%) or more of the Building is damaged or destroyed during the last twelve (12) months of the Term (unless Tenant has remaining extension options and has previously validly exercised such options or validly exercises such options within ten (10) days after the Casualty Discovery Date), Landlord shall have the option to terminate this Lease, exercisable by notice to Tenant within sixty (60) days after the Casualty Discovery Date.

21.4 Tenant's Right to Terminate Lease

If the Premises is damaged or destroyed to the extent that the Premises cannot be substantially repaired or restored by Landlord within three hundred sixty-five (365) days after the Casualty Discovery Date, Tenant may terminate this Lease immediately upon notice thereof to Landlord, which

notice shall be given, if at all, not later than fifteen (15) days after Landlord notifies Tenant of Landlord's estimate of the period of time required to repair such damage or destruction.

21.5 Rent Abatement

In the event of repair and restoration as herein provided, the monthly installments of Base Rent and Additional Rent shall be abated proportionately to the extent Tenant's use of the Premises is impaired during the period of such repair or restoration, but only to the extent of rental abatement insurance proceeds actually received by Landlord. The number of parking spaces allocated to Tenant hereunder shall be reduced on a proportionate basis in the event any of the parking spaces in the Parking Areas are eliminated as a result of such damage or destruction affecting such Parking Areas. Except as expressly provided above with respect to abatement of Base Rent, Tenant shall have no claim against Landlord for, and hereby releases Landlord and Landlord's Agents from responsibility for and waives its entire claim of recovery for any cost, loss or expense suffered or incurred by Tenant as a result of any damage to or destruction of the Premises, the Building or the Project or the repair or restoration thereof, including, without limitation, any cost, loss or expense resulting from any loss of use of the whole or any part of the Premises, the Building or the Project and/or any inconvenience or annoyance occasioned by such damage, repair or restoration.

21.6 Restoration of Base Building Improvements and Tenant Improvements

If Landlord is obligated to or elects to repair or restore as herein provided, Landlord shall repair or restore only the Base Building Improvements constructed pursuant to the terms of this Lease, substantially to their condition existing immediately prior to the occurrence of the damage or destruction; and Tenant shall promptly repair and restore, at Tenant's expense, the Tenant Improvements and Tenant's Alterations. Landlord shall make available to Tenant to pay Restoration Costs (as hereinafter defined) any insurance proceeds actually collected by Landlord allocable to the Tenant Improvements and Alterations. Such proceeds shall be disbursed by Landlord in accordance with customary construction-lending practices and disbursement procedures (including, without limitation, the creation of a retention). As used herein, "**Restoration Costs**" means costs actually incurred by Tenant in repairing and restoring the Tenant Improvements and any Alterations made by Tenant to the Premises.

21.7 Waiver

Tenant hereby waives the provisions of California Civil Code Section 1932(2) and Section 1933(4) which permit termination of a lease upon destruction of the leased premises, and the provisions of any similar law now or hereinafter in effect, and the provisions of this Paragraph 21 shall govern exclusively in case of such destruction.

22. CONDEMNATION

(a) If twenty-five percent (25%) or more of the Building or fifty percent (50%) or more of the Designated Parking Areas (as hereinafter defined) is taken for any public or quasi-public purpose by any lawful governmental power or authority, by exercise of the right of appropriation, inverse condemnation, condemnation or eminent domain, or sold to prevent such taking (each such event being referred to as a "**Condemnation**"), Landlord may, at its option, terminate this Lease as of the date title vests in the condemning party. If twenty-five percent (25%) or more of the Premises is taken and if the Premises remaining after such Condemnation and any repairs by Landlord would be untenantable for the conduct of Tenant's business operations, Tenant shall have the right to terminate this Lease as of the date title vests in the condemning party. If either party elects to terminate this Lease as provided herein, such election shall be made by written notice to the other party given within thirty (30) days after the nature and extent of such Condemnation have been finally determined. If neither Landlord nor Tenant elects to terminate this Lease to the extent permitted above, Landlord shall promptly

proceed to restore the Premises, to the extent of any Condemnation award received by Landlord, to substantially the same condition as existed prior to such Condemnation, allowing for the reasonable effects of such Condemnation, and a proportionate abatement shall be made to the Base Rent and Additional Rent corresponding to the time during which, and to the portion of the floor area of the Premises (adjusted for any increase thereto resulting from any reconstruction) of which, Tenant is deprived on account of such Condemnation and restoration, as reasonably determined by Landlord. Except as expressly provided in the immediately preceding sentence with respect to abatement of Rent, Tenant shall have no claim against Landlord for, and hereby releases Landlord and Landlord's Agents from responsibility for and waives its entire claim of recovery for any cost, loss or expense suffered or incurred by Tenant as a result of any Condemnation or the repair or restoration of the Premises, the Building, the Project or the Parking Areas following such Condemnation, including, without limitation, any cost, loss or expense resulting from any loss of use of the whole or any part of the Premises, the Building, the Project or the parking areas and/or any inconvenience or annoyance occasioned by such Condemnation, repair or restoration. The provisions of California Code of Civil Procedure Section 1265.130, which allows either party to petition the Superior Court to terminate the Lease in the event of a partial taking of the Premises, the Building or the Project or the parking areas for the Building or the Project, and any other applicable law now or hereafter enacted, are hereby waived by Tenant.

(b) Landlord shall be entitled to any and all compensation, damages, income, rent, awards, or any interest therein whatsoever which may be paid or made in connection with any Condemnation, and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease or otherwise; provided, however, that Tenant shall be entitled to receive any award separately allocated by the condemning authority to Tenant for Tenant's relocation expenses or the value of Tenant's Property (specifically excluding fixtures, Alterations and other components of the Premises which under this Lease or by law are or at the expiration of the Term will become the property of Landlord), provided that such award does not reduce any award otherwise allocable or payable to Landlord.

23. ASSIGNMENT AND SUBLETTING

23.1 Landlord's Consent Required Except for Permitted Transfers

Except as specifically provided for in Paragraph 23.3 below, Tenant shall not voluntarily or by operation of law, (1) mortgage, pledge, hypothecate or encumber this Lease or any interest herein, (2) assign or transfer this Lease or any interest herein, (3) sublease the Premises or any part thereof, or any right or privilege appurtenant thereto, or (4) allow any other person (the employees and invitees of Tenant excepted) to occupy or use the Premises, or any portion thereof, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, provided that Tenant is not then in Default under this Lease nor is any event then occurring which with the giving of notice or the passage of time, or both, would constitute a Default hereunder.

23.2 Requirements of Request for Consent

When Tenant requests Landlord's consent to such assignment or subletting, it shall notify Landlord in writing of the name and address of the proposed assignee or subtenant and the nature and character of the business of the proposed assignee or subtenant and shall provide current and prior financial statements for the proposed assignee or subtenant prepared in accordance with generally accepted accounting principles consistently applied ("**GAAP**"). Tenant shall also provide Landlord with a copy of the proposed sublease or assignment agreement, including all material terms and conditions thereof, and such additional information concerning the proposed assignee or subtenant as Landlord may request. Landlord shall have the option, to be exercised within fifteen (15) days of receipt of the foregoing in the case of a proposed assignment or subletting affecting not more than eleven thousand (11,000) square feet of the Premises, and within thirty (30) days of receipt of the foregoing in the case

of a proposed assignment or subletting affecting more than eleven thousand (11,000) square feet ("**Landlord's Review Period**"), to (1) consent to the proposed assignment or sublease, (2) refuse its consent to the proposed assignment or sublease, providing that such consent shall not be unreasonably withheld, conditioned or delayed so long as Tenant is not then in Default under this Lease or the 901 Gateway Lease, nor is any event then occurring which with the giving of notice or the passage of time, or both, would constitute a Default hereunder or under the 901 Gateway Lease, or (3) sublease or take an assignment, as the case may be, from Tenant of the interest in this Lease and/or the Premises that Tenant proposes to assign or sublease, on the same terms and conditions as stated in the proposed sublet or assignment agreement. Notwithstanding the foregoing, in the event Tenant wishes to assign or sublet all of the Premises for all of the remainder of the Term (except in either event in connection with a Permitted Transfer), then in addition to the options specified in the aforesaid clauses (1), (2) and (3), Landlord shall have the additional right, to be exercised within the aforesaid thirty (30) day period, to terminate this Lease in its entirety. In the event Landlord elects to terminate this Lease or sublease or take an assignment from Tenant of the interest in this Lease and/or the Premises that Tenant proposes to assign or sublease as provided in the foregoing clauses of this Paragraph 23.2, then Landlord shall have the additional right to negotiate directly with Tenant's proposed assignee or subtenant and to enter into a direct lease or occupancy agreement with such party on such terms as shall be acceptable to Landlord in its sole and absolute discretion, and Tenant hereby waives any claims against Landlord related thereto, including, without limitation, any claims for any compensation or profit related to such lease or occupancy agreement.

23.3 Criteria To Be Considered in Connection with Request for Consent

Without otherwise limiting the criteria upon which Landlord may withhold its consent to a proposed assignment or sublease, Landlord shall be entitled to consider all reasonable criteria including, but not limited to, the following: (1) whether or not the proposed subtenant or assignee is engaged in a business which, and the Premises will be used in a manner which, is in keeping with the then character and nature of all other tenancies in the Project, (2) whether the use to be made of the Premises by the proposed subtenant or assignee will conflict with any so-called "exclusive" use then in favor of any other tenant of the Building, the Project, or the Adjacent Properties, and whether such use would be prohibited by any other portion of this Lease, including, but not limited to, any rules and regulations then in effect, or under applicable Laws, and whether such use imposes an unreasonable load upon the Premises and the Building and Project services, (3) the business reputation of the proposed individuals who will be managing and operating the business operations of the assignee or subtenant, and the long-term financial and competitive business prospects of the proposed assignee or subtenant, and (4) the creditworthiness and financial stability of the proposed assignee or subtenant in light of the responsibilities involved. In any event, Landlord may withhold its consent to any assignment or sublease if the actual use proposed to be conducted in the Premises or portion thereof is not a Permitted Use provided for under Paragraph 9 above or a general office use.

23.4 Permitted Transfers

Notwithstanding the foregoing, Tenant may, without Landlord's consent, but upon notice and delivery of evidence documenting such assignment or subletting, assign or sublet to an Affiliate (as defined below) of the original Tenant (such assignment or subletting being referred to as a "**Permitted Transfer**"). In addition, a sale or transfer of the capital stock of Tenant shall be deemed a Permitted Transfer if (1) such sale or transfer occurs in connection with any bona fide financing or capitalization for the benefit of Tenant or (2) occurring through a public trade. For purposes of this Lease, "**Affiliate**" shall mean, as to any Person, any person, firm or corporation (i) which shall be controlled by, under the control of, or under common control with such person, (ii) which results from a merger of, reorganization of, or consolidation with, or (iii) which acquires substantially all of the stock or assets with respect to the business that is conducted in the Premises. "**Person**" means any natural person, corporation, firm, association, government, governmental agency or any other entity, whether acting in

any individual, fiduciary or other capacity. For purposes hereof, "**control**" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, firm or corporation, whether through the ownership of voting securities, by contract or otherwise.

23.5 Excess Rent

If Landlord approves an assignment or subletting as herein provided, Tenant shall pay to Landlord, as Additional Rent, fifty percent (50%) of the Transfer Profits (as hereinafter defined), as evidenced by written records satisfactory to Landlord. As used herein, "Transfer Profits" means the difference, if any, between (1) the Base Rent plus Additional Rent allocable to that part of the Premises affected by such assignment or sublease pursuant to the provisions of this Lease, and (2) the rent and any additional rent payable by the assignee or sublessee to Tenant, less actual leasing commissions and reasonable attorneys' fees, if any, incurred by Tenant in connection with such assignment or sublease, and actual tenant improvement costs paid by Tenant in improving the Premises for the applicable assignee or subtenant up to an aggregate of five dollars ($5.00) per square foot of space subject to the assignment or sublease transaction. The assignment or sublease agreement, as the case may be, after approval by Landlord, shall not be amended without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, shall contain an express assumption by the assignee or subtenant of Tenant's obligations under this Lease and shall contain a provision directing the assignee or subtenant to pay the rent and other sums due thereunder directly to Landlord upon receiving written notice from Landlord that Tenant is in default under this Lease with respect to the payment of Rent. In the event that, notwithstanding the giving of such notice, Tenant collects any rent or other sums from the assignee or subtenant, then Tenant shall hold such sums in trust for the benefit of Landlord and shall immediately forward the same to Landlord. Landlord's collection of such rent and other sums shall not constitute an acceptance by Landlord of attornment by such assignee or subtenant. A consent to one assignment, subletting, occupation or use shall not be deemed to be a consent to any other or subsequent assignment, subletting, occupation or use, and consent to any assignment or subletting shall in no way relieve Tenant of any liability under this Lease. Any assignment or subletting without Landlord's consent shall be void, and shall, at the option of Landlord, constitute a Default under this Lease.

23.6 No Release of Tenant

Notwithstanding any assignment or subletting, including, without limitation, a Permitted Transfer, Tenant shall at all times remain fully responsible and liable for the payment of the Rent and for compliance with all of Tenant's other obligations under this Lease (regardless of whether Landlord's approval has been obtained for any such assignment or subletting).

23.7 Payment of Landlord's Fees

Tenant shall pay Landlord's reasonable fees (including, without limitation, the fees of Landlord's counsel, not to exceed $1,000.00 per transaction), incurred in connection with Landlord's review and processing of documents regarding any proposed assignment or sublease.

23.8 No Consent to Further Assignment

Notwithstanding anything in this Lease to the contrary, in the event Landlord consents to an assignment or subletting by Tenant in accordance with the terms of this Paragraph 23 (specifically excluding any Permitted Transfer), Tenant's assignee or subtenant shall have no right to further assign this Lease or any interest therein or thereunder or to further sublease all or any portion of the Premises.

23.9 Constraints Reasonable

Tenant acknowledges and agrees that the restrictions, conditions and limitations imposed by this Paragraph 23 on Tenant's ability to assign or transfer this Lease or any interest herein, to sublet the Premises or any part thereof, to transfer or assign any right or privilege appurtenant to the Premises, or to allow any other person to occupy or use the Premises or any portion thereof, are, for the purposes of California Civil Code Section 1951.4, as amended from time to time, and for all other purposes, reasonable at the time that the Lease was entered into, and shall be deemed to be reasonable at the time that Tenant seeks to assign or transfer this Lease or any interest herein, to sublet the Premises or any part thereof, to transfer or assign any right or privilege appurtenant to the Premises, or to allow any other person to occupy or use the Premises or any portion thereof.

24. TENANT'S DEFAULT

The occurrence of any one of the following events shall constitute an event of default on the part of Tenant ("**Default**"):

(a) The vacation of the Premises for a consecutive period of sixty (60) days or more, without (i) the intention of retaking possession or occupancy, and (ii) providing for the security of the Building, or the abandonment of the Premises by Tenant or any other vacation which would cause any insurance policy to be invalidated or otherwise lapse;

(b) Failure to pay any installment of Rent or any other monies due and payable hereunder within five (5) days after the date the same are due;

(c) A general assignment by Tenant for the benefit of creditors;

(d) The filing of a voluntary petition in bankruptcy by Tenant, the filing by Tenant of a voluntary petition for an arrangement, the filing by or against Tenant of a petition, voluntary or involuntary, for reorganization, or the filing of an involuntary petition by the creditors of Tenant, said involuntary petition remaining undischarged for a period of sixty (60) days;

(e) Receivership, attachment, or other judicial seizure of substantially all of Tenant's assets on the Premises, such attachment or other seizure remaining undismissed or undischarged for a period of sixty (60) days after the levy thereof;

(f) Death or disability of Tenant, if Tenant is a natural person, or the failure by Tenant to maintain its legal existence, if Tenant is a corporation, partnership, limited liability company, trust or other legal entity;

(g) Failure of Tenant to execute and deliver to Landlord any estoppel certificate, subordination agreement, or lease amendment in the time periods and manner required by Paragraphs 30 or 31 or 42;

(h) An assignment or sublease, or attempted assignment or sublease, of this Lease or the Premises by Tenant contrary to the provisions of Paragraph 23, unless such assignment or sublease is expressly conditioned upon Tenant having received Landlord's consent thereto;

(i) Failure of Tenant to deposit the Letter of Credit with Landlord when required under Paragraph 7, and/or failure of Tenant to restore the Letter of Credit to the amount and within the time period provided in Paragraph 7;

(j) Failure in the performance of any of Tenant's covenants, agreements or obligations hereunder (except those failures specified as events of Default in any other subparagraphs of this Paragraph 24, which shall be governed by such other subparagraphs), which failure continues for thirty (30) days after written notice thereof from Landlord to Tenant, provided that, if Tenant has exercised reasonable diligence to cure such failure and such failure cannot be cured within such

thirty (30) day period despite reasonable diligence, Tenant shall not be in default under this subparagraph so long as Tenant thereafter diligently and continuously prosecutes the cure to completion;

(k) Chronic delinquency by Tenant in the payment of Rent, or any other periodic payments required to be paid by Tenant under this Lease. **"Chronic delinquency"** shall mean failure by Tenant to pay Rent, or any other periodic payments required to be paid by Tenant under this Lease, when due (i) for any three (3) months (consecutive or nonconsecutive) during any period of twelve (12) months or (ii) for any twelve (12) months (consecutive or nonconsecutive) during the Term. In the event of a Chronic Delinquency, in addition to Landlord's other remedies for Default provided in this Lease, at Landlord's option, Landlord shall have the right to require that Rent be paid by Tenant quarterly, in advance;

(l) Chronic overuse by Tenant or Tenant's Agents of the number of undesignated parking spaces set forth in the Basic Lease Information. **"Chronic overuse"** shall mean use by Tenant or Tenant's Agents of a number of parking spaces greater than the number of parking spaces set forth in the Basic Lease Information more than three (3) times during any twelve (12) month period;

(m) Any insurance required to be maintained by Tenant pursuant to this Lease shall be canceled or terminated or shall expire or be reduced or materially changed, except as permitted in this Lease, and shall not have been replaced with substitute insurance satisfying the requirements of this Lease within five (5) business days of Tenant's receipt of notice of such termination, reduction or change;

(n) Any failure by Tenant to discharge any lien or encumbrance placed on the Project or any part thereof in violation of this Lease within ten (10) days after the date such lien or encumbrance is filed or recorded against the Project or any part thereof; and

(o) Any Default (as defined in the 901 Gateway Lease) under the terms of the 901 Gateway Lease.

Tenant agrees that any notice given by Landlord pursuant to Paragraph 24(j) above shall satisfy the requirements for notice under California Code of Civil Procedure Section 1161, and Landlord shall not be required to give any additional notice in order to be entitled to commence an unlawful detainer proceeding.

25. LANDLORD'S REMEDIES

25.1 Termination

In the event of any Default by Tenant, then in addition to any other remedies available to Landlord at law or in equity and under this Lease, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such intention to terminate. In the event that Landlord shall elect to so terminate this Lease then Landlord may recover from Tenant:

(1) the worth at the time of award of any unpaid Rent and any other sums due and payable which have been earned at the time of such termination; plus

(2) the worth at the time of award of the amount by which the unpaid Rent and any other sums due and payable which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus

(3) the worth at the time of award of the amount by which the unpaid Rent and any other sums due and payable for the balance of the term of this Lease after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course would be likely to result therefrom, including, without limitation, (A) any costs or expenses incurred by Landlord (1) in retaking possession of the Premises; (2) in maintaining, repairing, preserving, restoring, replacing, cleaning, altering, remodeling or rehabilitating the Premises or any affected portions of the Building or the Project, including such, actions undertaken in connection with the reletting or attempted reletting of the Premises to a new tenant or tenants; (3) for leasing commissions, advertising costs and other expenses of resetting the Premises; or (4) in carrying the Premises, including taxes, insurance premiums, utilities and security precautions; (B) any unearned brokerage commissions paid in connection with Tenant's lease of the Premises; (C) reimbursement of any previously waived or abated Base Rent or Additional Rent or any free rent or reduced rental rate granted hereunder; and (D) any concession made or paid by Landlord to the benefit of Tenant in consideration of this Lease including, but not limited to, any moving allowances, contributions, payments or loans by Landlord for tenant improvements or build-out allowances (including, without limitation, any unamortized portion of the Tenant Improvement Allowance (such Tenant Improvement Allowance to be amortized over the Term in the manner reasonably determined by Landlord), if any), and any outstanding portion of the Deferred Allowance (including, without limitation, accrued interest thereon), if any, or assumptions by Landlord of any of Tenant's previous lease obligations; plus

(5) such reasonable attorneys' fees incurred by Landlord as a result of a Default, and costs in the event suit is filed by Landlord to enforce such remedy; and plus

(6) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

As used in subparagraphs (1) and (2) above, the "**worth at the time of award**" is computed by allowing interest at an annual rate equal to twelve percent (12%) per annum or the maximum rate permitted by law, whichever is less. As used in subparagraph (3) above, the "**worth at the time of award**" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%). Tenant waives redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other pertinent present or future Law, in the event Tenant is evicted or Landlord takes possession of the Premises by reason of any Default of Tenant hereunder.

25.2 Continuation of Lease

In the event of any Default by Tenant, then in addition to any other remedies available to Landlord at law or in equity and under this Lease, Landlord shall have the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's Default and abandonment and recover Rent as it becomes due, provided that Tenant has the right to sublet or assign, subject only to reasonable limitations). In addition, Landlord shall not be liable in any way whatsoever for its failure or refusal to relet the Premises; provided, however, that the foregoing provision shall not be deemed to relieve Landlord of any duty under applicable law to mitigate Tenant's damages in the event Landlord elects to seek damages for Tenant's breach or default. For purposes of this Paragraph 25.2, the following acts by Landlord will not constitute the termination of Tenant's right to possession of the Premises:

(1) Acts of maintenance or preservation or efforts to relet the Premises, including, but not limited to, alterations, remodeling, redecorating, repairs, replacements and/or painting as Landlord shall consider advisable for the purpose of reletting the Premises or any part thereof; or

(2) The appointment of a receiver upon the initiative of Landlord to protect Landlord's interest under this Lease or in the Premises.

25.3 Re-entry

In the event of any Default by Tenant, Landlord shall also have the right, with or without terminating this Lease, in compliance with applicable law, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant.

25.4 Reletting

In the event of the abandonment of the Premises by Tenant or in the event that Landlord shall elect to re-enter as provided in Paragraph 25.3 or shall take possession of the Premises pursuant to legal proceeding or pursuant to any notice provided by law, then if Landlord does not elect to terminate this Lease as provided in Paragraph 25.1, Landlord may from time to time, without terminating this Lease, relet the Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable with the right to make alterations and repairs to the Premises in Landlord's sole discretion. In the event that Landlord shall elect to so relet, then rentals received by Landlord from such reletting shall be applied in the following order: (1) to reasonable attorneys' fees incurred by Landlord as a result of a Default and costs in the event suit is filed by Landlord to enforce such remedies; (2) to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; (3) to the payment of any costs of such reletting; (4) to the payment of the costs of any alterations and repairs to the Premises; (5) to the payment of Rent due and unpaid hereunder; and (6) the residue, if any, shall be held by Landlord and applied in payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the. payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any costs and expenses incurred by Landlord in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting.

25.5 Termination

No re-entry or taking of possession of the Premises by Landlord pursuant to this Paragraph 25 shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by Landlord because of any Default by Tenant, Landlord may at any time after such reletting elect to terminate this Lease for any such Default.

25.6 Cumulative Remedies

The remedies herein provided are not exclusive and Landlord shall have any and all other remedies provided herein or by law or in equity.

25.7 No Surrender

No act or conduct of Landlord, whether consisting of the acceptance of the keys to the Premises, or otherwise, shall be deemed to be or constitute an acceptance of the surrender of the Premises by Tenant prior to the expiration of the Term, and such acceptance by Landlord of surrender by Tenant shall only flow from and must be evidenced by a written acknowledgment of acceptance of surrender signed by Landlord. The surrender of this Lease by Tenant, voluntarily or otherwise, shall not work a merger unless Landlord elects in writing that such merger take place, but shall operate as an assignment to Landlord of any and all existing subleases, or Landlord may, at its option, elect in writing to treat such surrender as a merger terminating Tenant's estate under this Lease, and thereupon Landlord may terminate any or all such subleases by notifying the sublessee of its election so to do within five (5) days after such surrender.

26. LANDLORD'S RIGHT TO PERFORM TENANT'S OBLIGATIONS

26.1 Landlord's Right to Perform

Without limiting the rights and remedies of Landlord contained in Paragraph 25 above, if Tenant shall be in Default in the performance of any of the terms, provisions, covenants or conditions to be performed or complied with by Tenant pursuant to this Lease, then Landlord may at Landlord's option, without any obligation to do so, and without further notice to Tenant perform any such term, provision, covenant, or condition, or make any such payment and Landlord by reason of so doing shall not be liable or responsible for any loss or damage thereby sustained by Tenant or anyone holding under or through Tenant or any of Tenant's Agents, unless caused by Landlord's gross negligence or willful misconduct.

26.2 In Emergencies

Without limiting the rights of Landlord under Paragraph 25 above, Landlord shall have the right at Landlord's option, without any obligation to do so, to perform any of Tenant's covenants or obligations under this Lease without notice to Tenant in the case of an emergency, as determined by Landlord in its good faith and absolute judgment, or if Landlord otherwise determines in its reasonable discretion that such performance is necessary or desirable for the preservation of the rights and interests or safety of other tenants of the Building or the Project.

26.3 Tenant's Obligation to Reimburse Landlord

If Landlord performs any of Tenant's obligations hereunder in accordance with this Paragraph 26, the full amount of the cost and expense incurred or the payment so made or the amount of the loss so sustained shall immediately be owing by Tenant to Landlord, and Tenant shall promptly pay to Landlord upon demand, as Additional Rent, the full amount thereof with interest thereon from the date of payment by Landlord at the lower of (1) twelve percent (12%) per annum, or (2) the highest rate permitted by applicable law.

27. ATTORNEYS' FEES

27.1 Prevailing Party Entitled to Fees

If either party hereto fails to perform any of its obligations under this Lease or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment.

27.2 Costs of Collection

Without limiting the generality of Paragraph 27.1 above, if Landlord utilizes the services of an attorney for the purpose of collecting any Rent due and unpaid by Tenant or in connection with any other breach of this Lease by Tenant, Tenant agrees to pay Landlord reasonable attorneys' fees as determined by Landlord for such services, regardless of the fact that no legal action may be commenced or filed by Landlord.

28. TAXES

Tenant shall be liable for and shall pay, prior to delinquency, all taxes levied against Tenant's Property. If any Alteration or Tenant Improvement installed by Tenant pursuant to Paragraph 12 or any of Tenant's Property is assessed and taxed with the Project or Building, Tenant shall pay such taxes to Landlord, in an amount reasonably determined by Landlord if such taxes are not separately stated in the applicable tax bill, within ten (10) days after delivery to Tenant of a statement therefor.

29. EFFECT OF CONVEYANCE

The term "**Landlord**" as used in this Lease means, from time to time, the then current owner of the Building or the Project containing the Premises, so that, in the event of any sale of the Building or the Project, Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord arising hereunder from and after the date of such transfer, and it shall be deemed and construed, without further agreement between the parties and the purchaser at any such sale, that the purchaser of the Building or the Project has assumed and agreed to carry out any and all covenants and obligations of Landlord hereunder.

30. TENANT'S ESTOPPEL CERTIFICATE

From time to time, upon written request of Landlord, Tenant shall execute, acknowledge and deliver to Landlord or its designee, a written certificate stating (a) the date this Lease was executed, the Commencement Date of the Term and the date the Term expires; (b) the date Tenant entered into occupancy of the Premises; (c) the amount of Rent and the date to which such Rent has been paid; (d) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way (or, if assigned, modified, supplemented or amended, specifying the date and terms of any agreement so affecting this Lease); (e) that this Lease represents the entire agreement between the parties with respect to Tenant's right to use and occupy the Premises (or specifying such other agreements, if any); (f) that all obligations under this Lease to be performed by Landlord as of the date of such certificate have been satisfied (or specifying those as to which Tenant claims that Landlord has yet to perform); (g) that all required contributions by Landlord to Tenant on account of Tenant's improvements have been received (or stating exceptions thereto); (h) that on such date there exist no defenses or offsets that Tenant has against the enforcement of this Lease by Landlord (or stating exceptions thereto); (i) that no Rent or other sum payable by Tenant hereunder has been paid more than one (1) month in advance (or stating exceptions thereto); (j) that a currently valid Letter of Credit has been deposited with Landlord, stating the original amount thereof and any increases or decreases thereto; and (k) any other matters evidencing the status of this Lease that may be required either by a lender making a loan to Landlord to be secured by a deed of trust covering the Building or the Project or by a purchaser of the Building or the Project. Any such certificate delivered pursuant to this Paragraph 30 may be relied upon by a prospective purchaser of Landlord's interest or a mortgagee of Landlord's interest or assignee of any mortgage upon Landlord's interest in the Premises. If Tenant shall fail to provide such certificate within ten (10) days of receipt by Tenant of a written request by Landlord as herein provided, such failure shall, at Landlord's election, constitute a Default under this Lease, and Tenant shall be deemed to have given such certificate as above provided without modification and shall be deemed to have admitted the accuracy of any information supplied by Landlord to a prospective purchaser or mortgagee.

31. SUBORDINATION

Landlord shall have the right to cause this Lease to be and remain subject and subordinate to any and all mortgages, deeds of trust and ground leases, if any ("**Encumbrances**") that are now or may hereafter be executed covering the Premises, or any renewals, modifications, consolidations, replacements or extensions thereof, for the full amount of all advances made or to be made thereunder

and without regard to the time or character of such advances, together with interest thereon and subject to all the terms and provisions thereof; provided only, and as an express condition precedent to any such subordination of this Lease to an Encumbrance hereafter executed covering the Premises, that the holder of such Encumbrance ("**Holder**") shall agree to recognize Tenant's rights under this Lease upon the foreclosure or termination, as applicable, of such Encumbrance as long as Tenant shall pay the Rent and observe and perform all the provisions of this Lease to be observed and performed by Tenant. Within ten (10) days after Landlord's written request, Tenant shall execute, acknowledge and deliver any and all reasonable documents required by Landlord or the Holder to effectuate such subordination, provided that, concurrently with the execution of such subordination documents, the Holder shall execute a nondisturbance agreement in favor of Tenant consistent with the terms of this Paragraph 31. If Tenant fails to do so, such failure shall constitute a Default by Tenant under this Lease. Notwithstanding anything to the contrary set forth in this Paragraph 31, Tenant hereby attorns and agrees to attorn to any person or entity purchasing or otherwise acquiring the Premises at any sale or other proceeding or pursuant to the exercise of any other rights, powers or remedies under such Encumbrance.

32. ENVIRONMENTAL COVENANTS

32.1 Disclosure Certificate

Prior to executing this Lease, Tenant has completed, executed and delivered to Landlord a Hazardous Materials Disclosure Certificate ("**Initial Disclosure Certificate**"), a fully completed copy of which is attached hereto as ***Exhibit E*** and incorporated herein by this reference. Tenant covenants, represents and warrants to Landlord that the information on the Initial Disclosure Certificate is, to the best of Tenant's knowledge, true and correct and accurately describes the Hazardous Materials which will be treated, used or stored on or about the Premises by Tenant or Tenant's Agents.

32.2 Tenant's Obligation to Update Disclosure Certificate

Tenant shall, on a semi-annual basis, complete, execute and deliver to Landlord an updated Disclosure Certificate (each, an "**Updated Disclosure Certificate**") describing Tenant's then current and proposed future uses of Hazardous Materials on or about the Premises, which Updated Disclosure Certificates shall be in the same format as that which is set forth in ***Exhibit F*** or in such updated format as Landlord may require from time to time. Landlord shall have the right to approve or disapprove such new or additional Hazardous Materials in its sole and absolute discretion. Tenant shall make no use of Hazardous Materials on or about the Premises except as described in the Initial Disclosure Certificate or as otherwise approved by Landlord in writing in accordance with this Paragraph 32.2.

32.3 Definition of Hazardous Materials

As used in this Lease, the term "**Hazardous Materials**" shall mean and include any substance that is or contains (1) any "hazardous substance" as now or hereafter defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("**CERCLA**") (42 U.S.C. § 9601 *et seq.*) or any regulations promulgated under CERCLA; (2) any "hazardous waste" as now or hereafter defined in the Resource Conservation and Recovery Act, as amended ("**RCRA**") (42 U.S.C. § 6901 *et seq.*) or any regulations promulgated under RCRA; (3) any substance now or hereafter regulated by the Toxic Substances Control Act, as amended ("**TSCA**") (15 U.S.C. § 2601 *et seq.*) or any regulations promulgated under TSCA; (4) petroleum, petroleum by-products, gasoline, diesel fuel, or other petroleum hydrocarbons; (5) asbestos and asbestos-containing material, in any form, whether friable or non-friable; (6) polychlorinated biphenyls; (7) lead and lead-containing materials; or (8) any additional substance, material or waste (A) the presence of which on or about the Premises (i) requires reporting, investigation or remediation under any Environmental Laws (as hereinafter defined), (ii) causes or threatens to cause a nuisance on the

Premises or any adjacent area or property or poses or threatens to pose a hazard to the health or safety of persons on the Premises or any adjacent area or property, or (iii) which, if it emanated or migrated from the Premises, could constitute a trespass, or (B) which is now or is hereafter classified or considered to be hazardous or toxic under any Environmental Laws. Landlord hereby notifies Tenant in accordance with California Health & Safety Code Section 25359.7 that in 1981-82, the Project was the subject of a state-supervised cleanup of hazardous waste disposed of on the site by prior occupants. As part of the cleanup approved by the applicable agencies, some soils containing heavy metals were left in place, covered by clean fill. These soils are managed in accordance with the requirements of the applicable agencies and a Declaration of Covenants, Conditions and Restrictions imposed by Homart Development Co.

32.4 Definition of Environmental Laws

As used in this Lease, the term "**Environmental Laws**" shall mean and include (1) CERCLA, RCRA and TSCA; and (2) any other federal, state or local laws, ordinances, statutes, codes, rules, regulations, orders or decrees now or hereinafter in effect relating to (A) pollution, (B) the protection or regulation of human health, natural resources or the environment, (C) the treatment, storage or disposal of Hazardous Materials, or (D) the emission, discharge, release or threatened release of Hazardous Materials into the environment.

32.5 Tenant's Use of Hazardous Materials

Tenant agrees that during its use and occupancy of the Premises it will (1) not (A) introduce any Hazardous Materials on or about the Premises except in a manner and quantity necessary for the ordinary performance of Tenant's business or (B) release, discharge or dispose of any Hazardous Materials on, in, at, under, or emanating from, the Premises, the Building or the Project; (2) comply with all Environmental Laws relating to Tenant's use of Hazardous Materials in, on or about the Premises and not engage in or permit Tenant's Agents to engage in any activity in, on or about the Premises in violation of any Environmental Laws; and (3) immediately notify Landlord of (A) any inquiry, test, investigation or enforcement proceeding by any governmental agency or authority against Tenant, Landlord or the Premises, Building or Project relating to any Hazardous Materials or under any Environmental Laws or (B) the occurrence of any event or existence of any condition that would cause a breach of any of the covenants set forth in this Paragraph 32.

32.6 Tenant's Remediation Obligations

If Tenant's use of Hazardous Materials on or about the Premises results in a release, discharge or disposal of Hazardous Materials on, in, at, under, or emanating from, the Premises, the Building or the Project, Tenant agrees to investigate, clean up, remove or remediate such Hazardous Materials in full compliance with (1) the requirements of (A) all Environmental Laws and (B) any governmental agency or authority responsible for the enforcement of any Environmental Laws; and (2) any additional requirements of Landlord that are reasonably necessary to protect the value of the Premises, the Building or the Project.

32.7 Landlord's Inspections

Upon twenty-four (24) hours' notice to Tenant (except in the case of an emergency, in which event no advance notice shall be required), Landlord may inspect the Premises and surrounding areas for the purpose of determining whether there exists on or about the Premises any Hazardous Material or other condition or activity that is in violation of the requirements of this Lease or of any Environmental Laws. Such inspections may include, but are not limited to, entering upon the property adjacent to or surrounding the Premises with drill rigs or other machinery for the purpose of obtaining laboratory samples. Landlord shall not be limited in the number of such inspections during the Term of this Lease. In the event (1) such inspections reveal the presence of any such Hazardous Material or other condition or activity caused by Tenant or its Agents in violation of the requirements of this Lease or of

any Environmental Laws, or (2) Tenant or its Agents contribute or knowingly consent to the importation of any Hazardous Materials in, on, under, through or about the Premises, the Building or the Project or, through their actions, exacerbate the condition of or the conditions caused by any Hazardous Materials in, on, under, through or about the Premises, the Building or the Project, Tenant shall reimburse Landlord for the cost of such inspections within ten (10) days of receipt of a written statement therefor. Tenant will supply to Landlord such historical and operational information regarding the Premises and surrounding areas as may be reasonably requested to facilitate any such inspection and will make available for meetings appropriate personnel having knowledge of such matters. In the event Tenant vacates the Premises prior to the Expiration Date, Tenant shall give Landlord at least sixty (60) days' prior notice of its intention to vacate the Premises so that Landlord will have an opportunity to perform such an inspection prior to such vacation. The right granted to Landlord herein to perform inspections shall not create a duty on Landlord's part to inspect the Premises, or liability on the part of Landlord for Tenant's use, storage, treatment or disposal of Hazardous Materials, it being understood that Tenant shall be solely responsible for all liability in connection therewith.

32.8 Landlord's Right to Remediate

Landlord shall have the right, but not the obligation, prior or subsequent to a Default, without in any way limiting Landlord's other rights and remedies under this Lease, to enter upon the Premises, or to take such other actions as it deems necessary or advisable, to investigate, clean up, remove or remediate any Hazardous Materials or contamination by Hazardous Materials present on, in, at, under, or emanating from, the Premises, the Building or the Project in violation of Tenant's obligations under this Lease or under any Environmental Laws. Notwithstanding any other provision of this Lease, Landlord shall also have the right, at its election, in its own name or as Tenant's agent, to negotiate, defend, approve and appeal, at Tenant's expense, any action taken or order issued by any governmental agency or authority with regard to any such Hazardous Materials or contamination by Hazardous Materials. All reasonable costs and expenses paid or incurred by Landlord in the exercise of the rights set forth in this Paragraph 32 shall be payable by Tenant upon demand.

32.9 Condition of Premises Upon Expiration or Termination

Tenant shall surrender the Premises to Landlord upon the expiration or earlier termination of this Lease free of debris, waste or Hazardous Materials placed on, about or near the Premises by Tenant or Tenant's Agents, and in a condition which complies with (i) all Environmental Laws, and (ii) any additional requirements of Landlord that are reasonably necessary to protect the value of the Premises, the Building or the Project, including, without limitation, the obtaining of any closure permits or other governmental permits or approvals related to Tenant's use of Hazardous Materials in or about the Premises. Tenant's obligations and liabilities pursuant to the provisions of this Paragraph 32 shall survive the expiration or earlier termination of this Lease.

32.10 Tenant's Indemnification of Landlord

Tenant agrees to indemnify and hold harmless Landlord from and against any and all claims, losses (including, without limitation, loss in value of the Premises, the Building or the Project and any losses to Landlord due to lost opportunities to lease any portions of the Premises to succeeding tenants due to the failure of Tenant to surrender the Premises upon the expiration or sooner termination of this Lease in accordance with the provisions of Paragraph 32.9 above), liabilities and expenses (including attorneys' fees) sustained by Landlord attributable to (1) any Hazardous Materials placed on or about the Premises, the Building or the Project by Tenant or Tenant's Agents, or (2) Tenant's breach of any provision of this Paragraph 32.

32.11 Landlord's Indemnification of Tenant

Landlord agrees to indemnify and hold harmless Tenant from and against any and all claims, losses, liabilities and expenses (including attorneys' fees, but specifically excluding lost profits and consequential damages) actually sustained by Tenant attributable to any Hazardous Materials placed on or about the Premises, the Building or the Project by Landlord or Landlord's Agents, except to the extent the condition thereof has been exacerbated by Tenant or Tenant's Agents.

32.12 Limitation of Tenant's Liability

Notwithstanding anything in this Lease to the contrary, Tenant shall not be responsible for the clean up or remediation of, and shall not be required to indemnify Landlord against any costs or liabilities attributable to, contamination by Hazardous Materials during the Term caused by third parties or Hazardous Materials place on or about the Premises (i) prior to the Commencement Date by third parties not related to Tenant or Tenant's Agents, or (ii) by Landlord at any time, except in any of the foregoing cases to the extent that Tenant or Tenant's Agents have contributed to or exacerbated the presence of such Hazardous Materials.

32.13 Survival

The provisions of this Paragraph 32 shall survive the expiration or earlier termination of this Lease.

33. NOTICES

All notices and demands which are required or may be permitted to be given to either party by the other hereunder shall be in writing and shall be sent by United States mail, postage prepaid, certified, or by personal delivery or overnight courier, addressed to the addressee at Tenant's Address or Landlord's Address as specified in the Basic Lease Information, or to such other place as either party may from time to time designate in a notice to the other party given as provided herein. Copies of all notices and demands given to Landlord shall additionally be sent to Landlord's property manager at the address specified in the Basic Lease Information or at such other address as Landlord may specify in writing from time to time. Notice shall be deemed given upon actual receipt (or attempted delivery if delivery is refused), if personally delivered, or one (1) business day following deposit with a reputable overnight courier that provides a receipt, or on the third (3rd) day following deposit in the United States mail in the manner described above.

34. WAIVER

The waiver of any breach of any term, covenant or condition of this Lease shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No delay or omission in the exercise of any right or remedy of Landlord in regard to any Default by Tenant shall impair such a right or remedy or be construed as a waiver. Any waiver by Landlord of any Default must be in writing and shall not be a waiver of any other Default concerning the same or any other provisions of this Lease.

35. HOLDING OVER

Any holding over after the expiration of the Term, without the express written consent of Landlord, shall constitute a Default and, without limiting Landlord's remedies provided in this Lease, such holding over shall be construed to be a tenancy at sufferance, at a rental rate equal to the greater of one hundred fifty percent (150%) of (i) the fair market rental value for the Premises as determined

by Landlord or (ii) the Base Rent last due in this Lease, plus Additional Rent, and shall otherwise be on the terms and conditions herein specified, so far as applicable; provided, however, that in no event shall any renewal or extension option or other similar right or option contained in this Lease be deemed applicable to any such tenancy at sufferance. If the Premises are not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of Paragraphs 11 and 32.9, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any loss or liability resulting from any claim against Landlord made by any succeeding tenant or prospective tenant caused by such delay and losses to Landlord due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

36. SUCCESSORS AND ASSIGNS

36.1 Binding on Successors, Etc.

The terms, covenants and conditions of this Lease shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto. If Tenant shall consist of more than one entity or person, the obligations of Tenant under this Lease shall be joint and several.

36.2 Landlord's Right to Sell

Notwithstanding anything in this Lease to the contrary, Landlord shall have the right to sell, transfer or otherwise convey, either separately or jointly, its interest in the Building and/or the Project, and all of Landlord's related rights and obligations hereunder, to any Person.

37. TIME

Time is of the essence of this Lease and each and every term, condition and provision herein.

38. BROKERS

Landlord and Tenant each represents and warrants to the other that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker except BT Commercial ("Broker") in relation to Tenant's lease of the Premises and/or the negotiating or making of this Lease, and each party agrees to indemnify and hold harmless the other from any claim or claims, and costs and expenses, including attorneys' fees, incurred by the indemnified party in conjunction with any such claim or claims of any other broker or brokers to a commission in connection with this Lease as a result of the actions of the indemnifying party. Landlord has paid or will hereafter pay the brokerage commissions due to BT Commercial in relation to Tenant's lease of the Premises. Nothing contained herein shall restrict Landlord from paying any fees owed by Landlord in connection with Tenant's lease of the Premises and/or the execution of this Lease to any constituent partner of Landlord (or any Affiliate of any such partner) and to any consultants providing services to Landlord in connection with the Project.

39. LIMITATION OF LIABILITY

Tenant agrees that, in the event of any default or breach by Landlord with respect to any of the terms of this Lease to be observed and performed by Landlord or with respect to the enforcement of an indemnity obligation of Landlord under this Lease (1) Tenant shall look solely to the then-current landlord's interest in the Building for the satisfaction of such indemnity obligation of Landlord or for satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord; (2) no other property or assets of Landlord, its partners,

shareholders, officers, directors, employees, investment advisors, or any successor in interest of any of them (collectively, the "**Landlord Parties**") shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies; (3) no personal liability shall at any time be asserted or enforceable against the Landlord Parties; and (4) no judgment will be taken against the Landlord Parties (except for a judgment against Landlord which is enforceable only to the extent of Landlord's interest in the Building). The provisions of this Paragraph shall apply only to the Landlord and the parties herein described, and shall not be for the benefit of any insurer nor any other third party.

40. FINANCIAL STATEMENTS

Within ten (10) days after Landlord's request, Tenant shall deliver to Landlord the then current, or if Tenant is a publicly traded company, the publicly available financial statements of Tenant (including interim periods following the end of the last fiscal year for which annual statements are available), prepared, compiled or reviewed by a certified public accountant, including a balance sheet and profit and loss statement for the most recent prior year, all prepared in accordance with GAAP.

41. RULES AND REGULATIONS

Tenant agrees to comply with such reasonable rules and regulations as Landlord may adopt from time to time for the orderly and proper operation of the Building and the Project. Such rules may include but shall not be limited to the following: (a) restriction of employee parking to a limited, designated area or areas in reasonable proximity to the Building; and (b) regulation of the removal, storage and disposal of Tenant's refuse and other rubbish at the sole cost and expense of Tenant. The then current rules and regulations shall be binding upon Tenant upon delivery of a copy of them to Tenant. Landlord shall not be responsible to Tenant for the failure of any other person to observe and abide by any of said rules and regulations; provided, however, that Landlord shall enforce such rules and regulation in a non-discriminatory manner. Landlord's current rules and regulations are attached to this Lease as ***Exhibit D***.

42. MORTGAGEE PROTECTION

42.1 Modifications for Lender

If, in connection with obtaining financing for the Project or any portion thereof, Landlord's lender shall request reasonable modifications to this Lease as a condition to such financing, Tenant shall not unreasonably withhold, delay or defer its consent to such modifications, provided that such modifications do not materially adversely affect Tenant's rights or increase Tenant's obligations under this Lease.

42.2 Rights to Cure

Tenant agrees to give to any trust deed or mortgage holder ("**Holder**"), by registered mail, at the same time as it is given to Landlord, a copy of any notice of default given to Landlord, provided that prior to such notice Tenant has been notified, in writing, (by way of notice of assignment of rents and leases, or otherwise) of the address of such Holder. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then the Holder shall have an additional twenty (20) days after expiration of such period, or after receipt of such notice from Tenant (if such notice to the Holder is required by this Paragraph 42.2), whichever shall last occur within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary if within such twenty (20) days, any Holder has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings, if necessary to effect such cure), in which event there shall be no default under this Lease.

43. ENTIRE AGREEMENT

This Lease, including the Exhibits and any Addenda attached hereto, which are hereby incorporated herein by this reference, contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties, not embodied herein or therein, shall be of any force and effect. Without limiting the foregoing, the terms and provisions of that certain Option to Lease Agreement dated as of February 17, 1999, entered into by the parties hereto concurrently with the execution of the 901 Gateway Lease, shall be of no further force or effect and shall be deemed superseded in their entirety by the terms and provisions contained in this Lease.

44. INTEREST

Any installment of Rent and any other sum due from Tenant under this Lease which is not received by Landlord when due shall bear interest from the date such payment was originally due under this Lease until paid at an annual rate equal to the maximum rate of interest permitted by law. Payment of such interest shall not excuse or cure any Default by Tenant. In addition, Tenant shall pay all costs and reasonable attorneys' fees incurred by Landlord in collection of such amounts.

45. INTERPRETATION

This Lease shall be construed and interpreted in accordance with the laws of the State of California. The parties acknowledge and agree that no rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Lease, including the Exhibits and any Addenda attached hereto. All captions in this Lease are for reference only and shall not be used in the interpretation of this Lease. Whenever required by the context of this Lease, the singular shall include the plural, the masculine shall include the feminine, and vice versa. If any provision of this Lease shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. Unless otherwise specifically stated herein to the contrary, Landlord's consent may be given or withheld in Landlord's sole and absolute discretion.

46. REPRESENTATIONS AND WARRANTIES

46.1 Of Tenant

Tenant hereby makes the following representations and warranties, each of which is material and being relied upon by Landlord, is true in all respects as of the date of this Lease, and shall survive the expiration or termination of the Lease.

(1) If Tenant is an entity, Tenant is duly organized, validly existing and in good standing under the laws of the state of its organization and the persons executing this Lease on behalf of Tenant have the full right and authority to execute this Lease on behalf of Tenant and to bind Tenant without the consent or approval of any other person or entity. Tenant has full power, capacity, authority and legal right to execute and deliver this Lease and to perform all of its obligations hereunder. This Lease is a legal, valid and binding obligation of Tenant, enforceable in accordance with its terms.

(2) Tenant has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by any creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets, (iv) suffered the attachment or other judicial seizure of all or substantially all of its assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

46.2 Of Landlord

Landlord hereby makes the following representations and warranties, each of which is material and being relied upon by Tenant, is true in all respects as of the date of this Lease, and shall survive the expiration or termination of the Lease.

(1) If Landlord is an entity, Landlord is duly organized, validly existing and in good standing under the laws of the state of its organization and the persons executing this Lease on behalf of Landlord have the full right and authority to execute this Lease on behalf of Landlord and to bind Landlord without the consent or approval of any other person or entity. Landlord has full power, capacity, authority and legal right to execute and deliver this Lease and to perform all of its obligations hereunder. This Lease is a legal, valid and binding obligation of Landlord, enforceable in accordance with its terms.

(2) Landlord has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by any creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets, (iv) suffered the attachment or other judicial seizure of all or substantially all of its assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

47. SECURITY

47.1 Landlord Not Obligated to Provide Security

Tenant acknowledges and agrees that, while Landlord may engage security personnel to patrol the Building or the Project, Landlord is not required to provide any security services with respect to the Premises, the Building or the Project and that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or any other breach of security with respect to the Premises, the Building or the Project.

47.2 Tenant's Obligation to Comply with Security Measures

Tenant hereby agrees to the exercise by Landlord and Landlord's Agents, within their sole discretion, of such security measures as, but not limited to, the evacuation of the Premises, the Building or the Project for cause, suspected cause or for drill purposes, the denial of any access to the Premises, the Building or the Project and other similarly related actions that it deems necessary to prevent any threat of property damage or bodily injury. The exercise of such security measures by Landlord and Landlord's Agents, and the resulting interruption of service and cessation of Tenant's business, if any, shall not be deemed an eviction or disturbance of Tenant's use and possession of the Premises, or any part thereof, or render Landlord or Landlord's Agents liable to Tenant for any resulting damages, or relieve Tenant from Tenant's obligations under this Lease.

48. JURY TRIAL WAIVER

Landlord and Tenant each hereby waive any right to trial by jury with respect to any action or proceeding (i) brought by Landlord, Tenant or any other party, relating to (A) this Lease and/or any understandings or prior dealings between the parties hereto, or (B) the Premises, the Building or the Project or any part thereof, or (ii) to which Landlord is a party. The parties each hereby agree that this Lease constitutes a written consent to waiver of trial by jury pursuant to the provisions of California Code of Civil Procedure Section 631.

49. OPTION TO RENEW

Tenant shall have two (2) options (each a "**Renewal Option**") to extend the Term of this Lease with respect to the entire Premises for successive periods of five (5) years each (each a "**Renewal Term**"). Each Renewal Option shall be effective only if (i) Tenant is not in Default under this Lease and no event has occurred which with the giving of notice or the passage of time, or both, would constitute a Default hereunder, either at the time of exercise of the Renewal Option or the time of commencement of the Renewal Term, and (ii) concurrently with the exercise of each such Renewal Option hereunder, Tenant validly exercises the corresponding renewal option contained in Paragraph 49 of the 901 Gateway Lease.

49.1 Commencement Dates

If Tenant exercises the first Renewal Option in accordance herewith, the first Renewal Term shall commence on the day following the last day of the initial Term and end on the day preceding the fifth anniversary thereof. If Tenant exercises the second Renewal Option, the second Renewal Term shall commence on the day following the last day of the first Renewal Term and end on the day preceding the fifth anniversary thereof. The second Renewal Option may not be exercised unless Tenant has previously exercised the first Renewal Option hereunder and under the 901 Gateway Lease. Each Renewal Term, if properly exercised, shall be upon the same terms and conditions as the Lease except for Monthly Base Rent (which shall be determined as provided in the following provisions of this Paragraph).

49.2 Renewal Option is Personal; Non-Transferable

The Renewal Option shall be personal to Tenant, any transferee under a Permitted Transfer, and any assignee to whom Tenant assigns its entire right, title and interest under, or any sublessee to whom Tenant subleases the entire Premises for the entire remaining Term of, this Lease, and shall not be assignable or otherwise transferable in whole or in part, voluntarily or by operation of law, to any other permitted assignee, subtenant or other third parties and there shall be no further Renewal Option beyond the expiration of the second Renewal Term.

49.3 Tenant's Notice of Exercise

In order to exercise a Renewal Option, Tenant shall give written notice to Landlord of Tenant's exercise of such election ("**Tenant's Notice**") at least ten (10) months prior to expiration of the then current Term and if such notice is not so given, the Renewal Option shall lapse; the Tenant hereby expressly acknowledges and agrees that time is of the essence for purposes of notice of exercise of a Renewal Option and that Tenant's failure to do so by said date will relieve Landlord of any obligation under this Paragraph. If Tenant gives such notice within the time prescribed, Landlord and Tenant shall be deemed to have entered into an extension of this Lease for a five (5) year extended term on the terms and conditions set forth herein.

49.4 Monthly Base Rent During Renewal Term

The Monthly Base Rent payable during any Renewal Term shall be an amount equal to the greater of (i) the Monthly Base Rent payable for the last month of the then expiring Term (provided that such

Monthly Base Rent shall be increased during each year of the Renewal Term to an amount equal to one hundred three percent (103%) of the Monthly Base Rent payable during the immediately preceding term), or (ii) ninety-five percent (95%) of the Fair Market Rent (as hereinafter defined) for the Premises during such Renewal Term.

49.4.1 Fair Market Rent Definition

"**Fair Market Rent**" shall mean the rate being charged for comparable office/R&D/laboratory space in comparable locations in the South San Francisco/Brisbane market area, taking into consideration: tenant credit, tenant improvements or allowances provided or to be provided and leasing commissions, but specifically excluding Tenant's Property, any specialized laboratory improvements or other Tenant Improvements actually paid for by Tenant (as determined in accordance with Paragraph 12.6 above).

49.4.2 Determination of Fair Market Rent

Landlord and Tenant shall meet and attempt in good faith to mutually determine the Fair Market Rent for any Renewal Term. If the parties have not reached agreement on the Fair Market Rent by the date that is thirty (30) days after Landlord's receipt of Tenant's Notice, each party shall appoint an arbitrator and shall give to the other party notice of the identity of the arbitrator no later than the date that is forty (40) days after Landlord's receipt of Tenant's Notice. If either party fails to appoint an arbitrator by the date that is forty (40) days after Landlord's receipt of Tenant's Notice, the sole arbitrator appointed, if any, shall determine the Fair Market Rent. If two arbitrators are appointed, they shall immediately meet and attempt to agree upon such Fair Market Rent. If the arbitrators cannot reach agreement on the Fair Market Rent by the date that is sixty (60) days after Landlord's receipt of Tenant's Notice, each arbitrator shall submit a determination of Fair Market Rent to Landlord and Tenant. If the determinations of Fair Market Rent made by these two arbitrators vary by ten percent (10%) or less, the Fair Market Rent shall be the average of the two determinations. If the determinations vary by more than ten percent (10%), the two arbitrators shall within ten (10) days after submission of their determinations appoint a third arbitrator. If the two arbitrators shall be unable to agree on the selection of a third arbitrator within the 10-day period, then either Tenant or Landlord may request such appointment by petitioning the presiding judge of the Superior Court in and for the County of San Mateo. Such third arbitrator shall, within thirty (30) days after appointment, make a determination of the Fair Market Rent and submit such determination to Landlord and Tenant. The Fair Market Rent shall be the determination of Fair Market Rent submitted by the original two arbitrators that is closer to the Fair Market Rent determination of the third arbitrator. If the third arbitrator's determination is exactly between the Fair Market Rent determination of the original two arbitrators, then the Fair Market Rent shall be the average of the original two determinations. The determination of Fair Market Rent pursuant to this Paragraph 49 shall be final and binding on Landlord and Tenant.

49.4.3 Arbitrator Qualifications

For purposes of this Paragraph, "**arbitrator**" shall mean a licensed commercial real estate broker or leasing agent with not less than five (5) years of full-time commercial brokerage experience in San Mateo County.

49.4.4 Fees and Costs of Arbitrators

Each party shall bear the fees and costs of its arbitrator in connection with the determination of Fair Market Rent and one-half of the fees and costs of the third arbitrator, if any.

49.4.5 Arbitration Period Base Rent

If the determination of Fair Market Rent has not been made by the expiration of the then expiring Term, Tenant shall (i) continue to pay Monthly Base Rent at the Monthly Base Rent for the last month

of the Term (the "**Arbitration Period Base Rent**") as well as any Additional Rent due under the Lease and (ii) pay to Landlord, or receive as a refund from Landlord, as applicable, on the first day of the month after the determination of Fair Market Rent is made, an amount, if any, equal to the difference between the Arbitration Period Base Rent that was paid to Landlord and the Monthly Base Rent for the Renewal Term that should have been paid to Landlord as the Monthly Base Rent for the Renewal Term as determined hereunder.

50. PARKING

50.1 Grant of Parking License

Provided that Tenant shall comply with and abide by Landlord's parking rules and regulations from time to time in effect, Tenant shall have a license to use for the parking of passenger automobiles the number of non-exclusive and undesignated parking spaces set forth in the Basic Lease Information in the areas designated for parking by Landlord from time to time (the "**Designated Parking Areas**"). Notwithstanding the foregoing, Landlord shall not be required to enforce Tenant's right to use any such parking spaces (but Landlord shall use commercially reasonable efforts to resolve any problems related to parking); and provided, further, that the number of parking spaces allocated to Tenant hereunder shall be reduced on a proportionate basis in the event any of the parking spaces in the Designated Parking Areas are taken or otherwise eliminated as a result of any Condemnation or casualty event affecting such Designated Parking Areas. Notwithstanding the foregoing provisions of this Paragraph 50.1, Landlord shall have the right to relocate Tenant's parking from time to time to other areas within the Project and to provide parking spaces to Tenant in surface parking lots, parking structures or other areas now or hereafter designated by Landlord as the "Project's Parking Areas." All unreserved spaces will be on a first-come, first-served basis in common with other tenants of and visitors to the Project in parking spaces provided by Landlord from time to time in the Project's Parking Areas. Tenant's license to use the parking spaces provided for herein shall be subject to such terms, conditions, rules and regulations as Landlord or the operator of the Parking Area may impose from time to time.

50.2 No Assignment of Parking License

The license granted hereunder is for self-service parking only and does not include additional rights or services except to the extent that Landlord elects in its sole and absolute discretion to provide any such services.

50.3 Visitor Parking

Tenant recognizes and agrees that visitors, clients and/or customers (collectively the "**Visitors**") to the Project and the Premises must park automobiles or other vehicles only in areas designated by Landlord from time to time as being for the use of such Visitors and Tenant hereby agrees to ask its Visitors to park only in the areas designated by Landlord from time to time for the use of Tenant's Visitors.

51. RIGHT OF FIRST OFFER

51.1 Offer Notice

If subsequent to the full execution of this Lease, Landlord desires to sell the Building, Landlord shall notify Tenant in writing of such intent to sell (the "**Offer Notice**"); provided, however, that Landlord shall not be required to provide Tenant with the Offer Notice with respect to the Building if Landlord has previously terminated this Lease or recaptured the Premises. This Right of First Offer shall be personal to Tenant and any transferee under a Permitted Transfer and shall not be assignable or otherwise transferable in whole or in part, voluntarily or by operation of law, to any other permitted assignee, subtenant or other third parties. Tenant's right to receive the Offer Notice shall further be

effective only if Tenant is not in Default under this Lease and no event has occurred which with the giving of notice or the passage of time, or both, would constitute a Default hereunder. Subject to Paragraph 51.4 below, Tenant's right to receive an Offer Notice in accordance with this Paragraph 51.1 shall be a one-time right.

51.2 Election Notice

In the event Tenant desires to purchase the Building, Tenant shall notify Landlord in writing of its election to purchase the Building (the **"Election Notice"**) within ten (10) days following Tenant's receipt of the Offer Notice. If Tenant delivers an Election Notice to Landlord, Tenant shall acquire the Building on an "AS IS" basis and without any representations or warranties from Landlord.

51.3 Purchase and Sale Agreement

In the event Tenant timely delivers the Election Notice to Landlord, the parties shall thereafter execute a purchase and sale agreement prepared by Seller's counsel (the "**Purchase and Sale Agreement**") with the purchase price of the Building (the "**Purchase Price**") equal to the quotient of the Net Operating Income (as defined below) of the Building divided by nine one hundredths (.09) and with a closing (the "**Closing**") to be held on or before the date that is forty-five (45) days after delivery of the Offer Notice.

51.4 Failure to Exercise or Sign Agreement

If Tenant fails to deliver an Election Notice within the 10-day time period, or if for any reason whatsoever Tenant has not executed the Purchase and Sale Agreement within ten (10) days after its receipt thereof from Landlord, Tenant's right to purchase the Building hereunder shall automatically terminate and be of no further force and effect with respect to Landlord or any other Person (as hereinafter defined) and Landlord shall thereafter have the right to sell the Building at any time to any Person on terms acceptable to Landlord in its sole and absolute discretion. Notwithstanding the foregoing, if Landlord fails to enter into a letter of intent or purchase and sale agreement for the sale of the Building to any such Person within two hundred seventy (270) days after the date Tenant's right to purchase the Building lapses pursuant to this Paragraph 51.4, then Tenant's rights under this Paragraph 51 shall be reinstated and Landlord shall once again furnish Tenant with an Offer Notice prior to selling the Building to a Person other than a Landlord Affiliate. Tenant hereby expressly acknowledges and agrees that time is of the essence for purposes of the Election Notice and the ten (10) day period to execute the Purchase and Sale Agreement and that Tenant's failure to deliver such Election Notice or the executed Purchase and Sale Agreement as specified herein will relieve Landlord of any obligation under this Paragraph.

51.5 Net Operating Income

As used herein, "Net Operating Income" shall mean the Monthly Base Rent due under the Lease with respect to the Building being purchased for the twelve (12) full calendar months following the Offer Notice or, if the Offer Notice is given prior to the Commencement Date, the Monthly Base Rent for the Premises for the twelve (12) full calendar months following the Commencement Date, and Tenant shall receive a credit against the Purchase Price equal to the cost (calculated as of the date of Closing) reasonably estimated by Landlord to complete the Base Building Improvements (exclusive of any Tenant Requested Base Building Improvements and any improvements or costs required to be paid by Tenant under the terms of the Lease), assuming for purposes of this determination that the Base Building Improvements for the Building shall be similar in design and quality to the Base Building Improvements constructed by Landlord under the 901 Gateway Lease. As used in this Paragraph 51.5, Monthly Base Rent shall mean the scheduled Monthly Base Rent set forth in the Basic Lease Information plus the monthly installment of principal and interest required to be paid on the Deferred Allowance, if any, pursuant to Section D of ***Exhibit B***.

51.6 Landlord's Sale to Affiliate; Survival of Option

Notwithstanding anything in this Paragraph to the contrary, this Paragraph shall be inapplicable to, and neither Landlord nor any person or entity providing financing to Landlord in connection with the Building ("**Lender**") shall have any obligation to provide an Offer Notice to Tenant in connection with (i) any sale, conveyance or other transfer or proposed sale, conveyance or other transfer of the Building to any Person who controls, is controlled by or is under common control with, Landlord or Lender or any Person in which Hines Interest Limited Partnership or Morgan Stanley Real Estate Investment Fund maintains an interest (collectively, a "**Landlord Affiliate**"), or (ii) any foreclosure sale or deed-in-lieu of foreclosure or the exercise of any similar remedy (collectively, a "**Foreclosure**") by any Lender. As used herein, "**Person**" shall mean any natural person, corporation, firm, association or other entity, whether acting in an individual, fiduciary or other capacity. Tenant's rights under this Paragraph 51.6 shall survive Landlord's transfer pursuant to clause (i) of this Paragraph 51.6 but shall not survive any Foreclosure.

51.7 Concurrent Exercise of Rights of First Offer with respect to 901 Gateway Boulevard and 951 Gateway Boulevard

Notwithstanding anything to the contrary contained in this Paragraph 51, if Landlord concurrently delivers to Tenant an Offer Notice under this Lease and an Offer Notice under Paragraph 51 of the 901 Gateway Lease, then Tenant shall have the right to exercise the Right of First Offer contained in this Paragraph 51 only if it concurrently and validly exercises the Right of First Offer granted to Tenant under Paragraph 51 of the 901 Gateway Lease. Any attempt by Tenant to deliver an Election Notice under Paragraph 51.2 above without the concurrent delivery of an Election Notice under Paragraph 51.2 of the 901 Gateway Lease (assuming that Landlord has delivered to Tenant Offer Notices under both this Lease and the 901 Gateway Lease) shall be null and void and of no force or effect.

52. MEMORANDUM OF LEASE

Promptly after full execution of this Lease, Landlord and Tenant shall execute and cause to be recorded a Memorandum of Lease in the form attached hereto as ***Exhibit G***.

Landlord and Tenant have executed and delivered this Lease effective as of the Lease Date specified in the Basic Lease Information.

LANDLORD: HMS GATEWAY OFFICE, L.P.,
a Delaware limited partnership

By: Hines Gateway Office, L.P.,
Administrative Partner

By: Hines Interests Limited Partnership,
General Partner

By: Hines Holdings, Inc.,
General Partner

By: /s/ JAMES C. BUIE, JR.

Name: James C. Buie, Jr.

Its: Executive Vice President

TENANT: ADVANCED MEDICINE, INC.,
a Delaware corporation

By: /s/ A. GREG STURMER

Name: A. Greg Sturmer

Its: Vice President

EXHIBIT A

BASE BUILDING CONSTRUCTION AGREEMENT

This exhibit, entitled "Base Building Construction Agreement," is and shall constitute ***Exhibit A*** to the Lease Agreement, dated as of January 1, 2001, by and between Landlord and Tenant (the "**Lease**"). The terms and conditions of this ***Exhibit A*** are hereby incorporated into and are made a part of the Lease.

Subject to the terms and conditions set forth herein and in the Lease, Landlord shall cause construction of the Building in accordance with the procedures set forth below:

A. Definitions

1. "**Base Building Improvements**" shall mean a three (3) story building, containing approximately 60,000 square feet, all exterior surfaces, utilities, landscaping and paved parking, all in substantial compliance with those items listed on the 951 Gateway Preliminary Specifications as "Base Building" and located substantially in accordance with the Site Plan; provided, however, that the term "**Base Building Improvements**" shall not include any Tenant Requested Base Building Improvements.

2. "**Base Building Plans and Specifications**" is defined in Section B.1 below.

3. "**Building Work Cost**" is defined in Section B.3 below.

4. "**Contractor**" shall mean a licensed general contractor selected by Landlord and approved by Tenant, which approval shall not be unreasonably withheld, conditioned or delayed.

5. "**Construction Warranties**" is defined in Section D.2 below.

6. "**Landlord's Architect**" shall mean Dowler Gruman Architects or another architect selected by Landlord in Landlord's reasonable discretion.

7. "**Landlord's Contract**" shall mean the construction contract entered into by and between Landlord and the Contractor for the construction of the Base Building Improvements and any Tenant Requested Base Building Improvements.

8. "**Original Base Building Plans and Specifications**" shall mean the plans and specifications for the two (2) story building, comprising approximately 50,000 square feet, together with all exterior surfaces, utilities, landscaping and paved parking associated therewith, which was to have been constructed by Landlord pursuant to the Original 951 Lease, which plans and specifications were titled "Preliminary Construction Documents dated August 24, 2000," and were prepared by Dowler Gruman Architects.

9. "**951 Gateway Preliminary Specifications**" shall mean those preliminary specifications for construction of the Base Building Improvements categorized as "Base Building" and more particularly described on the attached ***Exhibit A-1***.

10. "**Site Plan**" shall mean the site plan set forth on the attached ***Exhibit A-2*** establishing the approximate location of the Building.

11. "**Tenant Requested Base Building Improvements**" shall mean those improvements requested by Tenant in accordance with this ***Exhibit A*** that are to be incorporated into the Base Building Plans and Specifications.

Capitalized terms not otherwise defined in this ***Exhibit A*** shall have the meanings ascribed to them in the Lease.

B. Schedule

1. *Plans and Specifications*. Landlord's Architect has previously prepared the Original Base Building Plans and Specifications. At Tenant's request, Landlord has obtained the governmental approvals, permits and variances required for the construction of the Base Building Improvements contemplated under this Lease (the "**Expansion Approvals**"). At Tenant's sole cost and expense, Landlord's Architect shall modify and amend the Original Base Building Plans and Specifications, on or before Friday, February 23, 2001, to incorporate any changes necessary to accommodate construction of all of the Base Building Improvements substantially in accordance with the 951 Gateway Preliminary Specifications (the "**Base Building Plans and Specifications**"). Tenant shall have the right to approve the Base Building Plans and Specifications only to the extent such plans and specifications reflect any changes to the Original Base Building Plans and Specifications which are material deviations from the 951 Gateway Preliminary Specifications; provided, however, that such approval shall not be unreasonably withheld, conditioned or delayed; and provided, further, that if Tenant fails to respond within ten (10) days following Landlord's request for approval, Tenant shall be conclusively deemed to have given its approval to the matter submitted by Landlord. Notwithstanding the foregoing, the Base Building Plans and Specifications are, from time to time, subject to change in Landlord's discretion, upon written consent from Tenant, which consent shall not be unreasonably withheld, conditioned or delayed; and provided, further, that if Tenant fails to respond within five (5) business days following Landlord's request for consent, Tenant shall be conclusively deemed to have given its consent to any such change. Landlord may without the written consent of the Tenant change the Base Building Plans and Specifications as may be required by any governmental agency or as necessary to comply with any governmental requirements or to address structural or unanticipated field conditions or which, in the reasonable discretion of Landlord, will not have a material effect on Tenant's use of the Premises or a material effect on the aesthetic appearance or impression relating to the Base Building Improvements.

2. *Tenant Requested Base Building Improvements*. On or before Friday, February 23, 2001, Tenant shall deliver to Landlord's Architect detailed specifications for any Tenant Requested Base Building Improvements. Landlord shall have ten (10) days from its receipt of such specifications to approve or disapprove the Tenant Requested Base Building Improvements. Landlord's approval may be given or withheld in Landlord's reasonable discretion, to ensure, among other things, that the Tenant Requested Base Building Improvements are compatible with all other construction and all Systems within the Building. If Landlord disapproves the Tenant Requested Base Building Improvements, then within five (5) business days thereafter, Landlord shall meet with the Tenant's Architect (as defined in ***Exhibit B***) and Tenant to discuss, or shall submit to Tenant's Architect and Tenant in writing, the reasons for Landlord's disapproval. Within five (5) business days following such meeting or submission, Tenant shall cause Tenant's Architect to revise the same and to submit new specifications for the Tenant Requested Base Building Improvements to Landlord. The procedure set forth in this paragraph will be repeated as set forth above until Landlord has approved the Tenant Requested Base Building Improvements.

3. *Estimate of Building Work Costs*. Following the approval by Landlord of the Tenant Requested Base Building Improvements, Landlord shall furnish Tenant with an estimate of the cost of the Tenant Requested Base Building Improvements (the "**Building Work Cost**").

4. *Tenant's Review of Building Work Cost*. The Building Work Cost shall be subject to Tenant's approval, which approval shall not be unreasonably withheld, conditioned or delayed; and provided, further, that if Tenant fails to respond within five (5) business days following Landlord's request for consent, Tenant shall be conclusively deemed to have given its approval

to the Building Work Cost. If Tenant timely disapproves the Building Work Cost, then within five (5) business days thereafter, Tenant shall meet with Landlord, Contractor, Landlord's Architect and Tenant's Architect to discuss value engineering changes to the Tenant Requested Base Building Improvements. Within five (5) business days following such meeting, Tenant shall cause Tenant's Architect to revise the Tenant Requested Base Building Improvements and to submit revised specifications for approval by Landlord in accordance with the procedure set forth above and for a new Building Work Cost to be prepared by Landlord. The procedure set forth in this paragraph will be repeated until Tenant has approved the Building Work Cost.

5. *Revision of Plans & Specifications*. Following Landlord's approval of the Tenant Requested Base Building Improvements and Tenant's approval of the Building Work Cost, Landlord shall cause Landlord's Architect to revise the Base Building Plans and Specifications to incorporate the Tenant Requested Base Building Improvements.

C. Construction

The Base Building Improvements shall be constructed, at Landlord's sole cost and expense, by Contractor in accordance with the Base Building Plans and Specifications, as the same may be amended or modified from time to time by Landlord.

D. General

1. *Landlord's Covenant*. Subject to the terms and conditions of the Lease and the conditions precedent set forth in Section D.1 above, Landlord covenants that the Base Building Improvements shall be free from material latent defects in design, materials and workmanship. Any claims by Tenant under this Section D.1 shall be made in writing not later than one (1) year after the Commencement Date. In the event Tenant fails to deliver a written claim to Landlord on or before the applicable date set forth above, then Landlord shall be conclusively deemed to have satisfied its obligations under this paragraph. The covenants contained in this paragraph are subject to Paragraph 39 of the Lease and are made specifically and exclusively for the benefit of the original Tenant and any assignee or sublessee under a Permitted Transfer pursuant to Paragraph 23.4 of the Lease.

2. *Construction Warranties*. Landlord shall obtain from Contractor, and shall request Contractor to obtain from all subcontractors and material suppliers, warranties (collectively, "**Construction Warranties**") for all components of the Base Building Improvements for which warranties are customarily provided in the construction industry and Landlord shall enforce the Construction Warranties as reasonably requested by Tenant.

3. *Special Provisions regarding Construction of Bridge*. At the request of Tenant submitted to Landlord in accordance with Section B.2 above, Landlord shall consent to the construction of a pedestrian bridge (the "**Bridge**") connecting the Building to the 901 Gateway Premises in a location approved by Landlord in writing, subject, however, to the issuance by the City of all required permits and approvals for the construction of the Bridge and compliance by Tenant with all of the terms and provisions of said Section B.2, including, without limitation, the delivery to and approval by Landlord of detailed plans and specifications for the Bridge and all required alterations to the facades of the Building and the 901 Gateway Premises.

INITIALS:

TENANT: _____

LANDLORD: _____

EXHIBIT A-1

951 GATEWAY PRELIMINARY SPECIFICATIONS

A "cold shell" standard shell for each building shall be constructed per all governmental codes by Landlord for Tenant, including, but not limited to, the following:

Structure/Envelope

- Concrete foundation to be reinforced grade beams with spread footings or other system as specified by geotechnical and engineering consultants.
- Ground floor to be concrete slab, minimum thickness 5", level to FF-20, FL-15, on grade or as required by geotechnical and engineering consultants with a minimum of 4" drain rock, 2" sand cushion and a 10 mil vapor barrier, but in no event a mar slab.
- Second and third floors to have vented metal decking with reinforced concrete topping slab which meets fire inspection code and flat to FF-20.
- Building structural framing to consist of reinforced steel "braced frame" with beams and columns constructed using rolled shapes. Cross bracing at exterior.
- Non-bearing exterior curtain wall consisting of EIFS, with exterior containing a minimum average of 40% glass with ribbon windows of high performance glass (minimum shading coefficient of .67).
- Floor system designed with live load capacity of 120 psf.
- Roof live load to be 50 psf in all bays.
- Floor to floor heights to be 17'-0".
- Roof drains and drain lines with connection to site storm drain system.
- Paved surface parking and structured parking adjacent to the Premises as required to provide tenant with the parking designated in the Lease.
- Roof screens up to 11'-0" in height above the roof as required by the City.
- Roofing membrane to be a four-ply asphalt built-up over rigid insulation over metal deck roof construction.
- Fire proofing of building structure, if required, to building code.
- Fire safing between floors to maintain code required separations.
- Perimeter and roof base building insulation per Title 24 requirements.

Utilities

- 2,000 amp 277/480 volt, 3-phase electric service and transformer with underground electrical to switchgear and meter.
- "House power" panels and transformer for site lights and irrigation.
- One gas service to exterior meter.
- Four (4), 4" telephone and data conduits. Stubbed to building.
- Site storm drain system.

- Domestic water service with meters, backflow preventers and check assembly located per California Water Service requirements.
- Sanitary sewer to and including main line under ground floor slab.
- Complete light hazard automatic fire sprinkler system to meet NFPA standards (excluding drops to suspended ceilings).

Miscellaneous

- Exterior doors prepared with hardware and rough-in to provide for electronic security. Such security to be provided and installed by Tenant.
- All utility connection(s) and development fees for base building systems.
- Landscaping, hardscapes and automatic irrigation systems, including control systems.
- One (1) monument sign at each main entrance along Gateway Boulevard identifying The Gateway North Campus and the building address.
- Site lighting a minimum of one (1) foot candle per square foot, including control system.
- Two (2) sets of interior exit stairs per building and two corresponding exits; one set of exit stairs shall be extended to the roof for roof access.

EXHIBIT A2

SITE PLAN

EXHIBIT B

PREMISES CONSTRUCTION AGREEMENT

This exhibit, entitled "Premises Construction Agreement," is and shall constitute ***Exhibit B*** to the Lease Agreement, dated as of January 1, 2001, by and between Landlord and Tenant (the "**Lease**"). The terms and conditions of this ***Exhibit B*** are hereby incorporated into and are made a part of the Lease.

Subject to the terms and conditions set forth herein and in the Lease, Landlord shall allow the construction or installation of the improvements in the interior of the Premises in accordance with the procedures set forth below:

A. Definitions

1. "**Approved Plans**" is defined in Section B.5 below.

2. "**Contractor**" shall mean the general contractor retained by Landlord pursuant to ***Exhibit A*** to the Lease.

3. "**Estimated Work Cost**" is defined in Section B.3 below.

4. "**Excess Tenant Improvements Costs**" is defined in Section B.6 below.

5. "**Final Cost Quotation**" is defined in Section B.6 below and shall include all costs associated with the Tenant Improvements, including, without limitation, costs of all tenant improvement work; architectural and engineering fees; governmental agency fees for permits, licenses and inspections; construction fees, including, without limitation, general contractors' overhead and supervision fees; and such other costs as may be incurred by Landlord in connection with such construction.

6. "**Preliminary Plans**" is defined in Section B.1 below.

7. "**Tenant Improvement Allowance**" shall mean the amount set forth in the Basic Lease Information as adjusted pursuant to the provisions thereof, which amount shall, except as otherwise provided in this ***Exhibit B***, be paid by Landlord toward the cost of completion of the Tenant Improvements (collectively, the "**Tenant Improvement Cost**"). The Tenant Improvement Allowance shall be subject to adjustment upon the final determination of the Premises' square footage by Landlord's Architect. Notwithstanding the foregoing, (i) not less than an amount equal to Fifteen and 57/100^{ths} Dollars ($15.57) per square foot of the Premises (the "**Warm Shell Allowance**") shall be expended on the improvements generally described on ***Exhibit B-1*** hereto, and (ii) the Tenant Improvement Allowance and the Deferred Allowance may not be used to pay the costs of Tenant Improvements that constitute furniture, equipment or trade fixtures or result in changes to the Base Building Improvements. If the Tenant Improvement Cost exceeds the Tenant Improvement Allowance, the difference shall be paid by Tenant in accordance with this ***Exhibit B***. If the total cost of constructing and installing the improvements described on ***Exhibit B-1*** is less than the Warm Shell Allowance, then the Tenant Improvement Allowance shall be reduced by the difference and the difference shall not be disbursed to Tenant.

8. "**Tenant's Architect**" shall mean Dowler Gruman Architects or a replacement licensed architect selected by Tenant and approved by Landlord.

9. "**Tenant's Contract**" shall mean the construction contract entered into by and between Tenant and the Contractor for the construction of the Tenant Improvements.

10. "**Tenant Improvements**" shall mean all improvements made to the Premises pursuant to the Approved Plans, specifically excluding, however, any Tenant Requested Base Building Improvements (as defined in ***Exhibit A*** to the Lease). Without limiting the generality of the foregoing, the Tenant Improvements shall include and Tenant shall be responsible for the construction and installation of the improvements described on ***Exhibit B-1***.

11. "**Warm Shell Allowance**" is defined within the definition of Tenant Improvement Allowance in Section A.7 above.

Capitalized terms not otherwise defined in this ***Exhibit B*** shall have the meanings ascribed to them in the Lease.

B. Schedule

1. Tenant shall cause Tenant's Architect to furnish to Landlord preliminary space plans and specifications (the "**Preliminary Plans**") on or before February 15, 2001. The failure of Tenant's Architect to furnish Preliminary Plans to Landlord by February 15, 2001 shall constitute a Tenant Delay for all purposes of this Lease and shall not lead to a postponement of or adjustment to the Commencement Date. Tenant shall be responsible for all costs associated with the Preliminary Plans (collectively, the "**Preliminary Design Costs**"), including any revisions required by Section B.2 hereunder.

2. Landlord shall have ten (10) days from its receipt of the Preliminary Plans to approve or disapprove the same. Landlord's approval of the Preliminary Plans shall not be unreasonably withheld, conditioned or delayed. If Landlord disapproves the Preliminary Plans, then within five (5) business days thereafter, Landlord shall meet with Tenant's Architect and Tenant to discuss, or shall submit to Tenant's Architect and Tenant in writing, the reasons for Landlord's disapproval. Within five (5) business days following such meeting or submission, Tenant shall cause the Tenant's Architect to revise the same and to submit new Preliminary Plans to Landlord. The same procedure set forth in this paragraph will be repeated as set forth above until Landlord has approved the Preliminary Plans.

3. Promptly after approval of the Preliminary Plans, Tenant shall cause Contractor to furnish Landlord with an estimate of the cost of the Tenant Improvements as shown on the Preliminary Plans (the "**Estimated Work Cost**"). The Estimated Work Cost shall separately itemize all costs to complete the improvements described on ***Exhibit B-1*** hereto.

4. Following Contractor's calculation of the Estimated Work Cost, Tenant shall cause Tenant's Architect to prepare detailed construction drawings and specifications (the "**Working Drawings**") for the Tenant Improvements based strictly upon the Preliminary Plans, except as otherwise agreed in writing by Landlord and Tenant. Tenant shall be responsible for all costs associated with the Working Drawings. The Working Drawings shall be completed no later than April 15, 2001. The foregoing, any delay in the completion of the Working Drawings beyond April 15, 2001 shall constitute a Tenant Delay for all purposes of this Lease and shall not lead to a postponement of or adjustment to the Commencement Date.

5. Landlord shall have ten (10) days from its receipt of the Working Drawings to approve or disapprove the same. Landlord's approval of the Working Drawings shall not be unreasonably withheld, conditioned or delayed. If Landlord disapproves the Working Drawings, then within five (5) business days thereafter, Landlord shall meet with Tenant's Architect and Tenant to discuss, or shall submit to the Tenant's Architect and Tenant in writing, the reasons for Landlord's disapproval. Within five (5) business days following such meeting or submission, Tenant shall cause Tenant's Architect to revise the same and to submit new Working Drawings to Landlord, and the same procedure will be repeated as set forth above until Landlord has

approved the Working Drawings (the "**Approved Plans**"). Upon approval of the Working Drawings, Landlord shall deliver to Tenant a list of Tenant Improvements to be removed by Tenant, at Tenant's cost and expense in accordance with Paragraph 11.2 of the Lease, upon expiration of the Term or earlier termination of the Lease. Notwithstanding the foregoing, during the preparation of the Working Drawings, Landlord shall, upon Tenant's request, advise Tenant of items that will be required to be removed pursuant to the previous sentence.

6. Within ten (10) business days after Landlord's approval of the Approved Plans, Tenant shall cause Contractor to furnish to Landlord a cost estimate for the Tenant Improvements based upon the Approved Plans (the "**Final Cost Quotation**"). The Final Cost Quotation shall separately itemize all costs to complete the improvements described on ***Exhibit B-1*** hereto. If the Final Cost Quotation is greater than the Tenant Improvement Allowance, Tenant shall be responsible for the difference between the Tenant Improvement Allowance and the Final Cost Quotation (the "**Excess Tenant Improvements Cost**"). If the Tenant Improvement Allowance exceeds the Final Cost Quotation, then the Excess Tenant Improvements Cost shall be zero.

7. Landlord and Tenant shall make progress payments on a pro rata basis (in the proportion that the Tenant Improvement Allowance paid by Landlord and the Excess Tenant Improvements Cost paid by Tenant, if any, bear to the Final Cost Quotation) from time to time as the Tenant Improvements are constructed in the Premises. Tenant shall pay its pro rata share of any progress payments directly to Contractor or subcontractors, as appropriate, and Landlord shall pay its pro rata share of any progress payments directly to Tenant's Contractor or subcontractors, as appropriate, subject to a reasonable retention as determined by Landlord. Landlord shall be entitled to suspend or terminate construction of the Tenant Improvements and to declare Tenant in default in accordance with the terms of the Lease if payment by Tenant of Tenant's pro rata share of any progress payment has not been received by Contractor when due, as required hereunder. Moreover, Landlord shall not be required to pay its pro rata share of any progress payment until such time as Landlord receives from Tenant a draw request in a form approved by Landlord, which draw request shall be executed by Tenant, Tenant's Architect and Tenant's Contractor, together with a conditional lien waiver duly executed by Tenant's Contractor as to the progress payment then being requested by Tenant hereunder and an unconditional lien waiver for the immediately preceding progress payment made by Landlord. All lien waivers shall comply with California law regarding materialmen and mechanic's liens.

8. In the event that the Tenant Improvement Allowance exceeds the Final Cost Quotation, then promptly following the substantial completion of the Tenant Improvements, the payment in full of all costs of designing and constructing the Tenant Improvements, and the receipt by Landlord of unconditional lien waivers from Tenant's Contractor, subcontractors and material suppliers for all amounts due in connection with the Tenant Improvements, Landlord shall disburse the remaining Tenant Improvement Allowance to Tenant in a single lump-sum disbursement.

C. Tenant Improvement Construction

1. All Tenant Improvements to be constructed or installed in the Premises shall be performed by Contractor in accordance with the Approved Plans, subject to any changes agreed to by Landlord and Tenant in writing. Landlord shall have no obligation to Tenant for defects in design, workmanship or materials in connection with the Tenant Improvements. Any changes to the Approved Plans shall require the written approval of Landlord and Tenant, which approval shall not be unreasonably withheld, conditioned or delayed. All such changes must be evidenced by a written change order executed by Landlord and Tenant or their respective

representatives describing the change required in the Approved Plans, and the cost of such changes shall be paid in accordance with the terms of this ***Exhibit B***.

2. Tenant shall cause Contractor to construct the Tenant Improvements in a manner designed to avoid interference with the construction of the Base Building Improvements. Landlord and Tenant shall each use good faith efforts to reasonably resolve any issues or conflicts that may arise during the course of constructing the Tenant Improvements and the Base Building Improvements. Entry by Contractor in accordance with this ***Exhibit B*** shall not constitute Tenant's occupancy of the Premises under Paragraph 3 of the Lease; however, Tenant shall comply with all terms and conditions of the Lease (excluding only, prior to the Commencement Date, the obligation to pay Rent) during Contractor's occupancy of and work within the Premises. Tenant shall be responsible for maintaining harmonious labor relations with all contractors and service providers servicing the Premises.

3. In addition to and without limitation on the requirements set forth in the Lease, Tenant shall ensure that Contractor and all subcontractor(s) procure and maintain in full force and effect during the course of construction a "broad form" commercial general liability and property damage policy of insurance naming, Landlord, Tenant and Landlord's lenders as additional insureds. The minimum limit of coverage of the aforesaid policy shall be in the amount of not less than Three Million Dollars ($3,000,000) for injury or death of one person in any one accident or occurrence and in the amount of not less than Three Million Dollars ($3,000,000) for injury or death of more than one person in any one accident or occurrence, and shall contain a severability of interest clause or a cross liability endorsement. Such insurance shall further insure Landlord and Tenant against liability for property damage of at least One Million Dollars ($1,000,000).

D. Deferred Allowance

In addition to the Tenant Improvement Allowance, Landlord agrees to provide Tenant up to Nine Hundred Thousand Dollars ($900,000.00) (viz., $15.00 per square foot) to be applied toward completion of the Tenant Improvements (the "**Deferred Allowance**") after the Tenant Improvement Allowance has been disbursed. The Deferred Allowance shall be subject to adjustment upon the final determination of the Premises square footage by Landlord's Architect. The Deferred Allowance shall be disbursed to Tenant, if at all, in a single lump-sum disbursement, shall be available to reimburse Tenant for costs actually incurred in connection with the design and construction of the Tenant Improvements (except that no portion of the Deferred Allowance may be used to pay the costs of Tenant Improvements that constitute furniture, equipment or trade fixtures or result in changes to the Base Building Improvements), shall be disbursed by Landlord upon the submission of draw requests and other documentation similar in form and content to that required in connection with the disbursement of the Tenant Improvement Allowance, and shall be subject to a reasonable retention as determined by Landlord. Tenant shall provide the aforesaid draw request and associated documentation to Landlord not less than ninety (90) days' prior to the date of the disbursement of the Deferred Allowance. The Deferred Allowance shall be repayable by Tenant to Landlord in substantially equal self-amortizing monthly installments over the remaining initial Term of the Lease (from and after the date of disbursement of the Deferred Allowance), together with interest on the balance outstanding from time to time from the date of disbursement at the following rates: interest shall accrue on the initial Four Hundred Fifty Thousand Dollars ($450,000.00) disbursed by Landlord at the per annum rate of 14% and on the second Four Hundred Fifty Thousand Dollars ($450,000.00) disbursed by Landlord at the per annum rate of 15%. Such installments shall be payable on the first day of each month concurrently with the payment of Monthly Base Rent, and shall be deemed a part of the "Rent" hereunder for all purposes of this Lease. Concurrently with the disbursement of the Deferred Allowance, Landlord and Tenant shall execute a Deferred Allowance Amortization Memorandum in

the form of ***Exhibit I*** hereto. Notwithstanding anything herein to the contrary, in the event the Lease shall terminate for any reason prior to the scheduled expiration thereof, the Deferred Allowance and all accrued and unpaid interest thereon shall immediately become due and payable in full.

E. General

1. All drawings, space plans, plans and specifications for any improvements or installations in the Premises are expressly subject to Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. Any approval by Landlord of any drawings, plans or specifications prepared on behalf of Tenant including, without limitation, any Preliminary Plans, Working Drawings or Approved Plans, or any revisions thereto, shall not in any way bind Landlord, create any responsibility or liability on the part of the Landlord for the completeness of the same, their design sufficiency or compliance with applicable statutes, ordinances or regulations or constitute a representation or warranty by Landlord as to the adequacy or sufficiency of such drawings, plans or specifications, or the improvements to which they relate, but such approval shall merely evidence the consent of Landlord to such drawings, plans or specifications.

2. The Tenant Improvement Allowance (including, without limitation, the Warm Shell Allowance) and Deferred Allowance shall be used by Tenant to construct Tenant Improvements in the entire Premises and may not be used to improve only a portion or portions of the Premises. Tenant shall be deemed to have satisfied its obligations under this Section E.2 if Tenant constructs or installs, as appropriate, within the entire Premises, at a minimum, acoustical ceilings, HVAC, floor coverings, light fixtures and walls with a paint finish, all in accordance with applicable Laws and to a condition which allows for full legal occupancy of the Building, as evidenced by the receipt of a certificate of occupancy from the City. Notwithstanding the foregoing, Tenant shall only be required to improve the warehouse facilities, storerooms, electrical rooms and data rooms located within the Premises to the same condition to which such facilities and rooms were improved within the 901 Gateway Premises following the completion of construction of Tenant Improvements (as defined in the 901 Gateway Lease) in the 901 Gateway Premises.

3. Any failure by Tenant to pay any amounts due hereunder shall have the same effect under the Lease as a failure to pay Rent and any failure by Tenant to perform any of its other obligations hereunder shall be subject to Paragraph 24 of the Lease.

4. Tenant shall provide Landlord with as-built plans and specifications of the Tenant Improvements within forty-five (45) days after the Commencement Date.

INITIALS:

TENANT: /s/ A. GREG STURMER

LANDLORD: /s/ JAMES BUIE, JR.

EXHIBIT B-1

DESCRIPTION OF "WARM SHELL" IMPROVEMENTS

- Elevator(s) per code
- Stairs in excess of two (2) exit stairs provided as part of the 951 Gateway Preliminary Specifications
- Restrooms per code
- HVAC for standard office use (laboratory upgrades will not be funded-out of the Warm Shell Allowance)
- Standard office lobby
- Electrical for standard office use (laboratory upgrades will not be funded out of the Warm Shell Allowance)
- Rooftop mechanical platform
- Roof Screens

EXHIBIT C

ADDITIONAL OPERATIONAL GUIDELINES

As a component of the Tenant Improvements and any Alterations made by Tenant to the Premises, Tenant shall install fume hoods, as well as a rooftop venting and exhaust system designed to increase the velocity of exhaust such that any odors shall be discharged high into the atmosphere in order to minimize the risk of odors detectable at ground level. In addition, Tenant shall install and utilize such additional venting, exhaust and quenching systems, including, without limitation, base quenching, distillation units, acid quenching, and mechanical exhaust/filtration systems, as appropriate to reduce the risk of emanation of such odors.

EXHIBIT D

RULES AND REGULATIONS

This exhibit, entitled "Rules and Regulations," is and shall constitute ***Exhibit D*** to the Lease Agreement, dated as of the Lease Date, by and between Landlord and Tenant for the Premises. The terms and conditions of this ***Exhibit D*** are hereby incorporated into and are made a part of the Lease. Capitalized terms used, but not otherwise defined, in this ***Exhibit D*** have the meanings ascribed to such terms in the Lease.

1. Tenant shall not use any method of heating or air conditioning other than that approved by Landlord in writing without the prior written consent of Landlord, which consent shall not to be unreasonably withheld, conditioned or delayed.

2. All window coverings installed by Tenant and visible from the outside of the Building require the prior written approval of Landlord.

3. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance or any flammable or combustible materials on or around the Project or the Adjacent Properties, except to the extent that Tenant is permitted to use the same in the Premises under the terms of Paragraph 32 of the Lease.

4. Tenant shall not alter any lock or install any new locks or bolts on any door at the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

5. Tenant shall not make any duplicate keys without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

6. Tenant shall park motor vehicles in parking areas designated by Landlord, including areas for loading and unloading. During those periods of loading and unloading, Tenant shall not unreasonably interfere with traffic flow around the Building or the Project and loading and unloading areas of other tenants.

7. Tenant shall not disturb, solicit or canvas any tenant or other occupant of the Building or Project and shall cooperate to prevent same.

8. No person shall go on the roof without Landlord's permission except as required to repair and maintain the same as required under the Lease.

9. Business machines and mechanical equipment belonging to Tenant which cause noise or vibration that may be transmitted to the structure of the Building, to such a degree as to be objectionable to Landlord or other tenants, shall be placed and maintained by Tenant, at Tenant's expense, on vibration isolators or in noise-dampening housing or other devices sufficient to eliminate noise or vibration.

10. All goods, including material used to store goods, delivered to the Premises of Tenant shall be immediately moved into the Premises and shall not be left in parking or receiving areas overnight. During the period of construction of the Tenant Improvements and any Alterations, all construction materials shall be stored in a manner and a location mutually acceptable to Landlord and Tenant.

11. Tenant is responsible for the storage and removal of all trash and refuse. All such trash and refuse shall be contained in suitable receptacles stored behind screened enclosures at locations approved by Landlord.

12. Tenant shall not store or permit the storage or placement of goods or merchandise in or around the Common Areas surrounding the Premises. No displays or sales or merchandise shall be allowed in the Parking Areas or other Common Areas.

13. Tenant shall not permit any animals, including, but not limited to, any household pets, to be brought or kept in or about the Premises, the Building, the Project or any of the Common Areas which would violate applicable Laws or constitute a nuisance to the Premises, the Building or the Project. Tenant shall prior to the Commencement Date and thereafter from time to time upon the request of Landlord provide to Landlord a written plan for the handling and disposal of all animals used by Tenant in the conduct of its business, which plan shall be subject to the written approval of Landlord.

INITIALS:

TENANT: _____

LANDLORD: _____

EXHIBIT E

HAZARDOUS MATERIALS DISCLOSURE CERTIFICATE

Your cooperation in this matter is appreciated. Initially, the information provided by you in this Hazardous Materials Disclosure Certificate is necessary for the Landlord to evaluate your proposed uses of the premises (the "**Premises**") and to determine whether to enter into a lease agreement with you as tenant. If a lease agreement is signed by you and the Landlord (the "**Lease Agreement**"), on an annual basis in accordance with the provisions of Paragraph 32 of the Lease Agreement, you are to provide an update to the information initially provided by you in this certificate. Any questions regarding this certificate should be directed to, and when completed, the certificate should be delivered to:

Landlord: HMS Gateway Office L.P.
c/o Hines
651 Gateway Boulevard, Suite 1140
South San Francisco, California 94080
Phone: (650) 794-1111

Name of (Prospective) Tenant: Advanced Medicine, Inc.

Mailing Address:

Contact Person, Title and Telephone Number(s):

Contact Person for Hazardous Waste Materials Management and Manifests and Telephone Number(s):

Address of (Prospective) Premises:

Length of (Prospective) initial Term:

1. GENERAL INFORMATION:

Describe the proposed operations to take place in, on, or about the Premises, including, without limitation, principal products processed, manufactured or assembled, and services and activities to be provided or otherwise conducted. Existing tenants should describe any proposed changes to on-going operations.

2. USE, STORAGE AND DISPOSAL OF HAZARDOUS MATERIALS

2.1 Will any Hazardous Materials (as hereinafter defined) be used, generated, treated, stored or disposed of in, on or about the Premises? Existing tenants should describe any Hazardous Materials which continue to be used, generated, treated, stored or disposed of in, on or about the Premises.

Wastes	Yes o	No o
Chemical Products	Yes o	No o
Other	Yes o	No o

If Yes is marked, please explain:

2.2 If Yes is marked in Section 2.1, attach a list of any Hazardous Materials to be used, generated, treated, stored or disposed of in, on or about the Premises, including the applicable hazard class and an estimate of the quantities of such Hazardous Materials to be present on or about the Premises at any given time; estimated annual throughput; the proposed location(s) and method of storage (excluding nominal amounts of ordinary household cleaners and janitorial supplies which are not regulated by any Environmental Laws, as hereinafter defined); and the proposed location(s) and method(s) of treatment or disposal for each Hazardous Material, including the estimated frequency, and the proposed contractors or subcontractors. Existing tenants should attach a list setting forth the information requested above and such list should include actual data from on-going operations and the identification of any variations in such information from the prior year's certificate.

3. STORAGE TANKS AND SUMPS

3.1 Is any above or below ground storage or treatment of gasoline, diesel, petroleum, or other Hazardous Materials in tanks or sumps proposed in, on or about the Premises? Existing tenants should describe any such actual or proposed activities.

Yes o No o

If yes, please explain:

4. WASTE MANAGEMENT

4.1 Has your company been issued an EPA Hazardous Waste Generator I.D. Number? Existing tenants should describe any additional identification numbers issued since the previous certificate.

Yes o No o

4.2 Has your company filed a biennial or quarterly reports as a hazardous waste generator? Existing tenants should describe any new reports filed.

Yes o No o

If yes, attach a copy of the most recent report filed.

5. WASTEWATER TREATMENT AND DISCHARGE

5.1 Will your company discharge wastewater or other wastes to:

o storm drain? o sewer?

o surface water? o no wastewater or other wastes discharged.

Existing tenants should indicate any actual discharges. If so, describe the nature of any proposed or actual discharge(s).

5.2 Will any such wastewater or waste be treated before discharge?

Yes o No o

If yes, describe the type of treatment proposed to be conducted. Existing tenants should describe the actual treatment conducted.

6. AIR DISCHARGES

6.1 Do you plan for any air filtration systems or stacks to be used in your company's operations in, on or about the Premises that will discharge into the air; and will such air emissions be monitored? Existing tenants should indicate whether or not there are any such air filtration systems or stacks in use in, on or about the Premises which discharge into the air and whether such air emissions are being monitored.

Yes o No o

If yes, please describe:

6.2 Do you propose to operate any of the following types of equipment, or any other equipment requiring an air emissions permit? Existing tenants should specify any such equipment being operated in, on or about the Premises.

o Spray booth(s)

o Dip tank(s)

o Drying oven(s)

o Incinerator(s)

o Other (Please describe)

o No Equipment Requiring Air Permits

If yes, please describe:

6.3 Please describe (and submit copies of with this Hazardous Materials Disclosure Certificate) any reports you have filed in the past [thirty-six] months with any governmental or quasi-governmental agencies or authorities related to air discharges or clean air requirements and any such reports which have been issued during such period by any such agencies or authorities with respect to you or your business operations.

7. HAZARDOUS MATERIALS DISCLOSURES

7.1 Has your company prepared or will it be required to prepare a Hazardous Materials management plan ("**Management Plan**") or Hazardous Materials Business Plan and Inventory ("**Business Plan**") pursuant to Fire Department or other governmental or regulatory agencies' requirements? Existing tenants should indicate whether or not a Management Plan is required and has been prepared.

Yes o No o

If yes, attach a copy of the Management Plan or Business Plan. Existing tenants should attach a copy of any required updates to the Management Plan or Business Plan.

7.2 Are any of the Hazardous Materials, and in particular chemicals, proposed to be used in your operations in, on or about the Premises listed or regulated under Proposition 65? Existing tenants should indicate whether or not there are any new Hazardous Materials being so used which are listed or regulated under Proposition 65.

Yes o No o

If yes, please explain:

8. ENFORCEMENT ACTIONS AND COMPLAINTS

8.1 With respect to Hazardous Materials or Environmental Laws, has your company ever been subject to any agency enforcement actions, administrative orders, or consent decrees or has your company received requests for information, notice or demand letters, or any other inquiries regarding its operations? Existing tenants should indicate whether or not any such actions, orders or decrees have been, or are in the process of being, undertaken or if any such requests have been received.

Yes o No o

If yes, describe the actions, orders or decrees and any continuing compliance obligations imposed as a result of these actions, orders or decrees and also describe any requests, notices or demands, and attach a copy of all such documents. Existing tenants should describe and attach a copy of any new actions, orders, decrees, requests, notices or demands not already delivered to Landlord pursuant to the provisions of Paragraph 32 of the Lease Agreement.

8.2 Have there ever been, or are there now pending, any lawsuits against your company regarding any environmental or health and safety concerns?

Yes o No o

If yes, describe any such lawsuits and attach copies of the complaint(s), cross-complaint(s), pleadings and other documents related thereto as requested by Landlord. Existing tenants should describe and attach a copy of any new complaint(s), cross-complaint(s), pleadings and other related documents not already delivered to Landlord pursuant to the provisions of Paragraph 32 of the Lease Agreement.

8.3 Have there been any problems or complaints from adjacent tenants, owners or other neighbors at your company's current facility with regard to environmental or health and safety concerns? Existing tenants should indicate whether or not there have been any such problems or complaints from adjacent tenants, owners or other neighbors at, about or near the Premises and the current status of any such problems or complaints.

Yes o No o

If yes, please describe. Existing tenants should describe any such problems or complaints not already disclosed to Landlord under the provisions of the signed Lease Agreement and the current status of any such problems or complaints.

9. PERMITS AND LICENSES

9.1 Attach copies of all permits and licenses issued to your company with respect to its proposed operations in, on or about the Premises, including, without limitation, any Hazardous Materials permits, wastewater discharge permits, air emissions permits, and use permits or approvals. Existing tenants should attach copies of any new permits and licenses as well as any renewals of permits or licenses previously issued.

As used herein, "**Hazardous Materials**" shall mean and include any substance that is or contains (a) any "**hazardous substance**" as now or hereafter defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("**CERCLA**") (42 U.S.C. § 9601 *et seq.*) or any regulations promulgated under CERCLA; (b) any " **hazardous waste**" as now or hereafter defined in the Resource Conservation and Recovery Act, as amended ("**RCRA**") (42 U.S.C. § 6901 *et seq.*) or any regulations promulgated under RCRA; (c) any substance now or hereafter regulated by the Toxic Substances Control Act, as amended ("**TSCA**") (15 U.S.C. § 2601 *et seq.*) or any regulations promulgated under TSCA; (d) petroleum, petroleum by-products, gasoline, diesel fuel, or other petroleum hydrocarbons; (e) asbestos and asbestos-containing material, in any form, whether friable or non-friable; (f) polychlorinated biphenyls; (g) lead and lead-containing materials; or (h) any additional substance, material or waste (A) the presence of which on or about the Premises (i) requires reporting, investigation or remediation under any Environmental Laws (as hereinafter defined), (ii) causes or threatens to cause a nuisance on the Premises or any adjacent property or poses or threatens to pose a hazard to the health or safety of persons on the Premises or any adjacent property, or (iii) which, if it emanated or migrated from the Premises, could constitute a trespass, or (B) which is now or is hereafter classified or considered to be hazardous or toxic under any Environmental Laws; and "**Environmental Laws**" shall mean and include (a) CERCLA, RCRA and TSCA; and (b) any other federal, state or local laws, ordinances, statutes, codes, rules, regulations, orders or decrees now or hereinafter in effect relating to (i) pollution, (ii) the protection or regulation of human health, natural resources or the environment, (iii) the treatment, storage or disposal of Hazardous Materials, or (iv) the emission, discharge, release or threatened release of Hazardous Materials into the environment.

The undersigned hereby acknowledges and agrees that this Hazardous Materials Disclosure Certificate is being delivered to Landlord in connection with the evaluation of a Lease Agreement and, if such Lease Agreement is executed, will be attached thereto as an exhibit. The undersigned further acknowledges and agrees that if such Lease Agreement is executed, this Hazardous Materials Disclosure Certificate will be updated from time to time in accordance with Paragraph 32 of the Lease Agreement. The undersigned further acknowledges and agrees that the Landlord and its partners, lenders and representatives may, and will, rely upon the statements, representations, warranties, and certifications made herein and the truthfulness thereof in entering into the Lease Agreement and the continuance thereof throughout the term, and any renewals thereof, of the Lease Agreement. I [print name] , acting with full authority to bind the (proposed) Tenant and on behalf of the

(proposed) Tenant, certify, represent and warrant that the information contained in this certificate is true and correct.

(PROSPECTIVE) TENANT:

ADVANCED MEDICINE, INC.,
a Delaware corporation

By: _____

Title: _____

Date: _____

INITIALS:

TENANT:
/s/ A. GREG STURMER

LANDLORD:
/s/ JAMES BUIE, JR.

EXHIBIT F

TENANT'S PROPERTY

Laboratory related furniture and equipment including:

- benches and tables
- casework
- biosafety, laminar flow, and fume hoods
- cages/fencing
- DI water system
- vacuum pumps
- compressed air
- nitrogen manifold

Office related furniture and equipment including:

- open office partitions
- telephone and network equipment
- reception desk
- lobby furniture
- lobby display cases
- appliances
- interior signage

EXHIBIT G

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Attention:

(*Space above this line for Recorder's use*)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is executed as of January 1, 2001, by and between HMS GATEWAY OFFICE, L.P., a Delaware limited partnership ("**Landlord**"), and ADVANCED MEDICINE, INC., a Delaware corporation ("**Tenant**"). Landlord has previously leased to Tenant a portion of that certain real property described on ***Exhibit A*** attached hereto and incorporated herein by reference, consisting of the building commonly known as 951 Gateway Boulevard located in South San Francisco, California, commencing on January 1, 2001 and terminating on March 31, 2012 on the terms and conditions set forth in that certain Lease between Landlord and Tenant dated as of January 1, 2001 (the "**Off Record Lease**"). Landlord has also granted to Tenant options to renew the term of the Lease for two (2) additional periods of five (5) years each in accordance with the terms and conditions of the Off Record Lease.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Lease so that third parties might have notice of the lease by Landlord and Tenant herein.

LANDLORD: HMS GATEWAY OFFICE, L.P.,
a Delaware limited partnership

By: Hines Gateway Office, L.P.,
Administrative Partner

By: Hines Interests Limited Partnership,
General Partner

By: Hines Holdings, Inc.,
General Partner

By: _____

Name: _____

Its: _____

TENANT: ADVANCED MEDICINE, INC.,
a Delaware corporation

By: _____

Name: _____

Its: _____

INITIALS:

TENANT: /s/ A. GREG STURMER

LANDLORD: /s/ JAMES BUIE, JR.

EXHIBIT H

DEFERRED ALLOWANCE AMORTIZATION MEMORANDUM

LANDLORD: ARE-901/951 GATEWAY BOULEVARD, LLC, SUCCESSOR IN INTEREST TO HMS GATEWAY OFFICE, L.P.

TENANT: THERAVANCE, INC., (FORMERLY ADVANCED MEDICINE, INC.)

LEASE DATE: January 1, 2001

PREMISES: Located at 951 Gateway Boulevard, South San Francisco, California

Tenant hereby acknowledges that Landlord has provided a Deferred Allowance to Tenant in the amount of eight hundred ninety seven thousand two hundred forty Dollars ($897,240) pursuant to Paragraph D of *Exhibit B* to the Lease. Subject to the terms of the Lease and said *Exhibit B*, the Deferred Allowance shall be repayable by Tenant, together with interest on the principal balance outstanding from time to time at the rates set forth.

Four hundred forty eight thousand six hundred twenty Dollars ($448,620) of the Deferred Allowance shall bear interest at the rate of fourteen percent (14%) per annum; and

Four hundred forty eight thousand six hundred twenty Dollars ($448,620) of the Deferred Allowance shall bear interest at the rate of fifteen percent (15%) per annum.

The Deferred Allowance, together with interest at the rates set above, shall be payable in monthly installments of fourteen thousand three hundred sixty six and 73/100 Dollars ($14,366.73) each. Said installments shall be payable on the first day of each month during the initial Term of the Lease (commencing with the first day of the first month following the disbursement of the Deferred Allowance) concurrently with the payment of Base Rent.

TENANT: THERAVANCE, INC.,
(FORMERLY ADVANCED MEDICINE, INC.) a Delaware corporation

By: /s/ A. GREG STURMER

Name: A. Greg Sturmer

Title: Vice President, Finance

Approved and Agreed:

Landlord:

ARE-901/951 Gateway Boulevard, LLC,
successor in interest to HMS Gateway Office, L.P.
a Delaware limited partnership

By: ARE 901/951 Gateway Boulevard, LLC,

By: SEE SCHEDULE I

Name:

Title:

SCHEDULE I

ARE-901/951 GATEWAY BOULEVARD, LLC, a Delaware limited liability company

By: ALEXANDRIA REAL ESTATE EQUITIES, L.P., a Delaware limited partnership, managing member

By: ARE-QRS CORP.,
a Maryland corporation,
general partner

By: /s/ JOEL S. MARCUS

Name: Joel S. Marcus

Title: CEO

EXHIBIT J

TENANT ESTOPPEL CERTIFICATE
951 GATEWAY BOULEVARD

From: Theravance, Inc. (Formerly Advanced Medicine, Inc.)
901 Gateway Boulevard
South San Francisco, California 94080
("Tenant")

To: ARE-901/951 Gateway Boulevard LLC
c/o Alexandria Real Estate Equities, Inc.
135 N. Los Robles Ave., Suite 250
Pasadena, California 91101
("Purchaser")

HMS Gateway Office, L.P.
Hines Gateway
651 Gateway Boulevard, Suite 1140
South San Francisco, California 94080
("Landlord")

Lease: Amended and Restated Lease Agreement dated January 1, 2001 between HMS Gateway Office, L.P., a Delaware limited partnership, and Advanced Medicine, Inc., a Delaware corporation, covering the Premises (as defined below), as modified, altered or amended (as further described in Paragraph I below) (the "Lease").

Premises: 59,816 rentable square feet (as determined by Landlord's architect upon the commencement of the term, as provided in the Lease) (the "Premises"), located in the building to be known as 951 Gateway having an address of 951 Gateway Boulevard, South San Francisco, California 94080.

Tenant hereby certifies to Landlord and Purchaser as follows:

1. Attached hereto as Annex 1 is a true, correct, and complete copy of the Lease, including amendments, modifications, supplements, guarantees, and restatements thereof. Tenant is the current Tenant under the Lease. The Lease is in full force and effect and is the complete and only lease, agreement or understanding between Landlord and Tenant affecting the Premises and any rights to parking. The Lease has not been modified, altered or amended, except by the documents listed on Annex I attached hereto. Pursuant to the Lease, Tenant has the right to use 160 non-exclusive and undesignated parking spaces located within the project of which the Premises are part (the "Project"). Tenant acknowledges that Landlord may fulfill its obligations regarding parking under the Lease through the exercise of Landlord's rights under that certain Declaration of Reciprocal Easements made by HMS Gateway Office, L.P. and recorded on June 26, 2000 as Document No. 2000-077496.

2. The term of the Lease has commenced and expires on March 31, 2012 subject to the following options to extend: Two (2) options of five (5) years each. Tenant has accepted and is presently occupying the Premises.

3. Except as otherwise set forth in Paragraph 51 of the Lease, Tenant has no option or right of first refusal, right of first offer, or other right to purchase the Premises and has no right, title, or interest in the Premises other than as the tenant under the Lease. Based on Landlord's representation to Tenant that, on or about December 5, 2001, Landlord and Purchaser entered into a letter of intent for the sale of the Project to Purchaser, Tenant's right of first offer to purchase the Premises pursuant to Paragraph 51 of the Lease has automatically terminated, is no longer of any force or effect, and will not be reinstated unless the sale of the Project to Purchaser contemplated in the letter of intent fails to close. Upon completion of the sale of the Project to Purchaser, (i) neither Purchaser nor any successor landlord under the Lease shall have any obligations under Paragraph 51 of the Lease or shall ever be

required to provide Tenant with an "Offer Notice" (as defined in Paragraph 51.1 of the Lease), and (ii) Purchaser and each successor landlord under the Lease shall have the right to sell any part of the Project at any time to any "Person" (as defined in Paragraph 51.4 of the Lease) on terms acceptable to Purchaser or any such successor landlord, in Purchaser's or such successor landlord's sole and absolute discretion.

4. The base rent under the Lease for the current lease year is $162,731.18 per month. Tenant is responsible to pay, as additional rent, for its pro rata share (100%) of operating expenses for the building in excess of base operating expenses of $0. Tenant has fully paid all base rent, additional rent and other sums due and payable under the Lease on or before the date of this Certificate and Tenant has not paid any rent more than one month in advance. Tenant currently is not entitled to any abatement, refund, rebate, concession, forgiveness of rent or other charges, or free or partial rent. Tenant is not in default under any of the terms, conditions or covenants of the Lease to be performed or complied with by Tenant, and no event has occurred and no circumstance exists which, with the passage of time or the giving of notice by Landlord, or both, would constitute such a default.

5. As of the date of this Certificate, Landlord is not in default under any of the terms, conditions or covenants of the Lease to be performed or complied with by Landlord, and no event has occurred and no circumstance exists which, with the passage of time or the giving of notice by Tenant, or both, would constitute such a default.

6. As of the date of this Certificate, Tenant has no defenses, offsets or credits against the payment or rent and other sums due or to become due under the Lease or against the performance of any other of Tenant's obligations under the Lease.

7. Tenant has paid to Landlord a security deposit in the amount of $1,312,500 in the form of a letter of credit.

8. Tenant agrees that, from and after the date hereof, Tenant will not pay any rent under the Lease more than thirty (30) days in advance of its due date.

9. As of the date of this Certificate, all insurance, if any, required to be maintained by Tenant under the Lease currently is in effect.

10. As of the date of this Certificate, Tenant has not sublet any portion of the Premises or assigned any rights under the Lease. The address for notices to be sent to Tenant is as set forth in the Lease.

11. Tenant understands that this Certificate is required in connection with Purchaser's acquisition of the Property, and Tenant agrees that Purchaser and its assigns (including any parties providing financing for the Property) will, and will be entitled to, rely on the truth of this Certificate.

12. The party executing this document on behalf of Tenant represents that he/she has been authorized to do so on behalf of Tenant.

EXECUTED on this 19 day of April, 2002.

"TENANT"

By: /s/ A. GREG STURMER

QuickLinks

Exhibit 10.8

Exhibit 10.9

LEASE AGREEMENT

BY AND BETWEEN

HMS GATEWAY OFFICE L.P.,
A Delaware Limited Partnership

AS LANDLORD,

AND

ADVANCED MEDICINE, INC.,
a Delaware corporation

AS TENANT

DATED JANUARY 1, 2001

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LEASE AGREEMENT

BASIC LEASE INFORMATION

Lease Date:	January 1, 2001
Landlord:	HMS Gateway Office, L.P. a Delaware limited partnership
Landlord's Address:	c/o Hines Interests Limited Partnership 101 California Street, Suite 1000 San Francisco, California 94111-5848 Attn: Tom Kruggel *All notices sent to Landlord under this Lease shall be sent to the above address, with copies to:* Hines 651 Gateway Boulevard, Suite 1140 South San Francisco, California 94080 Attn: Catherine Fogelman
Tenant:	Advanced Medicine, Inc., a Delaware corporation
Tenant's Contact Person:	Marty Glick
Tenant's Address:	901 Gateway Boulevard South San Francisco, California 94080
Premises Square Footage:	One hundred ten thousand four hundred twenty eight (110,428) square feet.
Premises Address:	901 Gateway Boulevard South San Francisco, California
Project:	Parcel A as shown on the Final Parcel Map 99-095 dated March 2000, prepared by Kier & Wright, together with all improvements constructed thereon.
Building (if not the same as the Project):	901 Gateway Boulevard South San Francisco, California
Tenant's Proportionate Share of Project	100%
Tenant's Proportionate Share of	100%
Length of Term:	One hundred thirty five (135) months
Commencement Date:	January 1, 2001
Expiration Date:	March 31, 2012
Monthly Base Rent:	1. Monthly Base Rent for the period commencing January 1, 2001 and ending March 31, 2001 shall be $269,405.71; 2. Monthly Base Rent for the period commencing April 1, 2001 and ending March 31, 2002 shall be $275,534.46; 3. Monthly Base Rent for the period commencing April 1, 2002 and ending March 31, 2003 shall be $281,847.08;

4. Monthly Base Rent for the period commencing April 1, 2003 and ending March 31, 2004 shall be $288,349.07;

5. Monthly Base Rent for the period commencing April 1, 2004 and ending March 31, 2005 shall be $295,046.13;

6. Monthly Base Rent for the period commencing April 1, 2005 and ending March 31., 2006 shall be $301,944.09;

7. Monthly Base Rent for the period commencing April 1, 2006 and ending March 31, 2007 shall be $309,049.00;

8. Monthly Base Rent for the period commencing April 1, 2007 and ending March 31, 2008 shall be $316,367.05;

9. Monthly Base Rent for the period commencing April 1, 2008 and ending March 31, 2009 shall be $323,904.65;

10. Monthly Base Rent for the period commencing April 1, 2009 and ending March 31, 2010 shall be $331,668.37;

11. Monthly Base Rent for the period commencing April 1, 2010 through March 31, 2011 shall be $339,665.00;

12. Monthly Base Rent for the period commencing April 1, 2011 and ending March 31, 2012 shall be $347,901.53.

Letter of Credit: Three Million Seven Hundred Fifty Thousand Dollars ($3,750,000), subject to reduction in accordance with Paragraph 7(d) hereof.

Permitted Use: General office and research and development activities associated with biotechnology/pharmaceutical services. All uses must be in accordance with all applicable Laws.

Unreserved Parking Spaces: Two Hundred Ninety Three (293) non-exclusive and undesignated parking spaces.

Except as otherwise provided in this Lease to the contrary, the foregoing parking calculation shall remain fixed.

Tenant Improvement Allowance: Nine Million Three Hundred Eighty-Six Thousand Three Hundred Eighty Dollars ($9,386,380) of which Landlord has paid Seven Million Seven Hundred Twenty-Nine Thousand Nine Hundred Sixty Dollars ($7,729,960) as of the date of this Lease, leaving a remaining Tenant Improvement Allowance to be paid of One Million Six Hundred Fifty-Six Thousand Four Hundred Twenty Dollars ($1,656,420), which shall be paid on the later to occur of (i) January 1, 2001, or (ii) five (5) business days following the mutual execution and delivery of this Lease.

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into by and between Landlord and Tenant on the Lease Date. The defined terms used in this Lease which are defined in the Basic Lease Information attached to this Lease Agreement ("Basic Lease Information") shall have the meaning and definition given them in the Basic Lease Information. The Basic Lease Information, the exhibits, the addendum or addenda described in the Basic Lease Information, and this Lease Agreement are and shall be construed as a single instrument and are referred to herein as the "Lease".

O P E R A T I V E P R O V I S I O N S

1. DEMISE

In consideration for the rents and all other charges and payments payable by Tenant, and for the agreements, terms and conditions to be performed by Tenant in this Lease, LANDLORD DOES HEREBY LEASE TO TENANT, AND TENANT DOES HEREBY HIRE AND TAKE FROM LANDLORD, the Premises described below (the "Premises"), upon the agreements, terms and conditions of this Lease for the Term hereinafter stated.

2. PREMISES

2.1 Definition of Premises, 951 Gateway Premises, Building, Project, Parking Areas, Common Areas

(a) The "Premises" demised by this Lease consist of that certain three (3) story building (the "Building") shown on the Site Plan attached hereto as *Exhibit A*, which Building is to be located in that certain real estate development (the "Project") specified in the Basic Lease Information. Subject to the provisions of this Lease, Landlord shall have the right to revise the definition of "Project" from time to time as Landlord develops and improves the Project and surrounding real property now or hereafter owned by Landlord or its Affiliates (as hereinafter defined), or sells to third parties portions of the Project or such adjacent properties. If at any time during the Term, Tenant is leasing, in accordance with the terms and conditions of this Lease, less than the entire Building, the "Premises" shall be deemed to include only that portion of the Building then leased by Tenant pursuant to this Lease. Tenant shall have the non-exclusive right (in common with the other tenants, Landlord and any other person granted use by Landlord) to use the Common Areas (as hereinafter defined), except that, with respect to the Project's parking areas (the "Parking Areas"), Tenant shall have only the rights set forth in Paragraph 50 below. No easement for light or air is incorporated in the Premises. For purposes of this Lease, the term "Common Areas" shall mean all areas and facilities (i) outside the Premises and/or outside other buildings occupied or intended to be occupied by tenants, and (ii) either within the exterior boundary line of the Project or within the exterior boundary lines of properties abutting the Project, which areas and facilities are from time to time provided and designated by Landlord for the nonexclusive use of Landlord, Tenant and other tenants of the Project or of the properties abutting the Project and their respective employees, guests and invitees, including, without limitation, the Parking Areas.

(b) Concurrently herewith, Landlord and Tenant are entering into a Lease Agreement, dated as of even date herewith, covering certain premises (the "951 Gateway Lease") to be hereafter developed by Landlord and to be known as 951 Gateway Boulevard, South San Francisco, California (the "951 Gateway Premises").

2.2 Changes to Common Area

(a) Landlord has the right, in its sole and absolute discretion, from time to time, to: (i) make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces (provided, however, Landlord shall not have the right, except as otherwise provided herein, to reduce the total number of parking spaces below the number allocated to Tenant in the Basic Lease Information), Parking Areas, ingress, egress, direction of

driveways, entrances, corridors and walkways; (ii) close temporarily any of the Common Areas for maintenance or construction purposes so long as reasonable access to the Premises remains available; (iii) add additional buildings and improvements to the Common Areas or remove existing buildings or improvements therefrom; (iv) use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project or any portion thereof so long as reasonable access to the Premises and the loading area serving the Premises remains available; and (v) do and perform any other acts or make any other changes in, to or with respect to the Common Areas and the Project as Landlord may, in its sole and absolute discretion, deem to be appropriate.

(b) Notwithstanding the terms of Paragraph 2.2(a) above, Tenant understands and acknowledges that Landlord will during the Term be developing the Project and other lands owned by Landlord for other tenants or occupants, including, without limitation, for Tenant as the future occupant of the 951 Gateway Premises, and that from time to time, whether during periods of construction or otherwise, Landlord may be unable to provide the full number of parking spaces allocated to Tenant under this Lease in the Parking Areas. During such periods, Landlord shall have the right to provide parking to Tenant on properties reasonably proximate to the Project (the "Adjacent Properties") or through the use of valets or parking attendants on the Parking Areas or the Adjacent Properties, provided only that Tenant shall at all times have parking for the number of automobiles contemplated under this Lease.

3. TERM

The term of this Lease (the "Term") shall commence on January 1, 2001 (the "Commencement Date") and shall expire on March 31, 2012 (the "Expiration Date").

4. RENT

4.1 Monthly Base Rent.

Commencing on the Commencement Date, Tenant shall pay to Landlord, in advance on the first day of each month, without further notice or demand and without offset or deduction, the monthly installments of rent specified in the Basic Lease Information (the "Monthly Base Rent"). If the expiration or termination of the Term of this Lease is not the last day of a calendar month, a prorated installment of Rent based on a per diem calculation shall be paid for the fractional calendar month during which the Term expires or terminates.

4.2 Additional Rent

This Lease is intended to be a triple-net Lease with respect to Landlord; and subject to Paragraph 13.2 below, the Base Rent owing hereunder is (1) to be paid by Tenant absolutely net of all costs and expenses relating to Landlord's ownership and operation of the Project and the Building, and (2) not to be reduced, offset or diminished, directly or indirectly, by any cost, charge or expense payable hereunder by Tenant or by others in connection with the Premises, the Building and/or the Project or any part thereof. The provisions of this Paragraph 4.2 for the payment of Tenant's Proportionate Share(s) of Expenses (as hereinafter defined) are intended to pass on to Tenant its share of all such costs and expenses. In addition to the Base Rent, Tenant shall pay to Landlord, in accordance with this Paragraph 4, Tenant's Proportionate Share(s) of all costs and expenses paid or incurred by Landlord in connection with the ownership, operation, maintenance, management and repair of the Premises, the Building and/or the Project or any part thereof (collectively, the "Expenses"), including, without limitation, all the following items (the "Additional Rent"):

1. *Taxes and Assessments.* All real estate taxes and assessments, which shall include any form of tax, assessment, fee, license fee, business license fee, levy, penalty (if a result of Tenant's delinquency), or tax (other than net income, estate, succession, inheritance, transfer or franchise taxes), imposed by

any authority having the direct or indirect power to tax, or by any city, county, state or federal government or any improvement or other district or division thereof, whether such tax is (i) determined by the area of the Premises, the Building and/or the Project or any part thereof, or the Rent and other sums payable hereunder by Tenant or by other tenants, including, but not limited to, any gross income or excise tax levied by any of the foregoing authorities with respect to receipt of Rent and/or other sums due under this Lease; (ii) upon any legal or equitable interest of Landlord in the Premises, the Building and/or the Project or any part thereof, (iii) upon this transaction or any document to which Tenant is a party creating or transferring any interest in the Premises, the Building and/or the Project; (iv) levied or assessed in lieu of, in substitution for, or in addition to, existing or additional taxes against the Premises, the Building and/or the Project, whether or not now customary or within the contemplation of the parties; or (v) surcharged against the parking area. Tenant and Landlord acknowledge that Proposition 13 was adopted by the voters of the State of California in the June, 1978 election and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such purposes as fire protection, street, sidewalk, road, utility construction and maintenance, refuse removal and for other governmental services which may formerly have been provided without charge to property owners or occupants. It is the intention of the parties that all new and increased assessments, taxes, fees, levies and charges due to any cause whatsoever are to be included within the definition of real property taxes for purposes of this Lease. "Taxes and assessments" shall also include legal and consultants' fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce taxes, Landlord specifically reserving the right, but not the obligation, to contest by appropriate legal proceedings the amount or validity of any taxes. In the event Landlord elects not to contest the real property taxes and assessments levied against the Building with respect to any calendar year during the Term, and if Tenant demonstrates to Landlord's reasonable satisfaction that such a contest would likely result in a reduction of such taxes and assessments, then Tenant shall have the right to retain a consultant to prosecute such contest, subject to Landlord's reasonable approval of the identity of such consultant. Such contest shall be conducted at Tenant's sole cost and expense, provided that if Tenant prevails in such contest, the reasonable fees and costs of Tenant's consultants shall, to the extent of any actual savings resulting from such contest, be equitably shared by Tenant and other tenant(s) who receive the benefit of such savings. Tenant shall have the right to deduct from its payments of Additional Rent the shares of such fees and costs to be charged to other tenants, as reasonably determined by Landlord, and Landlord shall cause such amounts to be billed or charged to the other benefited tenant(s).

2. *Insurance.* All insurance premiums for the Building and/or the Project or, subject to clause (i) of the paragraph immediately following Paragraph 4.2(8) below, any part thereof, including premiums for "all risk" fire and extended coverage insurance, commercial general liability insurance, rent loss or abatement insurance, earthquake insurance, flood or surface water coverage, and other insurance as Landlord deems necessary in its sole discretion, and any deductibles paid under policies of any such insurance.

3. *Utilities.* The cost of all Utilities (as hereinafter defined) serving the Premises, the Building and the Common Areas that are not separately metered to Tenant, any assessments or charges for Utilities or similar purposes included within any tax bill for the Building or the Common Areas, including, without limitation, entitlement fees, allocation unit fees, and/or any similar fees or charges and any penalties (if a result of Tenant's delinquency) related thereto, and any amounts, taxes, charges, surcharges, assessments or impositions levied, assessed or imposed upon the Building or the Common Areas, or any part thereof, or upon Tenant's use and occupancy thereof, as a result of any rationing of Utility services or restriction on Utility use affecting the Building and/or the Common Areas, as contemplated in Paragraph 5 below (collectively, "Utility Expenses").

4. *Common Area Expenses.* All costs to operate, maintain, repair, replace, supervise, insure and administer the Common Areas, including supplies, materials, labor and equipment used in or related to

the operation and maintenance of the Common Areas, including parking areas (including, without limitation, all costs of resurfacing and restriping parking areas), signs and directories on the Building and/or the Project, landscaping (including maintenance contracts and fees payable to landscaping consultants), amenities, sprinkler systems, sidewalks, walkways, driveways, curbs, lighting systems and security services, if any, provided by Landlord for the Common Areas.

5. *Parking Charges.* Any parking charges or other costs levied, assessed or imposed by, or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by any governmental authority or insurer in connection with the use or occupancy of the Building or the Project.

6. *Maintenance and Repair Costs.* Except for costs which are the responsibility of Landlord pursuant to Paragraph 13.2 below, all costs to maintain, repair, and replace the Premises, the Building and/or the Common Areas or any part thereof, including, without limitation, (i) all costs paid under maintenance, management and service agreements such as contracts for janitorial, security and refuse removal, (ii) all costs to maintain, repair and replace the roof coverings of the Building, (iii) all costs to maintain, repair and replace the heating, ventilating, air conditioning, plumbing, sewer, drainage, electrical, fire protection, life safety and security systems and other mechanical and electrical systems and equipment serving the Premises, the Building and/or the Common Areas or any part thereof (collectively, the "Systems"), all to the extent that Landlord or any of Landlord's agents, advisors, employees, partners, shareholders, directors, invitees or independent contractors (collectively, "Landlord's Agents") perform such tasks.

7. *Life Safety Costs.* All costs to install, maintain, repair and replace all life safety systems, including, without limitation, all fire alarm systems, serving the Premises, the Building and/or the Common Areas or any part thereof (including all maintenance contracts and fees payable to life safety consultants) whether such systems are or shall be required by Landlord's insurance carriers, Laws (as hereinafter defined) or otherwise, all to the extent that Landlord or Landlord's Agents perform such tasks.

8. *Management and Administration.* All costs for management and administration of the Premises, the Building and/or the Project or any part thereof, including, without limitation, a property management fee equal to two percent (2%) of the annual Rent derived from the Building, accounting, auditing, billing, postage, legal and accounting costs and fees for licenses and permits related to the ownership and operation of the Project (but specifically excluding any salaries and benefits of employees of Landlord or the property manager of the Building).

9. *Gateway Operational Expenses.* All charges, assessments, costs or fees levied by any association or entity of which the Project or any part thereof is a member or to which the Project or any part thereof is subject (including, without limitation, the Gateway Property Owners' Association), or levied under or imposed by any reciprocal easement agreement, joint operating agreement or other document, instrument or agreement to which the Project or any part thereof is subject.

Notwithstanding anything in this Paragraph 4.2 to the contrary, (i) Tenant shall not be responsible for the payment of any Expenses which relate to or benefit solely another building within the Project occupied or intended to be occupied by tenants or for which Landlord receives full reimbursement from other tenants, and (ii) with respect to all sums payable by Tenant as Additional Rent under this Paragraph 4.2 for the replacement of any item or the construction of any new item in connection with the physical operation of the Premises, the Building or the Project (i.e., HVAC, roof membrane or coverings and parking area) which is a capital item the replacement of which would be capitalized under generally accepted accounting principles consistently applied, Tenant shall be required to pay only the prorata share of the cost of the item falling due within the Term (including any Renewal Term) based upon the amortization of the same over the useful life of such item, as reasonably

determined by Landlord. Such share shall be paid by Tenant on a monthly basis throughout the Term (rather than in a lump sum when incurred by Landlord).

4.3 Adjustment to Additional Rent

Notwithstanding any other provision herein to the contrary, if the Building is not fully occupied during any year of the Term, an adjustment shall be made in computing Additional Rent for such year so that Additional Rent shall be computed as though the Building had been fully occupied during such year; provided, however, that in no event shall Landlord collect in total, from Tenant and all other tenants of the Building, an amount greater than one hundred percent (100%) of the actual Expenses during any year of the Term.

4.4 Payment of Additional Rent.

4.4.1. Expense Statement

Upon the Commencement Date, Landlord shall submit to Tenant an estimate of monthly Additional Rent for the period between the Commencement Date and the following December 31 and Tenant shall pay such estimated Additional Rent on a monthly basis, in advance, on the first day of each month. Tenant shall continue to make said monthly payments until notified by Landlord of a change therein. By April 1 of each calendar year, Landlord shall endeavor to provide to Tenant a statement (the "Expense Statement") showing the actual Additional Rent due to Landlord for the prior calendar year, to be prorated during the first year from the Commencement Date. If the total of the monthly payments of Additional Rent that Tenant has made for the prior calendar year is less than the actual Additional Rent chargeable to Tenant for such prior calendar year, then Tenant shall pay the difference in a lump sum within ten (10) days after receipt of such statement from Landlord. Any overpayment by Tenant of Additional Rent for the prior calendar year shall be credited towards the Additional Rent next due.

4.4.2. Calculation of Additional Rent

Landlord's then-current annual operating and capital budgets for the Building and the Project shall be used for purposes of calculating Tenant's monthly payment of estimated Additional Rent for the current year. Landlord shall make the final determination of Additional Rent for the year in which this Lease terminates as soon as possible after termination of such year. Even though the Term has expired and Tenant has vacated the Premises, Tenant shall remain liable for payment of any amount due to Landlord in excess of the estimated Additional Rent previously paid by Tenant, and, conversely, Landlord shall promptly return to Tenant any overpayment. Failure of Landlord to submit statements as called for herein shall not be deemed a waiver of Tenant's obligation to pay Additional Rent as herein provided.

4.4.3. Tenant's Proportionate Share(s)

With respect to Expenses which Landlord allocates to the Building, Tenant's "Proportionate Share" shall be the percentage set forth in the Basic Lease Information as Tenant's Proportionate Share of the Building, as adjusted by Landlord from time to time for a remeasurement of or changes in the physical size of the Premises or the Building. With respect to Expenses which Landlord allocates to the Project, Tenant's "Proportionate Share" shall be the percentage set forth in the Basic Lease Information as Tenant's Proportionate Share of the Project as adjusted by Landlord from time to time in connection with the construction of additional buildings within the Project or a remeasurement of or changes in the physical size of the Premises or the Project, whether such changes in size are due to an addition to or a sale or conveyance of a portion of the Project or otherwise. Notwithstanding the foregoing,

Landlord may equitably adjust Tenant's Proportionate Share(s) for all or part of any item of expense or cost reimbursable by Tenant that relates to a repair, replacement, or service that benefits only the Premises or only a portion of the Building and/or the Project or that varies with the occupancy of the Building and/or the Project; provided, however, that Tenant's prorata allocation of any such Expense shall not be disproportionate to any other tenant's prorata allocation of such Expense.

4.4.4. Tenant's Audit Rights

Provided Tenant is not in Default under the terms of this Lease, Tenant, at its sole cost and expense, shall have the right within sixty (60) days after the delivery of each Expense Statement to review and audit Landlord's books and records regarding such Expense Statement for the sole purpose of determining the accuracy of such Expense Statement. Such review or audit shall be performed by a nationally recognized accounting firm that calculates its fees with respect to hours actually worked and that does not discount its time or rate (as opposed to a calculation based upon percentage of recoveries or other incentive arrangement), shall take place during normal business hours in the office of Landlord or Landlord's property manager and shall be completed within three (3) business days after the commencement thereof. If Tenant does not so review or audit Landlord's books and records, Landlord's Expense Statement shall be final and binding upon Tenant. In the event that Tenant determines on the basis of its review of Landlord's books and records that the amount of Expenses paid by Tenant pursuant to this Paragraph 4 for the period covered by such Expense Statement is less than or greater than the actual amount properly payable by Tenant under the terms of this Lease, Tenant shall promptly pay any deficiency to Landlord or, if Landlord concurs with the results of Tenant's audit, Landlord shall promptly refund any excess payment to Tenant, as the case may be. Landlord shall pay for any reasonable audit expenses if such excess payment exceeds the aggregate Expenses in Landlord's Expense Statement by seven percent (7%).

4.5 General Payment Terms

The Base Rent, Additional Rent and all other sums payable by Tenant to Landlord hereunder, including, without limitation, any Late Charges, as defined below, assessed pursuant to Paragraph 6 below, and any interest assessed pursuant to Paragraph 44 below, are referred to collectively as the "Rent." All Rent shall be paid without deduction, offset or abatement (except as specifically provided in this Lease) in lawful money of the United States of America. Checks are to be made payable to HMS Gateway Office, L.P. and shall be mailed: c/o Hines Interests Limited Partnership, 101 California Street, Suite 1000, San Francisco, California 94111-5848, Attn: Tom Kruggel, or to such other person or place as Landlord may, from time to time, designate to Tenant in writing. The Rent for any fractional part of a calendar month at the commencement or termination of the Lease term shall be a prorated amount of the Rent for a full calendar month based upon the number of days in the month of the commencement or termination of the Lease term, as applicable.

5. UTILITY EXPENSES

5.1 Tenant's Obligation to Pay

Tenant shall pay the cost of all water, sewer use, sewer discharge fees, gas, heat, electricity, refuse pick-up, janitorial service (including, without limitation, exterior and interior window washing), telephone, cable T.V., telecommunications facilities and all materials and services or other utilities (collectively, "Utilities") billed or metered separately to the Premises and/or Tenant, together with all taxes, assessments, charges and penalties added to or included within such cost. Tenant acknowledges that the Premises, the Building and/or the Project may become subject to the rationing of Utility services or restrictions on Utility use as required by a public utility company, governmental agency or other similar entity having jurisdiction thereof. Tenant acknowledges and agrees that its tenancy and

occupancy hereunder shall be subject to such rationing or restrictions as may be imposed upon Landlord, Tenant, the Premises, the Building and/or the Project, and Tenant shall in no event be excused or relieved from any covenant or obligation to be kept or performed by Tenant by reason of any such rationing or restrictions. Tenant agrees to comply with energy conservation programs implemented by Landlord by reason of rationing, restrictions or Laws.

5.2 Limitation of Landlord's Liability for Interruption of Utilities

(a) Landlord shall not be liable for any loss, injury or damage to property caused by or resulting from any variation, interruption, or failure of Utilities due to any cause whatsoever, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations, improvements, or due to accident, strike, or conditions or other events shall be deemed an eviction of Tenant or relieve Tenant from any of its obligations hereunder; provided, however, that Landlord shall give Tenant not less than forty-eight (48) hours' notice of any interruption of Utilities planned in advance by Landlord. Landlord shall also use reasonable efforts to notify Tenant of any planned interruption of Utilities by any Utility service provider, provided that Landlord obtains actual knowledge of such planned interruption. In no event shall Landlord be liable to Tenant for any damage to the Premises or for any loss, damage or injury to any property therein or thereon occasioned by bursting, rupture, leakage, failure or overflow of any plumbing or other pipes (including, without limitation, water, steam, and/or refrigerant lines), sprinklers, tanks, drains, drinking fountains or washstands, or other similar cause in, above, upon or about the Premises, the Building or the Project.

(b) Notwithstanding the provisions of Paragraph 5.2(a) above, if any Utility Services to the Premises are interrupted or interfered with as the result of the negligence or willful misconduct of any contractors engaged by Landlord to perform services at the Project, then Landlord shall use commercially reasonable efforts to pursue any claims for compensation or reimbursement available to Landlord against such contractors to the extent of any losses suffered by Tenant and shall make any monies received available to Tenant after allowance for Landlord's costs of collection. In addition to the foregoing, if any policy of insurance maintained by Landlord with respect to the Premises provides coverage for losses incurred due to the failure of Utilities, then Landlord shall make a claim under such policy to the extent of any losses suffered by Tenant, and shall make the proceeds received, if any, available to Tenant after allowance for Landlord's costs of collection.

6. LATE CHARGE

Notwithstanding any other provision of this Lease, Tenant hereby acknowledges that late payment to Landlord of Rent, or other amounts due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. If any Rent or other sums due from Tenant are not received by Landlord or by Landlord's designated agent when due, and if Tenant does not cure such failure within five (5) days after the due date (the "Grace Period"), then Tenant shall pay to Landlord a late charge equal to five percent (5%) of such overdue amount (the "Late Charge"), plus any costs and reasonable attorneys' fees incurred by Landlord by reason of Tenant's failure to pay Rent and/or other charges when due hereunder; provided, however, that Tenant shall have the right to pay Rent during the Grace Period only five (5) times during the Term and, after Tenant has paid Rent during the Grace Period an aggregate of five (5) times, Tenant shall pay to Landlord a Late Charge on any Rent or other sums due hereunder that are not received by Landlord or Landlord's designated agent when due. Notwithstanding the foregoing, if Tenant establishes and maintains throughout the Term a direct payment or debit arrangement with a bank or financial institution pursuant to which the Rent due hereunder is automatically paid to Landlord by electronic transfer on the first day of each month, and if Tenant provides Landlord with evidence of such arrangement, then Landlord shall. provide Tenant with notice of any late payment of Rent prior to

the imposition of a Late Charge. Landlord and Tenant hereby agree that such Late Charge represent a fair and reasonable estimate of the cost that Landlord will incur by reason of Tenant's late payment and shall not be construed as a penalty. Landlord's acceptance of such Late Charge shall not constitute a waiver of Tenant's default with respect to such overdue amount or estop Landlord from exercising any of the other rights and remedies granted under this Lease.

Initials: Landlord _____ Tenant _____

7. LETTER OF CREDIT

(a) *Delivery of Letter of Credit.* Tenant has heretofore delivered to Landlord or, concurrently herewith, Tenant shall deliver to Landlord, at Tenant's sole cost and expense, the Letter of Credit described below in the aggregate amount of Three Million Seven Hundred Fifty Thousand Dollars ($3,750,000.00) as security for the full and faithful performance of Tenant's covenants and obligations under this Lease and the 951 Gateway Lease. Upon the date that is forty-five (45) days after the later of (i) the expiration of the Term or earlier termination of this Lease, and/or (ii) the expiration or earlier termination of the 951 Gateway Lease, the Letter of Credit (as reduced pursuant to this Paragraph 7) shall be returned to Tenant, reduced by any amounts that Landlord reasonably estimates to be required to remedy any Defaults on the part of Tenant hereunder and/or under the 951 Gateway Lease.

(b) *Increase in Face Amount of Letter of Credit.* Notwithstanding anything to the contrary contained in Paragraph 7(a) above or Paragraph 7 of the 951 Gateway Lease, if at any time after the date of this Lease Tenant's Actual Cash Balance (as hereinafter defined) is less than Fifty Million Dollars ($50,000,000.00), then Tenant shall immediately deliver to Landlord an amendment to the Letter of Credit increasing the then-current face amount thereof by the sum of One Million Dollars ($1,000,000.00) (said One Million Dollar ($1,000,000.00) increase being herein referred to as the "Supplemental Credit"). Together with the execution of this Lease, Tenant shall deliver to Landlord bank and investment statements and other financial information acceptable to Landlord to substantiate Tenant's Actual Cash Balance as of September 30, 2000. Commencing as of the quarter ending December 31, 2000 and continuing thereafter, Tenant shall, within forty-five (45) days after the end of each calendar quarter, and at such other times as Landlord may request, Tenant shall deliver to Landlord, bank and investment statements and other financial information acceptable to Landlord to substantiate Tenant's then-current Actual Cash Balance. As used herein, Tenant's "Actual Cash Balance" means, at any given time, the actual balance of Tenant's "cash and cash equivalents," and "cash and cash equivalents" means the aggregate amount of the following, to the extent owned by Tenant free and clear of all loans, repayment obligations, encumbrances and rights of others: (i) cash on hand; (ii) dollar demand deposits maintained in the United States with any commercial bank and dollar time deposits maintained in the United States with, or certificates of deposit having a maturity of five years or less issued by, any commercial bank or other financial institution acceptable to the Landlord; (iii) direct obligations of, or unconditionally guaranteed by, the United States and having a maturity of five years or less; and (iv) readily marketable commercial paper having a maturity of five years or less, issued by any corporation organized and existing under the laws of the United States or any state thereof or the District of Columbia and rated by Standard & Poor's or Moody's (or, if neither such organization shall rate such commercial paper at any time, rated by any nationally recognized rating organization in the United States) with the highest rating assigned by such organization.

(c) *Landlord's Right to Draw on Letter of Credit; Letter of Credit Proceeds.* Landlord may (but shall not be required to) draw upon the Letter of Credit from time to time, in a singular draw or by partial draws at Landlord's election, as permitted by the Letter of Credit, and use the proceeds therefrom (the "Letter of Credit Proceeds") or any portion thereof to (i) cure or remedy any Default of Tenant under this Lease and/or under the 951 Gateway Lease, including, without limitation, any failure of Tenant to remove the Bridge and to restore the facades of the Building and the 951 Gateway Premises upon the earlier of the expiration or sooner termination of this Lease or the 951 Gateway Lease, to the extent such removal and restoration are required under Section 11.2 of the 951 Gateway Lease, (ii) repair damage to the Premises and/or to the 951 Gateway Premises caused by Tenant, (iii) clean the Premises upon termination of this Lease and clean the 951 Gateway Premises upon termination of the 951 Gateway Lease, (iv) reimburse Landlord for the payment of any amount which Landlord may spend or be required to spend by reason of Tenant's Default hereunder and/or under the 951 Gateway Lease, or (v) compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's Default hereunder and/or under the 951 Gateway Lease, including, without limitation, all costs incurred by Landlord in releasing the Premises and/or the 951 Gateway Premises, as appropriate, and any tenant improvement costs and leasing commissions associated therewith; it being understood that any use of the Letter of Credit Proceeds shall not constitute a bar or defense to any of Landlord's remedies set forth in this Lease or the 951 Gateway Lease, as the case may be. In such event and upon written notice from Landlord to Tenant specifying the amount of the Letter of Credit Proceeds so utilized by Landlord, Tenant shall immediately deliver to Landlord an amendment to the Letter of Credit restoring the Letter of Credit to the full amount required under Paragraph 7(a) above (as increased pursuant to Paragraph 7(b) above), less any reductions theretofore permitted pursuant to Paragraph 7(c). Tenant's failure to deliver such amendment to Landlord within ten (10) business days of Landlord's notice shall constitute a Default hereunder and under the 951 Gateway Lease.

(d) *Reduction of Amount of Letter of Credit.* As used herein, "Letter of Credit" shall mean an unconditional, stand-by irrevocable letter of credit (hereinafter referred to as the "Letter of Credit") issued by Mellon Bank or the San Francisco Bay Area office of another major national bank mutually satisfactory to Landlord and Tenant (collectively, the "LC Issuing Bank"), naming Landlord as beneficiary, in the amount specified above; provided, however, that the amount of the Letter of Credit shall be subject to reduction from time to time as provided below:

(1) If Tenant achieves actual annual net sales revenues of Thirty Million Dollars ($30,000,000.00) or more during any calendar year during the Term, the then-current amount of the Letter of Credit (including the Supplemental Credit, if applicable) shall be reduced by twenty-five percent (25%) (in addition to any other reduction to which Tenant is entitled under subparagraphs (2) and (3) below); for purposes of this subparagraph (1), "net sales revenues" shall mean the gross revenues actually realized by Tenant from the operation of its core business (as opposed to nonrecurring income or revenues not generated by Tenant's core business), less actual expenses incurred by Tenant during the applicable calendar year;

(2) commencing on April 1, 2004, the then-current amount of the Letter of Credit (specifically excluding, however, the Supplemental Credit, if applicable) shall be reduced on April 1 of each year in substantially equal annual amounts such that the balance of the Letter of Credit shall be zero on the Expiration Date; and

(3) commencing on the fourth (4th) anniversary of the date Tenant delivers the Supplemental Credit to Landlord (the "Supplemental Credit Delivery Date"), the Supplemental Credit shall be reduced on the fourth (4th) and each succeeding anniversary of the Supplemental Credit Delivery Date in substantially equal installments such that the balance of the Supplemental Credit shall be zero on the Expiration Date.

The Letter of Credit shall be for no less than a one-year term and in any event shall be maintained in effect from the date hereof through the date that is forty-five (45) days after expiration of the Term or the earlier termination of this Lease.

(e) *Form of Letter of Credit.* The Letter of Credit shall provide: (i) that Landlord may make partial and multiple draws hereunder, up to the face amount thereof, (ii) that Landlord may draw upon the Letter of Credit up to the full amount thereof, and the LC Issuing Bank will pay to Landlord the amount of such draw upon receipt by the LC Issuing Bank of a draft signed by Landlord (which draft may be presented by Landlord to the LC Issuing Bank in person, by overnight mail or by telefacsimile), accompanied by a written statement from Landlord that Tenant is in Default under this Lease and/or the 951 Gateway Lease or that Landlord is otherwise entitled to draw upon the Letter of Credit, and (iii) that, in the event of Landlord's assignment or other transfer of its interest in this Lease and/or the 951 Gateway Lease, the Letter of Credit shall be freely transferable by Landlord, without recourse, to the assignee or transferee of such interest and the LC Issuing Bank shall confirm the same to Landlord and such assignee or transferee.

(f) *Failure to Provide for Annual Renewal or Replacement of Letter of Credit.* In the event that the LC Issuing Bank shall fail to notify Landlord at least forty-five (45) days prior to expiration of the Letter of Credit that the Letter of Credit will be renewed for at least one (1) year beyond the then applicable expiration date, and deliver to Landlord a replacement Letter of Credit or a modification to the existing Letter of Credit effectuating such renewal at least forty-five (45) days prior to expiration of the Letter of Credit, and Tenant shall not have otherwise delivered to Landlord, at least forty-five (45) days prior to the relevant annual expiration date, a replacement Letter of Credit in the amount required hereunder and under the 951 Gateway Lease and otherwise meeting the requirements set forth above, then Landlord shall be entitled to draw on the Letter of Credit as provided above, and shall hold the proceeds of such draw in a segregated interest bearing cash collateral account in the name of Landlord and with a bank selected by Landlord, as security for the full and faithful performance of Tenant's obligations hereunder and under the 951 Gateway Lease, until Tenant shall have provided a new Letter of Credit satisfying the requirements of this Paragraph 7 and Paragraph 7 of the 951 Gateway Lease, in which event Landlord shall promptly return the proceeds of such draw plus all accrued interest thereon, not otherwise used in accordance with the terms of this Lease and/or the 951 Gateway Lease, to Tenant.

(g) *Bifurcation of Letter of Credit.* Notwithstanding anything to the contrary contained herein or in the 951 Gateway Lease, if requested by Landlord at any time following the date of this Lease, Tenant shall cause the LC Issuing Bank to bifurcate the Letter of Credit into two separate letters of credit, one securing Tenant's obligations under the 951 Gateway Lease and the other securing Tenant's obligations under this Lease. Such bifurcated letters of credit shall each be in an amount specified by Landlord, provided that the aggregate amount of such letters of credit shall equal the amount of the Letter of Credit immediately prior to such bifurcation. Concurrently with the bifurcation of the Letter of Credit, Landlord and Tenant shall enter into a modification of the 951 Gateway Lease and a modification of this Lease, which modifications shall amend Paragraph 7 of the 951 Gateway Lease and this Paragraph 7 to provide for separate, stand-alone letter of credit provisions in the 951 Gateway Lease and this Lease.

8. POSSESSION

By entry hereunder, Tenant accepts the Premises as suitable for Tenant's intended use and as being in good and satisfactory condition, operating order and repair, AS IS and without representation or warranty by Landlord as to the condition, use or occupancy which may be made thereof, with the exception of any obligation Landlord may have with respect to Landlord's covenants set forth within Section 9.2(a) below. Any exceptions to the foregoing must be by written agreement executed by Landlord and Tenant.

9. USE OF PREMISES

9.1 Permitted Use

(a) The use of the Premises by Tenant and Tenant's agents, advisors, employees, partners, shareholders, directors, invitees and independent contractors (collectively, "Tenant's Agents") shall be solely for the Permitted Use specified in the Basic Lease Information and for no other use. Tenant shall not permit any objectionable or unpleasant smoke, dust, gas, noise or vibration to emanate from or near the Premises, and shall use its best efforts to prevent any objectionable odor from emanating from or near the Premises. Tenant shall strictly comply with the measures set forth on *Exhibit B* hereto and any additional measures reasonably required by Landlord from time to time to eliminate the emanation of objectionable odors. Tenant shall promptly provide Landlord with copies of all permits issued to Tenant by the Bay Area Air Quality Management District (the "Air Management District") and any other governmental agency responsible for or having jurisdiction over matters related to air quality, together with copies of all correspondence between Tenant and the Air Management District or such other agencies. Tenant acknowledges that The Gateway, the real estate development in which the Project is located, is a first-class office and R&D campus and that "objectionable odors" is a subjective standard. Accordingly, Tenant agrees that if odors in the area of the Building lead to complaints from other tenants and occupants of The Gateway, and if Landlord reasonably determines, based upon observation and/or a review of Tenant's records, that such odors emanated from the Premises, Tenant shall promptly use its best efforts to correct the situation at Tenant's sole cost and expense. Such measures to be taken by Tenant shall include, without limitation, the hiring of special consultants and the making of capital improvements to the Premises. Tenant shall make its laboratory records available to Landlord for review in connection with any complaints by tenants or occupants of the Gateway and as otherwise reasonably requested by Landlord. Any failure of Tenant to comply with its obligations under this Paragraph 9.1 (a) shall constitute an immediate Default under this Lease.

(b) The Premises shall not be used to create any nuisance or trespass, for any illegal purpose, for any purpose not permitted by Laws, for any purpose that would invalidate the insurance or increase the premiums for insurance on the Premises, the Building or the Project or for any purpose or in any manner that would unreasonably interfere with other tenants' use or occupancy of the Project. Tenant agrees to pay to Landlord, as Additional Rent, any increases in premiums on policies resulting from Tenant's Permitted Use or any other use or action by Tenant or Tenant's Agents which increases Landlord's premiums or requires additional coverage by Landlord to insure the Premises. Tenant agrees not to overload the floor(s) of the Building.

9.2 Compliance with Governmental Regulations and Private Restrictions

(a) Subject to the terms and conditions of the Lease, Landlord covenants that the Base Building Improvements have been constructed in compliance with all applicable building code requirements in effect and actively being enforced by the City of South San Francisco on the date the building permits were issued to the Contractor therefor. Any claims by Tenant under this Paragraph 9.2 shall be made in writing not later than March 31, 2001. In the event Tenant fails to deliver a written claim to Landlord on or before such date, then Landlord shall be conclusively deemed to have satisfied its obligations under this paragraph. The covenants contained in this paragraph are subject to Paragraph 39 below of the Lease and are made specifically and exclusively for the benefit of the original Tenant and any assignee or sublessee under a Permitted Transfer pursuant to Paragraph 23.4 below.

(b) Tenant and Tenant's Agents shall, at Tenant's expense, faithfully observe and comply with (1) all municipal, state and federal laws, statutes, codes, rules, regulations, ordinances, requirements, and orders (collectively, "Laws"), now in force or which may hereafter be in force pertaining to the Premises or Tenant's use of the Premises, the Building or the Project, including, without limitation, any

Laws requiring installation of fire sprinkler systems, seismic reinforcement and related alterations, whether substantial in cost or otherwise; provided, however, that except as provided in Paragraph 9.3 below, Tenant shall not be required to make or, except as provided in Paragraph 4 above, pay for, structural changes to the Premises or the Building not related to Tenant's specific use of the Premises unless the requirement for such changes is imposed as a result of any improvements or additions made or proposed to be made at Tenant's request; (2) all recorded covenants, conditions and restrictions affecting the Project ("Private Restrictions") now in force or which may hereafter be in force, Landlord hereby specifically reserving the right to hereafter adopt such Private Restrictions and to impose the same on the Project or any portion thereof; provided that such Private Restrictions adopted after the date hereof shall not unreasonably impair Tenant's use of the Premises for any Permitted Use; and (3) any and all rules and regulations set forth in *Exhibit C* and any other rules and regulations now or hereafter promulgated by Landlord (collectively, the "Rules and Regulations"). Without limiting the generality of the foregoing, Tenant hereby covenants and agrees for itself, its successors and assigns, and all persons claiming under or through it, that this Lease is made and accepted upon and subject to the condition that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises herein leased, nor shall Tenant, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein leased. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such Laws or Private Restrictions, shall be conclusive of that fact as between Landlord and Tenant.

9.3 Compliance with Americans with Disabilities Act

Landlord and Tenant hereby agree and acknowledge that the Premises, the Building and/or the Project may be subject to, among other Laws, the requirements of the Americans with Disabilities Act, a federal law codified at 42 U.S.C. 12101 *et seq*., including, but not limited to, Title III thereof, and all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including all requirements of Title 24 of the State of California, as the same may be in effect on the date of this Lease and may be hereafter modified, amended or supplemented (collectively, the "ADA"). Any Tenant Improvements (as hereinafter defined) constructed in connection with Tenant's leasing of the Premises or Alterations (as hereinafter defined) made during the Term shall be in compliance with the requirements of the ADA, and all costs incurred for purposes of compliance therewith shall be a part of and included in the costs of the Tenant Improvements or the Alterations, as applicable. Tenant shall be solely responsible for conducting its own independent investigation of this matter and for ensuring that the design of all Tenant Improvements and Alterations strictly complies with all requirements of the ADA. Subject to reimbursement pursuant to Paragraph 4 above, if any barrier removal work or other work is required to the Building, the Common Areas or the Project under the ADA; then such work shall be the responsibility of Landlord; provided, if such work is required under the ADA as a result of Tenant's use of the Premises or any work or Alteration made to the Premises by or on behalf of Tenant, then such work shall be performed by Landlord at the sole cost and expense of Tenant; and, provided further, that if any such work is required under the ADA as a result of another tenant's specific use of its premises or improvements made by another tenant to its premises, then the cost of such work shall be solely chargeable to such tenant and Tenant shall have no responsibility therefor. Except as otherwise expressly provided in this provision, Tenant shall be responsible at its sole cost and expense for fully and faithfully complying with all applicable requirements of the ADA, including, without limitation, not discriminating against any disabled persons in the operation of Tenant's business in or about the Premises, and offering or otherwise providing

auxiliary aids and services as, and when, required by the ADA. Within ten (10) days after receipt, Tenant shall advise Landlord in writing, and provide Landlord with copies of (as applicable), any notices alleging violation of the ADA relating to any portion of the Premises, the Building or the Project; any claims made or threatened orally or in writing regarding noncompliance with the ADA and relating to any portion of the Premises, the Building or the Project; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Premises, the Building or the Project. Tenant shall and hereby agrees to protect, defend (with counsel acceptable to Landlord) and hold Landlord and Landlord's Agents harmless and indemnify Landlord and Landlord's Agents from and against all liabilities, damages, claims, losses, penalties, judgments, charges and expenses (including attorneys' fees, costs of court and expenses necessary in the prosecution or defense of any litigation including the enforcement of this provision) arising from or in any way related to, directly or indirectly, Tenant's or Tenant's Agents' violation or alleged violation of the ADA. Landlord shall and hereby agrees to protect, defend (with counsel acceptable to Tenant) and hold Tenant and Tenant's Agents harmless and indemnify Tenant and Tenant's Agents from and against all liabilities, damages, claims, losses, penalties, judgments, charges and expenses (including attorneys' fees, costs of court and expenses necessary in the prosecution or defense of any litigation including the enforcement of this provision) arising from or in any way related to, directly or indirectly, Landlord's failure to have the Base Building Improvements constructed in compliance with the ADA as currently administered by the City of South San Francisco.

10. ACCEPTANCE OF PREMISES

By taking possession of the Premises hereunder Tenant accepts the Premises as suitable for Tenant's intended use and as being in good and sanitary operating order, condition and repair, AS IS, and without representation or warranty by Landlord as to the condition, use or occupancy which may be made thereof, except for Landlord's covenant set forth in Section 9.2(a) above. Any exceptions to the foregoing must be by written agreement executed by Landlord and Tenant.

11. SURRENDER

11.1 Surrender at Expiration or Termination

Tenant agrees that on the last day of the Term, or on the sooner termination of this Lease, Tenant shall surrender the Premises to Landlord (i) in good condition and repair (damage by acts of God, fire, and normal wear and tear excepted), but with all interior walls painted or cleaned so they appear painted and, where appropriate, patched, any carpets cleaned, all floors cleaned and waxed, and all plumbing fixtures in good condition and working order and, where appropriate, capped, and (ii) otherwise in accordance with Paragraph 32.9. Normal wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Lease.

11.2 Removal Obligations and Abandonment of Tenant's Property

On or before the expiration or sooner termination of this Lease, Tenant shall, in accordance with this Paragraph 11, and at Tenant's sole cost and expense, remove, and repair any damage caused by such removal, (A) all of Tenant's Property (as hereinafter defined) and Tenant's signage from the Premises, the Building and the Project, (B) all Tenant Improvements and Alterations required to be removed pursuant to Paragraph 12 below, and (C) remove the depressed slab and trench drains in Room 1205 and return to such slab to a typical standard slab height and finish. Any of Tenant's Property not so removed by Tenant as required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention and disposition of such property;

provided, however, that Tenant shall remain liable to Landlord for all costs incurred in storing and disposing of such abandoned property of Tenant. All Tenant Improvements and Alterations except those which Tenant is required to remove pursuant to Paragraph 12 below hereto shall remain in the Premises as the property of Landlord.

11.3 Indemnification

If the Premises are not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Paragraph 11 and Paragraph 32.9 below, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any loss or liability resulting from any claim against Landlord made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Landlord due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, reasonable attorneys' fees and costs.

12. ALTERATIONS AND ADDITIONS

12.1 Landlord's Consent Required

Tenant shall not make, or permit to be made, any alteration, addition or improvement (hereinafter referred to individually as an "Alteration" and collectively as the "Alterations") to the Premises or any part thereof without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Landlord shall have the right in its sole and absolute discretion to consent or to withhold its consent to any Alteration which affects the structural portions of the Premises, the Building or the Project or the Systems serving the Premises, the Building and/or the Project or any portion thereof.

12.2 Alterations Permitted Without Landlord's Consent; Removal Requirements

Notwithstanding the foregoing, but subject to the conditions set forth below, Tenant may, without Landlord's consent, make Alterations within the Premises provided that (i) such Alterations do not affect the structural portions of the Premises, the Building or the Project or the Systems, and (ii) the cost, on an individual project basis, of any Alteration or related series of Alterations is less than $50,000, and all Alterations in the aggregate do not exceed $500,000 over the Term. The Alterations made by Tenant without the consent of Landlord in accordance with this Paragraph 12.2 shall be herein referred to as the "Permitted Alterations."

12.3 Alterations at Tenant's Expense

Any Alteration to the Premises shall be at Tenant's sole cost and expense, in compliance with all applicable Laws and all requirements requested by Landlord, including, without limitation, the requirements of any insurer providing coverage for the Premises or the Project or any part thereof, and in accordance with plans and specifications approved in writing by Landlord (except for Permitted Alterations), which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, with respect to Alterations that may be made without Landlord's prior consent as permitted above, Landlord agrees that Tenant shall not be required to submit plans and specifications for prior approval of the Landlord and that Landlord shall not require prior approval of the installing contractor; provided, however, if Tenant does not obtain the prior approval of plans and specifications for any Alteration, then subject to the terms of Paragraph 12.4(b) below, Landlord may, by notice to Tenant given not later than ninety (90) days prior to the Expiration Date (except in the event of a termination of this Lease prior to the scheduled Expiration Date, in which event no advance

notice shall be required), require Tenant, at Tenant's expense, to remove, and repair any damage caused by removal of, any and all such Alterations. If Tenant does not obtain Landlord's prior consent as to the installing contractor, Tenant shall be responsible for maintaining harmonious labor relations with all contractors and service providers servicing the Premises, Building and/or Project. In addition, with respect to any Permitted Alterations made without Landlord's prior consent as permitted above, Tenant agrees to meet with Landlord, at Landlord's request, not more than once in every calendar year, to discuss any such Permitted Alterations that have been made to the Premises (each such meeting being herein referred to as an "Alterations Meeting"). Tenant shall provide to Landlord within forty five (45) days after written request as-built plans and specifications for any Alterations (including, without limitation, any Permitted Alterations) made by Tenant to the Premises. Notwithstanding anything in this Lease to the contrary, any approval by Landlord of any drawings, plans or specifications prepared on behalf of Tenant shall not in any way bind Landlord, create any responsibility or liability on the part of Landlord for the completeness of the same, their design sufficiency or compliance with applicable statutes, ordinances or regulations or constitute a representation or warranty by Landlord as to the adequacy or sufficiency of such drawings, plans or specifications, or the improvements to which they relate, but such approval shall merely evidence the consent of Landlord to such drawings, plans or specifications.

12.4 Requirements of Request for Approval

(a) Any Alterations requiring the prior consent of Landlord shall contain a request that Landlord specify in writing to Tenant those Alterations that Tenant will be required to remove in accordance with Paragraph 11.1 upon expiration or sooner termination of this Lease. Upon receipt of such request, Landlord shall make such determination and respond to Tenant within twenty (20) business days of such request. Landlord's failure to respond within such time shall be deemed to mean that Tenant shall not be required to remove such Alterations upon the expiration or sooner termination of this Lease.

(b) In the event Tenant constructs or installs any Permitted Alterations without the consent of Landlord, then Tenant shall have the right at the next succeeding Alterations Meeting to request that Landlord specify in writing whether Tenant will be required to remove all or any portion of such Permitted Alterations upon expiration or sooner termination of this Lease. Upon receipt of such request, Landlord shall make such determination and respond to Tenant within twenty (20) business days of such request. Landlord's failure to respond within such time shall conclusively be deemed to be an irrevocable waiver of Landlord's right to demand their removal.

12.5 Permits Required; Insurance Required

12.5.1. Permits

Before Alterations may begin, valid building permits or other permits or licenses required must be furnished to Landlord, and, once the Alterations begin, Tenant will diligently and continuously pursue their completion. Landlord may monitor construction of the Alterations, either through its own employees or through a construction manager retained by Landlord.

12.5.2. Insurance

Tenant shall maintain during the course of any construction (including, without limitation, during the construction of any Alterations), at its sole cost and expense, builders' risk insurance for the amount of the completed value of the Alterations on an all-risk non-reporting form covering all improvements under construction, including building materials, and other insurance in amounts and against such risks as Landlord shall reasonably require in connection with the Alterations, including, without limitation, naming Landlord and Landlord's lender as loss payee under any such policy. In

addition to and without limitation on the generality of the foregoing, Tenant shall ensure that its contractor(s) procure and maintain in full force and effect during the course of construction a "broad form" commercial general liability and property damage policy of insurance naming Landlord, Tenant and Landlord's lenders as additional insureds. The minimum limit of coverage of the aforesaid policy shall be in the amount of not less than Three Million Dollars ($3,000,000.00) for injury or death of one person in any one accident or occurrence and in the amount of not less than Three Million Dollars ($3,000,000.00) for injury or death of more than one person in any one accident or occurrence, and shall contain a severability of interest clause or a cross liability endorsement. Such insurance shall further insure Landlord and Tenant against liability for property damage of at least One Million Dollars ($1,000,000.00).

12.6 Title to Improvements; Removal Rights; Financing

Except as otherwise expressly stated herein or agreed to in writing between the parties, the Tenant Improvements actually paid for by Tenant and all Alterations, including, but not limited to, heating, lighting, electrical, air conditioning, fixed partitioning, drapery, wall covering and paneling, built-in cabinet work and carpeting installations made by Tenant, together with all property that has become an integral part of the Premises or the Building, shall upon installation become the property of Tenant; provided, however, that title to all such Tenant Improvements, Alterations and property shall automatically transfer to Landlord upon the expiration of the Term or the sooner termination of this Lease without the payment of any consideration or the execution of any transfer documents. Notwithstanding the foregoing, Tenant shall retain title to and ownership of Tenant's Property at all times. For purposes of this Paragraph 12.6 and Paragraph 49.4.1 below, Landlord shall be deemed to have paid for those Tenant Improvements funded out of the Initial Tenant Improvement Allowance (as hereinafter defined), and Tenant shall be deemed to have paid for the remaining Tenant Improvements. As used herein, "Initial Tenant Improvement Allowance" means the initial $45.00 per square foot of the Tenant Improvement Allowance provided by Landlord hereunder.

12.7 Computer, Utility and Telecommunications Equipment

No private telephone systems, utilities and/or other related computer, utility or telecommunications equipment or lines may be installed without Landlord's prior written consent, which consent shall not be unreasonably withheld. If Landlord gives such consent, all equipment must be installed within the Premises and, unless Landlord, at the time of installation, notifies Tenant in writing that removal will be required, left in the Premises and surrendered to Landlord upon the expiration or sooner termination of this Lease.

12.8 Notice and Opportunity to Post Notice of Nonresponsibility

Tenant agrees not to proceed to make any Alterations, notwithstanding consent from Landlord to do so, without fifteen (15) days' prior written notice to Landlord, in order that Landlord may post appropriate notices to avoid any liability to contractors or material suppliers for payment for Tenant's improvements. Tenant will at all times permit such notices to be posted and to remain posted until the completion of work.

13. MAINTENANCE AND REPAIRS OF PREMISES

13.1 Maintenance by Tenant

Subject to the provisions of Paragraph 13.2, 21 and 22 below, throughout the Term, Tenant shall, at its sole expense, (1) keep and maintain in good order and condition the Building and the Premises and repair the Building and the Premises and every part thereof, including interior and exterior glass,

windows, window frames and casements, interior and exterior doors and door frames and door closers; interior and exterior lighting (including, without limitation, light bulbs and ballasts), the roof covering; the Systems serving the Premises and the Building; interior and exterior signage, interior demising walls and partitions, equipment, interior painting and interior walls and floors, and the roll-up doors, ramps and dock equipment, including, without limitation, dock bumpers, dock plates, dock seals, dock levelers and dock lights located in or on the Premises (excepting only those portions of the Building or the Project to be maintained by Landlord, as provided in Paragraph 13.2 below), (2) furnish all expendables, including light bulbs, paper goods and soaps, used in the Premises, and (3) keep and maintain in good order and condition and repair and replace all of Tenant's security systems in or about or serving the Premises. Tenant shall not do nor shall Tenant allow Tenant's Agents to do anything to cause any damage, deterioration or unsightliness to the Premises, the Building or the Project. Tenant shall perform its obligations under this Paragraph 13.1 in accordance with maintenance and repair standards adopted by Landlord from time to time for the Project. Tenant shall cause to be furnished to Landlord on not less than a quarterly basis maintenance reports on all Systems and the roof of the Building prepared by a qualified vendor or consultant, and Tenant shall promptly perform any maintenance tasks recommended by such reports or otherwise required by Landlord to cause the Premises and the Systems to comply with Landlord's maintenance and repair standards.

13.2 Maintenance by Landlord

Subject to the provisions of Paragraphs 13.1, 21 and 22, and further subject to Tenant's obligation under Paragraph 4 to reimburse Landlord, in the form of Additional Rent, for Tenant's Proportionate Share(s) of the Project and the Building, as applicable, of the cost and expense of the following items, Landlord agrees to repair and maintain the Common Areas in good order and condition, including, without limitation, the Parking Areas, pavement, landscaping, sprinkler systems, sidewalks, driveways, curbs, and lighting systems in the Common Areas. Subject to the provisions of Paragraphs 13.1, 21 and 22, Landlord, at its own cost and expense, agrees to repair and maintain the following items: the structural portions of the roof (specifically excluding the roof coverings), the foundation, the footings, the floor slab, and the load bearing walls and exterior walls of the Building (excluding any glass and any routine maintenance, including, without limitation, any painting, sealing, patching and waterproofing of such walls).

13.3 Landlord's Right to Perform Tenant's Obligations

Notwithstanding anything in this Paragraph 13 to the contrary, Landlord shall have the right to either repair or to require Tenant to repair any damage to any portion of the Premises, the Building and/or the Project caused by or created due to any act, omission, negligence or willful misconduct of Tenant or Tenant's Agents and to restore the Premises, the Building and/or the Project, as applicable, to the condition existing prior to the occurrence of such damage; provided, however, that in the event Landlord elects to perform such repair and restoration work, Tenant shall reimburse Landlord upon demand for all costs and expenses incurred by Landlord in connection therewith. Landlord's obligation hereunder to repair and maintain is subject to the condition precedent that Landlord shall have received written notice of the need for such repairs and maintenance and a reasonable time to perform such repair and maintenance. Tenant shall promptly report in writing to Landlord any defective condition which Landlord is required to repair, and failure to so report such defects shall make Tenant responsible to Landlord for the costs and expenses of repairing any Preventable Damage occurring after the date Tenant obtains actual knowledge of such defective condition and any liability incurred by Landlord by reason of Tenant's failure to notify Landlord of such defective condition in a timely manner as provided herein. As used herein, "Preventable Damage" means any damage or deterioration which could have been prevented had Landlord received timely notice of the defective condition. Nothing contained herein shall be deemed or construed to limit Tenant's obligations under Paragraph 16 below.

13.4 Tenant's Waiver of Rights

Tenant hereby expressly waives all rights to make repairs at the expense of Landlord or to terminate this Lease, as provided for in California Civil Code Sections 1941 and 1942, and 1932(1), respectively, and any similar or successor statute or law in effect or any amendment thereof during the Term.

14. LANDLORD'S INSURANCE

At all times during the Term of this Lease, Landlord shall purchase and keep in force "all risk" property insurance covering the Base Building Improvements, the Tenant Improvements and all Alterations made to the Premises by Tenant in accordance with the terms of Paragraph 12 above, in accordance with Landlord's customary insurance program for comparable properties. Tenant shall provide Landlord with such information as may be requested by Landlord or its insurers concerning the value of the Tenant Improvements or any Alterations. Tenant acknowledges and agrees that Landlord shall have no obligation to maintain property insurance covering any alterations, additions or improvements made to the Premises other than Alterations made in strict accordance with Paragraph 12 (such other alterations, additions or improvements being herein referred to as "Unpermitted Alterations"), and Tenant hereby agrees to indemnify and hold harmless Landlord and Landlord's Agents from and against any and all Losses (as hereinafter defined) resulting from or arising out of the making of any such Unpermitted Alterations. Tenant shall, at its sole cost and expense, comply with any and all reasonable requirements pertaining to the Premises, the Building and the Project of any insurer necessary for the maintenance of reasonable property damage and commercial general liability insurance, covering the Building and the Project. Landlord, at Tenant's cost, may maintain "Loss of Rents" insurance, insuring that the Rent will be paid in a timely manner to Landlord for a period of at least twelve (12) months if the Building or any portion thereof are destroyed or rendered unusable or inaccessible by any cause insured against under this Lease.

15. TENANT'S INSURANCE

15.1 Commercial General Liability Insurance

At all times during the Term of this Lease, Tenant shall, at Tenant's expense, secure and keep in force a Commercial General Liability insurance policy covering the Premises, insuring Tenant, and naming Landlord and its lenders as additional insureds, against liability arising out of the ownership, use, occupancy or maintenance of the Premises. The minimum limit of coverage of such policy shall be in the amount of not less than Three Million Dollars ($3,000,000.00) for each occurrence combined single limit for bodily injury and property damage, shall include contractual liability coverage (which shall include coverage for Tenant's indemnification obligations in this Lease, provided that the amount of such coverage shall not be construed to limit Tenant's indemnification obligations hereunder), and shall contain severability of interests and cross liability coverage clauses and/or endorsements. Such insurance shall be endorsed to be primary and non-contributory to any insurance Landlord may carry. Landlord may from time to time require reasonable increases in any such limits if Landlord believes that additional coverage is necessary or desirable. The limit of any insurance shall not limit the liability of Tenant hereunder. No policy maintained by Tenant under this Paragraph 15.1 shall contain a deductible greater than Five Thousand Dollars ($5,000.00). Such policies of insurance shall be issued as primary policies and not contributing with or in excess of coverage that Landlord may carry.

15.2 Property Insurance

At all times during the Term of this Lease, Tenant shall, at Tenant's expense, maintain in full force and effect special form property insurance on all of its personal property, possessions, furniture,

furnishings, trade or business fixtures, equipment and such other items listed on *Exhibit E* (collectively, "Tenant's Property") located on the Premises. Such special form property insurance shall be on a full replacement cost basis and shall be written to cover all risks of direct loss or damage, including, but not be limited to, theft, water damage and sprinkler leakage. No such policy shall contain a deductible greater than Five Thousand Dollars ($5,000.00). During the Term of this Lease the proceeds from any such policy or policies of insurance shall be used for the repair or replacement of Tenant's Property. Landlord shall have no interest in the insurance upon Tenant's Property and will sign all documents reasonably necessary in connection with the settlement of any claim or loss by Tenant. Landlord will not carry insurance on Tenant's Property.

15.3 Worker's Compensation Insurance; Employer's Liability Insurance

At all times during the Term of this Lease, Tenant shall, at Tenant's expense, maintain in full force and effect worker's compensation insurance with not less than the minimum limits required by Law, and employer's liability insurance with a minimum limit of coverage of One Million Dollars ($1,000,000) per accident.

15.4 Business Interruption Insurance

Tenant shall, at all times during the Term of this Lease, maintain in full force and effect loss of income and extra expense insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings or extra expenses attributable to or resulting from all perils commonly insured under a special form policy of property insurance.

15.5 Insurance Standards and Evidence of Coverage

All insurance required to be carried by Tenant hereunder shall be maintained with insurance companies authorized to do business in the State of California for the issuance of the applicable type of insurance coverage and rated A:XIII or better in Best's Key Rating Guide. Notwithstanding the foregoing, Landlord hereby approves General Star Indemnity as the carrier of the insurance required under Paragraph 15.1 above, provided that General Star Indemnity shall at all times during the Term maintain a Best's Key Rating of not less than A++:VIII. Tenant shall deliver to Landlord certificates of insurance and true and complete copies of any and all endorsements required herein for all insurance required to be maintained by Tenant hereunder at the time of execution of this Lease by Tenant. Tenant shall, at least thirty (30) days prior to expiration of each policy, furnish Landlord and the other parties named as additional insureds with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable except after thirty (30) days' prior written notice to Landlord and the other parties named as additional insureds as required in this Lease (except for cancellation for nonpayment of premium, in which event cancellation shall not take effect until at least ten (10) days' notice has been given to Landlord and the parties named as additional insureds hereunder).

16. INDEMNIFICATION

16.1 Of Landlord

Tenant shall indemnify and hold harmless Landlord and Landlord's advisors, employees, partners, shareholders and directors against and from any and all claims, liabilities, judgments, costs, demands, causes of action and expenses (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") arising from (1) the use of the Premises, the Building or the Project by Tenant or Tenant's Agents, or from any activity done, permitted or suffered by Tenant or Tenant's Agents in or about the Premises, the Building or the Project, and (2) any act, neglect, fault, willful misconduct or omission of

Tenant or Tenant's Agents, or from any breach or default in the terms of this Lease by Tenant or Tenant's Agents, and (3) any action or proceeding brought on account of any matter in items (1) or (2); provided, however, that in no event shall Tenant be required to indemnify Landlord against any claims, demands or losses resulting from any failure of Landlord to observe any of the terms and conditions of this Lease, including, without limitation, the covenant set forth in Paragraph 9.2(a) above, in each case to the extent such failure or breach has persisted for an unreasonable period of time after written notice of such failure or breach. If any action or proceeding is brought against Landlord by reason of any such claim, upon notice from Landlord, Tenant shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. As a material part of the consideration to Landlord, Tenant hereby releases Landlord and Landlord's Agents from responsibility for, waives its entire claim of recovery for and assumes all risk of (i) damage to property or injury to persons in or about the Premises, the Building or the Project from any cause whatsoever (except that which is caused by the gross negligence or willful misconduct of Landlord or Landlord's Agents or by the failure of Landlord to observe any of the terms and conditions of this Lease, if such failure has persisted for an unreasonable period of time after written notice of such failure), or (ii) loss resulting from business interruption or loss of income at the Premises. The obligations of Tenant under this Paragraph 16.1 shall survive the expiration or earlier termination of this Lease.

16.2 Of Tenant

Landlord shall indemnify and hold harmless Tenant and Tenant's employees, partners, shareholders and directors against and from any and all Losses relating to the Project and arising from (1) the gross negligence or willful misconduct of Landlord or Landlord's Agents, (2) the failure of Landlord to observe any of the terms and conditions of this Lease, if such failure has persisted for an unreasonable period of time after written notice of such failure, and (3) any action or proceeding brought on account of any matter in items (1) or (2). If any action or proceeding is brought against Tenant by reason of any such claim, upon notice from Tenant, Landlord shall defend the same at Landlord's expense by counsel reasonably satisfactory to Landlord. The obligations of Landlord under this Paragraph 16.2 shall survive any termination of this Lease.

16.3 No Impairment of Insurance

The foregoing indemnity shall not relieve any insurance carrier of its obligations under any policies required to be carried by either party pursuant to this Lease, to the extent that such policies cover the peril or occurrence that results in the claim that is subject to the foregoing indemnity.

17. SUBROGATION

Landlord and Tenant hereby mutually waive any claim against the other and its Agents for any loss or damage to any of their property located on or about the Premises, the Building or the Project that is caused by or results from perils covered by the property insurance required to be carried by the respective parties in accordance with Paragraphs 14 and 15 of this Lease, whether or not due to the negligence of the other party or its Agents. Because the foregoing waivers will preclude the assignment of any claim by way of subrogation to an insurance company or any other person, each party now agrees to immediately give to its insurer written notice of the terms of these mutual waivers and shall have their insurance policies endorsed to prevent the invalidation of the insurance coverage because of these waivers. Nothing in this Paragraph 17 shall relieve a party of liability to the other for failure to carry insurance required by this Lease.

18. SIGNS

Tenant shall not place or permit to be placed in, upon, or about the Premises, the Building or the Project any exterior lights, decorations, balloons, flags, pennants, banners, advertisements or notices, or

erect or install any signs, windows or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises without obtaining Landlord's prior written consent or without complying with Landlord's signage program, as the same may be modified by Landlord from time to time, and with all applicable Laws, and will not conduct, or permit to be conducted, any sale by auction on the Premises or otherwise on the Project. Tenant shall remove any sign, advertisement or notice placed on the Premises, the Building or the Project by Tenant upon the expiration of the Term or sooner termination of this Lease, and Tenant shall repair any damage or injury to the Premises, the Building or the Project caused thereby, all at Tenant's expense. If any signs are not removed, or necessary repairs not made, Landlord shall have the right to remove the signs and repair any damage or injury to the Premises, the Building or the Project at Tenant's sole cost and expense.

19. FREE FROM LIENS

Tenant shall keep the Premises, the Building and the Project free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant in accordance with the provisions of this Paragraph 19. In the event that Tenant shall not, within ten (10) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Landlord shall have in addition to all other remedies provided herein and by law the right but not the obligation to cause same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Landlord by Tenant upon demand. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Landlord shall deem proper for the protection of Landlord, the Premises, the Building and the Project, from mechanics' and materialmen's liens. Tenant agrees not to proceed to perform any repairs or construction on the Premises without fifteen (15) days' prior written notice to Landlord in order that Landlord may post appropriate notices to avoid any liability to contractors or material suppliers for payment for Tenant's work.

20. ENTRY BY LANDLORD

Tenant shall permit Landlord and Landlord's Agents to enter into and upon the Premises at all reasonable times upon twenty-four (24) hours' notice (except in the case of an emergency, in which event no advance notice shall be required) for the purpose of inspecting the same or showing the Premises to prospective purchasers, lenders or tenants or to alter, improve, maintain and repair the Premises or the Building as required or permitted of Landlord under the terms hereof, or for any other reasonable business purpose, without any rebate of Rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises thereby occasioned; and Tenant shall permit Landlord to post notices of non-responsibility and ordinary "for sale" or "for lease" signs. Notwithstanding the foregoing, Landlord shall only enter the Premises for the purpose of showing the same to prospective tenants during the last ten (10) months of the Term. No such entry shall be construed to be a forcible or unlawful entry into, or a detailer of, the Premises, or an eviction of Tenant from the Premises. Tenant's representatives shall have the right to accompany Landlord on any inspection of the Premises, provided that Tenant's representatives are available at the time of such inspections. Landlord may temporarily close entrances, doors, corridors, elevators or other facilities without liability to Tenant by reason of such closure in the case of an emergency and when Landlord otherwise reasonably deems such closure necessary.

21. DESTRUCTION AND DAMAGE

21.1 Damage Covered by Extended Coverage Insurance

If the Premises are damaged by fire or other perils covered by extended coverage insurance, Landlord shall, at Landlord's option:

21.1.1. Material Damage; Insured Loss

In the event of material damage to the Premises (which shall mean damage or destruction of a nature such that all required permits cannot be reasonably obtained and/or the Premises cannot be substantially repaired and restored to the condition existing immediately prior to such damage or destruction within three hundred sixty-five (365) days after the date Landlord obtains actual knowledge of such destruction (the "Casualty Discovery Date")), Landlord may elect either to commence promptly to repair and restore the Premises and prosecute the same diligently to completion, in which event this Lease shall remain in full force and effect; or not to repair or restore the Premises, in which event this Lease shall terminate. Landlord shall give Tenant written notice of its intention within sixty (60) days after the Casualty Discovery Date. If Landlord elects in writing not to restore the Premises, this Lease shall be deemed to have terminated as of the date of such destruction.

21.1.2. Minor Damage; Insured Loss

In the event of minor damage to the Premises (which shall mean damage or destruction of a nature such that all required permits can be reasonably obtained and the Premises may be substantially repaired or restored to the condition existing immediately prior to such damage or destruction within three hundred sixty-five (365) days after the Casualty Discovery Date) for which Landlord will receive insurance proceeds sufficient to cover the cost to repair and restore such partial destruction, Landlord shall commence and proceed diligently with the work of repair and restoration, in which event this Lease shall continue in full force and effect. If the insurance proceeds (plus any amounts Tenant may elect or is obligated to contribute) are not sufficient to cover the cost of such repair and restoration, Landlord may elect either to so repair and restore, in which event this Lease shall continue in full force and effect, or not to repair or restore, in which event this Lease shall terminate. In either case, Landlord shall give written notice to Tenant of its intention within sixty (60) days after the Casualty Discovery Date. If Landlord elects, in writing, not to restore the Premises, this Lease shall be deemed to have terminated as of the date of such partial destruction.

21.1.3. Calculation of Restoration Period.

Following the occurrence of any casualty event, Landlord shall obtain from a licensed general contractor selected by Landlord (the "Restoration Contractor") an estimate of the time required to obtain all permits and to fully repair and restore the Premises. In the event the Restoration Contractor determines that the work of repair and restoration shall require more than three hundred sixty-five (365) days to complete, Tenant shall have the right to discuss such timing with the Restoration Contractor and, with the approval of Landlord, to discuss modifications to the scope of work in an effort to reduce the repair and restoration time to a period of less than three hundred sixty-five days; provided, however, that in the event of any disagreement between the parties as to the estimated length of the restoration period or the scope of work required, the determination of Landlord and the Restoration Contractor shall control.

21.2 Uninsured Loss

If the Premises are damaged by any peril not covered by Landlord's property insurance, and the cost to repair such damage exceeds any amount Tenant may agree to contribute, Landlord may elect either to commence promptly to repair and restore the Premises and prosecute the same diligently to completion, in which event this Lease shall remain in full force and effect; or not to repair or restore the Premises, in which event this Lease shall terminate. Landlord shall give Tenant written notice of its intention within sixty (60) days after the Casualty Discovery Date. If Landlord elects, in writing, not to restore the Premises, this Lease shall be deemed to have terminated as of the date on which Tenant surrenders possession of the Premises to Landlord.

21.3 Casualty During Last Twelve Months of Term

If fifty percent (50%) or more of the Building is damaged or destroyed during the last twelve (12) months of the Term (unless Tenant has remaining extension options and has previously validly exercised such options or validly exercises such options within ten (10) days after the Casualty Discovery Date), Landlord shall have the option to terminate this Lease, exercisable by notice to Tenant within sixty (60) days after the Casualty Discovery Date.

21.4 Tenant's Right to Terminate Lease

If the Premises is damaged or destroyed to the extent that the Premises cannot be substantially repaired or restored by Landlord within three hundred sixty-five (365) days after the Casualty Discovery Date, Tenant may terminate this Lease immediately upon notice thereof to Landlord, which notice shall be given, if at all, not later than fifteen (15) days after Landlord notifies Tenant of Landlord's estimate of the period of time required to repair such damage or destruction.

21.5 Rent Abatement

In the event of repair and restoration as herein provided, the monthly installments of Base Rent and Additional Rent shall be abated proportionately to the extent Tenant's use of the Premises is impaired during the period of such repair or restoration, but only to the extent of rental abatement insurance proceeds actually received by Landlord. The number of parking spaces allocated to Tenant hereunder shall be reduced on a proportionate basis in the event any of the parking spaces in the Parking Areas are eliminated as a result of such damage or destruction affecting such Parking Areas. Except as expressly provided above with respect to abatement of Base Rent, Tenant shall have no claim against Landlord for, and hereby releases Landlord and Landlord's Agents from responsibility for and waives its entire claim of recovery for any cost, loss or expense suffered or incurred by Tenant as a result of any damage to or destruction of the Premises, the Building or the Project or the repair or restoration thereof, including, without limitation, any cost, loss or expense resulting from any loss of use of the whole or any part of the Premises, the Building or the Project and/or any inconvenience or annoyance occasioned by such damage, repair or restoration.

21.6 Restoration of Base Building Improvements and Tenant Improvements

If Landlord is obligated to or elects to repair or restore as herein provided, Landlord shall repair or restore only the Base Building Improvements constructed pursuant to the terms of this Lease, substantially to their condition existing immediately prior to the occurrence of the damage or destruction; and Tenant shall promptly repair and restore, at Tenant's expense, the Tenant Improvements and Tenant's Alterations. Landlord shall make available to Tenant to pay Restoration Costs (as hereinafter defined) any insurance proceeds actually collected by Landlord allocable to the Tenant Improvements and Alterations. Such proceeds shall be disbursed by Landlord in accordance with customary construction-lending practices and disbursement procedures (including, without

limitation, the creation of a retention). As used herein, "Restoration Costs" means costs actually incurred by Tenant in repairing and restoring the Tenant Improvements and any Alterations made by Tenant to the Premises.

21.7 Waiver

Tenant hereby waives the provisions of California Civil Code Section 1932(2) and Section 1933(4) which permit termination of a lease upon destruction of the leased premises, and the provisions of any similar law now or hereinafter in effect, and the provisions of this Paragraph 21 shall govern exclusively in case of such destruction.

22. CONDEMNATION

(a) If twenty-five percent (25%) or more of the Building or fifty percent (50%) or more of the Designated Parking Areas (as hereinafter defined) is taken for any public or quasi-public purpose by any lawful governmental power or authority, by exercise of the right of appropriation, inverse condemnation, condemnation or eminent domain, or sold to prevent such taking (each such event being referred to as a "Condemnation"), Landlord may, at its option, terminate this Lease as of the date title vests in the condemning party. If twenty-five percent (25%) or more of the Premises is taken and if the Premises remaining after such Condemnation and any repairs by Landlord would be untenantable for the conduct of Tenant's business operations, Tenant shall have the right to terminate this Lease as of the date title vests in the condemning party. If either party elects to terminate this Lease as provided herein, such election shall be made by written notice to the other party given within thirty (30) days after the nature and extent of such Condemnation have been finally determined. If neither Landlord nor Tenant elects to terminate this Lease to the extent permitted above, Landlord shall promptly proceed to restore the Premises, to the extent of any Condemnation award received by Landlord, to substantially the same condition as existed prior to such Condemnation, allowing for the reasonable effects of such Condemnation, and a proportionate abatement shall be made to the Base Rent and Additional Rent corresponding to the time during which, and to the portion of the floor area of the Premises (adjusted for any increase thereto resulting from any reconstruction) of which, Tenant is deprived on account of such Condemnation and restoration, as reasonably determined by Landlord. Except as expressly provided in the immediately preceding sentence with respect to abatement of Rent, Tenant shall have no claim against Landlord for, and hereby releases Landlord and Landlord's Agents from responsibility for and waives its entire claim of recovery for any cost, loss or expense suffered or incurred by Tenant as a result of any Condemnation or the repair or restoration of the Premises, the Building, the Project or the Parking Areas following such Condemnation, including, without limitation, any cost, loss or expense resulting from any loss of use of the whole or any part of the Premises, the Building, the Project or the parking areas and/or any inconvenience or annoyance occasioned by such Condemnation, repair or restoration. The provisions of California Code of Civil Procedure Section 1265.130, which allows either party to petition the Superior Court to terminate the Lease in the event of a partial taking of the Premises, the Building or the Project or the parking areas for the Building or the Project, and any other applicable law now or hereafter enacted, are hereby waived by Tenant.

(b) Landlord shall be entitled to any and all compensation, damages, income, rent, awards, or any interest therein whatsoever which may be paid or made in connection with any Condemnation, and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease or otherwise; provided, however, that Tenant shall be entitled to receive any award separately allocated by the condemning authority to Tenant for Tenant's relocation expenses or the value of Tenant's Property (specifically excluding fixtures, Alterations and other components of the Premises which under this Lease or by law are or at the expiration of the Term will become the property of Landlord), provided that such award does not reduce any award otherwise allocable or payable to Landlord.

23. ASSIGNMENT AND SUBLETTING

23.1 Landlord's Consent Required Except for Permitted Transfers

Except as specifically provided for in Paragraph 23.3 below, Tenant shall not voluntarily or by operation of law, (1) mortgage, pledge, hypothecate or encumber this Lease or any interest herein, (2) assign or transfer this Lease or any interest herein, (3) sublease the Premises or any part thereof, or any right or privilege appurtenant thereto, or (4) allow any other person (the employees and invitees of Tenant excepted) to occupy or use the Premises, or any portion thereof, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed provided that Tenant is not then in Default under this Lease nor is any event then occurring which with the giving of notice or the passage of time, or both, would constitute a Default hereunder.

23.2 Requirements of Request for Consent.

When Tenant requests Landlord's consent to such assignment or subletting, it shall notify Landlord in writing of the name and address of the proposed assignee or subtenant and the nature and character of the business of the proposed assignee or subtenant and shall provide current and prior financial statements for the proposed assignee or subtenant prepared in accordance with generally accepted accounting principles consistently applied ("GAAP"). Tenant shall also provide Landlord with a copy of the proposed sublease or assignment agreement, including all material terms and conditions thereof, and such additional information concerning the proposed assignee or subtenant as Landlord may request. Landlord shall have the option, to be exercised within fifteen (15) days of receipt of the foregoing in the case of a proposed assignment or subletting affecting not more than twenty five thousand (25,000) square feet of the Premises, and within thirty (30) days of receipt of the foregoing in the case of a proposed assignment or subletting affecting more than twenty five thousand (25,000) square feet ("Landlord's Review Period"), to (1) consent to the proposed assignment or sublease, (2) refuse its consent to the proposed assignment or sublease, providing that such consent shall not be unreasonably withheld, conditioned or delayed so long as Tenant is not then in Default under this Lease or the Expansion Lease, if any, nor is any event then occurring which with the giving of notice or the passage of time, or both, would constitute a Default hereunder or under the Expansion Lease, or (3) sublease or take an assignment, as the case may be, from Tenant of the interest in this Lease and/or the Premises that Tenant proposes to assign or sublease, on the same terms and conditions as stated in the proposed sublet or assignment agreement. Notwithstanding the foregoing, in the event Tenant wishes to assign or sublet all of the Premises for all of the remainder of the Term (except in either event in connection with a Permitted Transfer), then in addition to the options specified in the aforesaid clauses (1), (2) and (3), Landlord shall have the additional right, to be exercised within the aforesaid thirty (30) day period, to terminate this Lease in its entirety. In the event Landlord elects to terminate this Lease or sublease or take an assignment from Tenant of the interest in this Lease and/or the Premises that Tenant proposes to assign or sublease as provided in the foregoing clauses of this Paragraph 23.2, then Landlord shall have the additional right to negotiate directly with Tenant's proposed assignee or subtenant and to enter into a direct lease or occupancy agreement with such party on such terms as shall be acceptable to Landlord in its sole and absolute discretion, and Tenant hereby waives any claims against Landlord related thereto, including, without limitation, any claims for any compensation or profit related to such lease or occupancy agreement.

23.3 Criteria To Be Considered in Connection with Request for Consent

Without otherwise limiting the criteria upon which Landlord may withhold its consent to a proposed assignment or sublease, Landlord shall be entitled to consider all reasonable criteria including, but not limited to, the following: (1) whether or not the proposed subtenant or assignee is engaged in a business which, and the Premises will be used in a manner which, is in keeping with the

then character and nature of all other tenancies in the Project, (2) whether the use to be made of the Premises by the proposed subtenant or assignee will conflict with any so-called "exclusive" use then in favor of any other tenant of the Building, the Project, or the Adjacent Properties, and whether such use would be prohibited by any other portion of this Lease, including, but not limited to, any rules and regulations then in effect, or under applicable Laws, and whether such use imposes an unreasonable load upon the Premises and the Building and Project services, (3) the business reputation of the proposed individuals who will be managing and operating the business operations of the assignee or subtenant, and the long-term financial and competitive business prospects of the proposed assignee or subtenant, and (4) the creditworthiness and financial stability of the proposed assignee or subtenant in light of the responsibilities involved. In any event, Landlord may withhold its consent to any assignment or sublease if the actual use proposed to be conducted in the Premises or portion thereof is not a Permitted Use provided for under Paragraph 9 above or a general office use.

23.4 Permitted Transfers

Notwithstanding the foregoing, Tenant may, without Landlord's consent, but upon notice and delivery of evidence documenting such assignment or subletting, assign or sublet to an Affiliate (as defined below) of the original Tenant (such assignment or subletting being referred to as a "Permitted Transfer"). In addition, a sale or transfer of the capital stock of Tenant shall be deemed a Permitted Transfer if (1) such sale or transfer occurs in connection with any bona fide financing or capitalization for the benefit of Tenant or (2) occurring through a public trade. For purposes of this Lease, "Affiliate" shall mean, as to any Person, any person, firm or corporation (i) which shall be controlled by, under the control of, or under common control with such person, (ii) which results from a merger of, reorganization of, or consolidation with, or (iii) which acquires substantially all of the stock or assets with respect to the business that is conducted in the Premises. "Person" means any natural person, corporation, firm, association, government, governmental agency or any other entity, whether acting in any individual, fiduciary or other capacity. For purposes hereof, "control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, firm or corporation, whether through the ownership of voting securities, by contract or otherwise.

23.5 Excess Rent

If Landlord approves an assignment or subletting as herein provided, Tenant shall pay to Landlord, as Additional Rent, fifty percent (50%) of the Transfer Profits (as hereinafter defined), as evidenced by written records satisfactory to Landlord. As used herein, "Transfer Profits" means the difference, if any, between (1) the Base Rent plus Additional Rent allocable to that part of the Premises affected by such assignment or sublease pursuant to the provisions of this Lease, and (2) the rent and any additional rent payable by the assignee or sublessee to Tenant, less actual leasing commissions and reasonable attorneys' fees, if any, incurred by Tenant in connection with such assignment or sublease, and actual tenant improvement costs paid by Tenant in improving the Premises for the applicable assignee or subtenant up to an aggregate of five dollars ($5.00) per square foot of space subject to the assignment or sublease transaction. The assignment or sublease agreement, as the case may be, after approval by Landlord, shall not be amended without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, shall contain an express assumption by the assignee or subtenant of Tenant's obligations under this Lease and shall contain a provision directing the assignee or subtenant to pay the rent and other sums due thereunder directly to Landlord upon receiving written notice from Landlord that Tenant is in default under this Lease with respect to. the payment of Rent. In the event that, notwithstanding the giving of such notice, Tenant collects any rent or other sums from the assignee or subtenant, then Tenant shall hold such sums in trust for the benefit of Landlord and shall immediately forward the same to Landlord. Landlord's collection of such rent and other sums shall not constitute an acceptance by Landlord of attornment by such assignee or subtenant.

A consent to one assignment, subletting, occupation or use shall not be deemed to be a consent to any other or subsequent assignment, subletting, occupation or use, and consent to any assignment or subletting shall in no way relieve Tenant of any liability under this Lease. Any assignment or subletting without Landlord's consent shall be void, and shall, at the option of Landlord, constitute a Default under this Lease.

23.6 No Release of Tenant

Notwithstanding any assignment or subletting, including, without limitation, a Permitted Transfer, Tenant shall at all times remain fully responsible and liable for the payment of the Rent and for compliance with all of Tenant's other obligations under this Lease (regardless of whether Landlord's approval has been obtained for any such assignment or subletting).

23.7 Payment of Landlord's Fees

Tenant shall pay Landlord's reasonable fees (including, without limitation, the fees of Landlord's counsel, not to exceed $1,000.00 per transaction), incurred in connection with Landlord's review and processing of documents regarding any proposed assignment or sublease.

23.8 No Consent to Further Assignment

Notwithstanding anything in this Lease to the contrary, in the event Landlord consents to an assignment or subletting by Tenant in accordance with the terms of this Paragraph 23 (specifically excluding any Permitted Transfer), Tenant's assignee or subtenant shall have no right to further assign this Lease or any interest therein or thereunder or to further sublease all or any portion of the Premises.

23.9 Constraints Reasonable

Tenant acknowledges and agrees that the restrictions, conditions and limitations imposed by this Paragraph 23 on Tenant's ability to assign or transfer this Lease or any interest herein, to sublet the Premises or any part thereof, to transfer or assign any right or privilege appurtenant to the Premises, or to allow any other person to occupy or use the Premises or any portion thereof, are, for the purposes of California Civil Code Section 1951.4, as amended from time to time, and for all other purposes, reasonable at the time that the Lease was entered into, and shall be deemed to be reasonable at the time that Tenant seeks to assign or transfer this Lease or any interest herein, to sublet the Premises or any part thereof, to transfer or assign any right or privilege appurtenant to the Premises, or to allow any other person to occupy or use the Premises or any portion thereof.

24. TENANT'S DEFAULT

The occurrence of any one of the following events shall constitute an event of default on the part of Tenant ("Default"):

(a) The vacation of the Premises for a consecutive period of sixty (60) days or more, without (i) the intention of retaking possession or occupancy, and (ii) providing for the security of the Building, or the abandonment of the Premises by Tenant or any other vacation which would cause any insurance policy to be invalidated or otherwise lapse;

(b) Failure to pay any installment of Rent or any other monies due and payable hereunder within five (5) days after the date the same are due;

(c) A general assignment by Tenant for the benefit of creditors;

(d) The filing of a voluntary petition in bankruptcy by Tenant, the filing by Tenant of a voluntary petition for an arrangement, the filing by or against Tenant of a petition, voluntary or involuntary, for reorganization, or the filing of an involuntary petition by the creditors of Tenant, said involuntary petition remaining undischarged for a period of sixty (60) days;

(e) Receivership, attachment, or other judicial seizure of substantially all of Tenant's assets on the Premises, such attachment or other seizure remaining undismissed or undischarged for a period of sixty (60) days after the levy thereof;

(f) Death or disability of Tenant, if Tenant is a natural person, or the failure by Tenant to maintain its legal existence, if Tenant is a corporation, partnership, limited liability company, trust or other legal entity;

(g) Failure of Tenant to execute and deliver to Landlord any estoppel certificate, subordination agreement, or lease amendment in the time periods and manner required by Paragraphs 30 or 31 or 42;

(h) An assignment or sublease, or attempted assignment or sublease, of this Lease or the Premises by Tenant contrary to the provisions of Paragraph 23, unless such assignment or sublease is expressly conditioned upon Tenant having received Landlord's consent thereto;

(i) Failure of Tenant to deposit the Letter of Credit with Landlord when required under Paragraph 7, and/or failure of Tenant to restore the Letter of Credit to the amount and within the time period provided in Paragraph 7;

(j) Failure in the performance of any of Tenant's covenants, agreements or obligations hereunder (except those failures specified as events of Default in any other subparagraphs of this Paragraph 24, which shall be governed by such other subparagraphs), which failure continues for thirty (30) days after written notice thereof from Landlord to Tenant, provided that, if Tenant has exercised reasonable diligence to cure such failure and such failure cannot be cured within such thirty (30) day period despite reasonable diligence, Tenant shall not be in default under this subparagraph so long as Tenant thereafter diligently and continuously prosecutes the cure to completion;

(k) Chronic delinquency by Tenant in the payment of Rent, or any other periodic payments required to be paid by Tenant under this Lease. "Chronic delinquency" shall mean failure by Tenant to pay Rent, or any other periodic payments required to be paid by Tenant under this Lease, when due (i) for any three (3) months (consecutive or nonconsecutive) during any period of twelve (12) months or (ii) for any twelve (12) months (consecutive or nonconsecutive) during the Term. In the event of a Chronic Delinquency, in addition to Landlord's other remedies for Default provided in this Lease, at Landlord's option, Landlord shall have the right to require that Rent be paid by Tenant quarterly, in advance;

(l) Chronic overuse by Tenant or Tenant's Agents of the number of undesignated parking spaces set forth in the Basic Lease Information. "Chronic overuse" shall mean use by Tenant or Tenant's Agents of a number of parking spaces greater than the number of parking spaces set forth in the Basic Lease Information more than three (3) times during any twelve (12) month period;

(m) Any insurance required to be maintained by Tenant pursuant to this Lease shall be canceled or terminated or shall expire or be reduced or materially changed, except as permitted in this Lease, and shall not have been replaced with substitute insurance satisfying the requirements of this Lease within five (5) business days of Tenant's receipt of notice of such termination, reduction or change;

(n) Any failure by Tenant to discharge any lien or encumbrance placed on the Project or any part thereof in violation of this Lease within ten (10) days after the date such lien or encumbrance is filed or recorded against the Project or any part thereof; and

(o) Any Default (as defined in the 951 Gateway Lease) under the terms of the 951 Gateway Lease.

Tenant agrees that any notice given by Landlord pursuant to Paragraph 24(j) above shall satisfy the requirements for notice under California Code of Civil Procedure Section 1161, and Landlord shall not be required to give any additional notice in order to be entitled to commence an unlawful detainer proceeding.

25. LANDLORD'S REMEDIES

25.1 Termination

In the event of any Default by Tenant, then in addition to any other remedies available to Landlord at law or in equity and under this Lease, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such intention to terminate. In the event that Landlord shall elect to so terminate this Lease then Landlord may recover from Tenant:

(1) the worth at the time of award of any unpaid Rent and any other sums due and payable which have been earned at the time of such termination; plus

(2) the worth at the time of award of the amount by which the unpaid Rent and any other sums due and payable which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus

(3) the worth at the time of award of the amount by which the unpaid Rent and any other sums due and payable for the balance of the term of this Lease after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course would be likely to result therefrom, including, without limitation, (A) any costs or expenses incurred by Landlord (1) in retaking possession of the Premises; (2) in maintaining, repairing, preserving, restoring, replacing, cleaning, altering, remodeling or rehabilitating the Premises or any affected portions of the Building or the Project, including such actions undertaken in connection with the reletting or attempted reletting of the Premises to a new tenant or tenants; (3) for leasing commissions, advertising costs and other expenses of reletting the Premises; or (4) in carrying the Premises, including taxes, insurance premiums, utilities and security precautions; (B) any unearned brokerage commissions paid in connection with Tenant's lease of the Premises; (C) reimbursement of any previously waived or abated Base Rent or Additional Rent or any free rent or reduced rental rate granted hereunder; and (D) any concession made or paid by Landlord to the benefit of Tenant in consideration of this Lease including, but not limited to, any moving allowances, contributions, payments or loans by Landlord for tenant improvements or build-out allowances (including, without limitation, any unamortized portion of the Tenant Improvement Allowance (such Tenant Improvement Allowance to be amortized over the Term in the manner reasonably determined by Landlord), if any), or assumptions by Landlord of any of Tenant's previous lease obligations; plus

(5) such reasonable attorneys' fees incurred by Landlord as a result of a Default, and costs in the event suit is filed by Landlord to enforce such remedy; and plus

(6) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

As used in subparagraphs (1) and (2) above, the "worth at the time of award" is computed by allowing interest at an annual rate equal to twelve percent (12%) per annum or the maximum rate permitted by law, whichever is less. As used in subparagraph (3) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%). Tenant waives redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other pertinent present or future Law, in the event Tenant is evicted or Landlord takes possession of the Premises by reason of any Default of Tenant hereunder.

25.2 Continuation of Lease

In the event of any Default by Tenant, then in addition to any other remedies available to Landlord at law or in equity and under this Lease, Landlord shall have the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's Default and abandonment and recover Rent as it becomes due, provided Tenant has the right to sublet or assign, subject only to reasonable limitations). In addition, Landlord shall not be liable in any way whatsoever for its failure or refusal to relet the Premises; provided, however, that the foregoing provision shall not be deemed to relieve Landlord of any duty under applicable law to mitigate Tenant's damages in the event Landlord elects to seek damages for Tenant's breach or default. For purposes of this Paragraph 25.2, the following acts by Landlord will not constitute the termination of Tenant's right to possession of the Premises:

(1) Acts of maintenance or preservation or efforts to relet the Premises, including, but not limited to, alterations, remodeling, redecorating, repairs, replacements and/or painting as Landlord shall consider advisable for the purpose of reletting the Premises or any part thereof, or

(2) The appointment of a receiver upon the initiative of Landlord to protect Landlord's interest under this Lease or in the Premises.

25.3 Re-entry

In the event of any Default by Tenant, Landlord shall also have the right, with or without terminating this Lease, in compliance with applicable law, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant.

25.4 Reletting

In the event of the abandonment of the Premises by Tenant or in the event that Landlord shall elect to re-enter as provided in Paragraph 25.3 or shall take possession of the Premises pursuant to legal proceeding or pursuant to any notice provided by law, then if Landlord does not elect to terminate this Lease as provided in Paragraph 25.1, Landlord may from time to time, without terminating this Lease, relet the Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable with the right to make alterations and repairs to the Premises in Landlord's sole discretion. In the event that Landlord shall elect to so relet, then rentals received by Landlord from such reletting shall be applied in the following order: (1) to reasonable attorneys' fees incurred by Landlord as a result of a Default and costs in the event suit is filed by Landlord to enforce such remedies; (2) to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; (3) to the payment of any costs of such reletting; (4) to the payment of the costs of any alterations and repairs to the Premises; (5) to the payment of Rent due and unpaid hereunder; and (6) the residue, if any, shall

be held by Landlord and applied in payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder. Should that portion of such rentals received from such releting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any costs and expenses incurred by Landlord in such releting or in making such alterations and repairs not covered by the rentals received from such releting.

25.5 Termination

No re-entry or taking of possession of the Premises by Landlord pursuant to this Paragraph 25 shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any releting without termination by Landlord because of any Default by Tenant, Landlord may at any time after such releting elect to terminate this Lease for any such Default.

25.6 Cumulative Remedies

The remedies herein provided are not exclusive and Landlord shall have any and all other remedies provided herein or by law or in equity.

25.7 No Surrender

No act or conduct of Landlord, whether consisting of the acceptance of the keys to the Premises, or otherwise, shall be deemed to be or constitute an acceptance of the surrender of the Premises by Tenant prior to the expiration of the Term, and such acceptance by Landlord of surrender by Tenant shall only flow from and must be evidenced by a written acknowledgment of acceptance of surrender signed by Landlord. The surrender of this Lease by Tenant, voluntarily or otherwise, shall not work a merger unless Landlord elects in writing that such merger take place, but shall operate as an assignment to Landlord of any and all existing subleases, or Landlord may, at its option, elect in writing to treat such surrender as a merger terminating Tenant's estate under this Lease, and thereupon Landlord may terminate any or all such subleases by notifying the sublessee of its election so to do within five (5) days after such surrender.

26. LANDLORD'S RIGHT TO PERFORM TENANT'S OBLIGATIONS

26.1 Landlord's Right to Perform

Without limiting the rights and remedies of Landlord contained in Paragraph 25 above, if Tenant shall be in Default in the performance of any of the terms, provisions, covenants or conditions to be performed or complied with by Tenant pursuant to this Lease, then Landlord may at Landlord's option, without any obligation to do so, and without further notice to Tenant perform any such term, provision, covenant, or condition, or make any such payment and Landlord by reason of so doing shall not be liable or responsible for any loss or damage thereby sustained by Tenant or anyone holding under or through Tenant or any of Tenant's Agents, unless caused by Landlord's gross negligence or willful misconduct.

26.2 In Emergencies

Without limiting the rights of Landlord under Paragraph 25 above, Landlord shall have the right at Landlord's option, without any obligation to do so, to perform any of Tenant's covenants or obligations under this Lease without notice to Tenant in the case of an emergency, as determined by Landlord in its good faith and absolute judgment, or if Landlord otherwise determines in its reasonable discretion

that such performance is necessary or desirable for the preservation of the rights and interests or safety of other tenants of the Building or the Project.

26.3 Tenant's Obligation to Reimburse Landlord

If Landlord performs any of Tenant's obligations hereunder in accordance with this Paragraph 26, the full amount of the cost and expense incurred or the payment so made or the amount of the loss so sustained shall immediately be owing by Tenant to Landlord, and Tenant shall promptly pay to Landlord upon demand, as Additional Rent, the full amount thereof with interest thereon from the date of payment by Landlord at the lower of (l) twelve percent (12%) per annum, or (2) the highest rate permitted by applicable law.

27. ATTORNEYS' FEES

27.1 Prevailing Party Entitled to Fees

If either party hereto fails to perform any of its obligations under this Lease or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment.

27.2 Costs of Collection

Without limiting the generality of Paragraph 27.1 above, if Landlord utilizes the services of an attorney for the purpose of collecting any Rent due and unpaid by Tenant or in connection with any other breach of this Lease by Tenant, Tenant agrees to pay Landlord reasonable attorneys' fees as determined by Landlord for such services, regardless of the fact that no legal action may be commenced or filed by Landlord.

28. TAXES

Tenant shall be liable for and shall pay, prior to delinquency, all taxes levied against Tenant's Property. If any Alteration or Tenant Improvement installed by Tenant pursuant to Paragraph 12 or any of Tenant's Property is assessed and taxed with the Project or Building, Tenant shall pay such taxes to Landlord, in an amount reasonably determined by Landlord if such taxes are not separately stated in the applicable tax bill, within ten (10) days after delivery to Tenant of a statement therefor.

29. EFFECT OF CONVEYANCE

The term "Landlord" as used in this Lease means, from time to time, the then current owner of the Building or the Project containing the Premises, so that, in the event of any sale of the Building or the Project, Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord arising hereunder from and after the date of such transfer, and it shall be deemed and construed, without further agreement between the parties and the purchaser at any such sale, that the purchaser of the Building or the Project has assumed and agreed to carry out any and all covenants and obligations of Landlord hereunder.

30. TENANT'S ESTOPPEL CERTIFICATE

From time to time, upon written request of Landlord, Tenant shall execute, acknowledge and deliver to Landlord or its designee, a written certificate stating (a) the date this Lease was executed, the Commencement Date of the Term and the date the Term expires; (b) the date Tenant entered into occupancy of the Premises; (c) the amount of Rent and the date to which such Rent has been paid; (d) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way (or, if assigned, modified, supplemented or amended, specifying the date and terms of any agreement so affecting this Lease); (e) that this Lease represents the entire agreement between the parties with respect to Tenant's right to use and occupy the Premises (or specifying such other agreements, if any); (f) that all obligations under this Lease to be performed by Landlord as of the date of such certificate have been satisfied (or specifying those as to which Tenant claims that Landlord has yet to perform); (g) that all required contributions by Landlord to Tenant on account of Tenant's improvements have been received (or stating exceptions thereto); (h) that on such date there exist no defenses or offsets that Tenant has against the enforcement of this Lease by Landlord (or stating exceptions thereto); (i) that no Rent or other sum payable by Tenant hereunder has been paid more than one (1) month in advance (or stating exceptions thereto); (j) that a currently valid Letter of Credit has been deposited with Landlord, stating the original amount thereof and any increases or decreases thereto; and (k) any other matters evidencing the status of this Lease that may be required either by a lender making a loan to Landlord to be secured by a deed of trust covering the Building or the Project or by a purchaser of the Building or the Project. Any such certificate delivered pursuant to this Paragraph 30 may be relied upon by a prospective purchaser of Landlord's interest or a mortgagee of Landlord's interest or assignee of any mortgage upon Landlord's interest in the Premises. If Tenant shall fail to provide such certificate within ten (10) days of receipt by Tenant of a written request by Landlord as herein provided, such failure shall, at Landlord's election, constitute a Default under this Lease, and Tenant shall be deemed to have given such certificate as above provided without modification and shall be deemed to have admitted the accuracy of any information supplied by Landlord to a prospective purchaser or mortgagee.

31. SUBORDINATION

Landlord shall have the right to cause this Lease to be and remain subject and subordinate to any and all mortgages, deeds of trust and ground leases, if any ("Encumbrances") that are now or may hereafter be executed covering the Premises, or any renewals, modifications, consolidations, replacements or extensions thereof, for the full amount of all advances made or to be made thereunder and without regard to the time or character of such advances, together with interest thereon and subject to all the terms and provisions thereof; provided only, and as an express condition precedent to any such subordination of this Lease to an Encumbrance hereafter executed covering the Premises, that the holder of such Encumbrance ("Holder") shall agree to recognize Tenant's rights under this Lease upon the foreclosure or termination, as applicable, of such Encumbrance as long as Tenant shall pay the Rent and observe and perform all the provisions of this Lease to be observed and performed by Tenant. Within ten (10) days after Landlord's written request, Tenant shall execute, acknowledge and

deliver any and all reasonable documents required by Landlord or the Holder to effectuate such subordination, provided that, concurrently with the execution of such subordination documents, the Holder shall execute a nondisturbance agreement in favor of Tenant consistent with the terms of this Paragraph 31. If Tenant fails to do so, such failure shall constitute a Default by Tenant under this Lease. Notwithstanding anything to the contrary set forth in this Paragraph 31, Tenant hereby attorns and agrees to attorn to any person or entity purchasing or otherwise acquiring the Premises at any sale or other proceeding or pursuant to the exercise of any other rights, powers or remedies under such Encumbrance.

32. ENVIRONMENTAL COVENANTS

32.1 Disclosure Certificate

Prior to executing this Lease, Tenant has completed, executed and delivered to Landlord a Hazardous Materials Disclosure Certificate ("Initial Disclosure Certificate"), a fully completed copy of which is attached hereto as *Exhibit D* and incorporated herein by this reference. Tenant covenants, represents and warrants to Landlord that the information on the Initial Disclosure Certificate is, to the best of Tenant's knowledge, true and correct and accurately describes the Hazardous Materials which will be treated, used or stored on or about the Premises by Tenant or Tenant's Agents.

32.2 Tenant's Obligation to Update Disclosure Certificate

Tenant shall, on a semi-annual basis, complete, execute and deliver to Landlord an updated Disclosure Certificate (each, an "Updated Disclosure Certificate") describing Tenant's then current and proposed future uses of Hazardous Materials on or about the Premises, which Updated Disclosure Certificates shall be in the same format as that which is set forth in *Exhibit D* or in such updated format as Landlord may require from time to time. Landlord shall have the right to approve or disapprove such new or additional Hazardous Materials in its sole and absolute discretion. Tenant shall make no use of Hazardous Materials on or about the Premises except as described in the Initial Disclosure Certificate or as otherwise approved by Landlord in writing in accordance with this Paragraph 32.2.

32.3 Definition of Hazardous Materials

As used in this Lease, the term "Hazardous Materials" shall mean and include any substance that is or contains (1) any "hazardous substance" as now or hereafter defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") (42 U.S.C. § 9601 et seq.) or any regulations promulgated under CERCLA; (2) any "hazardous waste" as now or hereafter defined in the Resource Conservation and Recovery Act, as amended ("RCRA") (42 U.S.C. § 6901 et seq.) or any regulations promulgated under RCRA; (3) any substance now or hereafter regulated by the Toxic Substances Control Act, as amended ("TSCA") (15 U.S.C. § 2601 et seq.) or any regulations promulgated under TSCA; (4) petroleum, petroleum by-products, gasoline, diesel fuel, or other petroleum hydrocarbons; (5) asbestos and asbestos-containing material, in any form, whether friable or non-friable; (6) polychlorinated biphenyls; (7) lead and lead-containing materials; or (8) any additional substance, material or waste (A) the presence of which on or about the Premises (i) requires reporting, investigation or remediation under any Environmental Laws (as hereinafter defined), (ii) causes or threatens to cause a nuisance on the Premises or any adjacent area or property or poses or threatens to pose a hazard to the health or safety of persons on the Premises or any adjacent area or property, or (iii) which, if it emanated or migrated from the Premises, could constitute a trespass, or (B) which is now or is hereafter classified or considered to be hazardous or toxic under any Environmental Laws. Landlord hereby notifies Tenant in accordance with California Health & Safety Code Section 25359.7 that in 1981-82, the Project was

the subject of a state-supervised cleanup of hazardous waste disposed of on the site by prior occupants. As part of the cleanup approved by the applicable agencies, some soils containing heavy metals were left in place, covered by clean fill. These soils are managed in accordance with the requirements of the applicable agencies and a Declaration of Covenants, Conditions and Restrictions imposed by Homart Development Co.

32.4 Definition of Environmental Laws

As used in this Lease, the term "Environmental Laws" shall mean and include (1) CERCLA, RCRA and TSCA; and (2) any other federal, state or local laws, ordinances, statutes, codes, rules, regulations, orders or decrees now or hereinafter in effect relating to (A) pollution, (B) the protection or regulation of human health, natural resources or the environment, (C) the treatment, storage or disposal of Hazardous Materials, or (D) the emission, discharge, release or threatened release of Hazardous Materials into the environment.

32.5 Tenant's Use of Hazardous Materials

Tenant agrees that during its use and occupancy of the Premises it will (1) not (A) introduce any Hazardous Materials on or about the Premises except in a manner and quantity necessary for the ordinary performance of Tenant's business or (B) release, discharge or dispose of any Hazardous Materials on, in, at, under, or emanating from, the Premises, the Building or the Project; (2) comply with all Environmental Laws relating to Tenant's use of Hazardous Materials in, on or about the Premises and not engage in or permit Tenant's Agents to engage in any activity in, on or about the Premises in violation of any Environmental Laws; and (3) immediately notify Landlord of (A) any inquiry, test, investigation or enforcement proceeding by any governmental agency or authority against Tenant, Landlord or the Premises, Building or Project relating to any Hazardous Materials or under any Environmental Laws or (B) the occurrence of any event or existence of any condition that would cause a breach of any of the covenants set forth in this Paragraph 32.

32.6 Tenant's Remediation Obligations

If Tenant's use of Hazardous Materials on or about the Premises results in a release, discharge or disposal of Hazardous Materials on, in, at, under, or emanating from, the Premises, the Building or the Project, Tenant agrees to investigate, clean up, remove or remediate such Hazardous Materials in full compliance with (1) the requirements of (A) all Environmental Laws and (B) any governmental agency or authority responsible for the enforcement of any Environmental Laws; and (2) any additional requirements of Landlord that are reasonably necessary to protect the value of the Premises, the Building or the Project.

32.7 Landlord's Inspections

Upon twenty-four (24) hours' notice to Tenant (except in the case of an emergency, in which event no advance notice shall be required), Landlord may inspect the Premises and surrounding areas for the purpose of determining whether there exists on or about the Premises any Hazardous Material or other condition or activity that is in violation of the requirements of this Lease or of any Environmental Laws. Such inspections may include, but are not limited to, entering upon the property adjacent to or surrounding the Premises with drill rigs or other machinery for the purpose of obtaining laboratory samples. Landlord shall not be limited in the number of such inspections during the Term of this Lease. In the event (1) such inspections reveal the presence of any such Hazardous Material or other condition or activity caused by Tenant or its Agents in violation of the requirements of this Lease or of any Environmental Laws, or (2) Tenant or its Agents contribute or knowingly consent to the importation of any Hazardous Materials in, on, under, through or about the Premises, the Building or the Project or, through their actions, exacerbate the condition of or the conditions caused by any

Hazardous Materials in, on, under, through or about the Premises, the Building or the Project, Tenant shall reimburse Landlord for the cost of such inspections within ten (10) days of receipt of a written statement therefor. Tenant will supply to Landlord such historical and operational information regarding the Premises and surrounding areas as may be reasonably requested to facilitate any such inspection and will make available for meetings appropriate personnel having knowledge of such matters. In the event Tenant vacates the Premises prior to the Expiration Date, Tenant shall give Landlord at least sixty (60) days' prior notice of its intention to vacate the Premises so that Landlord will have an opportunity to perform such an inspection prior to such vacation. The right granted to Landlord herein to perform inspections shall not create a duty on Landlord's part to inspect the Premises, or liability on the part of Landlord for Tenant's use, storage, treatment or disposal of Hazardous Materials, it being understood that Tenant shall be solely responsible for all liability in connection therewith.

32.8 Landlord's Right to Remediate

Landlord shall have the right, but not the obligation, prior or subsequent to a Default, without in any way limiting Landlord's other rights and remedies under this Lease, to enter upon the Premises, or to take such other actions as it deems necessary or advisable, to investigate, clean up, remove or remediate any Hazardous Materials or contamination by Hazardous Materials present on, in, at, under, or emanating from, the Premises, the Building or the Project in violation of Tenant's obligations under this Lease or under any Environmental Laws. Notwithstanding any other provision of this Lease, Landlord shall also have the right, at its election, in its own name or as Tenant's agent, to negotiate, defend, approve and appeal, at Tenant's expense, any action taken or order issued by any governmental agency or authority with regard to any such Hazardous Materials or contamination by Hazardous Materials. All reasonable costs and expenses paid or incurred by Landlord in the exercise of the rights set forth in this Paragraph 32 shall be payable by Tenant upon demand.

32.9 Condition of Premises Upon Expiration or Termination

Tenant shall surrender the Premises to Landlord upon the expiration or earlier termination of this Lease free of debris, waste or Hazardous Materials placed on, about or near the Premises by Tenant or Tenant's Agents, and in a condition which complies with (i) all Environmental Laws, and (ii) any additional requirements of Landlord that are reasonably necessary to protect the value of the Premises, the Building or the Project, including, without limitation, the obtaining of any closure permits or other governmental permits or approvals related to Tenant's use of Hazardous Materials in or about the Premises. Tenant's obligations and liabilities pursuant to the provisions of this Paragraph 32 shall survive the expiration or earlier termination of this Lease.

32.10 Tenant's Indemnification of Landlord

Tenant agrees to indemnify and hold harmless Landlord from and against any and all claims, losses (including, without limitation, loss in value of the Premises, the Building or the Project and any losses to Landlord due to lost opportunities to lease any portions of the Premises to succeeding tenants due to the failure of Tenant to surrender the Premises upon the expiration or sooner termination of this Lease in accordance with the provisions of Paragraph 32.9 above), liabilities and expenses (including attorneys' fees) sustained by Landlord attributable to (1) any Hazardous Materials placed on or about the Premises, the Building or the Project by Tenant or Tenant's Agents, or (2) Tenant's breach of any provision of this Paragraph 32.

32.11 Landlord's Indemnification of Tenant

Landlord agrees to indemnify and hold harmless Tenant from and against any and all claims, losses, liabilities and expenses (including attorneys' fees, but specifically excluding lost profits and

consequential damages) actually sustained by Tenant attributable to any Hazardous Materials placed on or about the Premises, the Building or the Project by Landlord or Landlord's Agents, except to the extent the condition thereof has been exacerbated by Tenant or Tenant's Agents.

32.12 Limitation of Tenant's Liability

Notwithstanding anything in this Lease to the contrary, Tenant shall not be responsible for the clean up or remediation of, and shall not be required to indemnify Landlord against any costs or liabilities attributable to, contamination by Hazardous Materials during the Term caused by third parties or Hazardous Materials place on or about the Premises (i) prior to the Commencement Date by third parties not related to Tenant or Tenant's Agents, or (ii) by Landlord at any time, except in any of the foregoing cases to the extent that Tenant or Tenant's Agents have contributed to or exacerbated the presence of such Hazardous Materials.

32.13 Survival

The provisions of this Paragraph 32 shall survive the expiration or earlier termination of this Lease.

33. NOTICES

All notices and demands which are required or may be permitted to be given to either party by the other hereunder shall be in writing and shall be sent by United States mail, postage prepaid, certified, or by personal delivery or overnight courier, addressed to the addressee at Tenant's Address or Landlord's Address as specified in the Basic Lease Information, or to such other place as either party may from time to time designate in a notice to the other party given as provided herein. Copies of all notices and demands given to Landlord shall additionally be sent to Landlord's property manager at the address specified in the Basic Lease Information or at such other address as Landlord may specify in writing from time to time. Notice shall be deemed given upon actual receipt (or attempted delivery if delivery is refused), if personally delivered, or one (1) business day following deposit with a reputable overnight courier that provides a receipt, or on the third (3rd) day following deposit in the United States mail in the manner described above.

34. WAIVER

The waiver of any breach of any term, covenant or condition of this Lease shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No delay or omission in the exercise of any right or remedy of Landlord in regard to any Default by Tenant shall impair such a right or remedy or be construed as a waiver. Any waiver by Landlord of any Default must be in writing and shall not be a waiver of any other Default concerning the same or any other provisions of this Lease.

35. HOLDING OVER

Any holding over after the expiration of the Term, without the express written consent of Landlord, shall constitute a Default and, without limiting Landlord's remedies provided in this Lease, such holding over shall be construed to be a tenancy at sufferance, at a rental rate equal to the greater of one hundred fifty percent (150%) of (i) the fair market rental value for the Premises as determined by Landlord or (ii) the Base Rent last due in this Lease, plus Additional Rent, and shall otherwise be on the terms and conditions herein specified, so far as applicable; provided, however, in no event shall

any renewal or extension option or other similar right or option contained in this Lease be deemed applicable to any such tenancy at sufferance. If the Premises are not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of Paragraphs 11 and 32.9, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any loss or liability resulting from any claim against Landlord made by any succeeding tenant or prospective tenant caused by such delay and losses to Landlord due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

36. SUCCESSORS AND ASSIGNS

36.1 Binding on Successors, Etc.

The terms, covenants and conditions of this Lease shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto. If Tenant shall consist of more than one entity or person, the obligations of Tenant under this Lease shall be joint and several.

36.2 Landlord's Right to Sell

Notwithstanding anything in this Lease to the contrary, Landlord shall have the right to sell, transfer or otherwise convey, either separately or jointly, its interest in the Building and/or the Project, and all of Landlord's related rights and obligations hereunder, to any Person.

37. TIME

Time is of the essence of this Lease and each and every term, condition and provision herein.

38. BROKERS

Landlord and Tenant each represents and warrants to the other that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker other than BT Commercial ("Broker") in relation to Tenant's lease of the Premises and/or the negotiating or making of this Lease, and each party agrees to indemnify and hold harmless the other from any claim or claims, and costs and expenses, including attorneys' fees, incurred by the indemnified party in conjunction with any such claim or claims of any other broker or brokers to a commission in connection with this Lease as a result of the actions of the indemnifying party. Landlord has paid BT Commercial a brokerage commissions in the amount of Five Hundred Fifty-Two Thousand One Hundred Forty ($552,140.00) in relation to Tenant's lease of the Premises. Nothing contained herein shall restrict Landlord from paying any fees owed by Landlord in connection with Tenant's lease of the Premises and/or the execution of this Lease to any constituent partner of Landlord (or any Affiliate of any such partner) and to any consultants providing services to Landlord in connection with the Project.

39. LIMITATION OF LIABILITY

Tenant agrees that, in the event of any default or breach by Landlord with respect to any of the terms of this Lease to be observed and performed by Landlord or with respect to the enforcement of an indemnity obligation of Landlord under this Lease (1) Tenant shall look solely to the then-current landlord's interest in the Building for the satisfaction of such indemnity obligation of Landlord or for satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord; (2) no other property or assets of Landlord, its partners, shareholders, officers, directors, employees, investment advisors, or any successor in interest of any of

them (collectively, the "Landlord Parties") shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies; (3) no personal liability shall at any time be asserted or enforceable against the Landlord Parties; and (4) no judgment will be taken against the Landlord Parties (except for a judgment against Landlord which is enforceable only to the extent of Landlord's interest in the Building). The provisions of this Paragraph shall apply only to the Landlord and the parties herein described, and shall not be for the benefit of any insurer nor any other third party.

40. FINANCIAL STATEMENTS

Within ten (10) days after Landlord's request, Tenant shall deliver to Landlord the then current, or if Tenant is a publicly traded company, the publicly available financial statements of Tenant (including interim periods following the end of the last fiscal year for which annual statements are available), prepared, compiled or reviewed by a certified public accountant, including a balance sheet and profit and loss statement for the most recent prior year, all prepared in accordance with GAAP.

41. RULES AND REGULATIONS

Tenant agrees to comply with such reasonable rules and regulations as Landlord may adopt from time to time for the orderly and proper operation of the Building and the Project. Such rules may include but shall not be limited to the following: (a) restriction of employee parking to a limited, designated area or areas in reasonable proximity to the Building; and (b) regulation of the removal, storage and disposal of Tenant's refuse and other rubbish at the sole cost and expense of Tenant. The then current rules and regulations shall be binding upon Tenant upon delivery of a copy of them to Tenant. Landlord shall not be responsible to Tenant for the failure of any other person to observe and abide by any of said rules and regulations; provided, however, Landlord shall enforce such rules and regulation in a non-discriminatory manner. Landlord's current rules and regulations are attached to this Lease as *Exhibit C*.

42. MORTGAGEE PROTECTION

42.1 Modifications for Lender

If, in connection with obtaining financing for the Project or any portion thereof, Landlord's lender shall request reasonable modifications to this Lease as a condition to such financing, Tenant shall not unreasonably withhold, delay or defer its consent to such modifications, provided such modifications do not materially adversely affect Tenant's rights or increase Tenant's obligations under this Lease.

42.2 Rights to Cure

Tenant agrees to give to any trust deed or mortgage holder ("Holder"), by registered mail, at the same time as it is given to Landlord, a copy of any notice of default given to Landlord, provided that prior to such notice Tenant has been notified, in writing, (by way of notice of assignment of rents and leases, or otherwise) of the address of such Holder. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then the Holder shall have an additional twenty (20) days after expiration of such period, or after receipt of such notice from Tenant (if such notice to the Holder is required by this Paragraph 42.2), whichever shall last occur within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary if within such twenty (20) days, any Holder has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings, if necessary to effect such cure), in which event there shall be no default under this Lease.

43. ENTIRE AGREEMENT

This Lease, including the Exhibits and any Addenda attached hereto, which are hereby incorporated herein by this reference, contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties, not embodied herein or therein, shall be of any force and effect.

44. INTEREST

Any installment of Rent and any other sum due from Tenant under this Lease which is not received by Landlord when due shall bear interest from the date such payment was originally due under this Lease until paid at an annual rate equal to the maximum rate of interest permitted by law. Payment of such interest shall not excuse or cure any Default by Tenant. In addition, Tenant shall pay all costs and reasonable attorneys' fees incurred by Landlord in collection of such amounts.

45. INTERPRETATION

This Lease shall be construed and interpreted in accordance with the laws of the State of California. The parties acknowledge and agree that no rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Lease, including the Exhibits and any Addenda attached hereto. All captions in this Lease are for reference only and shall not be used in the interpretation of this Lease. Whenever required by the context of this Lease, the singular shall include the plural, the masculine shall include the feminine, and vice versa. If any provision of this Lease shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. Unless otherwise specifically stated herein to the contrary, Landlord's consent may be given or withheld in Landlord's sole and absolute discretion.

46. REPRESENTATIONS AND WARRANTIES

46.1 Of Tenant

Tenant hereby makes the following representations and warranties, each of which is material and being relied upon by Landlord, is true in all respects as of the date of this Lease, and shall survive the expiration or termination of the Lease.

(1) If Tenant is an entity, Tenant is duly organized, validly existing and in good standing under the laws of the state of its organization and the persons executing this Lease on behalf of Tenant have the full right and authority to execute this Lease on behalf of Tenant and to bind Tenant without the consent or approval of any other person or entity. Tenant has full power, capacity, authority and legal right to execute and deliver this Lease and to perform all of its obligations hereunder. This Lease is a legal, valid and binding obligation of Tenant, enforceable in accordance with its terms.

(2) Tenant has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by any creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets, (iv) suffered the attachment or other judicial seizure of all or substantially all of its assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

46.2 Of Landlord

Landlord hereby makes the following representations and warranties, each of which is material and being relied upon by Tenant, is true in all respects as of the date of this Lease, and shall survive the expiration or termination of the Lease.

(1) If Landlord is an entity, Landlord is duly organized, validly existing and in good standing under the laws of the state of its organization and the persons executing this Lease on behalf of Landlord have the full right and authority to execute this Lease on behalf of Landlord and to bind Landlord without the consent or approval of any other person or entity. Landlord has full power, capacity, authority and legal right to execute and deliver this Lease and to perform all of its obligations hereunder. This Lease is a legal, valid and binding obligation of Landlord, enforceable in accordance with its terms.

(2) Landlord has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by any creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets, (iv) suffered the attachment or other judicial seizure of all or substantially all of its assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

47. SECURITY

47.1 Landlord Not Obligated to Provide Security

Tenant acknowledges and agrees that, while Landlord may engage security personnel to patrol the Building or the Project, Landlord is not required to provide any security services with respect to the Premises, the Building or the Project and that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or any other breach of security with respect to the Premises, the Building or the Project.

47.2 Tenant's Obligation to Comply with Security Measures

Tenant hereby agrees to the exercise by Landlord and Landlord's Agents, within their sole discretion, of such security measures as, but not limited to, the evacuation of the Premises, the Building or the Project for cause, suspected cause or for drill purposes, the denial of any access to the Premises, the Building or the Project and other similarly related actions that it deems necessary to prevent any threat of property damage or bodily injury. The exercise of such security measures by Landlord and Landlord's Agents, and the resulting interruption of service and cessation of Tenant's business, if any, shall not be deemed an eviction or disturbance of Tenant's use and possession of the Premises, or any part thereof, or render Landlord or Landlord's Agents liable to Tenant for any resulting damages, or relieve Tenant from Tenant's obligations under this Lease.

48. JURY TRIAL WAIVER

Landlord and Tenant each hereby waive any right to trial by jury with respect to any action or proceeding (i) brought by Landlord, Tenant or any other party, relating to (A) this Lease and/or any understandings or prior dealings between the parties hereto, or (B) the Premises, the Building or the Project or any part thereof, or (ii) to which Landlord is a party. The parties each hereby agree that this Lease constitutes a written consent to waiver of trial by jury pursuant to the provisions of California Code of Civil Procedure Section 631.

49. OPTION TO RENEW

Tenant shall have two (2) options (each a "Renewal Option") to extend the Term of this Lease with respect to the entire Premises (including, without limitation, the "951 Gateway Premises"), for successive periods of five (5) years each (each a "Renewal Term"). Each Renewal Option shall be effective only if (i) Tenant is not in Default under this Lease and no event has occurred which with the giving of notice or the passage of time, or both, would constitute a Default hereunder, either at the time of exercise of the Renewal Option or the time of commencement of the Renewal Term, and (ii) concurrently with the exercise of each such Renewal Option hereunder, Tenant validly exercises the corresponding renewal option contained in Paragraph 49 of the 951 Gateway Lease.

49.1 Commencement Dates

If Tenant exercises the first Renewal Option in accordance herewith, the first Renewal Term shall commence on the day following the last day of the initial Term and end on the day preceding the fifth anniversary thereof. If Tenant exercises the second Renewal Option, the second Renewal Term shall commence on the day following the last day of the first Renewal Term and end on the day preceding the fifth anniversary thereof. The second Renewal Option may not be exercised unless Tenant has previously exercised the first Renewal Option hereunder and under the 951 Gateway Lease. Each Renewal Term, if properly exercised, shall be upon the same terms and conditions as the Lease except for Monthly Base Rent (which shall be determined as provided in the following provisions of this Paragraph).

49.2 Renewal Option is Personal; Non-Transferable

The Renewal Option shall be personal to Tenant, any transferee under a Permitted Transfer, and any assignee to whom Tenant assigns its entire right, title and interest under, or any sublessee to whom Tenant subleases the entire Premises for the entire remaining Term of, this Lease, and shall not be assignable or otherwise transferable in whole or in part, voluntarily or by operation of law, to any other permitted assignee, subtenant or other third parties and there shall be no further Renewal Option beyond the expiration of the second Renewal Term.

49.3 Tenant's Notice of Exercise

In order to exercise a Renewal Option, Tenant shall give written notice to Landlord of Tenant's exercise of such election ("Tenant's Notice") at least ten (10) months prior to expiration of the then current Term and if such notice is not so given, the Renewal Option shall lapse; the Tenant hereby expressly acknowledges and agrees that time is of the essence for purposes of notice of exercise of a Renewal Option and that Tenant's failure to do so by said date will relieve Landlord of any obligation under this Paragraph. If Tenant gives such notice within the time prescribed, Landlord and Tenant shall be deemed to have entered into an extension of this Lease for a five (5) year extended term on the terms and conditions set forth herein.

49.4 Monthly Base Rent During Renewal Term

The Monthly Base Rent payable during any Renewal Term shall be an amount equal to the greater of (i) the Monthly Base Rent payable for the last month of the then expiring Term (provided that such Monthly Base Rent shall be increased during each year of the Renewal Term to an amount equal to one hundred three percent (103%) of the Monthly Base Rent payable during the immediately preceding term), or (ii) ninety-five percent (95%) of the Fair Market Rent (as hereinafter defined) for the Premises during such Renewal Term.

49.4.1. Fair Market Rent Definition

"Fair Market Rent" shall mean the rate being charged for comparable office/R&D/laboratory space in comparable locations in the South San Francisco/Brisbane market area, taking into consideration: tenant credit, tenant improvements or allowances provided or to be provided and leasing commissions, but specifically excluding any specialized laboratory improvements, Tenant's Property or other Tenant Improvements actually paid for by Tenant (as determined in accordance with Paragraph 12.6 above).

49.4.2. Determination of Fair Market Rent

Landlord and Tenant shall meet and attempt in good faith to mutually determine the Fair Market Rent for any Renewal Term. If the parties have not reached agreement on the Fair Market Rent by the date that is thirty (30) days after Landlord's receipt of Tenant's Notice, each party shall appoint an arbitrator and shall give to the other party notice of the identity of the arbitrator no later than the date that is forty (40) days after Landlord's receipt of Tenant's Notice. If either party fails to appoint an arbitrator by the date that is forty (40) days after Landlord's receipt of Tenant's Notice, the sole arbitrator appointed, if any, shall determine the Fair Market Rent. If two arbitrators are appointed, they shall immediately meet and attempt to agree upon such Fair Market Rent. If the arbitrators cannot reach agreement on the Fair Market Rent by the date that is sixty (60) days after Landlord's receipt of Tenant's Notice, each arbitrator shall submit a determination of Fair Market Rent to Landlord and Tenant. If the determinations of Fair Market Rent made by these two arbitrators vary by ten percent (10%) or less, the Fair Market Rent shall be the average of the two determinations. If the determinations vary by more than ten percent (10%), the two arbitrators shall within ten (10) days after submission of their determinations appoint a third arbitrator. If the two arbitrators shall be unable to agree on the selection of a third arbitrator within the 10-day period, then either Tenant or Landlord may request such appointment by petitioning the presiding judge of the Superior Court in and for the County of San Mateo. Such third arbitrator shall, within thirty (30) days after appointment, make a determination of the Fair Market Rent and submit such determination to Landlord and Tenant. The Fair Market Rent shall be the determination of Fair Market Rent submitted by the original two arbitrators that is closer to the Fair Market Rent determination of the third arbitrator. If the third arbitrator's determination is exactly between the Fair Market Rent determination of the original two arbitrators, then the Fair Market Rent shall be the average of the original two determinations. The determination of Fair Market Rent pursuant to this Paragraph 49 shall be final and binding on Landlord and Tenant.

49.4.3. Arbitrator Qualifications

For purposes of this Paragraph, "arbitrator" shall mean a licensed commercial real estate broker or leasing agent with not less than five (5) years of fulltime commercial brokerage experience in San Mateo County.

49.4.4. Fees and Costs of Arbitrators

Each party shall bear the fees and costs of its arbitrator in connection with the determination of Fair Market Rent and one-half of the fees and costs of the third arbitrator, if any.

49.4.5. Arbitration Period Base Rent

If the determination of Fair Market Rent has not been made by the expiration of the then expiring Term, Tenant shall (i) continue to pay Monthly Base Rent at the Monthly Base Rent for the last month of the Term (the "Arbitration Period Base Rent") as well as any Additional Rent due under the Lease and (ii) pay to Landlord, or receive as a refund from Landlord, as applicable, on the first day of the

month after the determination of Fair Market Rent is made, an amount, if any, equal to the difference between the Arbitration Period Base Rent that was paid to Landlord and the Monthly Base Rent for the Renewal Term that should have been paid to Landlord as the Monthly Base Rent for the Renewal Term as determined hereunder.

50. PARKING

50.1 Grant of Parking License

Provided that Tenant shall comply with and abide by Landlord's parking rules and regulations from time to time in effect, Tenant shall have a license to use for the parking of passenger automobiles the number of non-exclusive and undesignated parking spaces in the Common Areas set forth in the Basic Lease Information. Notwithstanding the foregoing, Landlord shall not be required to enforce Tenant's right to use any such parking spaces (but Landlord shall use commercially reasonable efforts to resolve any problems related to parking); and, provided further, that the number of parking spaces allocated to Tenant hereunder shall be reduced on a proportionate basis in the event any of the parking spaces in the Designated Parking Areas are taken or otherwise eliminated as a result of any Condemnation or casualty event affecting such Designated Parking Areas. Notwithstanding the foregoing provisions of this Paragraph 50.1, Landlord shall have the right to relocate Tenant's parking from time to time to other areas within the Project and to provide parking spaces to Tenant in surface parking lots, parking structures or other areas now or hereafter designated by Landlord as the "Project's Parking Areas." All unreserved spaces will be on a first-come, first-served basis in common with other tenants of and visitors to the Project in parking spaces provided by Landlord from time to time in the Project's Parking Areas. Tenant's license to use the parking spaces provided for herein shall be subject to such terms, conditions, rules and regulations as Landlord or the operator of the Parking Area may impose from time to time.

50.2 No Assignment of Parking License

The license granted hereunder is for self-service parking only and does not include additional rights or services except to the extent that Landlord elects in its sole and absolute discretion to provide any such services.

50.3 Visitor Parking

Tenant recognizes and agrees that visitors, clients and/or customers (collectively the "Visitors") to the Project and the Premises must park automobiles or other vehicles only in areas designated by Landlord from time to time as being for the use of such Visitors and Tenant hereby agrees to ask its Visitors to park only in the areas designated by Landlord from time to time for the use of Tenant's Visitors.

51. RIGHT OF FIRST OFFER

51.1 Offer Notice

If subsequent to the full execution of this Lease, Landlord desires to sell the Building, Landlord shall notify Tenant in writing of such intent to sell (the "Offer Notice"); provided, however, Landlord shall not be required to provide Tenant with the Offer Notice with respect to the Building if Landlord has previously terminated this Lease or recaptured the Premises. This Right of First Offer shall be personal to Tenant and any transferee under a Permitted Transfer and shall not be assignable or otherwise transferable in whole or in part, voluntarily or by operation of law, to any other permitted assignee, subtenant or other third parties. Tenant's right to receive the Offer Notice shall further be

effective only if Tenant is not in Default under this Lease and no event has occurred which with the giving of notice or the passage of time, or both, would constitute a Default hereunder. Subject to Paragraph 51.4 below, Tenant's right to receive an Offer Notice in accordance with this Paragraph 51.1 shall be a one-time right.

51.2 Election Notice

In the event Tenant desires to purchase the Building, Tenant shall notify Landlord in writing of its election to purchase the Building (the "Election Notice") within ten (10) days following Tenant's receipt of the Offer Notice. If Tenant delivers an Election Notice to Landlord, Tenant shall acquire the Building on an "as-is" basis and without any representations or warranties from Landlord.

51.3 Purchase and Sale Agreement

In the event Tenant timely delivers the Election Notice to Landlord, the parties shall thereafter execute a purchase and sale agreement prepared by Seller's counsel (the "Purchase and Sale Agreement") with the purchase price of the Building equal to the quotient of the Net Operating Income (as defined below) of the Building divided by nine hundredths (.09%) and with a closing to be held on or before the date that is forty-five (45) days after delivery of the Offer Notice.

51.4 Failure to Exercise or Sign Agreement

If Tenant fails to deliver an Election Notice within the 10-day time period, or if for any reason whatsoever Tenant has not executed the Purchase and Sale Agreement within ten (10) days after its receipt thereof from Landlord, Tenant's right to purchase the Building hereunder shall automatically terminate and be of no further force and effect with respect to Landlord or any other Person (as hereinafter defined) and Landlord shall thereafter have the right to sell the Building at any time to any Person on terms acceptable to Landlord in its sole and absolute discretion. Notwithstanding the foregoing, if Landlord fails to enter into a letter of intent or purchase and sale agreement for the sale of the Building to any such Person within two hundred seventy (270) days after the date Tenant's right to purchase the Building lapses pursuant to this Paragraph 51.4, then Tenant's rights under this Paragraph 51 shall be reinstated and Landlord shall once again furnish Tenant with an Offer Notice prior to selling the Building to a Person other than a Landlord Affiliate. Tenant hereby expressly acknowledges and agrees that time is of the essence for purposes of the Election Notice and the ten (10) day period to execute the Purchase and Sale Agreement and that Tenant's failure to deliver such Election Notice or the executed Purchase and Sale Agreement as specified herein will relieve Landlord of any obligation under this Paragraph.

51.5 Net Operating Income

As used herein, "Net Operating Income" shall mean the Monthly Base Rent due under the Lease with respect to the Building being purchased for the twelve (12) full calendar months following the Offer Notice. As used in this Paragraph 51.5, Monthly Base Rent shall mean the scheduled Monthly Base Rent set forth in the Basic Lease Information.

51.6 Landlord's Sale to Affiliate; Survival of Option

Notwithstanding anything in this Paragraph to the contrary, this Paragraph shall be inapplicable to, and neither Landlord nor any person or entity providing financing to Landlord in connection with the Building ("Lender") shall have any obligation to provide an Offer Notice to Tenant in connection with (i) any sale, conveyance or other transfer or proposed sale, conveyance or other transfer of the Building to any Person who controls, is controlled by or is under common control with, Landlord or Lender or any Person in which Hines Interest Limited Partnership or Morgan Stanley Real Estate

Investment Fund maintains an interest (collectively, a "Landlord Affiliate"), or (ii) any foreclosure sale or deed-in-lieu of foreclosure or the exercise of any similar remedy (collectively, a "Foreclosure") by any Lender. As used herein "Person" shall mean any natural person, corporation, firm, association or other entity, whether acting in an individual, fiduciary or other capacity. Tenant's rights under this Paragraph 51.6 shall survive Landlord's transfer pursuant to clause (i) of this Paragraph 51.6 but shall not survive any Foreclosure.

51.7 Concurrent Exercise of Rights of First Offer with respect to 901 Gateway Boulevard and 951 Gateway Boulevard

Notwithstanding anything to the contrary contained in this Paragraph 51, if Landlord concurrently delivers to Tenant an Offer Notice under this Lease and an Offer Notice under Paragraph 51 of the 951 Gateway Lease, then Tenant shall have the right to exercise the Right of First Offer contained in this Paragraph 51 only if it concurrently and validly exercises the Right of First Offer granted to Tenant under Paragraph 51 of the 951 Gateway Lease. Any attempt by Tenant to deliver an Election Notice under Paragraph 51.2 above without the concurrent delivery of an Election Notice under Paragraph 51.2 of the 951 Gateway Lease (assuming that Landlord has delivered to Tenant Offer Notices under both this Lease and the 951 Gateway Lease) shall be null and void and of no force or effect.

52. MEMORANDUM OF LEASE

Promptly after full execution of this Lease, Landlord and Tenant shall execute and cause to be recorded a Memorandum of Lease in the form attached hereto as *Exhibit F.*

53. TENANT IMPROVEMENTS AND TENANT IMPROVEMENT ALLOWANCE

In connection with Tenant's lease of the Premises, Tenant has constructed the improvements described in *Exhibit G* attached hereto (the "Tenant Improvements"). In connection with this Lease, Landlord has agreed to supply Tenant with an improvement allowance ("Tenant Improvement Allowance") in an amount equal to Nine Million Three Hundred Eighty-Six Thousand Three Hundred Eighty Dollars ($9,386,380). Landlord and Tenant hereby acknowledge that prior to the date hereof, Landlord has paid Tenant Seven Million Seven Hundred Twenty-Nine Thousand Nine Hundred Sixty ($7,729,960), representing a portion of the Tenant Improvement Allowance owed hereunder, leaving a remaining Tenant Improvement Allowance to be paid to Tenant in the amount of One Million Six Hundred Fifty-Six Thousand Four Hundred Twenty Dollars ($1,656,420). On the later date to occur of (i) January 1, 2001, or (ii) the date which is five (5) business days following the mutual execution and delivery of this Lease, Landlord shall pay to Tenant the amount of One Million Six Hundred Fifty-Six Thousand Four Hundred Twenty Dollars ($1,656,420) representing the remaining outstanding balance of the Tenant Improvement Allowance owed hereunder.

Landlord and Tenant have executed and delivered this Lease effective as of the Lease Date specified in the Basic Lease Information.

LANDLORD: HMS GATEWAY OFFICE, L.P.,
a Delaware limited partnership

By: Hines Gateway Office, L.P.,
Administrative Partner

By: Hines Interests Limited Partnership,
General Partner

By: Hines Holdings, Inc.,
General Partner

By: /s/ JAMES C. BUIE, JR.

Name: James C. Buie, Jr.

Its: Executive Vice President

TENANT: ADVANCED MEDICINE, INC.
a Delaware corporation

By: /s/ A. GREG STURMER

Name: A. Greg Sturmer

Its: Vice President, Finance

EXHIBIT A

SITE PLAN

[TO COME]

EXHIBIT B

ADDITIONAL OPERATIONAL GUIDELINES

As a component of the Tenant Improvements and any Alterations made by Tenant to the Premises, Tenant shall install fume hoods, as well as a rooftop venting and exhaust system designed to increase the velocity of exhaust such that any odors shall be discharged high into the atmosphere in order to minimize the risk of odors detectable at ground level. In addition, Tenant shall install and utilize such additional venting, exhaust and quenching systems, including, without limitation, base quenching, distillation units, acid quenching, and mechanical exhaust/filtration systems, as appropriate to reduce the risk of emanation of such odors.

EXHIBIT C

RULES AND REGULATIONS

This exhibit, entitled "Rules and Regulations," is and shall constitute *Exhibit E* to the Lease Agreement, dated as of the Lease Date, by and between Landlord and Tenant for the Premises. The terms and conditions of this *Exhibit E* are hereby incorporated into and are made a part of the Lease. Capitalized terms used, but not otherwise defined, in this *Exhibit E* have the meanings ascribed to such terms in the Lease.

1. Tenant shall not use any method of heating or air conditioning other than that approved by Landlord in writing without the prior written consent of Landlord, which consent shall not to be unreasonably withheld, conditioned or delayed.

2. All window coverings installed by Tenant and visible from the outside of the Building require the prior written approval of Landlord.

3. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance or any flammable or combustible materials on or around the Project or the Adjacent Properties, except to the extent that Tenant is permitted to use the same in the Premises under the terms of Paragraph 32 of the Lease.

4. Tenant shall not alter any lock or install any new locks or bolts on any door at the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

5. Tenant shall not make any duplicate keys without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

6. Tenant shall park motor vehicles in parking areas designated by Landlord, including areas for loading and unloading. During those periods of loading and unloading, Tenant shall not unreasonably interfere with traffic flow around the Building or the Project and loading and unloading areas of other tenants.

7. Tenant shall not disturb, solicit or canvas any tenant or other occupant of the Building or Project and shall cooperate to prevent same.

8. No person shall go on the roof without Landlord's permission.

9. Business machines and mechanical equipment belonging to Tenant which cause noise or vibration that may be transmitted to the structure of the Building, to such a degree as to be objectionable to Landlord or other tenants, shall be placed and maintained by Tenant, at Tenant's expense, on vibration isolators or in noise-dampening housing or other devices sufficient to eliminate noise or vibration.

10. All goods, including material used to store goods, delivered to the Premises of Tenant shall be immediately moved into the Premises and shall not be left in parking or receiving areas overnight. During the period of construction of the Tenant Improvements and any Alterations, all construction materials shall be stored in a manner and a location mutually acceptable to Landlord and Tenant.

11. Tenant is responsible for the storage and removal of all trash and refuse. All such trash and refuse shall be contained in suitable receptacles stored behind screened enclosures at locations approved by Landlord.

12. Tenant shall not store or permit the storage or placement of goods or merchandise in or around the Common Areas surrounding the Premises. No displays or sales or merchandise shall be allowed in the Parking Areas or other Common Areas.

13. Tenant shall not permit any animals, including, but not limited to, any household pets, to be brought or kept in or about the Premises, the Building, the Project or any of the Common Areas which would violate applicable Laws or constitute a nuisance to the Premises, the Building or the Project. Tenant shall prior to the Commencement Date and thereafter from time to time upon the request of Landlord provide to Landlord a written plan for the handling and disposal of all animals used by Tenant in the conduct of its business, which plan shall be subject to the written approval of Landlord.

INITIALS:

TENANT: _____

LANDLORD: _____

EXHIBIT D

HAZARDOUS MATERIALS DISCLOSURE CERTIFICATE

Your cooperation in this matter is appreciated. Initially, the information provided by you in this Hazardous Materials Disclosure Certificate is necessary for the Landlord to evaluate your proposed uses of the premises (the "Premises") and to determine whether to enter into a lease agreement with you as tenant. If a lease agreement is signed by you and the Landlord (the "Lease Agreement"), on an annual basis in accordance with the provisions of Paragraph 32 of the Lease Agreement, you are to provide an update to the information initially provided by you in this certificate. Any questions regarding this certificate should be directed to, and when completed, the certificate should be delivered to:

Landlord: HMS Gateway Office L.P. c/o Hines
c/o Hines
650 Gateway Boulevard, Suite 1140
South San Francisco, California 94080
Phone: (650) 794-1111

Name of (Prospective) Tenant: Advance Medicine, Inc.

Mailing Address: _____

_____

Contact Person, Title and Telephone Number(s): _____

Contact Person for Hazardous Waste Materials Management and Manifests and Telephone Number(s):

_____

_____

Address of (Prospective) Premises: _____

Length of (Prospective) initial Term: _____

_____

_____

1. GENERAL INFORMATION:

Describe the proposed operations to take place in, on, or about the Premises, including, without limitation, principal products processed, manufactured or assembled, and services and activities to be provided or otherwise conducted. Existing tenants should describe any proposed changes to on-going operations.

2. USE, STORAGE AND DISPOSAL OF HAZARDOUS MATERIALS

2.1 Will any Hazardous Materials (as hereinafter defined) be used, generated, treated, stored or disposed of in, on or about the Premises? Existing tenants should describe any Hazardous Materials which continue to be used, generated, treated, stored or disposed of in, on or about the Premises.

Wastes	Yes o	No o
Chemical Products	Yes o	No o
Other	Yes o	No o

If Yes is marked, please explain:

2.2 If Yes is marked in Exhibit 2.1, attach a list of any Hazardous Materials to be used, generated, treated, stored or disposed of in, on or about the Premises, including the applicable hazard class and an estimate of the quantities of such Hazardous Materials to be present on or about the Premises at any given time; estimated annual throughput; the proposed location(s) and method of storage (excluding nominal amounts of ordinary household cleaners and janitorial supplies which are not regulated by any Environmental Laws, as hereinafter defined); and the proposed location(s) and method(s) of treatment or disposal for each Hazardous Material, including the estimated frequency, and the proposed contractors or subcontractors. Existing tenants should attach a list setting forth the information requested above and such list should include actual data from on-going operations and the identification of any variations in such information from the prior year's certificate.

3. STORAGE TANKS AND SUMPS

3.1 Is any above or below ground storage or treatment of gasoline, diesel, petroleum, or other Hazardous Materials in tanks or sumps proposed in, on or about the Premises? Existing tenants should describe any such actual or proposed activities.

Yes o No o

If yes, please explain:

4. WASTE MANAGEMENT

4.1 Has your company been issued an EPA Hazardous Waste Generator I.D. Number? Existing tenants should describe any additional identification numbers issued since the previous certificate.

Yes o No o

4.2 Has your company filed a biennial or quarterly reports as a hazardous waste generator? Existing tenants should describe any new reports filed.

Yes o No o

If yes, attach a copy of the most recent report filed.

5. WASTEWATER TREATMENT AND DISCHARGE

5.1 Will your company discharge wastewater or other wastes to:

_____ storm drain? _____ sewer?

_____ surface water? _____ no wastewater or other wastes discharged.

Existing tenants should indicate any actual discharges. If so, describe the nature of any proposed or actual discharge(s).

_____

_____

5.2 Will any such wastewater or waste be treated before discharge?

Yes o No o

If yes, describe the type of treatment proposed to be conducted. Existing tenants should describe the actual treatment conducted.

_____

_____

6. AIR DISCHARGES

6.1 Do you plan for any air filtration systems or stacks to be used in your company's operations in, on or about the Premises that will discharge into the air; and will such air emissions be monitored? Existing tenants should indicate whether or not there are any such air filtration systems or stacks in use in, on or about the Premises which discharge into the air and whether such air emissions are being monitored.

Yes o No o

If yes, please describe: _____

_____

_____

6.2 Do you propose to operate any of the following types of equipment, or any other equipment requiring an air emissions permit? Existing tenants should specify any such equipment being operated in, on or about the Premises.

_____ Spray booth(s) _____ Incinerator(s)

_____ Dip tank(s) _____ Other (Please describe)

_____ Drying oven(s) _____ No Equipment Requiring Air Permits

If yes, please describe:

6.3 Please describe (and submit copies of with this Hazardous Materials Disclosure Certificate) any reports you have filed in the past [thirty-six] months with any governmental or quasi-governmental agencies or authorities related to air discharges or clean air requirements and any such reports which have been issued during such period by any such agencies or authorities with respect to you or your business operations.

7. HAZARDOUS MATERIALS DISCLOSURES

7.1 Has your company prepared or will it be required to prepare a Hazardous Materials management plan ("Management Plan") or Hazardous Materials Business Plan and Inventory ("Business Plan") pursuant to Fire Department or other governmental or regulatory agencies' requirements? Existing tenants should indicate whether or not a Management Plan is required and has been prepared.

Yes o No o

If yes, attach a copy of the Management Plan or Business Plan. Existing tenants should attach a copy of any required updates to the Management Plan or Business Plan.

7.2 Are any of the Hazardous Materials, and in particular chemicals, proposed to be used in your operations in, on or about the Premises listed or regulated under Proposition 65? Existing tenants should indicate whether or not there are any new Hazardous Materials being so used which are listed or regulated under Proposition 65.

Yes o No o

If yes, please explain:

8. ENFORCEMENT ACTIONS AND COMPLAINTS

8.1 With respect to Hazardous Materials or Environmental Laws, has your company ever been subject to any agency enforcement actions, administrative orders, or consent decrees or has your company received requests for information, notice or demand letters, or any other inquiries regarding its operations? Existing tenants should indicate whether or not any such actions, orders or decrees have been, or are in the process of being, undertaken or if any such requests have been received.

Yes o No o

If yes, describe the actions, orders or decrees and any continuing compliance obligations imposed as a result of these actions, orders or decrees and also describe any requests, notices or demands, and attach a copy of all such documents. Existing tenants should describe and attach a copy of any new actions, orders, decrees, requests, notices or demands not already delivered to Landlord pursuant to the provisions of Paragraph 32 of the Lease Agreement.

8.2 Have there ever been, or are there now pending, any lawsuits against your company regarding any environmental or health and safety concerns?

Yes o No o

If yes, describe any such lawsuits and attach copies of the complaint(s), cross-complaint(s), pleadings and other documents related thereto as requested by Landlord. Existing tenants should describe and attach a copy of any new complaint(s), cross-complaint(s), pleadings and other related documents not already delivered to Landlord pursuant to the provisions of Paragraph 32 of the Lease Agreement.

8.3 Have there been any problems or complaints from adjacent tenants, owners or other neighbors at your company's current facility with regard to environmental or health and safety concerns? Existing tenants should indicate whether or not there have been any such problems or complaints from adjacent tenants, owners or other neighbors at, about or near the Premises and the current status of any such problems or complaints.

Yes o No o

If yes, please describe. Existing tenants should describe any such problems or complaints not already disclosed to Landlord under the provisions of the signed Lease Agreement and the current status of any such problems or complaints.

9. PERMITS AND LICENSES

9.1 Attach copies of all permits and licenses issued to your company with respect to its proposed operations in, on or about the Premises, including, without limitation, any Hazardous Materials permits, wastewater discharge permits, air emissions permits, and use permits or approvals. Existing tenants should attach copies of any new permits and licenses as well as any renewals of permits or licenses previously issued.

As used herein, "Hazardous Materials" shall mean and include any substance that is or contains (a) any "hazardous substance" as now or hereafter defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") (42 U.S.C. § 9601 *et seq.*) or any regulations promulgated under CERCLA; (b) any "hazardous waste" as now or hereafter defined in the Resource Conservation and Recovery Act, as amended ("RCRA") (42 U.S.C. § 6901 *et seq.*) or any regulations promulgated under RCRA; (c) any substance now or hereafter regulated by the Toxic Substances Control Act, as amended ("TSCA") (15 U.S.C. § 2601 *et seq.*) or any regulations promulgated under TSCA; (d) petroleum, petroleum by-products, gasoline, diesel fuel, or other petroleum hydrocarbons; (e) asbestos and asbestos-containing material, in any form, whether friable or non-friable; (f) polychlorinated biphenyls; (g) lead and lead-containing materials; or (h) any additional substance, material or waste (A) the presence of which on or about the Premises (i) requires reporting, investigation or remediation under any Environmental Laws (as hereinafter defined), (ii) causes or threatens to cause a nuisance on the Premises or any adjacent property or poses or threatens to pose a hazard to the health or safety of persons on the Premises or any adjacent property, or (iii) which, if it emanated or migrated from the Premises, could constitute a trespass, or (B) which is now or is hereafter classified or considered to be hazardous or toxic under any Environmental Laws; and "Environmental Laws" shall mean and include (a) CERCLA, RCRA and TSCA; and (b) any other federal, state or local laws, ordinances, statutes, codes, rules, regulations, orders or decrees now or hereinafter in effect relating to (i) pollution, (ii) the protection or regulation of human health, natural resources or the environment, (iii) the treatment, storage or disposal of Hazardous Materials, or (iv) the emission, discharge, release or threatened release of Hazardous Materials into the environment.

The undersigned hereby acknowledges and agrees that this Hazardous Materials Disclosure Certificate is being delivered to Landlord in connection with the evaluation of a Lease Agreement and, if such Lease Agreement is executed, will be attached thereto as an exhibit. The undersigned further

acknowledges and agrees that if such Lease Agreement is executed, this Hazardous Materials Disclosure Certificate will be updated from time to time in accordance with Paragraph 32 of the Lease Agreement. The undersigned further acknowledges and agrees that the Landlord and its partners, lenders and representatives may, and will, rely upon the statements, representations, warranties, and certifications made herein and the truthfulness thereof in entering into the Lease Agreement and the continuance thereof throughout the term, and any renewals thereof, of the Lease Agreement. I [print name] , acting with full authority to bind the (proposed) Tenant and on behalf of the (proposed) Tenant, certify, represent and warrant that the information contained in this certificate is true and correct.

(PROSPECTIVE) TENANT:

ADVANCED MEDICINE, INC.,
a Delaware corporation

By: _____

Title: _____

Date: _____

INITIALS:

TENANT: /s/ A. GREG STURMER

LANDLORD: /s/ JAMES C. BUIE, JR.

EXHIBIT E

TENANT'S PROPERTY

Laboratory related furniture and equipment including:

- benches and tables
- casework
- biosafety, laminar flow, and fume hoods
- cages/fencing
- DI water system
- vacuum pumps
- compressed air
- nitrogen manifold

Office related furniture and equipment including:

- open office partitions
- telephone and network equipment
- reception desk
- lobby furniture
- lobby display cases
- appliances
- interior signage

EXHIBIT F

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Attention:

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is executed as of February 17, 1999, by and between HMS GATEWAY OFFICE, L.P., a Delaware limited partnership ("Landlord"), and ADVANCED MEDICINE, INC., a Delaware corporation ("Tenant"). Landlord has previously leased to Tenant a portion of that certain real property described on *Exhibit A* attached hereto and incorporated herein by reference, consisting of the building commonly known as 901 Gateway Boulevard located in South San Francisco, California, commencing on , and terminating on , on the terms and conditions set forth in that certain Lease between Landlord and Tenant dated as of February , 1999 (the "Off Record Lease"). Landlord has also granted to Tenant (i) options to renew the term of the Lease for two (2) additional periods of five (5) years each, and (ii) a right to expand the premises being leased by Tenant, all terms and conditions of the Off Record Lease.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Lease so that third parties might have notice of the lease by Landlord and Tenant herein.

Landlord: HMS GATEWAY OFFICE, L.P.,
a Delaware limited partnership

By: Hines Gateway Office, L.P.,
Administrative Partner

By: Hines Interests Limited Partnership,
General Partner

By: Hines Holdings, Inc.,
General Partner

By: _____

Name: _____

Its: _____

Tenant: ADVANCED MEDICINE, INC.,
a Delaware corporation

By: _____

Name: _____

Its: _____

INITIALS:

TENANT: /s/ A. GREG STURMER

LANDLORD: /s/ JAMES C. BUIE, JR.

EXHIBIT G

TENANT IMPROVEMENTS

The tenant improvements depicted on the plan set dated August 10, 1999, titled "Advanced Medicine, Inc. Tenant Improvement Package."

Exhibit H

TENANT ESTOPPEL CERTIFICATE
901 GATEWAY BOULEVARD

From: Theravance, Inc. (Formerly Advanced Medicine, Inc.)
901 Gateway Boulevard
South San Francisco, California 94080
("Tenant")

To: ARE-901/951 Gateway Boulevard LLC
c/o Alexandria Real Estate Equities, Inc.
135 N. Los Robles Ave., Suite 250
Pasadena, California 91101
("Purchaser")

HMS Gateway Office, L.P.
Hines Gateway
651 Gateway Boulevard, Suite 1140
South San Francisco, California 94080
("Landlord")

Lease: Lease Agreement dated January 1, 2001 between HMS Gateway Office,. L.P., a Delaware limited partnership, and Advanced Medicine, Inc., a Delaware corporation, covering the Premises (as defined below), as modified, altered or amended (as further described in Paragraph 1 below) (the "Lease").

Premises: 110,428 rentable square feet (as set forth in the Lease) (the "Premises"), located in the building known as 901 Gateway having an address of 901 Gateway Boulevard, South San Francisco, California 94080.

Tenant hereby certifies to Landlord and Purchaser as follows:

1. Attached hereto as Annex 1 is a true, correct, and complete copy of the Lease, including amendments, modifications, supplements, guarantees, and restatements thereof. Tenant is the current Tenant under the Lease. The Lease is in full force and effect and is the complete and only lease, agreement or understanding between Landlord and Tenant affecting the Premises and any rights to parking. The Lease has not been modified, altered or amended, except by the documents listed on Annex I attached hereto. Pursuant to the Lease, Tenant has the right to use 293 non-exclusive and undesignated parking spaces located within the project of which the Premises are part (the "Project"). Tenant acknowledges that Landlord may fulfill its obligations regarding parking under the Lease through the exercise of Landlord's rights under that certain Declaration of Reciprocal Easements made by HMS Gateway Office, L.P. and recorded on June 26, 2000 as Document No. 2000-077496.

2. The term of the Lease has commenced and expires on March 31, 2012 subject to the following options to extend: Two (2) options of five (5) years each. Tenant has accepted and is presently occupying the Premises.

10. As of the date of this Certificate, Tenant has not sublet any portion of the Premises or assigned any rights under the Lease. The address for notices to be sent to Tenant is as set forth in the Lease.

11. Tenant understands that this Certificate is required in connection with Purchaser's acquisition of the Property, and Tenant agrees that Purchaser and its assigns (including any parties providing financing for the Property) will, and will be entitled to, rely on the truth of this Certificate.

12. The party executing this document on behalf of Tenant represents that he/she has been authorized to do so on behalf of Tenant.

EXECUTED on this day of April, 2002.

"TENANT"

By: /s/ A. GREG STURMER

QuickLinks

Exhibit 10.10

COLLABORATION AGREEMENT

by and between

THERAVANCE, INC.

and

GLAXO GROUP LIMITED

Dated: November 14, 2002

TABLE OF CONTENTS

COLLABORATION AGREEMENT

This COLLABORATION AGREEMENT ("Agreement") dated November 14, 2002, is made by and between THERAVANCE, INC., a Delaware corporation, and having its principal office at 901 Gateway Boulevard, South San Francisco, California 94080 ("Theravance"), and GLAXO GROUP LIMITED, a United Kingdom corporation, and having its principal office at Glaxo Wellcome House, Berkeley Avenue, Greenford, Middlesex, UB6 0NN, United Kingdom ("GSK"). Theravance and GSK may be referred to as a "Party" or together, the "Parties".

RECITALS

WHEREAS, Theravance is currently developing Long-Acting â2 Adrenoceptor Agonists such as but not limited to TD-3327 and AMI-15471 for the treatment and/or prophylaxis of asthma and other respiratory diseases;

WHEREAS, GSK is also currently developing Long-Acting â2 Adrenoceptor Agonists such as but not limited to [*], as well as other anti-inflammatory compounds, for the treatment and/or prophylaxis of respiratory disease;

WHEREAS, GSK and Theravance desire to pool certain of their respective development compounds on an exclusive, worldwide basis to commercialize at least one Long-Acting â2 Adrenoceptor Agonist that can be used as a single agent and/or in combination with a Long-Acting Inhaled Corticosteroid and potentially other compounds for treatment and/or prophylaxis of respiratory disease;

WHEREAS, GSK and Theravance are willing to undertake research and development activities and investment and to coordinate such activities and investment as provided by this Agreement with respect to the Collaboration Products; and

WHEREAS, GSK and Theravance believe that a collaboration pursuant to this Agreement for the development and commercialization of Collaboration Products would be desirable and compatible with their respective business objectives.

NOW, THEREFORE, in consideration of the foregoing premises and the representations, covenants and agreements contained herein, Theravance and GSK, intending to be legally bound, hereby agree as follows:

ARTICLE 1
DEFINITIONS

For purposes of this Agreement, the following initially capitalized terms, whether used in the singular or plural, shall have the following meanings:

1.1 "AMI-15471" means the Long-Acting b2 Adrenoceptor Agonist designated as such by Theravance and all pharmaceutically acceptable salts and solvates thereof.

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1.2 "Adverse Drug Experience" means any of: an "adverse drug experience," a "life-threatening adverse drug experience," a "serious adverse drug experience," or an "unexpected adverse drug experience," as those terms are defined at either 21 C.F.R.(S)312.32 or 21 C.F.R.(S)314.80.

1.3 "Affiliate" of a Party means any Person, whether de jure or de facto, which directly or indirectly controls, is controlled by, or is under common control with such Person for so long as such control exists, where "control" means the decision-making authority as to such Person and, further, where such control shall be presumed to exist where a Person owns more than fifty percent (50%) of the equity (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) having the power to vote on or direct the affairs of the entity.

1.4 "API Compound" means bulk quantities of active pharmaceutical ingredient compound prior to the commencement of secondary manufacturing resulting in a Collaboration Product.

1.5 "Breaching Party" shall have the meaning set forth in Section 14.2.

1.6 "Business Day" means any day on which banking institutions in both New York City, New York, United States and London, England are open for business.

1.7 "Calendar Month" means for each Calendar Year, each of the one-month periods.

1.8 "Calendar Quarter" means for each Calendar Year, each of the three month periods ending March 31, June 30, September 30 and December 31; provided, however, that the first calendar quarter for the first Calendar Year shall extend from the Effective Date to the end of the first complete calendar quarter thereafter.

1.9 "Calendar Year" means, for the first calendar year, the period commencing on the Effective Date and ending on December 31 of the calendar year during which the Effective Date occurs, and each successive period beginning on January 1 and ending twelve (12) consecutive calendar months later on December 31.

1.10 "Change in Control" means, with respect to a Party, any transaction or series of related transactions following which continuing stockholders of such Party hold less than 50% of the outstanding voting securities of either such Party or the entity surviving such transaction.

1.11 "Claim" means all charges, complaints, actions, suits, proceedings, hearings, investigations, claims and demands.

1.12 "Collaboration Product" means any of the Long-Acting â2 Adrenoceptor Agonists identified in Section 4.1 as Pooled Compounds (including any Theravance New Compounds and Replacement Compounds, as applicable) which may become Developed and Commercialized subject to and in accordance with the terms of this Agreement, which such Collaboration Product can be used as a single agent and/or in combination with other therapeutically active components, including but not limited to a Long-Acting Inhaled Corticosteroid, for the treatment and prophylaxis of respiratory diseases. The term "Collaboration Product" shall also include any [*] to prepare and deliver a pharmaceutically effective dose of the Pooled Compound and any other therapeutically active component together with any delivery device.

1.13 "Commercial Conflict" means a situation where Theravance determines that GSK's decision related to [*] of a [*] is likely to result in a [*], and that such decision is not based on the [*] of the [*] but primarily on [*] whereby GSK is likely to achieve [*].

1.14 "Commercial Failure" means failure of [*] for reasons other than [*], based on the determination that such product will result in a [*] that is materially worse than the [*]. The [*] of a [*] will be based on [*] from such product not taking into account the [*].

1.15 "Commercialization" means any and all activities directed to marketing, promoting, distributing, offering for sale and selling a Collaboration Product, importing a Collaboration Product (to the extent applicable) and conducting Phase IV Studies. When used as a verb, "Commercialize" means to engage in Commercialization.

1.16 "Competing Product" means a product that [*].

1.17 "Confidential Information" means all secret, confidential or proprietary information, data or Know-How (including GSK Know-How and Theravance Know-How) whether provided in written, oral, graphic, video, computer or other form, provided by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") pursuant to this Agreement or generated pursuant to this Agreement, including but not limited to, information relating to the Disclosing Party's existing or proposed research, development efforts, patent applications, business or products, the terms of this Agreement and any other materials that have not been made available by the Disclosing Party to the general public. Confidential Information shall not include any information or materials that the Receiving Party can document with competent written proof:

1.17.1 were already known to the Receiving Party (other than under an obligation of confidentiality), at the time of disclosure by the Disclosing Party;

1.17.2 were generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party;

1.17.3 became generally available to the public or otherwise part of the public domain after its disclosure or development, as the case may be, and other than through any act or omission of a Party in breach of such Party's confidentiality obligations under this Agreement;

1.17.4 were disclosed to a Party, other than under an obligation of confidentiality, by a Third Party who had no obligation to the Disclosing Party not to disclose such information to others; or

1.17.5 were independently discovered or developed by or on behalf of the Receiving Party without the use of the Confidential Information belonging to the other Party.

1.18 "Country" means any generally recognized sovereign entity.

1.19 "Criteria" means the requirements set forth in Schedule 1.19 that the Replacement Compounds and Theravance New Compounds must meet to become a Pooled Compound. These requirements may be amended after the Effective Date by written agreement of the Parties (such agreement not to be unreasonably withheld by either Party) to take account of any newly established data or knowledge that has or have arisen since the Effective Date that affect or is likely to affect same.

1.20 "Designated Foreign Filing" shall have the meaning set forth in Section 13.1.2(b).

1.21 "Development" or "Develop" means preclinical and clinical drug development activities, including, among other things: test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, current Good Manufacturing Practices audits, current Good Clinical Practices audits, current Good Laboratory Practices audits, analytical method validation, manufacturing process validation, cleaning validation, scale-up and post approval changes, quality assurance/quality control development, statistical analysis and report writing, preclinical and clinical studies, regulatory filing submission and approval, and regulatory affairs related to the foregoing. When used as a verb, "Develop" means to engage in Development.

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1.22 "Development Expenses" means the cost of all studies or activities performed by or on behalf of GSK or any of its Affiliates pursuant to this Agreement.

1.23 "Development Milestone" shall have the meaning set forth in Section 6.2.1.

1.24 "Development Plan" means the outline plan for each Collaboration Product designed to achieve the Development for such Collaboration Product, including, without limitation, the nature, number and schedule of Development activities as well as the estimated resources necessary to implement such activities as such may be amended in accordance with the terms of this Agreement.

1.25 "Diligent Efforts" means the carrying out of [*], based on [*], with the objective of [*]. Diligent Efforts requires that: (i) each Party [*], (ii) each Party [*], and (iii) each Party [*].

1.26 "Disclosing Party" shall have the meaning set forth in Section 1.17.

1.27 "Effective Date" means the first business day following the date on which the last of the conditions contained in Section 16.15 of this Agreement has been satisfied.

1.28 "Exchange Act" shall have the meaning set forth in Section 15.1.1.

1.29 "FDA" means the United States Food and Drug Administration and any successor agency thereto.

1.30 "Field" means [*].

1.31 "First Commercial Sale" means the first shipment of commercial quantities of any Collaboration Product sold to a Third Party by a Party or its sublicensees in any Country after receipt of Marketing Authorization Approval for such Collaboration Product in such Country. Sales for test marketing, sampling and promotional uses, clinical trial purposes or compassionate or similar uses shall not be considered to constitute a First Commercial Sale.

1.32 "Force Majeure Event" shall have the meaning set forth in Section 16.3.

1.33 "Governmental Authority" means any court, tribunal, arbitrator, agency, legislative body, commission, official or other instrumentality of (i) any government of any Country, (ii) a federal, state, province, county, city or other political subdivision thereof or (iii) any supranational body, including without limitation the European Agency for the Evaluation of Medicinal Products.

1.34 "GSK Compound" means a GSK Initially Pooled Compound, any Replacement Compound offered up to the collaboration by GSK or a GSK non-LABA Compound utilised by GSK for Development purposes in relation to combination product activity under this Agreement currently owned or subsequently discovered by GSK and/or its predecessors in title or in-licensed from a Third Party by GSK and/or its predecessors in title.

1.35 "GSK Initially Pooled Compound" shall mean the chemical entities individually identified as [*] and all pharmaceutically acceptable [*] thereof.

1.36 "GSK Invention" means an Invention that is invented by an employee or agent of GSK solely or jointly with a Third Party.

1.37 "GSK Know-How" means all present and future information directly relating to the Collaboration Products, a GSK Compound or the GSK Inventions, including without limitation all data, records, and regulatory filings relating to Collaboration Products, that is required for Theravance to perform its obligations or exercise it rights under this Agreement, and which during the Term are in GSK's or any of its Affiliates' possession or control and are or become owned by, or otherwise may be licensed to (provided there is no restriction on GSK thereof), GSK. GSK Know-How does not include any GSK Patents.

1.38 "GSK non-LABA Compound" means any other compound contributed to the collaboration by GSK pursuant to Section 4.2.1 for the purpose of developing a combination product.

1.39 "GSK Patents" means all present and future patents and patent applications including United States provisional applications and any continuations, continuations-in-part, divisionals, registrations, confirmations, revalidations, reissues, Patent Cooperation Treaty applications, certificates of addition, utility models, design patents, petty patents as well as all other intellectual property related to the application or patent including extensions or restorations of terms thereof, pediatric use extensions, supplementary protection certificates or any other such right covering the Pooled Compounds, Collaboration Products, a GSK Compound or the GSK Inventions which are or become owned by GSK or GSK's Affiliates, or as to which GSK or GSK's Affiliates otherwise are or become licensed, now or in the future, where GSK has the right to grant the sublicense rights granted to Theravance under this Agreement, which such patent rights cover the making, having made, use, offer for sale, sale or importation of the Collaboration Products.

1.40 "Hatch-Waxman Certification" shall have the meaning set forth in Section 13.3.

1.41 "Hostile Tender Offer" shall have the meaning set forth in Section 15.2.6.

1.42 "Indemnified Party" shall have the meaning set forth in Section 12.3.1.

1.43 "Indemnifying Party" shall have the meaning set forth in Section 12.3.1.

1.44 "Invention" means any discovery (whether patentable or not) invented during the Term as a result of research, Development or manufacturing activities and specifically related to a Pooled Compound or Collaboration Product hereunder.

1.45 "Investigational Authorization" means, with respect to a Country, the regulatory authorization required to investigate a Collaboration Product in such Country as granted by the relevant Governmental Authority.

1.46 "Joint Invention" means an Invention that is invented jointly by employees and/or agents of both Theravance and GSK hereunder and the patent rights in such Invention.

1.47 "Joint Project Committee" shall have the meaning set forth in Section 3.2.

1.48 "Joint Steering Committee" shall have the meaning set forth in Section 3.1.

1.49 "LABA/ICS Combination Product" means a product that contains a Pooled Compound and a Long-Acting Inhaled Corticosteroid for the treatment and/or prophylaxis of respiratory diseases. A LABA/ICS Combination Product shall also be considered a Collaboration Product.

1.50 "Laws" means all laws, statutes, rules, regulations (including, without limitation, current Good Manufacturing Practice Regulations as specified in 21 C.F.R. (S)(S) 210 and 211; Investigational New Drug Application regulations at 21 C.F.R. (S) 312; NDA regulations at 21 C.F.R. (S) 314, relevant provisions of the Federal Food, Drug and Cosmetic Act, and other laws and regulations enforced by the FDA), ordinances and other pronouncements having the binding effect of law of any Governmental Authority.

1.51 "Litigation Condition" shall have the meaning set forth in Section 12.3.2.

1.52 "Long-Acting $\hat{a}_2$ Adrenoceptor Agonist" or "LABA" means a chemical entity that (i) [*] and (ii) has significantly longer activity than [*].

1.53 "Long-Acting Inhaled Corticosteroid" or "ICS" means a corticosteroid that has duration of action of [*].

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1.54 "Losses" means any and all damages (including all incidental, consequential, statutory an treble damages), awards, deficiencies, settlement amounts, defaults, assessments, fines, dues, penalties, costs, fees, liabilities, obligations, taxes, liens, losses, lost profits and expenses (including without limitation court costs, interest and reasonable fees of attorneys, accountants and other experts) incurred by or awarded to Third Parties and required to be paid to Third Parties with respect to a Claim by reason of any judgment, order, decree, stipulation or injunction, or any settlement entered into in accordance with the provisions of this Agreement, together with all documented out-of-pocket costs and expenses incurred in complying with any judgments, orders, decrees, stipulations and injunctions that arise from or relate to a Claim of a Third Party.

1.55 "Major Market Country" means each of the [*].

1.56 "Marketing Authorization" means, with respect to a Country, the regulatory authorization required to market and sell a Collaboration Product in such Country as granted by the relevant Governmental Authority.

1.57 "Marketing Authorization Approval" shall mean approval by a Governmental Authority for sale of a Collaboration Product, including any applicable pricing, final labeling or reimbursement approvals.

1.58 "Marketing Plan" means for each relevant Collaboration Product the global plan prepared by GSK identifying the core strategic, commercial and promotional claims and objectives for the specific Collaboration Product as reviewed and approved under Section 5.1.1.

1.59 "NDA" means a new drug application or supplemental new drug application or any amendments thereto submitted to the FDA in the United States.

1.60 "NDA Acceptance" shall mean the written notification by the FDA that the NDA has met all the criteria for filing acceptance pursuant to 21 C.F.R. (S)314.101.

1.61 "Net Sales" means the [*], less the following to the extent [*]: (a) [*]; (b) [*], including [*]; and (c) [*]. Net Sales shall [*].

1.62 "Net Sales Report" shall have the meaning set forth in Section 6.4.2.

1.63 "Officers" shall have the meaning set forth in Section 3.1.5(b).

1.64 "Other Combination Product" means any product developed pursuant to this Agreement for the treatment and/or prophylaxis of respiratory disease that contains a [*].

1.65 "Patent Infringement Claim" shall have the meaning set forth in Section 13.2.1.

1.66 "Patent Infringement Notice" shall have the meaning set forth in Section 13.2.2.

1.67 "Person" means any natural person, corporation, general partnership, limited partnership, limited liability company, joint venture, proprietorship or other business organization.

1.68 "Phase I Studies" means that portion of the Development Plan or Development relating to each Collaboration Product which provides for the first introduction into humans of such Collaboration Product including small scale clinical studies conducted in normal volunteers to obtain information on such Collaboration Product's safety, tolerability, pharmacological activity, pharmacokinetics, drug metabolism and mechanism of action, as well as early evidence of effectiveness, as more fully defined in 21 C.F.R. (S) 312.21(a).

1.69 "Phase II Studies" means, subject to Section 6.2.2, that portion of the Development Plan or Development relating to each Collaboration Product which provides for well controlled clinical trials of such Collaboration Product in patients, including clinical studies conducted in patients with the condition, and designed to evaluate clinical efficacy and safety for such Collaboration Product for one or more indications, as well as to obtain an indication of the dosage regimen required, as more fully defined in 21 C.F.R. (S) 312.21(b).

1.70 "Phase III Studies" means that portion of the Development Plan or Development relating to each Collaboration Product which provides for large scale, pivotal, clinical studies conducted in a sufficient number of patients and whose primary objective is to obtain a definitive evaluation of the therapeutic efficacy and safety of the Collaboration Product in patients for the particular indication in question that is needed to evaluate the overall risk-benefit profile of the Collaboration Product and to provide adequate basis for obtaining requisite regulatory approval(s) and product labeling, as more fully defined in 21 C.F.R. (S) 312.21(c).

1.71 "Phase IV Studies" means a study for a Collaboration Product that is initiated after receipt of a Marketing Authorization for a Collaboration Product and is principally intended to support the marketing and Commercialization of such Collaboration Product, including without limitation investigator initiated trials, clinical experience trials and studies conducted to fulfill local commitments made as a condition of any Marketing Authorization.

1.72 "Pooled Compounds" means (i) the four Long-Acting Beta-2 Adrenoceptor Agonists provided by GSK as of the Effective Date (identified as [*]), (ii) the two Long-Acting Beta-2 Adrenoceptor Agonists provided by Theravance as of the Effective Date (identified as TD-3327 and AMI-15471), (iii) the Theravance New Compounds provided by Theravance pursuant to Section 4.1, and any Replacement Compounds provided by Theravance or GSK.

1.73 "Product Supplier" means any manufacturer, packager or processor of a Collaboration Product for development, marketing and sale.

1.74 "Promotional Materials" means the core written, printed, video or graphic advertising, promotional, educational and communication materials (other than Collaboration Product labeling) for marketing, advertising and promotion of the Collaboration Products.

1.75 "Receiving Party" shall have the meaning set forth in Section 1.17.

1.76 "Replacement Compound" means a Long-Acting â2 Adrenoceptor Agonist that meets the Criteria and is provided by Theravance or GSK, as applicable, (and "GSK Replacement Compound" and "Theravance Replacement Compound" shall be interpreted accordingly) after the Effective Date to replace a Pooled Compound for which Development has been discontinued due to Technical Failure.

1.77 "ROW" means Countries other than the Major Market Countries.

1.78 "Samples" means Collaboration Product packaged and distributed as a complimentary trial for use by patients in the Territory.

1.79 "SEC" shall have the meaning set forth in Section 15.1.2.

1.80 "Selectively" means [*] (a) [*] as determined by [*], and (b) [*].

1.81 "TD-3327" means the Long-Acting â2 Adrenoceptor Agonist so designated by Theravance and all pharmaceutically acceptable salts and solvates thereof contributed to the collaboration by Theravance.

1.82 "Taxes" shall have the meaning set forth in Section 6.9.1.

1.83 "Technical Failure" means [*], or [*], or [*], or [*], or [*].

1.84 "Term" means, on a Country-by-Country and Collaboration Product-by-Collaboration Product basis, the period from [*], and (b) [*], unless this Agreement is terminated earlier in accordance with Article 14.

1.85 "Terminated Collaboration Product" shall mean a Terminated Development Collaboration Product or a Terminated Commercialized Collaboration Product.

1.86 "Terminated Commercialized Collaboration Product" shall have the meaning set forth in Section 14.4.

1.87 "Terminated Development Collaboration Product" shall have the meaning set forth in Section 14.3.

1.88 "Territory" means worldwide.

1.89 "Theravance Compound" means TD-3327 and AMI-15471, (together the "Theravance Initially Pooled Compounds"), the two Theravance New Compounds and any Replacement Compound that is offered up to the collaboration by Theravance.

1.90 "Theravance New Compound" means each of the two chemical entities meeting the Criteria and provided by Theravance to the collaboration as Pooled Compounds after the Effective Date pursuant to Section 4.1.

1.91 "Housemark" means the name and logo of GSK or Theravance or any of their respective Affiliates as identified by one Party to the other from time to time.

1.92 "Theravance Invention" means an Invention that is invented by an employee or agent of Theravance solely or jointly with a Third Party.

1.93 "Theravance Know-How" means all present and future information directly relating to the Collaboration Products, a Theravance Compound or the Theravance Inventions that is required for GSK to perform its obligations or exercise its rights under this Agreement, and which during the Term are in Theravance's or any of its Affiliates' possession or control and are or become owned by, or otherwise may be licensed (provided there are no restrictions on Theravance thereof) by, Theravance. Theravance Know-How does not include any Theravance Patents.

1.94 "Theravance Patents" means all present and future patents and patent applications including United States provisional applications and any continuations, continuations-in-part, divisionals, registrations, confirmations, revalidations, reissues, Patent Cooperation Treaty applications, certificates of addition, utility models, design patents, petty patents as well as all other intellectual property related to the application or patent including extensions or restorations of terms thereof, pediatric use extensions, supplementary protection certificates or any other such right covering the Pooled Compounds, the Collaboration Products, a Theravance Compound or the Theravance Inventions which are or become owned by Theravance or Theravance's Affiliates, or as to which Theravance or Theravance's Affiliates are or become licensed, now or in the future, with the right to grant the sublicense rights granted to GSK under this Agreement, which patent rights cover the making, having made, use, offer for sale, sale or importation of Collaboration Products.

1.95 "Third Party" means a Person who is not a Party or an Affiliate of a Party.

1.96 "Third Party Claim" shall have the meaning set forth in Section 12.3.1.

1.97 "United States" means the United States, its territories and possessions.

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1.98 "Valid Claim" means any claim(s) pending in a patent application or in an unexpired patent which has not been held unenforceable, unpatentable or invalid by a decision of a court or other governmental agency of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, and which has not has been admitted to be invalid or unenforceable through reissue or disclaimer. If in any country there should be two or more such decisions conflicting with respect to the validity of the same claim, the decision of the higher or highest tribunal shall thereafter control; however, should the tribunals be of equal rank, then the decision or decisions upholding the claim shall prevail when the decisions are equal in number, and the majority of decisions shall prevail when the conflicting decisions are unequal in number.

1.99 "Withholding Party" shall have the meaning set forth in Section 6.9.1.

ARTICLE 2
RIGHTS AND OBLIGATIONS

2.l *License Grants from Theravance to GSK.*

2.1.1 *Development License.* Subject to the terms of this Agreement, including without limitation Section 2.2, Theravance grants to GSK, and GSK accepts, an exclusive (except as to Theravance and its Affiliates) license in the Field under the Theravance Patents, Theravance Know-How and Theravance's rights in the Joint Inventions to make, have made, use and Develop Collaboration Products for Commercialization in the Territory.

2.1.2 *Commercialization License.* Subject to the terms of this Agreement, including without limitation Section 2.2, Theravance hereby grants to GSK, and GSK accepts, an exclusive license in the Field under the Theravance Patents, Theravance Know-How and Theravance's rights in the Joint Inventions to make, have made use, sell, offer for sale and import Collaboration Products in the Territory.

2.1.3 *Manufacturing License.* Subject to the terms of this Agreement, including without limitation Section 2.2, Theravance grants to GSK an exclusive license in the Field under the Theravance Patents, Theravance Know-How and Theravance's rights in the Joint Inventions to make and have made API Compound or formulated Collaboration Product in the Territory.

2.2 *Sublicensing and Subcontracting.* GSK may sublicense or subcontract its rights to Develop, Manufacture or Commercialize the Collaboration Products in whole or in part to one or more of its Affiliates, provided that the rights sublicensed or subcontracted to such Affiliate shall automatically terminate upon a change of control of such Affiliate in connection with which such Affiliate ceases to be an Affiliate of GSK. GSK may also sublicense or subcontract any of GSK's rights to Develop or Manufacture the Collaboration Products, in whole or in part, to one or more Third Parties. In the event GSK wishes to sublicense or subcontract any of GSK's rights to Commercialize the Collaboration Products, in whole or in part, to one or more Third Parties, GSK shall obtain the prior written consent of Theravance, such consent not to be unreasonably withheld, provided always that no such restriction shall apply in respect of those countries of the Territory wherein GSK is or has been required under applicable local laws to appoint a Third Party as its distributor or marketing partner. GSK shall secure all appropriate covenants, obligations and rights from any such sublicensee or subcontractor granted by it under this Agreement, including, but not limited to, intellectual property rights and confidentiality obligations in any such agreement or other relationship, to ensure that such sublicensee can comply with all of GSK's covenants and obligations to Theravance under this Agreement. GSK's rights to sublicense, subcontract or otherwise transfer its rights granted under Section 2.1 are limited to those expressly set forth in this Section 2.2.

2.3 *Trademarks and Housemarks.*

2.3.1 *Trademarks.* The Collaboration Products shall be Commercialized under trademarks (the "Trademarks") and trade dress selected by the Joint Project Committee and approved by the Joint Steering Committee. Prior to any such proposed Trademark(s) being submitted to the Joint Project Committee, GSK shall be responsible for undertaking their preliminary selection. GSK shall exclusively own all Trademarks, and shall be responsible for the procurement, filing and maintenance of trademark registrations for such Trademarks and all costs and expenses related thereto. GSK shall also exclusively own all trade dress and copyrights associated with the Collaboration Products. Nothing herein shall create any ownership rights of Theravance in and to the Trademarks or the copyrights and trade dress associated with the Collaboration Products.

2.3.2 *Housemarks.* Each Party acknowledges the goodwill and reputation that has been associated with the other Party's Housemarks over the years, and shall use such Housemarks in a manner that maintains and promotes such goodwill and reputation and is consistent with trademark guidelines. Each Party shall take all reasonable precautions and actions to protect the goodwill and reputation that has inured to the other Party's Housemarks, shall refrain from doing any act that is reasonably likely to impair the reputation of such Housemarks, and shall cooperate fully to protect such Housemarks.

2.3.3 *Ownership of Inventions.* Each Party shall promptly disclose to the other Party all Inventions made by it during the Term; provided that GSK will be allowed a reasonable time to file patent applications covering GSK Inventions prior to disclosing the GSK Invention to Theravance, and Theravance will be allowed a reasonable time to file patent applications covering Theravance Inventions prior to disclosing the Theravance Invention to GSK. Theravance shall own all Theravance Inventions and GSK shall own all GSK Inventions. All Joint Inventions shall be owned jointly by Theravance and GSK, and each Party hereby consents to the assignment or license or other disposition by the other Party of its joint interests in Joint Inventions without the need to seek the consent of the other Party to such assignment or license or other disposition; provided that any such assignment, license or other disposition shall at all times be subject to the grant of rights and accompanying conditions under Sections 2.1 and 2.2 and Article 14. The determination of inventorship for Inventions shall be made in accordance with applicable laws relating to inventorship set forth in the patent laws of the United States (Title 35, United States Code).

ARTICLE 3
GOVERNANCE OF DEVELOPMENT AND COMMERCIALIZATION OF PRODUCTS

3.1 *Joint Steering Committee.*

3.1.1 *Purpose.* The purposes of the Joint Steering Committee shall be (i) to determine the overall strategy for this collaboration between the Parties and (ii) to coordinate the Parties' activities hereunder. The Parties intend that their respective organizations will work together and will use Diligent Efforts to assure success of the collaboration.

3.1.2 *Members; Officers.* Within thirty (30) days after the Effective Date, the Parties shall establish a joint steering committee (the "Joint Steering Committee"), which shall consist of four (4) members, two (2) of whom shall be designated by each of GSK and Theravance and shall have appropriate expertise, with at least one (1) member from each Party being at least at a vice president level or higher. Each of GSK and Theravance may replace any or all of its representatives on the Joint Steering Committee at any time upon written notice to the other Party. A Party may designate a substitute to temporarily attend and perform the functions of such Party's designee at any meeting of the Joint Steering Committee. GSK and Theravance each may, on advance written notice to the other Party, invite non-member representatives of such Party to

attend meetings of the Joint Steering Committee. The Joint Steering Committee shall be chaired on an annual rotating basis by a representative of either Theravance or GSK, as applicable, on the Joint Steering Committee, with Theravance providing the first such chairperson. The chairperson shall appoint a secretary of the Joint Steering Committee, who shall be a representative of the other Party and who shall serve for the same annual term as such chairperson.

3.1.3 *Responsibilities.* The Joint Steering Committee shall perform the following functions:

(a) Manage and oversee the Development and Commercialization of the Collaboration Products pursuant to the terms of this Agreement;

(b) Review and approve the Development Plans and the Marketing Plans for Collaboration Products and any material amendments to the Development Plans and Marketing Plans;

(c) At each meeting of the Joint Steering Committee, review Net Sales for the year-to-date as available;

(d) Review and approve the progress of the Joint Project Committee;

(e) Review and approve the Trademarks selected under Section 2.3;

(f) Review and approve "go/no-go" decisions and other matters referred to the Joint Steering Committee, including, without limitation, the continued Development of a particular Collaboration Product or the inclusion of Replacement Compounds;

(g) Life cycle management of, and intellectual property protection for, the Collaboration Products;

(h) In accordance with the procedures established in Section 3.1.5, resolve disputes, disagreements and deadlocks unresolved by the Joint Project Committee; and

(i) Have such other responsibilities as may be assigned to the Joint Steering Committee pursuant to this Agreement or as may be mutually agreed upon by the Parties from time to time.

3.1.4 *Meetings.* The Joint Steering Committee shall meet in person at least once during every Calendar Year, and more frequently (i) as mutually agreed by the Parties or (ii) as required to resolve disputes, disagreements or deadlocks in the Joint Project Committee, on such dates, and at such places and times, as such Parties shall agree; provided that the Parties shall endeavor to have the first meeting of the Joint Steering Committee within thirty (30) days after the establishment of the Joint Steering Committee. The Joint Steering Committee shall arrange to meet in person or convene otherwise to assess and approve any Development Plans or Marketing Plans, if any, submitted to the Joint Steering Committee in each Calendar Year so that such plans will be reviewed and approved within thirty (30) days following submission to the Joint Steering Committee. To the extent any such Development Plans or Marketing Plans are not approved and need to be reformulated by the Joint Project Committee, such plans shall be reviewed by the Joint Steering Committee as soon as reasonably practicable after resubmission of same. Meetings of the Joint Steering Committee that are held in person shall alternate between offices of GSK and Theravance, or such other place as the Parties may agree. In addition to the annual face to face meetings the Joint Steering Committee may also be held by means of telecommunications or, video conferences as deemed appropriate by the Parties.

3.1.5 *Decision-Making.*

(a) The Joint Steering Committee may make decisions with respect to any subject matter that is subject to the Joint Steering Committee's decision-making authority and functions as

set forth in Section 3.1.3. Except as specified in Section 3.1.5(b), all decisions of the Joint Steering Committee shall be made by consensus, with the representatives from each Party presenting a unified position on behalf of such Party. The Joint Steering Committee shall use Diligent Efforts to resolve the matters within its roles and functions or otherwise referred to it.

(b) With respect to any issue, if the Joint Steering Committee cannot reach consensus within ten (10) Business Days after the matter has been brought to the Joint Steering Committee's attention, then such issue shall be referred to the Chief Executive Officer of Theravance and the Chairman of R&D of GSK (collectively, the "Officers") for resolution. The Parties accept that the use of the Officers for resolution of any unresolved issues will be on an exceptional basis. In the event that the use of the Officers occurs on more than two occasions in any consecutive twelve (12) month period and such disputes are not related to [*], then GSK will from then on retain the final vote within the Joint Steering Committee for all issues [*]. If the Officers are unable to reach consensus within thirty (30) days after the matter has been referred to them, the final decision on such disputed issue will reside with GSK; provided, however, that if the disputed issue involves [*], then the final decision will be made by [*].

3.2 *Joint Project Committee.*

3.2.1 *Purpose.* The purposes of the Joint Project Committee shall be to manage the Parties' day-to-day activities hereunder.

3.2.2 *Members; Officers.* Within thirty (30) days after the Effective Date, the Parties shall establish a Project Committee (the "Joint Project Committee"), and GSK and Theravance shall designate an equal number of representatives, up to a maximum total of eight (8) members on such Joint Project Committee, with a maximum of four (4) from each Party. Each of GSK and Theravance may replace any or all of its representatives on the Joint Project Committee at any time upon written notice to the other Party. Such representatives shall include individuals who have the relevant experience and expertise for the next twelve months as included in the Development Plan for the Collaboration Products. A Party may designate a substitute to temporarily attend and perform the functions of such Party's designee at any meeting of the Joint Project Committee. GSK and Theravance each may, on advance written notice to the other Party, invite non-member representatives of such Party to attend meetings of the Joint Project Committee. The Joint Project Committee shall be chaired by a representative of GSK. The chairperson shall appoint a secretary of the Joint Project Committee, who shall be a representative of Theravance.

3.2.3 *Responsibilities.* The Joint Project Committee shall perform the following functions:

(a) Review the Development Plans as prepared by GSK;

(b) On an annual rolling basis beginning within six months of the Effective Date, update and amend any initial Development Plan and review the Development Plan for each Collaboration Product for the following Calendar Year so that it can immediately thereafter submit such proposed Development Plan to the Joint Steering Committee for review and approval;

(c) At each meeting of the Joint Project Committee, review the Development strategy for the Collaboration Products in the Territory;

(d) At each meeting of the Joint Project Committee, review and recommend to the Joint Steering Committee any material amendments or modifications to the Development Plans;

(e) Coordinate and monitor regulatory strategy and activities for the Collaboration Products in accordance with Article 8;

(f) Review and recommend to the Joint Steering Committee "go/no-go" decisions for the Development of Collaboration Products;

(g) Review the Marketing Plans where appropriate;

(h) Review and recommend to the Joint Steering Committee any material amendments or modifications to the Marketing Plans;

(j) Discuss the state of the markets for Collaboration Products and opportunities and issues concerning the Commercialization of the Collaboration Products, including consideration of marketing and promotional strategy, marketing research plans, labeling, Collaboration Product positioning and Collaboration Product profile issues;

(k) At each meeting of the Joint Project Committee, review the status of all Studies conducted on Collaboration Products and any results therefrom;

(l) At each meeting of the Joint Project Committee, review Net Sales for the year-to-date, as available; and

(m) Have such other responsibilities as may be assigned to the Joint Project Committee pursuant to this Agreement or as may be mutually agreed upon by the Parties through the Joint Steering Committee from time to time.

3.2.4 *Meetings.* The Joint Project Committee shall meet at least once during every Calendar Quarter, and more frequently as GSK and Theravance mutually agree on such dates, and at such places and times, as such Parties shall agree; provided that the Parties shall endeavor to have the first meeting of the Joint Project Committee as a face to face meeting within thirty (30) days after the establishment of the Joint Project Committee. Meetings of the Joint Project Committee that are held in person shall alternate between the offices of GSK and Theravance, or such other place as the Parties may agree and such face to face meetings shall occur no less than twice a year. The remaining meetings may be held by means of telecommunications or video conferences as deemed appropriate. Following Commercialization of a Collaboration Product in the first Major Market, the Joint Project Committee shall meet twice a year with only one annual face to face meeting required.

3.2.5 *Decision-Making.* The Joint Project Committee may make decisions with respect to any subject matter that is subject to the Joint Project Committee's decision-making authority and functions as set forth in Section 3.2.3. All decisions of the Joint Project Committee shall be made by consensus, with the representatives from each Party presenting a unified position on behalf of such Party. If the Joint Project Committee cannot reach consensus within ten (10) Business Days after it has first met and attempted to reach such consensus, the matter shall be referred on the eleventh (11^{th}) Business Day to the Joint Steering Committee for resolution.

3.3 *Minutes of Committee Meetings.* Definitive minutes of all committee meetings shall be finalized no later than thirty (30) days after the meeting to which the minutes pertain as follows:

3.3.1 *Distribution of Minutes.* Within ten (10) days after a committee meeting, the secretary of such committee shall prepare and distribute to all members of such committee draft minutes of

the meeting. Such minutes shall provide a list of any issues yet to be resolved, either within such committee or through the relevant resolution process.

3.3.2 *Review of Minutes.* The Party members of each committee shall have ten (10) days after receiving such draft minutes to collect comments thereon and provide them to the secretary of such committee.

3.3.3 *Discussion of Comments.* Upon the expiration of such second ten (10) day period, the Parties shall have an additional ten (10) days to discuss each other's comments and finalize the minutes. The secretary and chairperson(s) of such committee shall each sign and date the final minutes. The signature of such chairperson(s) and secretary upon the final minutes shall indicate each Party's assent to the minutes.

3.4 *Expenses.* Each Party shall be responsible for all travel and related costs and expenses for its members and other representatives to attend meetings of, and otherwise participate on, a committee.

3.5 *General Guidelines and Initial Coordination Efforts.* In all matters related to the collaboration established by this Agreement, the Parties shall strive to balance as best they can the legitimate interests and concerns of the Parties and to realize the economic potential of Collaboration Products. In all matters relating to this Agreement, the Parties shall seek to comply with good pharmaceutical and environmental practices. The Parties intend, following the Effective Date, to organize meetings of internal staff to communicate and explain the provisions of this Agreement to ensure the efficient and timely Development and Commercialization of the Collaboration Products.

ARTICLE 4
DEVELOPMENT OF PRODUCTS

4.1. *Pooling of Compounds.* Subject to and consistent with the further Development principles outlined herein, each Party will offer a minimum of four (4) identified LABA compounds to this collaboration, with the intention of commercializing [*] Long-Acting Beta2 Adrenoceptor Agonist as a single agent and/or as a LABA/ICS Combination Product. Upon commencement of the collaboration pursuant to this Agreement, GSK and Theravance will contribute the following LABA compounds as Pooled Compounds to the collaboration:

GSK Compounds [*] and Theravance Compounds [*].

For the avoidance of doubt, it is agreed and hereby acknowledged by both Parties that the compounds [*] are hereby accepted as Pooled Compounds.

Theravance will provide two (2) Theravance New Compounds to the collaboration within [*] of the Effective Date in order to meet the requirement that Theravance contribute a total of four (4) LABA compounds to the Pooled Compounds. Without prejudice to the foregoing, GSK will endeavor to provide Theravance, upon Theravance's request and at [*], such assistance as may be reasonably required by Theravance to achieve this objective, including providing directly or through GSK's vendors, assistance in (i) [*], (ii) [*], (iii) [*], (iv) [*], and (v) [*].

4.2 *Obligations for Development.*

4.2.1 *General; GSK.* Under the direction of the Joint Project Committee, specific Pooled Compounds will be identified from time to time and, as applicable, selected for Development as a Collaboration Product. The Joint Project Committee will determine the number and extent of Development of the Pooled Compounds and the criteria to be used for selecting among the eight Pooled Compounds and, subject to the other terms of this Agreement, will endeavor to move [*] forward in Development. In relation to the foregoing, GSK shall have the overall responsibility for, and use Diligent Efforts in, the performance of all such Development activities which shall include, where applicable, relevant regulatory filings (as contemplated under Article 8) for any such Collaboration Product moved forward in Development. Further, GSK shall use Diligent Efforts to advance such Collaboration Product through Development in accordance with [*] the then current Development Plan for such Collaboration Product. GSK shall also use Diligent Efforts to contribute [*] to the collaboration for the purpose of developing a [*] and Diligent Efforts to develop an [*] which may be [*] of the Collaboration Compound and Development activities of such may continue in parallel.

4.2.2 *GSK Funding Responsibility.* GSK shall bear all costs and expenses associated with the Development of Collaboration Products for Commercialization including those incurred by Theravance (or to which it has become obligated) after the signature date of this Agreement and which previously have been discussed with and agreed to by GSK and, so far as the aforementioned Theravance costs are concerned, for the avoidance of doubt, the maximum amount shall not exceed [*].

4.2.3 *Decisions with Respect to Products.*

(a) GSK shall have the sole discretion with respect to Development decisions for Collaboration Products subject to and in accordance with Sections 3.1.5, 3.2.5, and 4.3.

(b) Notwithstanding the foregoing, the Parties acknowledge that Theravance is about to initiate a Phase I Study in two parts, on TD-3327. The initiation of this study will be approved via the Joint Project Committee in accordance with all other Development activities. Theravance shall be responsible for the routine monitoring of this study and will transfer remaining clinical development responsibility for TD-3327 to the Joint Project Committee on [*].

(c) GSK shall provide the Joint Project Committee with an update report within thirty days of (i) the initiation (i.e., first person dosed) of any Study involving a Collaboration Product, and (ii) the last person dosed/last visit in any Study relating to a Collaboration Product. GSK will provide the Joint Project Committee with a reasonably detailed "top line results" report within sixty days following the last person dosed/last visit in any Study involving a Collaboration Product.

4.2.4 *Development Timelines.* It is hereby acknowledged that GSK's strategic objective is [*]. GSK will consult with the Joint Project Committee and will share, modify and further develop all applicable Development Plans and timelines in that forum. It is recognised that success can be optimised [*]. At a strategic level, GSK is committed to this objective. However, at an operational level it is recognised that [*]. GSK will use Diligent Efforts to secure the necessary resource and will keep the Joint Project Committee informed on the progress of individual studies and activities relating to Collaboration Products as part of any changes to Development Plans and timelines. The current objective of the Collaboration is to achieve Marketing Authorization Approval in the US and other Major Markets for a Collaboration Product from one of the eight Pooled Compounds which can be used as a single agent and/or in combination with other therapeutically active components (including but not limited to a Long Acting Inhaled Corticosteroid) for the treatment and/or prophylaxis of one or more respiratory diseases [*] and Development Plans and timelines will be developed and/or refined in an effort to achieve this objective.

4.3 *Replacement Compounds.* If within [*], the Development of Collaboration Products containing [*] of the Pooled Compounds contributed by a Party is [*], it will be the option of the Party who contributed the discontinued compounds to discover and offer up to the collaboration [*] Replacement Compounds as replacements for the discontinued compounds within [*] following the discontinuation of the [*] failed compound. For the avoidance of doubt, any such new compound that satisfies the Criteria will automatically be accepted as a Pooled Compound in place of the relevant Party's discontinued compound, subject to Joint Steering Committee approval pursuant to Section 3.1.3(f). Nothing in the foregoing shall preclude either Party from having the option of offering up a Replacement Compound for a Pooled Compound at any time during the period referred to in Section 14.5 (subject to the Criteria being met and Joint Steering Committee approval pursuant to Section 3.1.3(f)).

4.4 *Transfer of Data.* As soon as practicable but in no event more than thirty (30) days after the Effective Date, the Parties shall determine what data and materials relating to TD-3327 and AMI-15471 are necessary for GSK's Development obligations pursuant to this Article 4, including any technology transfer required for API Compound manufacturing activities contemplated by Article 9, and establish a process for transferring copies of such data and material to GSK (including, to the extent available, in appropriate electronic format) or provide means of access thereto reasonably acceptable to GSK.

4.5 *LABA Activity Inside and Outside of the Collaboration.*

4.5.1 The intent of the Parties in respect of the Pooled Compounds is that such Pooled Compounds remain exclusive to this Collaboration and, subject to Sections 4.5.2 - 4.5.4 and Article 14 below, no activity in respect of such Pooled Compounds shall be permitted outside of this Agreement.

4.5.2 Subject to Article 14 and to Section 4.5.4, if prior to First Commercial Sale of a GSK Initially Pooled Compound or a GSK Replacement Compound, Development of such compound is discontinued under this Agreement ("GSK Discontinued Compound"), [*], and (ii) for the avoidance of doubt, [*].

4.5.3 Subject to Article 14 and Section 4.5.4, if prior to First Commercial Sale of a Theravance Compound, Development of such compound is discontinued under this Agreement ("Theravance Discontinued Compound"), [*], and (ii) for the avoidance of doubt, [*].

4.5.4 Notwithstanding Sections 4.5.2 and 4.5.3, for so long as there is one Collaboration Product being Developed under this Agreement, neither Party shall [*]; provided, however, that this restriction shall not apply to any compound or product (including new product line extensions and/or re-formulation work) where [*].

ARTICLE 5
COMMERCIALIZATION

5.1 *Global Marketing Plans.*

5.1.1 *General.* The Joint Project Committee shall be responsible for reviewing and approving a Global Marketing Plan for each Collaboration Product ("Marketing Plan"). Each Marketing Plan shall define the goals and objectives for Commercializing the Collaboration Products in the pertinent Calendar Year consistent with the applicable Development Plan.

5.1.2 *Contents of Each Marketing Plan.* The Marketing Plan for each Collaboration Product shall be prepared during the Calendar Year wherein, and where applicable, Phase III Studies for such Collaboration Product have commenced and shall be a rolling, three year plan, updated annually and shall contain at a minimum and as appropriate to current knowledge:

(a) Results of market research and strategy, including market size, dynamics, growth, customer segmentation, customer targeting, competitive analysis and global Collaboration Product positioning;

(b) Annual sales forecasts for Major Market Countries;

(c) For each major Market Country (as available): sales plans which will include target number of sales representatives, detail order and target number of details

(d) Core, global advertising and promotion programs and strategies, including literature, media plans, symposia and speaker programs; and

(e) Core Phase III/Phase IV Studies to be conducted

5.2 *Obligations for Commercialization.* GSK shall use Diligent Efforts to Commercialize the Collaboration Products.

5.3 *Commercialization.*

5.3.1 *GSK Responsibility.* GSK shall have the sole right and responsibility for Commercialization of Collaboration Products for distribution and sale. GSK shall bear all costs and expenses associated with the Commercialization of Collaboration Products for sale or distribution.

(a) GSK shall have the sole right and responsibility to distribute, sell, record sales and collect payments for Collaboration Products.

(b) GSK shall have the sole right and responsibility for establishing and modifying the terms and conditions with respect to the sale of Collaboration Products, including, without limitation, the price or prices at which the Collaboration Products will be sold, any discount applicable to payments or receivables, and similar matters.

(c) GSK will be responsible for storage, order receipt, order fulfillment, shipping and invoicing of Collaboration Products.

5.3.2 *Semi-Annual Reports.* GSK shall provide the Joint Project Committee reports semi-annually. Such reports shall set forth in summary form the results of GSK's Commercialization activities performed during such semi-annual period in the Major Markets.

5.3.3 *Exports to the United States.* To the extent permitted by Law, the Parties shall use Diligent Efforts to prevent the Collaboration Products distributed for sale in a particular Country other than the United States from being exported to the United States for sale.

ARTICLE 6
FINANCIAL PROVISIONS

6.1 *Signing Payment; Equity Investment; One-Time Fee.*

6.1.1 *Signing Payment.* In partial consideration for the acquisition of license rights under the Theravance Patents and the Theravance Know-How by GSK under this Agreement, GSK shall on the Effective Date, pay to Theravance a non-creditable, non-refundable amount of Ten Million United States Dollars (U.S. $10,000,000).

6.1.2 *Stock Purchase.* On the Effective Date, GSK will purchase 4,000,000 shares of Theravance Series E Preferred Stock at a price of U.S.$10.00 per share for total consideration of Forty Million United States Dollars (U.S. $40,000,000). Such purchase will be made pursuant to the Preferred Stock Purchase Agreement attached hereto as Schedule 6.1.2.

6.1.3 *One-Time Fee for* [*]. Within thirty days following receipt by GSK of Theravance's written notification of the decision by Theravance to nominate [*] as a "development candidate," and in further partial consideration for the acquisition of license rights under the Theravance Patents and the Theravance Know-How by GSK under this Agreement, GSK shall pay to Theravance a non-creditable, non-refundable amount of [*]. [*] will be declared a development candidate when Theravance (a) completes a study demonstrating [*] (as per the Criteria in Schedule 1.19), and (b) [*].

6.1.4 *One-Time Fee for Each Theravance New Compound.* Within thirty days following the acceptance by the Joint Project Committee or the Joint Steering Committee of each of the [*] Theravance New Compounds to be contributed to the collaboration pursuant to Section 4.1, and in further partial consideration for the acquisition of license rights under the Theravance Patents and the Theravance Know-How by GSK under this Agreement, GSK shall pay to Theravance a non-creditable, non-refundable amount of [*] for each such Theravance New Compound.

6.2 *Milestone Payments.*

6.2.1 *General.* In further consideration of the covenants and agreements contained herein, the Parties shall also pay to each other the payments set forth below for each such Development milestone referred to therein (each, a "Development Milestone"); provided always that each such payment shall be made only one time for each Collaboration Product regardless of how many times such Development Milestones are achieved for such Collaboration Product, and no payment shall be owed for a Development Milestone which is not reached (except that, upon achievement of a Development Milestone for a particular Collaboration Product, any previous Development Milestone for that Collaboration Product for which payment was not made shall be deemed achieved and payment therefore shall be made); provided further that, in the event that [*], then all applicable payments under Section 6.2 shall be made. For example, [*]. In the event of termination of development of a particular Collaboration Product and an alternative Collaboration Product replaces such Terminated Collaboration Product then milestone payments for such replacement compound shall not be paid in respect of milestones already achieved by the Terminated Collaboration Product. For example, [*].

6.2.2 *GSK to Theravance.* GSK shall make the following milestone payments to Theravance upon the achievement of the indicated Development Milestone for the first Collaboration Product in which the Long-Acting â2 Adrenoceptor Agonist is [*], and for the first LABA/ICS Combination Product in which the Long-Acting â2 Adrenoceptor Agonist [*]:

Milestone	Amount
[*]*	[*]
[*]**	[*]
[*]**	[*]
[*]	[*]
Registration	
[*]	[*]
[*]	[*]
[*]	[*]
Launch	
[*]	[*]
[*]	[*]
[*]	[*]
Annual Worldwide Net Sales over [*] Collaboration Product	[*]
Annual Worldwide Net Sales over [*] Combination Product	[*]

* GSK will make a [*]. The [*] for [*] is defined as [*] and will [*]. The [*] is defined as [*] and will [*].

** [*] is defined as [*] where such [*]. [*] is defined as [*].

Other Combination Products that contain a Long-Acting â2 Adrenoceptor Agonist that is a Theravance Compound are not subject to milestone payments by GSK *only* if [*]. The Parties intend that if the collaboration is successful [*] Collaboration Products that contain a Theravance Compound, Theravance be paid the applicable milestones [*].

If GSK, either individually or as a member of the Joint Steering Committee or Joint Project Committee, discontinues the Development of a [*] Collaboration Product that is a Theravance Compound for reasons other than [*], and such compound is the [*], it will [*].

6.2.3 *Theravance to GSK.* Theravance shall make the following milestone payments to GSK upon the achievement of the indicated Development Milestone for the first Collaboration Product in which the Long-Acting â2 Adrenoceptor Agonist is a GSK Compound and for the first LABA/ICS Combination Product in which the Long-Acting â2 Adrenoceptor Agonist is a GSK Compound:

Milestone	Amount
Registration	
[*]	[*]
[*]	[*]
[*]	[*]
Launch	
[*]	[*]
[*]	[*]
[*]	[*]

Other Combination Products that contain a Long-Acting â2 Adrenoceptor Agonist that is a GSK Compound are not subject to milestone payments by Theravance *only* if all milestone payments through launch have otherwise been made to GSK from any Collaboration Product [*]. The Parties intend that if the collaboration is successful [*] Collaboration Products that contain a GSK Compound, GSK be paid the applicable milestones [*].

6.2.4 *Notification and Payment.* In the event a Party achieves a Development Milestone, such Party shall promptly, but in no event more than ten (10) days after the achievement of each such Development Milestone, notify the other Party in writing of the achievement of same. For all Development Milestones achieved, each Party shall promptly, but in no event more than thirty (30) days after notification of the achievement of each such Development Milestone, remit payment to the other Party for such Development Milestone.

6.3 *Payment of Royalties on Net Sales.*

6.3.1 *Royalty on Single-Agent Collaboration Products and LABA/ICS Combination Products.*

Within twenty (20) days after the end of each Calendar Quarter, GSK shall pay Theravance royalty payments based on Net Sales in such Calendar Quarter during the Term as follows:

[*]

it being understood that [*] for purposes of the foregoing royalty calculation.

The quarterly royalty payments made under this Section 6.3.1 may be based on estimated Net Sales. Within thirty (30) days after the end of each Calendar Quarter, GSK shall calculate the actual amount of Net Sales for the previous Calendar Quarter and either credit or debit the difference between such actual and projected amount on the succeeding Calendar Quarter's royalty payment to Theravance. As soon as practical following the end of each Calendar Month, but in no event later than the 10th business day of the following month, GSK will provide Theravance with an estimate of Net Sales for such Calendar Month.

[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

The royalties payable under this Section 6.3 shall be paid on a Country-by-Country basis from the date of first commercial sale of each Collaboration Product in a particular Country for the Term of the Collaboration.

6.3.2 *Royalty Adjustment.* The [*] royalty payable on the first [*] of total annual worldwide Net Sales under this Section 6.3 shall be reduced to [*] if all of the following occur: (i) [*]; (ii) [*]; and (iii) [*]. The [*] royalty payable on [*] under this Section 6.3 shall be [*] if all of the following occur: (i) [*]; (ii) [*]; and (iii) [*]. Nothing in the foregoing shall affect other royalties owed under this Agreement.

6.3.3 *Royalties on Other Collaboration Products Launched After the LABA/ICS Combination Product.* For any Other Collaboration Product launched after the LABA/ICS Combination Product, GSK shall within twenty (20) days after the end of each Calendar Quarter, pay Theravance royalty payments based on Net Sales in such Calendar Quarter during the Term as follows:

[*]

For the avoidance of doubt, the Parties agree that the royalty set forth in this Section 6.3.3 shall only be effective if GSK has launched and is selling a LABA/ICS Combination Product that is subject to the royalties under Section 6.3.1. If GSK is not selling a LABA/ICS Combination Product, then the royalty set forth in Section 6.3.1 shall apply to the first Other Combination Product launched by GSK, provided such Other Combination Product does not contain a product [*]; if such Other Combination Product contains a product [*], then the royalty payable to Theravance will be [*], provided that in no case will the royalty payable to Theravance be less than set forth in this Section 6.3.3.

6.4 *Royalty Responsibilities; Net Sales Reports.*

6.4.1 *Payments to Third Parties.*

(a) If, as a result of a settlement approved by both Parties or as a result of a final non-appealable judgment, GSK is required to pay any amounts to a Third Party directly because using or selling a Theravance Compound is found to infringe the rights of such Third Party, GSK shall deduct [*] of any such amount paid to such Third Party from the royalties otherwise due Theravance for the Collaboration Product containing such Theravance Compound, provided in no event shall such reduction reduce the royalties otherwise payable to Theravance during any Calendar Year by more than [*]; provided, further, that any excess deduction shall be carried over into subsequent years of this Agreement until the full deduction is taken.

(b) GSK shall pay any amounts owed to a Third Party as a result of the use of GSK Patents or GSK Know-How with respect to sales of Collaboration Products and shall not deduct any of such amounts from the royalties due Theravance. The foregoing is subject to Section 6.3.3.

6.4.2 *Net Sales Report.* Within thirty (30) days after the end of each Calendar Quarter, GSK shall submit to Theravance a written report setting forth Net Sales in the Territory on a Country-by-Country and Collaboration Product-by-Collaboration Product basis during such Calendar Quarter, total royalty payments due Theravance, relevant market share data and any payments made to any Third Party pursuant to Section 6.4.1(a) (each a "Net Sales Report").

6.5 *GAAP.* All financial terms and standards defined or used in this Agreement for sales or activities occurring in the United States shall be governed by and determined in accordance with United States generally accepted accounting principles, consistently applied. Except as otherwise set forth herein, all financial terms and standards defined or used in this Agreement for sales or activities occurring outside the United States shall be governed by and determined in accordance with United Kingdom generally accepted accounting principles, consistently applied.

6.6 *Currencies.* Monetary conversion from the currency of a foreign country in which Collaboration Product is sold into US Dollars shall be calculated in accordance with either (a) the methodology referred to in GSK's then current Corporate Finance Reporting Policy or (b) as otherwise may be mutually agreed by the Parties. The following summarizes GSK's current methodology applied in accordance with its current Corporate Finance Reporting System: the cumulative year-to-date Average Rates are calculated by determining the average of (i) the preceding 31st December Spot Rate plus (ii) the Closing Spot Rates of the relevant months to date using the exact figures provided by the Reuters 2000 download. (By way of example, the Average Rate for the five months from January, 2002 to May, 2002 would be computed by taking the sum of the Spot Rates for the preceding 31st December, 2001, plus the month-end Spot Rates for the five months to May, 2002, divided by six).

6.7 *Manner of Payments.* All sums due to either Party under this Section 6 shall be payable in United States Dollars by bank wire transfer in immediately available funds to such bank account(s) as each of GSK and Theravance shall designate. GSK shall notify Theravance as to the date and amount of any such wire transfer to Theravance at least five (5) Business Days prior to such transfer. Theravance shall notify GSK as to the date and amount of any such wire transfer to GSK at least five (5) Business Days prior to such transfer.

6.8 *Interest on Late Payments.* If either Theravance or GSK shall fail to make a timely payment pursuant to this Article 6, any such payment that is not paid on or before the date such payment is due under this Agreement shall bear interest, to the extent permitted by applicable law, at the average one-month London Inter-Bank Offering Rate (LIBOR) for the United States Dollar as reported from time to time in The Wall Street Journal, effective for the first date on which payment was delinquent and calculated on the number of days such payment is overdue or, if such rate is not regularly published, as published in such source as the Joint Steering Committee agrees.

6.9 *Tax Withholding.*

6.9.1 Any taxes, levies or other duties ("Taxes") paid or required to be withheld under the appropriate local tax laws by one of the Parties ("Withholding Party") on account of monies payable to the other Party under this Agreement shall, subject to Sections 6.9.2 and 6.9.3, be deducted from the amount of monies otherwise payable to the other Party under this Agreement. The Withholding Party shall secure and send to the other Party within a reasonable period of time proof of any such Taxes paid or required to be withheld by Withholding Party for the benefit of the other Party.

6.9.2 If GSK or any GSK Affiliate is or becomes liable to withhold any taxes from payments made to Theravance under Sections 6.1 and 6.2 of this Agreement, then GSK shall pay to Theravance an amount equal to the amount GSK or the applicable GSK Affiliate owes to the relevant tax authority provided always that if Theravance is able to obtain credit for any taxes withheld ("Creditable Taxes") against any liability to tax either in the year in which the receipt is taxable or any preceding years, Theravance shall reimburse to GSK an amount equivalent to the Creditable Taxes. Theravance shall provide GSK with such reasonable evidence as GSK may reasonably request to determine whether the taxes are creditable against taxes payable by Theravance.

6.9.3 If GSK or any GSK Affiliate is or becomes liable to withhold any taxes from payments made to Theravance under Section 6.3, then such taxes may be withheld by GSK or the applicable GSK Affiliate up to a limit of [*] of the relevant payment. GSK shall pay to Theravance an amount equal to the amount GSK owes to the relevant tax authority in excess of such [*] provided always that if Theravance is able to obtain credit for any taxes withheld ("Creditable Taxes") against any liability to tax either in the year in which the receipt is taxable or any preceding years, Theravance shall reimburse to GSK an amount equivalent to the Creditable Taxes. Theravance shall provide GSK with such reasonable evidence as GSK may reasonably request to determine whether the taxes are creditable against taxes payable by Theravance.

6.10 *Financial Records; Audits.* GSK shall keep, and shall cause its Affiliates and sublicensees to keep, such accurate and complete records of Net Sales as are necessary to determine the amounts due to Theravance under this Agreement and such records shall be retained by GSK or any of its Affiliates or sublicensees (in such capacity, the "Recording Party") for at least the three preceding Calendar Years to which the Net Sales relate. During normal business hours and with reasonable advance notice to the Recording Party, such records shall be made available for inspection, review and audit, at the request and expense of Theravance, by an independent certified public accountant, or the local equivalent, appointed by Theravance and reasonably acceptable to the Recording Party for the sole purpose of verifying the accuracy of the Recording Party's accounting reports and payments made or to be made pursuant to this Agreement; provided, however that such audits may not be performed by Theravance more than once per Calendar Year. Such accountants shall be instructed not to reveal to Theravance the details of its review, except for (i) such information as is required to be disclosed under this Agreement and (ii) such information presented in a summary fashion as is necessary to report the accountants' conclusions to Theravance, and all such information shall be deemed Confidential Information of the Recording Party; provided, however, that in any event such information may be presented to Theravance in a summary fashion as is necessary to report the accountants' conclusions. All costs and expenses incurred in connection with performing any such audit shall be paid by Theravance unless the audit discloses at least a [*] shortfall, in which case the Recording Party will bear the full cost of the audit for such Calendar Year. Theravance will be entitled to recover any shortfall in payments due to it as determined by such audit, plus interest thereon calculated in accordance with Section 6.8, or alternatively shall have the right to offset and deduct any such shortfall in payments due to it against payments Theravance is otherwise required to make to the Reporting Party under this Agreement. The documents from which were calculated the sums due under this Article 6 shall be retained by the relevant Party during the Term.

ARTICLE 7
PROMOTIONAL MATERIALS AND SAMPLES

7.1 *Promotional Materials.*

7.1.1 *Review of Core Promotional Materials.* Subject to applicable Law, in accordance with the direction of the Joint Project Committee, the Parties will jointly, through consultation and with the assistance of each other, review the core Promotional Materials. The relevant legal or regulatory personnel of each Party shall have the opportunity to review and comment on all such core Promotional Materials prior to use and such comments shall be considered by the Joint Project Committee in the review of such core Promotional Materials.

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7.1.2 *Markings of Promotional Materials.* To the extent required by applicable Law, and further to the extent reasonably practicable, all Promotional Materials will indicate the contribution of the license from Theravance for the Collaboration Products. Subject to the foregoing, the Theravance Housemark and the GSK Housemark shall both be given exposure and prominence on all promotional materials, labelling, package inserts or outserts and packaging for the Collaboration Products.

7.2 *Samples.* Packaging, package inserts and outserts, Sample labels and labeling shall each contain reference to Theravance and GSK indicating, in the case of Theravance, the contribution of the license from Theravance for the Collaboration Products, if appropriate, and as may be required under applicable FDA rules and regulations.

7.3 *Statements Consistent with Labeling.* GSK shall ensure that its sales representatives detail the Collaboration Products in a fair and balanced manner and consistent with the requirements of the Federal Food, Drug and Cosmetic Act of the United States, as amended, including, but not limited to, the regulations at 21 C.F.R. (S) 202 in the United States.

7.4 *Implications of Change in Control in Theravance.* In the event that there is a Change in Control of Theravance and the references contemplated in Sections 7.1.2 and 7.2 are no longer made to "Theravance,", then other than to the extent required by applicable Law, GSK shall have the right, not to be unreasonably exercised, to terminate its obligations under Sections 7.1 and 7.2.

ARTICLE 8
REGULATORY MATTERS

8.1 *Governmental Authorities.* GSK shall be solely responsible for communicating with Governmental Authorities and will keep Theravance informed, through the Joint Project Committee and Joint Steering Committee, of any significant issue or issues arising therefrom.

8.2 *Filings.* GSK shall also be solely responsible for filing drug approval applications for Collaboration Products and will use Diligent Efforts in seeking appropriate approvals in those Countries of the Territory for Collaboration Products as GSK reasonably determines and sees fit. Such regulatory documents for each filing shall be centralized and held at the offices of GSK. Theravance shall provide such reasonable assistance as may be required by GSK where liaison between the Parties is, or may be, necessary to enable GSK to fulfill its responsibilities hereunder. GSK shall be responsible for maintaining the Approvals obtained under this Section and shall solely own all such Approvals in the Territory. GSK shall be fully responsible for bearing all costs and expense associated with undertaking and completing said registration activities in the Territory, including but not limited to the costs of preparing and prosecuting applications for such Approvals and fees payable to regulatory agencies in obtaining and maintaining same.

8.3 *Exchange of Drug Safety Information.* Subject to the second sentence of this Section 8.3, GSK shall be responsible for recording, investigating, summarizing, notifying, reporting and reviewing all Adverse Drug Experiences in accordance with Law and shall require that its Affiliates (i) adhere to all requirements of applicable Laws which relate to the reporting and investigation of Adverse Drug Experiences, and (ii) keep the Joint Project Committee apprised on a regular basis of such matters arising therefrom. The foregoing shall be subject to any of Theravance's own clinical safety obligations mandated by Law as a result of its ongoing Development activity related to TD-3327 (as such activity is more specifically referred to in Article 4) and, in acknowledgement of this, it is thereby contemplated that the Parties' respective clinical safety groups may need to discuss and agree, at the appropriate time after the Effective Date, appropriate safety data exchange procedures related to same.

8.4 *Recalls or Other Corrective Action.* Each Party shall, as soon as practicable, notify the other Party of any recall information received by it in sufficient detail to allow the Parties to comply with any

and all applicable Laws. GSK shall promptly notify Theravance of any material actions to be taken by GSK with respect to any recall or market withdrawal or other corrective action related to a Collaboration Product prior to such action to permit Theravance a reasonable opportunity to consult with GSK with respect thereto. All costs and expenses with respect to a recall, market withdrawal or other corrective action shall be borne by GSK unless such recall, market withdrawal or other corrective action was due solely to the negligence, willful misconduct or breach of this Agreement by Theravance. GSK shall have sole responsibility for and shall make all decisions with respect to any recall, market withdrawals or any other corrective action related to the Collaboration Products.

8.5 *Events Affecting Integrity or Reputation.* During the Term, the Parties shall notify each other immediately of any circumstances of which they are aware and which could impair the integrity and reputation of the Collaboration Products or if a Party is threatened by the unlawful activity of any Third Party in relation to the Collaboration Products, which circumstances shall include, by way of illustration, deliberate tampering with or contamination of the Collaboration Products by any Third Party as a means of extorting payment from the Parties or another Third Party. In any such circumstances, the Parties shall use Diligent Efforts to limit any damage to the Parties and/or to the Collaboration Products. The Parties shall promptly call a Joint Steering Committee meeting to discuss and resolve such circumstances.

ARTICLE 9
ORDERS; SUPPLY AND RETURNS

9.1 *Orders and Terms of Sale.* Except as otherwise expressly stated in this Agreement, GSK shall have the sole right to (i) receive, accept and fill orders for the Collaboration Products, (ii) control invoicing, order processing and collection of accounts receivable for the Collaboration Products sales, (iii) record the Collaboration Products sales in its books of account, and (iv) establish and modify the commercial terms and conditions with respect to the sale and distribution of the Collaboration Products, [*].

9.2 *Supply of API Compound and Formulated Collaboration Product for Development.*

9.2.1 *Supply of API Compound for Development.* Subject to the terms and conditions of this Agreement, GSK shall conduct or have conducted any chemical process development required to develop a commercially acceptable process for making API Compound and obtain supply for worldwide requirements of API Compound. Notwithstanding the foregoing, Theravance may transfer to GSK, at cost, whatever supply it has on hand of TD-3327 API and/or AMI-15471 API and/or intermediate materials for API manufacture, within specification as of the Effective Date, such cost not to exceed [*]. API Compound requirements for Development activities shall be set forth in the relevant Development Plan and shall be periodically updated by the Joint Project Committee.

9.2.2 *Supply of Formulated Collaboration Products for Development.* Subject to the terms and conditions of this Agreement, GSK shall obtain supply for worldwide requirements of formulated Collaboration Products. Notwithstanding the foregoing, Theravance agrees to transfer to GSK whatever supply it has on hand of formulated TD-3327, within specification, at cost as of the Effective Date, such cost not to exceed [*]. Formulated Collaboration Product requirements for Development activities shall be set forth in the relevant Development Plan and shall be periodically updated by the Joint Project Committee.

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9.3 *Supply of API Compound for Commercial Requirements.* Subject to the terms and conditions of this Agreement, GSK shall obtain supply of API Compound. A forecast for API Compound requirements for Commercialization of the Collaboration Products shall be prepared and periodically updated by the Joint Project Committee and coordinated with the applicable Marketing Plans for Collaboration Products.

9.4 *Supply of Collaboration Products for Commercialization.* Subject to the terms and conditions of this Agreement, GSK shall obtain supply of the commercial requirements of formulated, packaged and labeled Collaboration Products. Such formulated, packaged and labeled Collaboration Products shall be manufactured and supplied in accordance with all applicable Laws and current Good Manufacturing Practices. GSK shall be solely responsible for secondary manufacture, packaging and labeling of the Collaboration Product.

9.5 *Inventories.* GSK and its Product Suppliers shall maintain an inventory of API Compound and Collaboration Products in accordance with their normal practices and so as to ensure fulfillment of its respective supply obligations herein.

ARTICLE 10
CONFIDENTIAL INFORMATION

10.1 *Confidential Information.* Each of GSK and Theravance shall keep all Confidential Information received from the other Party with the same degree of care it maintains the confidentiality of its own Confidential Information. Neither Party shall use such Confidential Information for any purpose other than in performance of this Agreement or disclose the same to any other Person other than to such of its agents who have a need to know such Confidential Information to implement the terms of this Agreement or enforce its rights under this Agreement. A Receiving Party shall advise any agent who receives such Confidential Information of the confidential nature thereof and of the obligations contained in this Agreement relating thereto, and the Receiving Party shall ensure that all such agents comply with such obligations as if they had been a Party hereto. Upon termination of this Agreement, the Receiving Party shall return or destroy all documents, tapes or other media containing Confidential Information of the Disclosing Party that remain in the Receiving Party's or its agents' possession, except that the Receiving Party may keep one copy of the Confidential Information in the legal department files of the Receiving Party, solely for archival purposes. Such archival copy shall be deemed to be the property of the Disclosing Party, and shall continue to be subject to the provisions of this Article 10. Notwithstanding anything to the contrary in this Agreement, the Receiving Party shall have the right to disclose this Agreement or Confidential Information provided hereunder if, in the reasonable opinion of the Receiving Party's legal counsel, such disclosure is necessary to comply with the terms of this Agreement, or the requirements of any Law. Where possible, the Receiving Party shall notify the Disclosing Party of the Receiving Party's intent to make such disclosure pursuant to the provision of the preceding sentence sufficiently prior to making such disclosure so as to allow the Disclosing Party adequate time to take whatever action the Disclosing Party may deem to be appropriate to protect the confidentiality of the information. The Receiving Party will cooperate reasonably with the Disclosing Party's efforts to protect the confidentiality of the information. Each Party will be liable for breach of this Article 10 by any of its Affiliates.

10.2 *Permitted Disclosure and Use.* Notwithstanding Section 10.1, a Party may disclose Confidential Information belonging to the other Party only to the extent such disclosure is reasonably necessary to: (a) obtain Marketing Authorization of a Collaboration Product; (b) enforce the provisions of this Agreement; or (c) comply with Laws. If a Party deems it necessary to disclose Confidential Information of the other Party pursuant to this Section 10.2, such Party shall give reasonable advance notice of such disclosure to the other Party to permit such other Party sufficient opportunity to object to such disclosure or to take measures to ensure confidential treatment of such information. The

Receiving Party will cooperate reasonably with the Disclosing Party's efforts to protect the confidentiality of the information.

10.3 *Publications.* Subject to any Third Party rights existing as of the Effective Date, each Party shall submit to the Joint Project Committee for review and approval all proposed academic, scientific and medical publications and public presentations relating to a Collaboration Product or any research or Development activities under this Agreement for review in connection with preservation of Patent Rights, and trade secrets and/or to determine whether Confidential Information should be modified or deleted from the proposed publication or public presentation. Written copies of such proposed publications and presentations shall be submitted to the Joint Project Committee no later than sixty (60) days before submission for publication or presentation and the Joint Project Committee shall provide its comments with respect to such publications and presentations within ten (10) Business Days of its receipt of such written copy. The review period may be extended for an additional sixty (60) days if a representative of the non-publishing Party on the Joint Project Committee can demonstrate a reasonable need for such extension including, but not limited to, the preparation and filing of patent applications. By mutual agreement of the Parties, this period may be further extended. The Parties will each comply with standard academic practice regarding authorship of scientific publications and recognition of contribution of other parties in any publications relating to the Collaboration Products or any research or Development activities under this Agreement.

10.4 *Public Announcements.* Except as may be expressly permitted under Section 10.3 or required by applicable Laws and subject to the final two sentences of this Section 10.4, neither Party will make any public announcement of any information regarding this Agreement, the Collaboration Products or any research or Development activities under this Agreement without the prior written approval of the other Party, which approval shall not be withheld unreasonably. Once any statement is approved for disclosure by the Parties or information is otherwise made public in accordance with the preceding sentence, either Party may make a subsequent public disclosure of the contents of such statement without further approval of the other Party. Notwithstanding the foregoing, within sixty (60) days following the Effective Date, appropriate representatives of the Parties will meet and agree upon a process and principles for reaching timely consensus on how the Parties will make public disclosure concerning this Agreement, the Collaboration Products or any research and Development activities under this Agreement.

10.5 *Confidentiality of This Agreement.* The terms of this Agreement shall be Confidential Information of each Party and, as such, shall be subject to the provisions of this Article 10. Either party may disclose the terms of this Agreement if, in the opinion of its counsel, such disclosure is required by Law. In such event, the disclosing Party will seek appropriate confidentiality of those portions of the Agreement for which confidential treatment is typically permitted by the relevant Governmental Authority.

10.6 *Termination of Prior Confidentiality Agreements.* Except as expressly provided in this Section 10.6, this Agreement supercedes the Mutual Confidential Disclosure Agreement (the "MCDA") between the Parties dated April 10, 2002. Except as expressly provided in this Section 10.6 and in Paragraph 8 of the Confidentiality Agreement between the Parties dated October 2, 2002 (the "Patent CDA"), this Agreement supersedes the Patent CDA. Except as set forth in Paragraph 8 of the Patent CDA, all information disclosed pursuant to the MCDA and the Patent CDA shall be subject to the provisions of this Article 10.

10.7 *Survival.* The obligations and prohibitions contained in this Article 10 shall survive the expiration or termination of this Agreement for a period of ten (10) years.

ARTICLE 11
REPRESENTATIONS AND WARRANTIES; COVENANTS

11.1 *Mutual Representations and Warranties.* Theravance and GSK each represents and warrants to the other as of the Effective Date that:

11.1.1 Such Party (a) is a company duly organized, validly existing, and in good standing under the Laws of its incorporation; (b) is duly qualified as a corporation and in good standing under the Laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, where the failure to be so qualified would have a material adverse effect on its financial condition or its ability to perform its obligations hereunder; (c) has the requisite corporate power and authority and the legal right to conduct its business as now conducted and hereafter contemplated to be conducted; (d) has or will obtain all necessary licenses, permits, consents, or approvals from or by, and has made or will make all necessary notices to, all Governmental Authorities having jurisdiction over such Party, to the extent required for the ownership and operation of its business, where the failure to obtain such licenses, permits, consents or approvals, or to make such notices, would have a material adverse effect on its financial condition or its ability to perform its obligations hereunder; and (e) is in compliance with its charter documents;

11.1.2 The execution, delivery and performance of this Agreement by such Party and all instruments and documents to be delivered by such Party hereunder (a) are within the corporate power of such Party; (b) have been duly authorized by all necessary or proper corporate action; (c) do not conflict with any provision of the charter documents of such Party; (d) will not, to the best of such Party's knowledge, violate any law or regulation or any order or decree of any court of governmental instrumentality; (e) will not violate or conflict with any terms of any indenture, mortgage, deed of trust, lease, agreement, or other instrument to which such Party is a party, or by which such Party or any of its property is bound, which violation would have a material adverse effect on its financial condition or on its ability to perform its obligations hereunder;

11.1.3 This Agreement has been duly executed and delivered by such Party and constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as such enforceability may be limited by applicable insolvency and other Laws affecting creditors' rights generally, or by the availability of equitable remedies; and

11.1.4 All of its employees, officers, and consultants have executed agreements or have existing obligations under law requiring assignment to such Party of all Inventions made by such individuals during the course of and as the result of their association with such Party, and obligating such individuals to maintain as confidential such Party's Confidential Information.

11.1.5 Nothing contained in this Agreement shall give a Party the right to use the Confidential Information received from the other Party in connection with any activity other than Development and Commercialization of a Pooled Compound or Collaboration Product consistent with this Agreement.

11.1.6 As soon as practicably possible after the Effective Date, the Parties will each deliver to each other a schedule listing (i) in the case of GSK, GSK Patents as of the date of signature of this Agreement and (ii) in the case of Theravance, Theravance Patents as of the date of signature of this Agreement.

11.2 *Additional GSK Representations and Warranties.* GSK further represents, warrants and covenants to Theravance that:

11.2.1 It has utilized its own scientific, marketing and distribution expertise and experience to analyze and evaluate both the scientific and commercial value of this collaboration and has solely relied on such analysis and evaluations in deciding to enter into this Agreement;

11.2.2 Neither GSK nor any of its Affiliates is a party to or otherwise bound by any oral or written contract or agreement that will result in any Person obtaining any interest in, or that would give to any Person any right to assert any claim in or with respect to, any of GSK's rights granted under this Agreement;

11.2.3 There is no claim or demand of any person or entity pertaining to, or any proceeding which is pending or, to the knowledge of GSK, threatened, that challenges the rights of Theravance in respect of any GSK Know-How or GSK Patents, or that claims that any default exists under any license with respect to any GSK Know-How or GSK Patents to which GSK is a party, except where such claim, demand or proceeding would not materially and adversely affect the ability of GSK to carry out its obligations under this Agreement; and

11.2.4 Having carried out and completed diligent searches in relation to the GSK Patents, and other than as disclosed to Theravance's counsel by GSK's counsel, GSK is not aware, nor has been made aware, of any conflict or likely future conflict with the intellectual property rights of any Third Party with respect to GSK Patents.

11.3 *Additional Theravance Representations and Warranties.* Theravance further represents and warrants to GSK as of the Effective Date that:

11.3.1 Having carried out and completed diligent searches in relation to the Theravance Patents, and other than as disclosed to GSK's counsel by Theravance's counsel, Theravance is not aware, nor has been made aware, of any conflict or likely future conflict with the intellectual property rights of any Third Party with respect to Theravance Patents.

Theravance has not received notice from any Third Party of a claim that an issued patent of such Third Party would be infringed by the manufacture, distribution, marketing or sale of the Collaboration Products under this Agreement;

11.3.2 To Theravance's knowledge, the Theravance Patents are not subject to any pending or any threatened re-examination, opposition, interference or litigation proceedings;

11.3.3 Theravance has not received notice from any Third Party of a claim asserting the invalidity, misuse, unregisterability or unenforceability of any of the Theravance Patents, or challenging its right to use or ownership of any of the Theravance Patents or the Theravance Know-How, or making any adverse claim of ownership thereof;

11.3.4 Theravance has not received notice from any Third Party that any trade secrets or other intellectual property rights of such Third Party would be misappropriated by the development and reduction to practice of the Theravance Patents and Theravance Know-How; and

11.3.5 Theravance has, up to and including the Effective Date, furnished GSK with all material information requested by GSK concerning the quality, toxicity, safety and/or efficacy concerns that may materially impair the utility and/or safety of the Compound or Collaboration Products.

11.4 *Covenants.* Each Party hereby covenants and agrees during the Term that it shall carry out its obligations or activities hereunder in accordance with (i) the terms of this Agreement and (ii) all applicable Laws.

11.5 *Disclaimer of Warranty.* Subject to the specific warranties and representations given under Sections 11.1 through and including 11.3, nothing in this Agreement shall be construed as a warranty or representation by either Party (i) that any Collaboration Product made, used, sold or otherwise disposed of under this Agreement is or will be free from infringement of patents, copyrights, trademarks, industrial design or other intellectual property rights of any Third Party, (ii) regarding the effectiveness, value, safety, non-toxicity, patentability, or non-infringement of any patent technology, the Collaboration Products or any information or results provided by either Party pursuant to this Agreement or (iii) that any Collaboration Product will obtain Marketing Authorization or appropriate pricing approval. Each Party explicitly accepts all of the same as experimental and for development purposes, and without any express or implied warranty from the other Party. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY EXPRESSLY DISCLAIMS, WAIVES, RELEASES, AND RENOUNCES ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 12
INDEMNIFICATION

12.1 *Indemnification by GSK.* Subject to Sections 12.4 and 13.2, GSK shall defend, indemnify and hold harmless Theravance and its Affiliates and each of their officers, directors, shareholders, employees, successors and assigns from and against all Claims of Third Parties, and all associated Losses, to the extent arising out of (a) GSK's negligence or willful misconduct in performing any of its obligations under this Agreement, (b) a breach by GSK of any of its representations, warranties, covenants or agreements under this Agreement, or (c) the manufacture, use, handling, storage, marketing, sale, distribution or other disposition of Collaboration Products by GSK, its Affiliates, agents or sublicensees, except to the extent such losses result from the negligence or willful misconduct of Theravance.

12.2 *Indemnification by Theravance.* Subject to Sections 12.4 and 13.2, Theravance shall defend, indemnify and hold harmless GSK and its Affiliates and each of their officers, directors, shareholders, employees, successors and assigns from and against all Claims of Third Parties, and all associated Losses, to the extent arising out of (a) Theravance's negligence or willful misconduct in performing any of its obligations under this Agreement, or (b) a breach by Theravance of any of its representations, warranties, covenants or agreements under this Agreement.

12.3 *Procedure for Indemnification.*

12.3.1 *Notice.* Each Party will notify promptly the other in writing if it becomes aware of a Claim (actual or potential) by any Third Party (a "Third Party Claim") for which indemnification may be sought by that Party and will give such information with respect thereto as the other Party shall reasonably request. If any proceeding (including any governmental investigation) is instituted involving any Party for which such Party may seek an indemnity under Section 12.1 or 12.2, as the case may be (the "Indemnified Party"), the Indemnified Party shall not make any admission or statement concerning such Third Party Claim, but shall promptly notify the other Party (the "Indemnifying Party") orally and in writing and the Indemnifying Party and Indemnified Party shall meet to discuss how to respond to any Third Party Claims that are the subject matter of such proceeding. The Indemnifying Party shall not be obligated to indemnify the Indemnified Party to the extent any admission or statement made by the Indemnified Party or any failure by such Party to notify the Indemnifying Party of the claim materially prejudices the defense of such claim.

12.3.2 *Defense of Claim.* If the Indemnifying Party elects to defend or, if local procedural rules or laws do not permit the same, elects to control the defense of a Third Party Claim, it shall be entitled to do so provided it gives notice to the Indemnified Party of its intention to do so

within forty-five (45) days after the receipt of the written notice from the Indemnified Party of the potentially indemnifiable Third Party Claim (the "Litigation Condition"). The Indemnifying Party expressly agrees the Indemnifying Party shall be responsible for satisfying and discharging any award made to or settlement reached with the Third Party pursuant to the terms of this Agreement without prejudice to any provision in this Agreement or right at law which will allow the Indemnifying Party subsequently to recover any amount from the Indemnified Party to the extent the liability under such settlement or award was attributable to the Indemnified Party. Subject to compliance with the Litigation Condition, the Indemnifying Party shall retain counsel reasonably acceptable to the Indemnified Party (such acceptance not to be unreasonably withheld, refused, conditioned or delayed) to represent the Indemnified Party and shall pay the reasonable fees and expenses of such counsel related to such proceeding. In any such proceeding, the Indemnified Party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party. The Indemnified Party shall not settle any claim for which it is seeking indemnification without the prior written consent of the Indemnifying Party which consent shall not be unreasonably withheld, refused, conditioned or delayed. The Indemnified Party shall, if requested by the Indemnifying Party, cooperate in all reasonable respects in the defense of such claim that is being managed and/or controlled by the Indemnifying Party. The Indemnifying Party shall not, without the written consent of the Indemnified Party (which consent shall not be unreasonably withheld, refused, conditioned or delayed), effect any settlement of any pending or threatened proceeding in which the Indemnified Party is, or based on the same set of facts could have been, a party and indemnity could have been sought hereunder by the Indemnified Party, unless such settlement includes an unconditional release of the Indemnified Party from all liability on claims that are the subject matter of such proceeding. If the Litigation Condition is not met, then neither Party shall have the right to control the defense of such Third Party Claim and the Parties shall cooperate in and be consulted on the material aspects of such defense at each Party's own expense; provided that if the Indemnifying Party does not satisfy the Litigation Condition, the Indemnifying Party may at any subsequent time during the pendency of the relevant Third Party Claim irrevocably elect, if permitted by local procedural rules or laws, to defend and/or to control the defense of the relevant Third Party Claim so long as the Indemnifying Party also agrees to pay the reasonable fees and costs incurred by the Indemnified Party in relation to the defense of such Third Party Claim from the inception of the Third Party Claim until the date the Indemnifying Party assumes the defense or control thereof.

12.4 *Assumption of Defense.* Notwithstanding anything to the contrary contained herein, an Indemnified Party shall be entitled to assume the defense of any Third Party Claim with respect to the Indemnified Party, upon written notice to the Indemnifying Party pursuant to this Section 12.4, in which case the Indemnifying Party shall be relieved of liability under Section 12.1 or 12.2, as applicable, solely for such Third Party Claim and related Losses.

12.5 *Insurance.* During the Term of this Agreement and for a period of [*] after the termination or expiration of this Agreement, GSK shall obtain and/or maintain at its sole cost and expense, product liability insurance (including any self-insured arrangements) in amounts which are reasonable and customary in the U.S. pharmaceutical industry for companies of comparable size and activities. Such product liability insurance or self-insured arrangements shall insure against all liability, including without limitation personal injury, physical injury, or property damage arising out of the manufacture, sale, distribution, or marketing of the Collaboration Products. GSK shall provide written proof of the existence of such insurance to Theravance upon request.

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ARTICLE 13
PATENTS

13.1 *Prosecution and Maintenance of Patents.*

13.1.1 *Prosecution and Maintenance of Theravance Patents.* Theravance shall have the exclusive right and the obligation to (subject to Theravance's election not to file, prosecute, or maintain pursuant to Section 13.1.4) or to cause its licensors to, prepare, file, prosecute in a diligent manner (including without limitation by conducting interferences, oppositions and reexaminations or other similar proceedings), maintain (by timely paying all maintenance fees, renewal fees, and other such fees and costs required under applicable Laws) and extend all Theravance Patents and related applications. Theravance shall consult with GSK prior to abandoning any Theravance Patents or related applications that are material to the matters contemplated in this Agreement. Theravance shall regularly advise GSK of the status of all pending applications, including with respect to any hearings or other proceedings before any Governmental Authority, and, at GSK's request, shall provide GSK with copies of all documentation concerning such applications, including all correspondence to and from any Governmental Authority. Subject to Section 2.3.3, Theravance shall solicit GSK's advice and review of the nature and text of such patent applications and important prosecution matters related thereto in reasonably sufficient time prior to filing thereof, and Theravance shall take into account GSK's reasonable comments related thereto; provided, however, Theravance shall have the final decision authority with respect to any action relating to any Theravance Patent. Within the priority period, Theravance shall agree with GSK regarding the countries outside the United States in which corresponding applications should be filed ("OUS Filings"). It is presumed that a corresponding Patent Cooperation Treaty ("PCT") application will be filed unless otherwise agreed by the Parties. Theravance shall effect filing of all such applications within the priority period.

Subject to Section 13.1.4, Theravance shall be responsible for all costs incurred in the United States in connection with procuring Theravance Patents, including applications preparation, filing fees, prosecution, maintenance and all costs associated with reexamination and interference proceedings in the United States Patent and Trademark Office and United States Courts. GSK shall be responsible for all out-of-pocket costs and expenses incurred by Theravance after the Effective Date that are associated with procuring corresponding OUS patents, including without limitation PCT and individual country filing fees, translations, maintenance, annuities, and protest proceedings. For all such OUS patent applications, Theravance will invoice GSK on a quarterly basis beginning April 1, 2003, setting forth all such expenses incurred. Reimbursement will be made to Theravance in United States Dollars within thirty (30) days of receipt of the invoice by GSK. GSK will within thirty (30) days following the Effective Date identify the GSK representative that should receive such invoices from Theravance. GSK's obligations hereunder are in addition to any obligations of GSK under Section 13.1.2(b)

13.1.2 *Prosecution and Maintenance of Patents Covering Joint Inventions.*

(a) For Patents covering Joint Inventions, the Parties shall agree, without prejudice to ownership, which Party shall have the right to prepare and file a priority patent application, and prosecute such application(s) and maintain any patents derived therefrom, with the Parties equally sharing the reasonable out-of-pocket costs for the preparation, filing, prosecution and maintenance of such priority patent application. The Parties will reasonably cooperate to obtain any export licenses that might be required for such activities. Should the agreed upon Party elect not to prepare and/or file any such priority patent application, it shall (i) provide the other Party with written notice as soon as reasonably possible after making such election but in any event no later than sixty (60) days before the other Party would be faced with a possible loss of rights, (ii) give the other Party the right, at the other Party's discretion and sole expense, to prepare and file the

priority application(s), and (iii) offer reasonable assistance in connection with such preparation and filing at no cost to the other Party except for reimbursement of reasonable out-of-pocket expenses incurred by the agreed upon Party in rendering such assistance. The other Party, at its discretion and cost, shall prosecute such application(s) and maintain sole ownership of any patents derived therefrom.

(b) Within nine (9) months after the filing date of a priority application directed to an Invention, the Party filing the priority application shall request that the other Party identify those non-priority, non-PCT ("foreign") Countries in which the other Party desires that the Party filing the priority application file corresponding patent applications. Within thirty (30) days after receipt by the other Party of such request from the Party filing the priority application, the other Party shall provide to the Party filing the priority application a written list of such foreign countries in which the other Party wishes to effect corresponding foreign patent applications filings. The Parties will then attempt to agree on the particular countries in which such applications will be filed, provided that in the event agreement is not reached, the application will be filed in the disputed as well as the non-disputed countries (all such filings referred to hereinafter as "Designated Foreign Filings"). Thereafter, within twelve (12) months after the filing date of the priority application, the Party filing the priority application shall effect all such Designated Foreign Filings. It is presumed unless otherwise agreed in writing by the Parties, that a corresponding PCT application will be filed designating all PCT member countries. As to each Designated Foreign Filing and PCT application, GSK shall bear the costs for the filing and prosecutions of such Designated Foreign Filing and PCT application (including entering national phase in all agreed countries). Should the Party filing the priority application not agree to file or cause to be filed a Designated Foreign Filing, the other Party will have the right to effect such Designated Foreign Filing in its name.

(c) Should the filing Party pursuant to Section 13.1.2(a) or 13.1.2(b) no longer wish to prosecute and/or maintain any patent application or patent resulting from such application, the filing Party shall (i) provide the non-filing Party with written notice of its wish no later than sixty (60) days before the patent or patent applications would otherwise become abandoned, (ii) give the non-filing Party the right, at the non-filing Party's election and sole expense, to prosecute and/or maintain such patent or patent application, and (iii) offer reasonable assistance to the non-filing Party in connection with such prosecution and/or maintenance at no cost to the non-filing Party except for reimbursement of the filing Party's reasonable out-of-pocket expenses incurred by the filing Party in rendering such assistance.

(d) Should the non-filing Party pursuant to Section 13.1.2(c) not wish to incur its share of preparation, filing, prosecution and/or maintenance costs for a patent application filed pursuant to Section 13.1.2(a) or 13.1.2(b) or patents derived therefrom, it shall (i) provide the filing Party with written notice of its wish, and (ii) continue to offer reasonable assistance to the filing Party in connection with such prosecution or maintenance at no cost to the filing Party except for reimbursement of the non-filing Party's reasonable out-of-pocket expenses incurred by the non-filing Party in rendering such assistance.

(e) The Parties agree to cooperate in the preparation and prosecution of all patent applications filed under Section 13.1.2(a) and 13.1.2(b), including obtaining and executing necessary powers of attorney and assignments by the named inventors, providing relevant technical reports to the filing Party concerning the invention disclosed in such patent application, obtaining execution of such other documents which shall be needed in the filing and prosecution of such patent applications, and, as requested, updating each other regarding the status of such patent applications.

13.1.3 *Prosecution and Maintenance of GSK Patents.* GSK shall have the exclusive right and obligation to (subject to GSK's election not to file, prosecute or maintain pursuant to Section 13.1.5) or to cause its licensors to, prepare, file and prosecute in a diligent manner (including without limitation by conducting interferences, oppositions and reexaminations or other similar proceedings), maintain (by timely paying all maintenance fees, renewal fees, and other such fees and costs required under applicable Laws) and extend all GSK Patents and related applications. Consistent with Section 2.3.3, GSK will consult with Theravance within the priority period for any patent application that is material to this Agreement concerning Countries in which corresponding applications will be filed. In the event the Parties can not agree, GSK shall make the final decision. GSK shall consult with Theravance prior to abandoning any GSK Patents or related applications that are material to the matters contemplated in this Agreement. GSK shall regularly advise Theravance of the status of all pending applications, including with respect to any hearings or other proceedings before any Governmental Authority, and, at Theravance's request, shall provide Theravance with copies of documentation relating to such applications, including all correspondence to and from any Governmental Authority. Subject to Section 2.3.3, GSK shall solicit Theravance's advice and review of the nature and text of such patent applications and important prosecution matters related thereto in reasonably sufficient time prior to filing thereof, and GSK shall take into account Theravance's reasonable comments relating thereto; provided that GSK shall have the final decision authority with respect to any action relating to a GSK Patent.

13.1.4 *GSK Step-In Rights.* If Theravance elects not to file, prosecute or maintain the Theravance Patents or claims encompassed by such Theravance Patents necessary for GSK to exercise its rights hereunder in any Country, Theravance shall give GSK notice thereof within a reasonable period prior to allowing such Theravance Patents, or such claims encompassed by such Theravance Patents, to lapse or become abandoned or unenforceable, and GSK shall thereafter have the right, at its sole expense, to prepare, file, prosecute and maintain such Theravance Patents in such Country.

13.1.5 *Theravance Step-In Rights.* If GSK elects not to file, prosecute or maintain the GSK Patents or claims encompassed by such GSK Patents necessary for Theravance to exercise its license rights hereunder in any Country, GSK shall give Theravance notice thereof within a reasonable period prior to allowing such GSK Patents, or such claims encompassed by such GSK Patents, to lapse or become abandoned or unenforceable, and Theravance shall thereafter have the right, at its sole expense, to prepare, file, prosecute and maintain such GSK Patents in such Country. In the event that GSK elects not to file, prosecute or maintain GSK Patents or claims that would affect the royalty owed Theravance pursuant to Section 6.3, GSK shall reimburse Theravance for all out-of-pocket expenses incurred by Theravance in connection with Theravance exercising its Step-In Rights under this Section.

13.1.6 *Execution of Documents by Agents.* Each of the Parties shall execute or have executed by its appropriate agents such documents as may be necessary to obtain, perfect or maintain any Patent Rights filed or to be filed pursuant to this Agreement, and shall cooperate with the other Party so far as reasonably necessary with respect to furnishing all information and data in its possession reasonably necessary to obtain or maintain such Patent Rights.

13.1.7 *Patent Term Extensions.* The Parties shall cooperate with each other in gaining patent term extension where applicable to Collaboration Products. The Joint Steering Committee shall determine which patents the Parties shall endeavor to have extended. All filings for such extension will be made by the Party to whom the patent is assigned after consultation with the other Party. In the event the Joint Steering Committee can not agree, the Party who is assigned the compound patent covering the LABA in the Collaboration Product will make the decision.

13.2 *Patent Infringement.*

13.2.1 *Infringement Claims.* With respect to any and all Claims instituted by Third Parties against Theravance or GSK or any of their respective Affiliates for patent infringement involving the manufacture, use, license, marketing or sale of a Collaboration Product in the United States during the Term (each, a "Patent Infringement Claim") as applicable, Theravance and GSK will assist one another and cooperate in the defense and settlement of such Patent Infringement Claims at the other Party's request.

13.2.2 *Infringement of Theravance Patents.* In the event that Theravance or GSK becomes aware of actual or threatened infringement of a Theravance Patent during the Term, that Party will promptly notify the other Party in writing (a "Patent Infringement Notice"). Theravance will have the right but not the obligation to bring an infringement action against any Third Party. If Theravance elects to pursue such infringement action, Theravance shall be solely responsible for the costs and expenses associated with such action and retain all recoveries. During the Term, in the event that Theravance does not undertake such an infringement action, upon Theravance's written consent, which shall not be unreasonably withheld, refused, conditioned or delayed, GSK shall be permitted to do so in Theravance's or the relevant Theravance Affiliate's name and on Theravance's or the relevant Theravance Affiliate's behalf. If Theravance has consented to an infringement action but GSK is not recognized by the applicable court or other relevant body as having the requisite standing to pursue such action, then GSK may join Theravance as party-plaintiff. If GSK elects to pursue such infringement action, Theravance may be represented in such action by attorneys of its own choice and its own expense with GSK taking the lead in such action.

13.2.3 *Infringement of GSK Patents.* In the event that GSK or Theravance becomes aware of actual or threatened infringement of a GSK Patent during the Term, that Party will promptly notify the other Party in writing. GSK will have the right but not the obligation to bring an infringement action against any Third Party. If GSK elects to pursue such infringement action, GSK shall be solely responsible for the costs and expenses associated with such action and retain all recoveries. During the Term, in the event that GSK does not undertake such an infringement action, upon GSK's written consent, which shall not be unreasonably withheld, refused, conditioned or delayed, Theravance shall be permitted to do so in GSK's or the relevant GSK Affiliate's name and on GSK's or the relevant GSK Affiliate's behalf. If GSK has consented to an infringement action but Theravance is not recognized by the applicable court or other relevant body as having the requisite standing to pursue such action, then Theravance may join GSK as a party-plaintiff. If Theravance elects to pursue such infringement action, GSK may be represented in such action by attorneys of its own choice and at its own expense, with Theravance taking the lead in such action.

13.3 *Notice of Certification.* GSK and Theravance each shall immediately give notice to the other of any certification filed under the "U.S. Drug Price Competition and Patent Term Restoration Act of 1984" (or its foreign equivalent) claiming that a GSK Patent or a Theravance Patent is invalid or that infringement will not arise from the manufacture, use or sale of any Collaboration Product by a Third Party ("Hatch-Waxman Certification").

13.3.1 *Notice.* If a Party decides not to bring infringement proceedings against the entity making such a certification, such Party shall give notice to the other Party of its decision not to bring suit within twenty-one (21) days after receipt of notice of such certification.

13.3.2 *Option.* Such other Party then may, but is not required to, bring suit against the entity that filed the certification.

13.3.3 *Name of Party.* Any suit by Theravance or GSK shall either be in the name of Theravance or in the name of GSK, (or any Affiliate) or jointly in the name of Theravance and GSK (or any Affiliate), as may be required by law.

13.4 *Assistance.* For purposes of this Article 13, the Party not bringing suit shall execute such legal papers necessary for the prosecution of such suit as may be reasonably requested by the Party bringing suit. The out-of-pocket costs and expenses of the Party bringing suit shall be reimbursed first out of any damages or other monetary awards recovered in favor of GSK or Theravance. The documented out-of-pocket costs and expenses of the other Party shall then be reimbursed out of any remaining damages or other monetary awards. The Party initiating and prosecuting the action to completion will retain any remaining damages or other monetary awards following such reimbursements.

13.5 *Settlement.* No settlement or consent judgment or other voluntary final disposition of a suit under this Article may be entered into without the joint written consent of GSK and Theravance (which consent will not be withheld unreasonably).

ARTICLE 14
TERM AND TERMINATION

14.1 *Term and Expiration of Term.* Unless otherwise mutually agreed to by the Parties, this Agreement shall commence on the Effective Date and shall end upon expiration of the Term, unless terminated early as contemplated hereunder. Unless terminated early under this Article 14, the licenses granted by Theravance to GSK pursuant to Section 2.1 with respect to the Collaboration Products shall be considered fully-paid and shall become non-exclusive upon expiration of the Term.

14.2 *Termination for Material Breach.* Either Party may, without prejudice to any other remedies available to it at law or in equity, terminate this Agreement subject to Section 14.10 in the event that the other Party (as used in this subsection, the "Breaching Party") shall have materially breached or defaulted in the performance of any of its obligations. The Breaching Party shall, if such breach can be cured, have sixty (60) days after written notice thereof was provided to the Breaching Party by the non-breaching Party to remedy such default (or, if such default cannot be cured within such 60-day period, the Breaching Party must commence and diligently continue actions to cure such default during such 60-day period). Any such termination shall become effective at the end of such 60-day period unless the Breaching Party has cured any such breach or default prior to the expiration of such 60-day period (or, if such default is capable of being cured but cannot be cured within such 60-day period, the Breaching Party has commenced and diligently continued actions to cure such default provided always that, in such instance, such cure must have occurred within one hundred twenty (120) days after written notice thereof was provided to the Breaching Party by the non-breaching Party to remedy such default).

14.3 *GSK Right to Terminate Development of a Collaboration Product.* On a Collaboration Product-by-Collaboration Product basis, and at any time during Development and prior to First Commercial Sale of the applicable Collaboration Product, GSK shall have the right to terminate Development of such Collaboration Product (upon the provision of ninety (90) days written notice) for reasons of Technical Failure or Commercial Failure following communication to, and assessment of such proposed termination by, the Joint Project Committee and Joint Steering Committee (in which case such Collaboration Product shall be referred to as a "Terminated Development Collaboration Product"). For the avoidance of doubt, a "Terminated Development Collaboration Product" can be any of the following: [*].

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14.4 *GSK Right to Terminate Commercialization of a Collaboration Product Following First Commercial Sale.* On a Collaboration Product-by-Collaboration Product basis, and on a Country-by-Country basis, at any time after First Commercial Sale of the applicable Collaboration Product in such country, GSK shall have the right to terminate Commercialization of such Collaboration Product (upon the provision of one hundred and eighty (180) days written notice) for reasons of Commercial Failure or Technical Failure and following communication to, and assessment of such proposed termination by, the Joint Project Committee and Joint Steering Committee (in which case, such Collaboration Product shall be referred to as a "Terminated Commercialized Collaboration Product"). For the avoidance of doubt, a Terminated Commercialized Collaboration Product can be any of the following: [*].

14.5 *Termination of the Agreement Due to Discontinuation of Development of All Collaboration Products and All Pooled Compounds.* Any time following the [*] the Effective Date, either Party may terminate this Agreement, subject to Section 14.10, upon the provision of ninety (90) days written notice if Development of all Collaboration Products and all Pooled Compounds have been discontinued for Technical Failure and/or Commercial Failure. Notwithstanding the foregoing, in the event that (i) Development of all Collaboration Products and all Pooled Compounds (including any Replacement Compounds) has ceased for at least [*], (ii) all such termination and/or discontinuance decisions have been validly approved by the Joint Steering Committee, and (iii) both parties have provided written notice to the other that such party does not intend to contribute any additional Replacement Compounds to the collaboration, then either Party shall be entitled to terminate this Agreement, subject to Section 14.10, upon the provision of ninety (90) days written notice.

14.6 *Effects of Termination.*

14.6.1 *Effect of Termination for Material Breach.*

(a) *Material Breach by Theravance.* In the event this Agreement is terminated by GSK pursuant to Section 14.2 for material breach by Theravance, all licenses granted by Theravance to GSK under this Agreement shall survive, subject to GSK's continued obligation to pay milestones and royalties to Theravance hereunder. In such event, GSK shall retain all of its rights to bring an action against Theravance for damages and any other available remedies in law or equity, and shall be entitled to set-off against any monies payable to Theravance hereunder all amounts GSK reasonably believes constitute its damages incurred by such breach, subject to final judicial resolution or settlement. Also, Theravance shall, at its sole expense, promptly transfer to GSK copies of all data, reports, records and materials in its possession or control that relate to the Collaboration Products that contain a GSK Compound and return to GSK, or destroy at GSK's request, all relevant records and materials in its possession or control containing Confidential Information of GSK (provided that Theravance may keep one copy of such Confidential Information of GSK for archival purposes only in accordance with Section 10.1).

(b) *Material Breach By GSK.* In the event that this Agreement is terminated by Theravance pursuant to Section 14.2 for material breach by GSK:

(i) GSK shall [*] promptly transfer to Theravance copies of all data, reports, records and materials in its possession or control that relate to the Theravance Compounds and return to Theravance, or destroy at Theravance's request, all relevant records and materials in its possession or control containing Confidential Information of Theravance (provided that GSK may keep one copy of such Confidential Information of Theravance for archival purposes only in accordance with Section 10.1).

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(ii) GSK shall [*] transfer to Theravance, or shall cause its designee(s) to transfer to Theravance, ownership of all regulatory filings made or filed for any Collaboration Product that contains a LABA as a single agent (to the extent that any are held in GSK's or such designee(s)'s name), and such transfer to be as permitted by applicable Laws and regulations; otherwise GSK shall cooperate as necessary to permit Theravance to exercise its rights hereunder.

(iii) Theravance shall have the non-exclusive right to [*].

(iv) All of the provisions of Section [*] shall apply for the benefit of Theravance for any Collaboration Product for which [*] at the effective date of such termination, subject to the limitations set forth in Section [*].

(v) All the provisions of Section [*] shall apply for any Collaboration Product that has been Commercialized at the effective date of such termination.

(vi) All licenses granted by Theravance to GSK with respect to the applicable Theravance Compounds under this Agreement shall terminate.

(vii) Theravance shall retain all of its rights to bring an action against GSK for damages and any other available remedies in law or equity, and shall be entitled to set-off against any monies payable to GSK hereunder all amounts Theravance reasonably believes constitute its damages incurred by such breach, subject to final judicial resolution or settlement.

14.6.2 *Effect of Termination by GSK of Certain Terminated Development Collaboration Product(s).* If GSK terminates a Collaboration Product [*] concerning such Collaboration Product, and Development of all other Collaboration Products and Pooled Compounds have been discontinued for Technical Failure and/or Commercial Failure, then at the sole election of Theravance, the following shall apply:

(a) GSK shall [*] promptly transfer to Theravance copies of all data, reports, records and materials in its possession or control that relate to the Theravance Compounds and return to Theravance, or destroy at Theravance's request, all relevant records and materials in its possession or control containing Confidential Information of Theravance (provided that GSK may keep one copy of such Confidential Information of Theravance for archival purposes only in accordance with Section 10.1).

(b) GSK shall [*] transfer to Theravance, or shall cause its designee(s) to transfer to Theravance, ownership of all regulatory filings made or filed for the Terminated Development Collaboration Product that contains a LABA as a single agent (to the extent that any are held in GSK's or such designee(s)'s name), such transfer to be as permitted by any Third Party licenses or other such prior rights and applicable Laws and regulations, otherwise GSK shall cooperate as necessary to permit Theravance to exercise its rights hereunder.

(c) Theravance shall have the non-exclusive right to [*].

(d) For [*].

(e) In the event of a Change in Control of Theravance prior to termination by GSK under Section 14.3, none of the provisions under this Section 14.6.2 shall survive as they pertain to any Collaboration Product other than [*].

14.6.3 *Effect of Termination by GSK of a Terminated Commercialized Collaboration Product.* The provisions of this Section 14.6.3 shall apply only where a Terminated Commercialised Collaboration Product is *not* being or has not been replaced by an alternative Collaboration Product under this Agreement and provided that, [*]. GSK will use reasonable efforts to assist Theravance in locating a mutually acceptable Third Party to carry out the rights and activities contemplated by this Section 14.6.3. Subject to the foregoing:

(a) If GSK terminates a Collaboration Product after First Commercial Sale of such Collaboration Product in one or more of the Major Market Countries, Theravance shall have the right in its sole discretion and at its sole expense, for its own benefit or together with a Third Party, to commercialize such Terminated Commercialized Collaboration Product in any of such Major Market Countries where it has been terminated.

(b) If GSK terminates Commercialization of a Collaboration Product in all Countries of the Territory following the first commercial sale in any Country of the Territory, Theravance shall have the right in its sole discretion and at it sole expense, for its own benefit or together with a Third Party, to Commercialise such Terminated Commercialized Collaboration Product in the Territory.

(c) [*].

(d) In the event Theravance exercises its rights under Section 14.6.3(a) and (b) above, the Parties shall negotiate in good faith a [*] for such Terminated Commercialized Collaboration Product which shall ensure that, based on commercially reasonable terms (recognizing the Commercialized status of the Terminated Commercialized Collaboration Product), Theravance has a [*].

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(e) In the event of a Change in Control of Theravance, prior to termination by GSK under Section 14.4, [*].

(f) [*].

14.6.4 *Effect of Termination of the Agreement Due to Discontinuation of Development Prior to First Commercial Sale of All Collaboration Products and All Pooled Compounds.* In the event that the Agreement is terminated pursuant to Section 14.5, the following shall occur:

(i) *Return of Materials.* GSK shall [*] promptly transfer to Theravance copies of all data, reports, records and materials in its possession or control that relate to the Theravance Compounds and return to Theravance, or destroy at Theravance's request, all relevant records and materials in its possession or control containing Confidential Information of Theravance (provided that GSK may keep one copy of such Confidential Information of Theravance for archival purposes only in accordance with Section 10.1). Theravance shall, at its sole expense, promptly transfer to GSK copies of all data, reports, records and materials in its possession or control that relate to the GSK Compounds and return to GSK, or destroy at GSK's request, all relevant records and materials in its possession or control containing Confidential Information of GSK (provided that Theravance may keep one copy of such Confidential Information of GSK for archival purposes only in accordance with Section 10.1).

(ii) *Transfer of Regulatory Filings.* GSK shall [*] transfer to Theravance, or shall cause its designee(s) to transfer to Theravance, ownership of all regulatory filings made or filed for any Terminated Development Collaboration Product (to the extent that any are held in GSK's or such designee(s)'s name), but only where [*] and such transfer to be as permitted by applicable Laws and regulations. GSK, at its sole discretion, shall also give due consideration to transferring to Theravance any additional regulatory filings for a Terminated Development Collaboration Product which contains a [*].

(iii) *License Rights.* All licenses granted by Theravance to GSK with respect to the Collaboration Products under this Agreement shall terminate.

(iv) *Stock Return.* GSK shall return to Theravance all available formulated and API stocks that contain a Theravance Compound and which are then held by GSK or cause such API stocks to be provided to Theravance if held by a vendor or other Third Party on behalf of GSK.

(v) *Limitations on Further Development by GSK.* GSK shall not be permitted to continue or re-initiate clinical Development of any GSK Compound that is both a Terminated Collaboration Product and a LABA in the Field for a period of [*] after the date of such termination.

14.7 *License Rights.* Except as otherwise provided herein in, all licenses granted hereunder relating to Terminated Collaboration Products shall terminate. Also the Parties accept that nothing provided for in this Article 14 or elsewhere in this Agreement, grants any licenses (whether exclusive, semi-exclusive or otherwise) from GSK to Theravance for any (i) GSK Compound (ii) GSK Invention (ii) GSK Know How and (iv) GSK Patents, except for those rights essential and specific to enable Theravance to exercise those rights and carry out those activities contemplated under Section 14.6 above.

14.8 *Milestone Payments.* Neither Party shall be obligated to make a Development Milestone payment under Section 6.2 which is triggered by an event occurring after the effective date of termination of this Agreement with respect to a Collaboration Product.

14.9 *Subsequent Royalties.* If after termination of this Agreement either Party subsequently Develops and Commercializes any [*] for the treatment / prophylaxis of respiratory diseases which (i) was [*] or (ii) was a [*], it will pay to the other Party a royalty on Net Sales of any such products at the rate of [*] for a single-agent product and [*] for the first combination product for a period of [*] from the date of launch on a Country-by-Country basis; provided, however, that this royalty shall not apply to any compound or product (including new product line extensions and/or re-formulation work) where the original compound or product is, as of the date of signature of this Agreement, already Commercialized.

14.10 *Accrued Rights; Surviving Obligations.* Termination, relinquishment or expiration of this Agreement for any reason shall be without prejudice to any rights that shall have accrued to the benefit of any Party prior to such termination, relinquishment or expiration. Such termination, relinquishment or expiration shall not relieve any Party from obligations which are expressly or by implication intended to survive termination, relinquishment or expiration of this Agreement, including without limitation Article 10, and shall not affect or prejudice any provision of this Agreement which is expressly or by implication provided to come into effect on, or continue in effect after, such termination, relinquishment or expiration.

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ARTICLE 15
LIMITATIONS RELATING TO THERAVANCE EQUITY SECURITIES

15.1 *Purchases of Equity Securities.* So long as this Agreement remains in effect and for a period of [*] thereafter, except as permitted by Section 15.2, or as otherwise agreed in writing by Theravance, GSK and its Affiliates will not (and will not assist or encourage others to) directly or indirectly in any manner:

15.1.1 acquire, or agree to acquire, directly or indirectly, alone or in concert with others, by purchase, gift or otherwise, any direct or indirect beneficial ownership (within the meaning of Rule l3d-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) or interest in any securities or direct or indirect rights, warrants or options to acquire, or securities convertible into or exchangeable for, any securities of Theravance;

15.1.2 make, or in any way participate in, directly or indirectly, alone or in concert with others, any "solicitation" of "proxies" to vote (as such terms are used in the proxy rules of the Securities and Exchange Commission (the "SEC") promulgated pursuant to Section 14 of the Exchange Act); provided, however, that the prohibition in this Section 15.1.2 shall not apply to solicitations exempted from the proxy solicitation rules by Rule 14a-2 under the Exchange Act as such Rule 14a-2 is in effect as of the date hereof;

15.1.3 form, join or in any way participate in a "group" within the meaning of Section 13(d)(3) of the Exchange Act with respect to any voting securities of Theravance;

15.1.4 acquire or agree to acquire, directly or indirectly, alone or in concert with others, by purchase, exchange or otherwise, (i) any of the assets, tangible or intangible, of Theravance or (ii) direct or indirect rights, warrants or options to acquire any assets of Theravance, except for such assets as are then being offered for sale by Theravance;

15.1.5 enter into any arrangement or understanding with others to do any of the actions restricted or prohibited under Sections 15.1.1, 15.1.2, 15.1.3, or 15.1.4.

15.1.6 otherwise act in concert with others, to seek to offer to Theravance or any of its stockholders any business combination, restructuring, recapitalization or similar transaction to or with Theravance or otherwise seek in concert with others, to control, change or influence the management, board of directors or policies of Theravance or nominate any person as a director of Theravance who is not nominated by the then incumbent directors, or propose any matter to be voted upon by the stockholders of Theravance.

15.2 *Exceptions for Purchasing Securities of Theravance.* Nothing herein shall prevent GSK or its Affiliates (or in the case of Section 15.2.4, their employees) from:

15.2.1 purchasing the Series E Preferred Stock of Theravance on the Effective Date as contemplated herein.

15.2.2 purchasing additional equity securities of Theravance after the Effective Date if after such purchase GSK and its Affiliates would own in the aggregate no greater percent of the total voting power of all voting securities of Theravance then outstanding than GSK together with its Affiliates owned immediately after purchase of the Series E Preferred Stock on the Effective Date.

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15.2.3 acquiring securities of Theravance issued in connection with stock splits or recapitalizations or on exercise of pre-emptive rights afforded to Theravance stockholders generally.

15.2.4 purchasing securities of Theravance pursuant to (i) a pension plan established for the benefit of GSK's employees, (ii) any employee benefit plan of GSK, (iii) any stock portfolios not controlled by GSK or any of its Affiliates that invest in Theravance among other companies, or (iv) following an initial public offering of Theravance common stock, for the account of a GSK employee in such employee's personal capacity.

15.2.5 acquiring securities of another biotechnology or pharmaceutical company that beneficially owns any of Theravance's securities.

15.2.6 acquiring equity securities of Theravance without any limitation following initiation by a third party of an unsolicited tender offer to purchase [*] or more of any class or service of Theravance's publicly traded voting securities (a "Hostile Tender Offer"); provided that the exception provided by this Section 15.2.6 shall be limited to the classes or series of Theravance's securities that are the subject of the Hostile Tender Offer; provided, further, that, in the event that either (a) such Hostile Tender Offer is terminated or expires without the purchase of at least [*] of any class or series of Theravance's publicly traded voting securities by such third party, or (b) the Theravance Board of Directors subsequently recommends that such offer be accepted, then following the date of such termination, expiration or recommendation the acquisitions by GSK and/or its Affiliates under this Section 15.2.6 prior to the events described in clauses (a) and (b) above shall not be considered a breach by GSK of the provisions of Section 15.2 as long as GSK, at its option, either:

(i) divests (or cause to be divested) in one or more open-market transactions such number of shares of Theravance's securities acquired by it and its Affiliates pursuant to this Section 15.2.6 such that after such divestiture GSK and its Affiliates would own in the aggregate no greater percent of the total voting power of all voting securities of Theravance then outstanding than GSK together with its Affiliates owned immediately prior to the commencement of such Hostile Tender Offer, any such divestiture to be completed as expeditiously as possible consistent with applicable securities laws and regulations and in a manner intended to shield GSK and its Affiliates from liability for recovery of short swing profits under Section 16 of the Exchange Act and the rules promulgated thereunder; or

(ii) enters into a voting agreement, proxy or similar arrangement pursuant to which (A) all Theravance voting securities acquired pursuant to this Section 15.2.6 are voted on all matters to be voted on by holders of Theravance voting securities, including, but not limited to, in favor of any transaction involving a proposed Change in Control (as defined below) of Theravance in the same proportion as the outstanding Theravance voting securities not held by GSK or any GSK Affiliate are voted, (B) no Theravance voting securities beneficially owned by GSK and/or any Affiliate abstain from such a vote, and (C) no dissenter or appraisal or similar rights are exercised with respect to any vote relating to a Change in Control of Theravance.

15.3 *Voting.* Until the date of an initial public offering of Theravance common stock, GSK shall ensure that all outstanding Theravance voting securities beneficially owned by GSK and/or any GSK Affiliate are voted for management's nominees to the Board of Directors of Theravance to the extent not inconsistent with Section 2.8 of the Investors' Rights Agreement.

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15.4 *Theravance Voting Securities Transfer Restrictions.*

15.4.1 So long as this Agreement remains in effect and for a period of one (1) year thereafter, neither GSK nor any of its Affiliates shall dispose of beneficial ownership of Theravance voting securities except (i) pursuant to a bona fide public offering registered under the Securities Act of either Theravance voting securities or securities exchangeable or exercisable for Theravance voting securities (in which the securities are broadly distributed and GSK does not select the purchasers); or (ii) pursuant to Rule 144 under the Securities Act (provided that if Rule 144(k) is available, such transfer nevertheless is within the volume limits and manner of sale requirements applicable to non-144(k) transfers under Rule 144); or (iii) in transactions that to the knowledge of GSK do not, directly or indirectly, result in any person or group owning or having the right to acquire or intent to acquire beneficial ownership of Theravance voting securities with aggregate voting power of five percent or more of the aggregate voting power of all outstanding Theravance voting securities.

15.4.2 Notwithstanding the foregoing, the restrictions on disposition under Section 15.4.1 shall not apply if, as a result of such disposition, (A) no filing by any Person (including, but not limited to GSK or any of its Affiliates) shall be required under any Law (including but not limited to the Exchange Act) that would identify GSK or any of its Affiliates as the seller of the securities, and (B) neither GSK nor any of its Affiliates (or any transferee thereof) would be required by Law (including without limitation the disclosure requirements of the Securities Act of 1933, as amended (the "Securities Act"), and the Exchange Act) to make any public announcement of the transfer or disposition.

15.4.3 So long as this Agreement remains in effect and for a period of one (1) year thereafter, neither GSK nor any of its Affiliates may make any public disclosure of any holdings of or disposition of beneficial ownership of Theravance voting securities unless such disclosure is approved in advance in writing by Theravance, such approval not to be unreasonably withheld or delayed. Notwithstanding the foregoing, no consent of Theravance shall be required for any filing that GSK or any of its Affiliates is required to make under applicable Law in any jurisdiction, including without limitation any Form 144 under the Securities Act, any Form 4 under the Exchange Act, or any Schedule 13D or 13G or any amendments thereto under the Exchange Act; provided that, prior to making any such filings, GSK shall use reasonable efforts to (i) to provide Theravance notice and a copy of such proposed filings and (ii) consult with Theravance on the content of such filings.

15.5 *Termination of Purchase Restrictions.* The limitations on purchase of equity securities set forth in Section 15.1 shall terminate immediately upon a transaction or series of related transactions following a Change in Control of Theravance.

ARTICLE 16
MISCELLANEOUS

16.1 *Relationship of the Parties.* Each Party shall bear its own costs incurred in the performance of its obligations hereunder without charge or expense to the other except as expressly provided in this Agreement. Neither Party shall have any responsibility for the hiring, termination or compensation of the other Party's employees or for any employee benefits of such employee. No employee or representative of a Party shall have any authority to bind or obligate the other Party to this Agreement for any sum or in any manner whatsoever, or to create or impose any contractual or other liability on the other Party without said Party's approval. For all purposes, and notwithstanding any other provision of this Agreement to the contrary, GSK's legal relationship under this Agreement to Theravance shall be that of independent contractor. This Agreement is not a partnership agreement and nothing in this

Agreement shall be construed to establish a relationship of co-partners or joint venturers between the Parties.

16.2 *Registration and Filing of This Agreement.* To the extent, if any, that either Party concludes in good faith that it or the other Party is required to file or register this Agreement or a notification thereof with any Governmental Authority, including without limitation the U.S. Securities and Exchange Commission, the Competition Directorate of the Commission of the European Communities or the U.S. Federal Trade Commission, in accordance with Law, such Party shall inform the other Party thereof. Should both Parties jointly agree that either of them is required to submit or obtain any such filing, registration or notification, they shall cooperate, each at its own expense, in such filing, registration or notification and shall execute all documents reasonably required in connection therewith. In such filing, registration or notification, the Parties shall request confidential treatment of sensitive provisions of this Agreement, to the extent permitted by Law. The Parties shall promptly inform each other as to the activities or inquiries of any such Governmental Authority relating to this Agreement, and shall reasonably cooperate to respond to any request for further information there from on a timely basis.

16.3 *Force Majeure.* The occurrence of an event which materially interferes with the ability of a Party to perform its obligations or duties hereunder which is not within the reasonable control of the Party affected or any of its Affiliates, not due to malfeasance by such Party or its Affiliates, and which could not with the exercise of due diligence have been avoided (each, a "Force Majeure Event"), including, but not limited to, an injunction, order or action by a Governmental Authority, fire, accident, labor difficulty, strike, riot, civil commotion, act of God, inability to obtain raw materials, delay or errors by shipping companies or change in law, shall not excuse such Party from the performance of its obligations or duties under this Agreement, but shall merely suspend such performance during the continuation of the Force Majeure. The Party prevented from performing its obligations or duties because of a Force Majeure Event shall promptly notify the other Party of the occurrence and particulars of such Force Majeure and shall provide the other Party, from time to time, with its best estimate of the duration of such Force Majeure Event and with notice of the termination thereof. The Party so affected shall use Diligent Efforts to avoid or remove such causes of nonperformance as soon as is reasonably practicable. Upon termination of the Force Majeure Event, the performance of any suspended obligation or duty shall promptly recommence. The Party subject to the Force Majeure Event shall not be liable to the other Party for any direct, indirect, consequential, incidental, special, punitive, exemplary or other damages arising out of or relating to the suspension or termination of any of its obligations or duties under this Agreement by reason of the occurrence of a Force Majeure Event, provided such Party complies in all material respects with its obligations under this Section 16.3.

16.4 *Governing Law.* This Agreement shall be construed, and the respective rights of the Parties determined, according to the substantive law of the State of Delaware notwithstanding the provisions governing conflict of laws under such Delaware law to the contrary, except matters of intellectual property law which shall be determined in accordance with the intellectual property laws relevant to the intellectual property in question.

16.5 *Attorneys' Fees and Related Costs.* In the event that any legal proceeding is brought to enforce or interpret any of the provisions of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, court costs and expenses of litigation whether or not the action or proceeding proceeds to final judgment.

16.6 *Assignment.* This Agreement may not be assigned by either Party without the prior written consent of the other Party; provided, however that either Party may assign this Agreement, in whole or in part, to any of its Affiliates if such Party guarantees the performance of this Agreement by such Affiliate; and provided further that either Party may assign this Agreement to a successor to all or substantially all of the assets of such Party whether by merger, sale of stock, sale of assets or other similar transaction. This Agreement shall be binding upon, and subject to the terms of the foregoing sentence, inure to the benefit of the Parties hereto, their permitted successors, legal representatives and assigns.

16.7 *Notices.* All demands, notices, consents, approvals, reports, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally, by facsimile with confirmation of receipt, by mail (first class, postage prepaid), or by overnight delivery using a globally-recognized carrier, to the Parties at the following addresses:

Theravance:	Theravance, Inc. 901 Gateway Boulevard South San Francisco, CA 94080 Facsimile: 650-827-8683 Attn: Senior Vice President, Commercial Development
GSK:	Glaxo Group Limited Glaxo Wellcome House Berkeley Avenue Greenford Middlesex UB6 0NN United Kingdom Attn: Company Secretary Facsimile: 011 44 208-047-6912
With a copy to:	GlaxoSmithKline plc 980 Great West Road Brentford Middlesex TW8 9GS United Kingdom Attn: Corporate Law Facsimile: 011 44 208-047-6912
and with a copy to:	Brentford Middlesex TW8 9GS United Kingdom Attn: Vice President, Worldwide Business Development Facsimile: 011 44 208-990-8142

or to such other address as the addressee shall have last furnished in writing in accord with this provision to the addressor. All notices shall be deemed effective upon receipt by the addressee.

16.8 *Severability.* In the event of the invalidity of any provisions of this Agreement or if this Agreement contains any gaps, the Parties agree that such invalidity or gap shall not affect the validity of the remaining provisions of this Agreement. The Parties will replace an invalid provision or fill any gap with valid provisions which most closely approximate the purpose and economic effect of the invalid provision or, in case of a gap, the Parties' presumed intentions. In the event that the terms and conditions of this Agreement are materially altered as a result of the preceding sentences, the Parties shall renegotiate the terms and conditions of this Agreement in order to resolve any inequities. Nothing in this Agreement shall be interpreted so as to require either Party to violate any applicable laws, rules or regulations.

16.9 *Headings.* The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

16.10 *Waiver.* Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written

instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. Except as expressly set forth in this Agreement, all rights and remedies available to a Party, whether under this Agreement or afforded by law or otherwise, will be cumulative and not in the alternative to any other rights or remedies that may be available to such Party.

16.11 *Entire Agreement.* This Agreement (including the exhibits and schedules hereto) constitutes the entire agreement between the Parties hereto with respect to the within subject matter and supersedes all previous agreements and understandings between the Parties, whether written or oral. This Agreement may be altered, amended or changed only by a writing making specific reference to this Agreement and signed by duly authorized representatives of Theravance and GSK.

16.12 *No License.* Nothing in this Agreement shall be deemed to constitute the grant of any license or other right in either Party, to or in respect of any Collaboration Product, patent, trademark, Confidential Information, trade secret or other data or any other intellectual property of the other Party, except as expressly set forth herein.

16.13 *Third Party Beneficiaries.* None of the provisions of this Agreement shall be for the benefit of or enforceable by any Third Party, including without limitation any creditor of either Party hereto. No such Third Party shall obtain any right under any provision of this Agreement or shall by reasons of any such provision make any Claim in respect of any debt, liability or obligation (or otherwise) against either Party hereto.

16.14 *Counterparts.* This Agreement may be executed in any two counterparts, each of which, when executed, shall be deemed to be an original and both of which together shall constitute one and the same document.

16.15 *Single Closing Condition.* The obligation of each Party to consummate the transaction contemplated hereby is subject to the satisfaction of the following condition (the "Closing Condition"): All filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and any other similar competition or merger control laws that are necessary in any jurisdiction with respect to the transaction contemplated hereby shall have been made and any required waiting period under such laws shall have expired or been terminated and any Governmental Authority that has power under or authority to enforce such laws shall have, if applicable, approved, cleared or decided neither to initiate proceedings or otherwise intervene in respect of the transaction contemplated hereby nor to refer the transaction to any other competent Governmental Authority. Each Party shall use good faith efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other party in doing, all things necessary, proper or advisable to consummate and make effective the transaction contemplated by this Agreement, including, but not limited to satisfaction of the Closing Condition and each Party shall keep the other Party reasonably apprised of the status of matters relating to the completion of same. In connection with the foregoing, the Parties hereby agree to negotiate in good faith to make as soon as practicable any modification or amendment to this Agreement or any agreement related hereto that is required by the United States Federal Trade Commission, Department of Justice or equivalent Governmental Authority, provided that no Party shall be required to agree to any modification or amendment that, in the reasonable opinion of such Party's external legal or financial counsel, would be adverse to such Party. This Agreement may be terminated by either Party upon written notice any time after June 1, 2003 if the transactions contemplated by this Agreement shall not have been consummated by June 1, 2003 due to failure to satisfy the Closing Condition; provided, however, that the terminating Party shall not have breached in any material respect its obligations under this Agreement in any manner that shall have been the proximate cause of, or resulted in, the failure to satisfy the Closing Condition or otherwise to consummate the transactions contemplated by this Agreement by such date.

IN WITNESS WHEREOF, Theravance and GSK, by their duly authorized officers, have executed this Agreement on November 14, 2002.

THERAVANCE, INC.		GLAXO GROUP LIMITED	
By:	/s/ RICK E WINNINGHAM	By:	/s/ JEAN-PIERRE GARNIER
	Rick E Winningham Chief Executive Officer		Jean-Pierre Garnier Chief Executive Officer

Schedule 1.19

Criteria for Theravance New Compounds and Replacement Compounds

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Schedule 6.1.2

Preferred Stock Purchase Agreement

THERAVANCE, INC.

SERIES E PREFERRED

STOCK PURCHASE AGREEMENT

December 19, 2002

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THERAVANCE, INC.

SERIES E PREFERRED STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT is made as of the 19th day of December, 2002, by and among Theravance, Inc., a Delaware corporation (the "Company"), and Glaxo Group Limited, a limited liability company organized under the laws of England and Wales (the "Investor").

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. *Purchase and Sale of Stock.*

1.1 *Sale and Issuance of Series E Preferred Stock.*

(a) The Company shall adopt and file with the Secretary of State Delaware on or before the Closing (as defined below) the Restated Certificate of Incorporation in the form attached hereto as *Exhibit A* (the "Restated Certificate").

(b) On or prior to the Closing (as defined below), the Company shall have authorized (i) the sale and issuance pursuant to this Agreement of up to an aggregate of 4,000,000 shares at a price of $10.00 per share of its Series E Preferred Stock and (ii) the issuance of the same number of shares of its Common Stock to be issued upon conversion of the Series E Preferred Stock (the "Conversion Shares"). The Series E Preferred Stock and the Conversion Shares shall have the rights, preferences, privileges and restrictions set forth in the Restated Certificate.

(c) Subject to the terms and conditions of this Agreement, the Investor agrees, severally and not jointly, to purchase at the Closing and the Company agrees to sell and issue to the Investor at the Closing, 4,000,000 shares of the Company's Series E Preferred Stock for an aggregate purchase price of $40,000,000.

1.2 *Closing.* The purchase and sale of the Series E Preferred Stock shall take place at the offices of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, 610 Lincoln Street, Waltham, MA 02451, at 10:00 A.M., on the date all conditions to closing set forth in Sections 4 and 5 have been satisfied or effectively waived, or at such other time and place as the Company and Investor mutually agree upon orally or in writing (which time and place are designated as the "Closing"). At the Closing the Company shall deliver to the Investor a certificate representing the Series E Preferred Stock that the Investor is purchasing against payment of the purchase price therefor by check or wire transfer, or any combination thereof.

2. *Representations and Warranties of the Company.* The Company hereby represents and warrants to the Investor that, except as set forth on a Schedule of Exceptions (the "Schedule of Exceptions") furnished to the Investor, which exceptions shall be deemed to be representations and warranties as if made hereunder:

2.1 *Organization, Good Standing and Qualification.* The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to (i) execute, deliver and perform its obligations under this Agreement and the Amended and Restated Investors' Rights Agreement dated of even date herewith, by and among the Company and the Investors, the form of which is attached hereto as *Exhibit B* (the "Investors' Rights Agreement"), (ii) to issue and sell the Series E Preferred Stock hereunder, (iii) to issue the Conversion Shares in accordance with the Restated Certificate, (iv) to perform its obligations under the Restated Certificate, and (v) to carry on its business as now conducted and as proposed to be conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect on its business or properties.

2.2 *Capitalization and Voting Rights.* The authorized capital of the Company will consist immediately prior to the Closing, of:

(a) *Preferred Stock.* 50,000,000 shares of Preferred Stock (the "Preferred Stock"), of which (i) 5,020,000 shares have been designated Series A Preferred Stock (the "Series A Preferred Stock"), 4,988,000 of which are outstanding; (ii) 5,100,000 shares have been designated Series B Preferred Stock (the "Series B Preferred Stock"), 5,074,000 of which are outstanding; (iii) 18,823,000 shares have been designated Series C Preferred Stock (the "Series C Preferred Stock"), 18,745,166 of which are outstanding; (iv) 1,666,666 shares have been designated Series D Preferred Stock (the "Series D Preferred Stock"), 1,666,666 of which are outstanding (which are initially convertible into 2,777,777 shares of Common Stock); (v) 13,888,889 shares have been designated Series D-1 Preferred Stock (the "Series D-1 Preferred Stock"), 13,169,905 of which are outstanding; and (vi) 4,000,000 shares have been designated Series E Preferred Stock (the "Series E Preferred Stock"), none of which will be outstanding prior to the Closing, and up to all of which may be sold pursuant to this Agreement. The rights, privileges and preferences of the Preferred Stock will be as stated in the Company's Restated Certificate.

(b) *Common Stock.* 120,000,000 shares of common stock, par value $0.01 ("Common Stock"), of which 11,158,392 shares are issued and outstanding.

(c) The outstanding shares of Common Stock and Preferred Stock are all duly and validly authorized and issued, fully paid and nonassessable, and were issued in accordance with the registration or qualification provisions of the Securities Act of 1933, as amended (the "Act") and any relevant state securities laws, or pursuant to valid exemptions therefrom.

(d) Except for (A) the conversion privileges of the Preferred Stock, (B) the rights provided in Section 2.5 of the Investors' Rights Agreement, (C) currently outstanding warrants to purchase 4,000 shares of Series A Preferred Stock, (D) currently outstanding warrants to purchase 4,000 shares of Series B Preferred Stock, (E) currently outstanding warrants to purchase 45,000 shares of Series C Preferred Stock, (F) a currently outstanding warrant to purchase 48,611 shares of Series D-1 Preferred Stock, and (G) currently outstanding options to purchase 7,187,436 shares of Common Stock granted to employees, directors, board members, consultants and service providers, there are not outstanding any options, warrants, rights (including conversion or preemptive rights) or agreements for the purchase or acquisition from the Company of any shares of its capital stock. In addition to the aforementioned options, the Company has reserved an additional 969,493 shares of its Common Stock for issuance upon exercise of options to be granted in the future under the Company's 1997 Stock Plan. Except for the provisions of the Restated Certificate, the Investors' Rights Agreement and of that certain Amended and Restated Stockholders' Voting Agreement dated as of January 25, 1999 by and among the Company and the other parties listed therein, the Company is not a party or subject to any agreement or understanding, and, to the best of the Company's knowledge, there is no agreement or understanding between any persons and/or entities, which affects or relates to the voting or giving of written consents with respect to any security or by a director of the Company. No stock plan, stock purchase, stock option or other agreement or understanding between the Company and any holder of any equity securities or rights to purchase equity securities provides for acceleration or other changes in the vesting provisions of such agreement or understanding as the result of any merger, consolidated sale of stock or assets, change in control or any other similar transaction(s) by the Company.

2.3 *Subsidiaries.* The Company does not presently own or control, directly or indirectly, any interest in any other corporation, association or other business entity, other than Theravance East, Inc., a Delaware corporation and a direct wholly-owned subsidiary of the Company. The Company is not a participant in any joint venture, partnership, or similar arrangement.

2.4 *Authorization.* All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement and the Investors' Rights Agreement (collectively, the "Transaction Documents"), the performance of all obligations of the Company hereunder and thereunder, and the authorization, issuance (or reservation for issuance), sale and delivery of the Series E Preferred Stock being sold hereunder and the Common Stock issuable upon conversion of the Series E Preferred Stock has been taken or will be taken prior to the Closing, and the Transaction Documents constitute valid and legally binding obligations of the Company, enforceable in accordance with their respective terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, and (iii) to the extent the indemnification provisions contained in the Investors' Rights Agreement may be limited by applicable federal or state securities laws.

2.5 *Valid Issuance of Preferred and Common Stock.* The Series E Preferred Stock that is being purchased by the Investor hereunder, when issued, sold and delivered in accordance with the terms of this Agreement for the consideration expressed herein, will be duly and validly issued, fully paid, and nonassessable, and will be free of restrictions on transfer other than restrictions on transfer under the Transaction Documents and under applicable state and federal securities laws. The Common Stock issuable upon conversion of the Series E Preferred Stock purchased under this Agreement has been duly and validly reserved for issuance and, upon issuance in accordance with the terms of the Restated Certificate, will be duly and validly issued, fully paid, and nonassessable and will be free of restrictions on transfer other than restrictions on transfer under the Transaction Documents and under applicable state and federal securities laws. The Series E Preferred Stock that is being purchased by the Investor hereunder, and the Common Stock issuable upon conversion of such Series E Preferred Stock is not subject to preemptive rights or rights of first refusal that have not been waived or complied with. The outstanding Series A, Series B, Series C, Series D and Series D-1 Preferred Stock was duly and validly issued, fully paid, and is nonassessable. The Common Stock issuable upon conversion of the outstanding Series A, Series B, Series C, Series D and Series D-1 Preferred Stock has been duly and validly reserved for issuance and, upon issuance in accordance with the terms of the Restated Certificate, will be duly and validly issued, fully paid, and nonassessable and will be free of restrictions on transfer other than restrictions on transfer under the documents executed in connection with the sale of the Series A, Series B, Series C, Series D and Series D-1 Preferred Stock and under applicable state and federal securities laws. The outstanding Series A, Series B, Series C, Series D and Series D-1 Preferred Stock and the Common Stock issuable upon conversion of such Preferred Stock is not subject to preemptive rights or rights of first refusal that have not been waived or complied with.

2.6 *Governmental Consents.* No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority on the part of the Company is required in connection with the consummation of the transactions contemplated by this Agreement, except (i) a filing under the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), (ii) the filing of the Restated Certificate with the Secretary of State of Delaware; and (iii) certain post-closing filings as may be required pursuant to federal securities laws and under the "Blue Sky" laws of the various states.

2.7 *Offering.* Subject in part to the truth and accuracy of the Investor's representations set forth in Section 3 of this Agreement, the offer, sale and issuance of the Series E Preferred Stock and the Conversion Shares as contemplated by this Agreement are exempt from the registration requirements of any applicable state and federal securities laws, and neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemption.

2.8 *Litigation.* There is no action, suit, proceeding or investigation pending or, to the Company's knowledge, currently threatened against the Company that questions the validity of the Transaction

Documents, or the right of the Company to enter into such agreements, or to consummate the transactions contemplated hereby or thereby, or if determined adversely, might result, either individually or in the aggregate, in (i) any material adverse changes in the assets or business of the Company, financially or otherwise or (ii) any change in the current equity ownership of the Company, nor is the Company aware that there is any basis for the foregoing. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit, proceeding or investigation by the Company currently pending or that the Company intends to initiate.

2.9 *Patents and Trademarks.* The Company owns, or has rights to use pursuant to a valid license, all patents, trademarks, service marks, trade names, copyrights, trade secrets, information, proprietary rights and processes necessary for its business as now conducted. There are no outstanding options, licenses or agreements of any kind relating to the foregoing proprietary rights, nor is the Company bound by or a party to any options, licenses or agreements of any kind with respect to the patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information and other proprietary rights and processes of any other person or entity other than such licenses or agreements arising from the purchase of "off the shelf" or standard products. The use, modification, licensing, sublicensing, sale, or any other exercise of rights involving such intellectual property does not infringe any copyright, trade secret, trademark, service mark, trade name, firm name, logo, trade dress, mask work, moral right, other intellectual property right, right of privacy or right in personal data, or to the knowledge of the Company, any patent, of any person. No claims (i) challenging the validity, effectiveness, or ownership by the Company of any of the Company's intellectual property, or (ii) to the effect that the use, reproduction, modification, manufacturing, distribution, licensing, sublicensing, sale or any other exercise of rights in any product, work, technology, service or process as used, provided or offered at any time, or as proposed for use, reproduction, modification, distribution, licensing, sublicensing, sale or any other exercise of rights, by the Company infringes or will infringe on any intellectual property or other proprietary or personal right of any person have been asserted or, to the knowledge of the Company, (A) are threatened by any person nor (B) are there any valid grounds for any bona fide claim of any such kind. To the knowledge of the Company, there is no unauthorized use, infringement or misappropriation of any of the Company's intellectual property by any third party, employee or former employee. The Company's employees are not obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of his or her best efforts to promote the interests of the Company or that would conflict with the Company's business as proposed to be conducted. Neither the execution nor delivery of the Transaction Documents, nor the carrying on of the Company's business by the employees of the Company, nor the conduct of the Company's business as proposed, will, to the best of the Company's knowledge, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated. The Company does not believe it is or will be necessary to utilize any inventions of any of its employees made prior to their employment by the Company unless such inventions are properly assigned to the Company.

2.10 *Compliance with Other Instruments.* The Company is not in violation or default in any material respect of any provision of its Restated Certificate or Bylaws, or in any material respect of any instrument, judgment, order, writ, decree or contract to which it is a party or by which it is bound, or, to the best of its knowledge, of any provision of any statute, rule or regulation applicable to the Company. The execution, delivery and performance of the Transaction Documents, and the consummation of the transactions contemplated hereby and thereby will not result in any such violation or be in conflict with or constitute, with or without the passage of time and giving of notice, either a default under any such provision, instrument, judgment, order, writ, decree or contract or an event that results in the creation of any lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, impairment, forfeiture, or nonrenewal of any material permit, license,

authorization, or approval applicable to the Company, its business or operations or any of its assets or properties.

2.11 *Agreements; Action.*

(a) Except for agreements explicitly contemplated by the Transaction Documents, there are no agreements, understandings or proposed transactions between the Company and any of its officers, directors, affiliates, or any affiliate thereof.

(b) There are no agreements, understandings, instruments, contracts, proposed transactions, judgments, orders, writs or decrees to which the Company is a party or by which it is bound that may involve (i) provisions restricting or affecting the development, manufacture or distribution of the Company's products or services; (ii) obligations (contingent or otherwise) of, or payments to, the Company in excess of $100,000 (other than obligations of, or payments to, the Company arising from agreements entered into in the ordinary course of business); or (iii) indemnification by the Company with respect to infringements of proprietary rights (other than indemnification obligations arising from agreements entered into in the ordinary course of business).

(c) The Company has not (i) declared or paid any dividends or authorized or made any distribution upon or with respect to any class or series of its capital stock, (ii) incurred any indebtedness for money borrowed or any other liabilities individually in excess of $1,000,000 or in the aggregate in excess of $5,000,000, (iii) made any loans or advances to any person, other than ordinary advances for travel expenses, or (iv) sold, exchanged or otherwise disposed of any of its assets or rights, other than the sale of its inventory in the ordinary course of business.

(d) For the purposes of subsection (c) above, all indebtedness and liabilities involving the same person or entity (including persons or entities the Company has reason to believe are affiliated therewith) shall be aggregated for the purpose of meeting the individual minimum dollar amounts of such subsection.

(e) The Company is not a party to and is not bound by any contract, agreement or instrument, or subject to any restriction under its Restated Certificate or Bylaws that adversely affects its business as now conducted or as proposed to be conducted, its properties or its financial condition.

(f) The Company has not engaged in the past three (3) months in any discussion (i) with any representative of any corporation or corporations regarding the consolidation or merger of the Company with or into any such corporation or corporations, (ii) with any corporation, partnership, association or other business entity or any individual regarding the sale, conveyance or disposition of all or substantially all of the assets of the Company or a transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company is disposed of, or (iii) regarding any other form of acquisition, liquidation, dissolution or winding up of the Company.

2.12 *Related-Party Transactions.* No employee, officer, or director of the Company or member of his or her immediate family is indebted to the Company, nor is the Company indebted (or committed to make loans or extend or guarantee credit) to any of them. To the Company's knowledge, none of such persons has any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated or with which the Company has a business relationship, or any firm or corporation that competes with the Company, except that employees, officers, or directors of the Company and members of their immediate families may own stock in publicly traded companies that may compete with the Company. No member of the immediate family of any officer or director of the Company is directly or indirectly interested in any material contract with the Company.

2.13 *Permits.* The Company has all franchises, permits, licenses, and any similar authority necessary for the conduct of its business as now being conducted by it, the lack of which could materially and adversely affect the business, properties, prospects, or financial condition of the Company, and the Company believes it can obtain, without undue burden or expense, any similar authority for the conduct of its business as planned to be conducted. The Company is not in default in any material respect under any of such franchises, permits, licenses, or other similar authority.

2.14 *Disclosure.* The Company has provided the Investor with all information requested by the Investor in connection with their decision to purchase the Shares, including all information the Company believes is reasonably necessary to make such investment decision. To the Company's knowledge, neither this Agreement, the Investors' Rights Agreement, nor any other statements or certificates made or delivered in connection herewith or therewith contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements herein or therein not misleading.

2.15 *Corporate Documents.* Except for amendments necessary to satisfy representations and warranties or conditions contained herein (the form of which amendments has been approved by the Investor), the Restated Certificate and Bylaws of the Company are in the form previously provided to the Investor.

2.16 *Title to Property and Assets.* The Company owns its property and assets free and clear of all mortgages, liens, loans and encumbrances, except such encumbrances and liens that arise in the ordinary course of business and do not materially impair the Company's ownership or use of such property or assets and has good and marketable title to such property. With respect to the property and assets it leases, the Company is in compliance with such leases and holds a valid leasehold interest free of any liens, claims or encumbrances.

2.17 *Tax Returns, Payments and Elections.* The Company has timely filed all tax returns and reports as required by law. These returns and reports are true and correct in all material respects. The Company has paid all taxes and assessments due, except those contested by it in good faith, if any. The Company has not been advised (a) that any of its federal, state or local returns are being audited as of the date hereof, or (b) of any deficiency in assessment or proposed judgment to its federal, state or other taxes. The Company has no knowledge of any liability of any tax to be imposed upon its properties or assets as of the date of this Agreement that isn't adequately provided for.

2.18 *Environmental Law.* To the Company's knowledge, the Company is not in violation of and has no liability or potential liability under any applicable statute, law, or regulation relating to the environment, and to the best of its knowledge, no material expenditures are or will be required in order to comply with any such existing statute, law, or regulation.

2.19 *Proprietary Information and Employment Agreements.* Each current and former employee, officer and consultant of the Company has executed a standard Proprietary Information and Inventions Agreement. The Company is not aware that any of its employees, officers or consultants are in violation thereof, and the Company will use its best efforts to prevent any such violation. The Company has not entered into any employment agreements.

2.20 *Financial Statements.* The Company has made available to the Investor its audited financial statements as of and for the twelve-month period ended December 31, 2001, and its unaudited financial statements for the six-month period ending September 30, 2002 (the "Financial Statements"). The Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods indicated and with each other except that the unaudited Financial Statements may not contain all footnotes required by generally accepted accounting principles. The Financial Statements fairly present the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein, subject in the case of the

unaudited Financial Statements to normal year-end audit adjustments. Except as set forth in the Financial Statements, the Company has no material liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to the date of the Financial Statements and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under generally accepted accounting principles to be reflected in the Financial Statements, which, in both cases, individually or in the aggregate, are not material to the financial condition or operating results of the Company. Except as disclosed in the Financial Statements, the Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with generally accepted accounting principles.

2.21 *Changes.* Since September 30, 2002 there has not been:

(a) any change in the assets, liabilities, financial condition or operating results of the Company from that reflected in the Financial Statement, except changes in the ordinary course of business that have not been, in the aggregate, materially adverse;

(b) any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the assets, properties, financial condition, operating results, prospects or business of the Company (as such business is presently conducted and as it is proposed to be conducted);

(c) any waiver by the Company of a valuable right or of a material debt owed to it;

(d) any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company, except in the ordinary course of business and that is not material to the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted and as it is proposed to be conducted);

(e) any material change or amendment to a material contract or arrangement by which the Company or any of its assets or properties is bound or subject;

(f) any material change in any compensation arrangement or agreement with any employee;

(g) any sale, assignment or transfer of any patents, trademarks, copyrights, trade secrets or other intangible assets;

(h) any resignation or termination of employment of any key employee or officer of the Company; and the Company, to the best of its knowledge, does not know of the impending resignation or termination of employment of any such employee or officer;

(i) receipt of notice that there has been a loss of, or material order cancellation by, any major customer of the Company;

(j) any mortgage, pledge, transfer of a security interest in, or lien, created by the Company, with respect to any of its material properties or assets, except liens for taxes not yet due or payable;

(k) any loans or guarantees made by the Company to or for the benefit of its employees, officers or directors, or any members of their immediate families, other than travel advances and other advances made in the ordinary course of its business;

(l) any declaration, setting aside or payment or other distribution in respect of any of the Company's capital stock, or any direct or indirect redemption, purchase or other acquisition of any of such stock by the Company;

(m) to the best of the Company's knowledge, any other event or condition of any character that might materially and adversely affect the assets, properties, financial condition, operating

results or business of the Company (as such business is presently conducted and as it is proposed to be conducted); or

(n) any agreement or commitment by the Company to do any of the things described in this Section 2.21.

2.22 *Registration Rights.* Except as required pursuant to the Investors' Rights Agreement, the Company is not presently under any obligation, and has not granted, any rights to register any of the Company's presently outstanding securities or any of its securities that may hereafter be issued.

2.23 *Real Property Holding Corporation.* The Company is not a real property holding corporation within the meaning of Code Section 897(c)(2) and any regulations promulgated thereunder.

2.24 *Labor Agreements.* The Company is not bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any labor union, and no labor union has requested or, to the Company's knowledge, has sought to represent any of the employees, representatives or agents of the Company. There is no strike or other labor dispute involving the Company pending, or to the Company's knowledge, threatened, that could have a material adverse effect on its business or properties, nor is the Company aware of any labor organization activity involving its employees.

2.25 *Insurance.* The Company maintains in full force and effect such types and amounts of insurance issued by insurers of recognized responsibility insuring the Company with respect to its business and properties, in such amounts and against such losses and risks which are usual and customary in the Company's business as to amount and scope.

3. *Representations and Warranties of the Investor.* The Investor hereby represents and warrants that:

3.1 *Authorization.* The Investor has full power and authority to enter into the Transaction Documents, and each such Agreement constitutes its valid and legally binding obligation, enforceable in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, and (iii) to the extent the indemnification provisions contained in the Investors' Rights Agreement may be limited by applicable federal or state securities laws.

3.2 *Purchase Entirely for Own Account.* This Agreement is made with the Investor in reliance upon the Investor's representation to the Company, which by the Investor's execution of this Agreement the Investor hereby confirms, that the Series E Preferred Stock to be received by the Investor and the Common Stock issuable upon conversion thereof (collectively, the "Securities") will be acquired for investment for the Investor's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same in violation of applicable securities laws. By executing this Agreement, the Investor further represents that the Investor does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Securities.

3.3 *Disclosure of Information.* The Investor further represents that it has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Series E Preferred Stock and the business, properties, prospects and financial condition of the Company. The foregoing, however, does not limit or modify the representations and warranties of the Company in Section 2 of this Agreement or the right of the Investor to rely thereon.

3.4 *Investment Experience.* The Investor is an investor in securities of companies in the development stage and acknowledges that it is able to fend for itself, can bear the economic risk of its

investment, and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Series E Preferred Stock. The Investor also represents that it has not been organized for the purpose of acquiring the Series E Preferred Stock.

3.5 *Accredited Investor.* The Investor is an "accredited investor" within the meaning of SEC Rule 501 of Regulation D, as presently in effect.

3.6 *Restricted Securities.* The Investor understands that the Securities it is purchasing are characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the Act, only in certain limited circumstances. In this connection, the Investor represents that it is familiar with SEC Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Act.

3.7 *Further Limitations on Disposition.* Without in any way limiting the representations set forth above, the Investor further agrees not to make any disposition of all or any portion of the Securities unless and until the transferee has agreed in writing for the benefit of the Company to be bound by this Section 3 and the Investors' Rights Agreement provided and to the extent this Section and such agreements are then applicable, and:

(a) There is then in effect a Registration Statement under the Act covering such proposed disposition and such disposition is made in accordance with such Registration Statement; or

(b) (i) The Investor shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, including, but not limited to, the name of the transferee, and (ii) if reasonably requested by the Company, the Investor shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company that such disposition will not require registration of such shares under the Act. It is agreed that the Company will not require opinions of counsel for transactions made pursuant to Rule 144 except in unusual circumstances.

(c) Notwithstanding the provisions of Section 3.2 or Paragraphs (a) and (b) above, no such registration statement or opinion of counsel shall be necessary for a transfer by the Investor (i) that is a partnership to a partner of such partnership or a retired partner of such partnership who retires after the date hereof, or to the estate of any such partner or retired partner or the transfer by gift, will or intestate succession of any partner to his or her spouse or to the siblings, lineal descendants or ancestors of such partner or his or her spouse, or (ii) to any entity that is not a natural person and is controlled by, controls or is under common control with the Investor, if the transferee agrees in writing to be subject to the terms hereof to the same extent as if he or she were an original Investor hereunder.

(d) In addition, Investor agrees that, without the Company's written consent, in no event shall any transfer of Securities by the Investor made prior to the initial public offering of the Company's Common Stock pursuant to an effective registration statement under the Act be effective if the transferee is a direct competitor with the primary business of the Company (as determined in the sole discretion of the Company's Board of Directors). The Company agrees that it shall not unreasonably withhold consent for any transfer by Investor to a member or affiliate of Investor or an affiliate of GlaxoSmithKline PLC.

3.8 *Legends.* It is understood that the certificates evidencing the Securities may bear one or all of the following legends:

(a) "These securities have not been registered under the Securities Act of 1933, as amended. They may not be sold, offered for sale, pledged or hypothecated in the absence of a registration statement in effect with respect to the securities under such Act or an opinion of counsel

satisfactory to the Company that such registration is not required or unless sold pursuant to Rule 144 of such Act."

(b) Any legend required by the laws of any state.

4. *Conditions of Investor's Obligations at Closing.* The obligations of the Investor under subsection 1.1(c) of this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions, the waiver of which shall not be effective against the Investor if it does not consent thereto:

4.1 *Representations and Warranties.* The representations and warranties of the Company contained in Section 2 shall have been true on and as of the date of this Agreement.

4.2 *Performance.* The Company shall have performed and complied with all agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing.

4.3 *Compliance Certificate.* The Chief Executive Officer of the Company shall deliver to each Investor at the Closing a certificate stating that the conditions specified in Sections 4.1 and 4.2 have been fulfilled.

4.4 *Qualifications.* All authorizations, approvals, or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be duly obtained and effective as of the Closing.

4.5 *Proceedings and Documents.* All corporate and other proceedings in connection with the transactions contemplated at the Closing and all documents incident thereto shall be reasonably satisfactory in form and substance to the Investor, and they shall have received all such counterpart original and certified or other copies of such documents as they may reasonably request.

4.6 *Opinion of Company Counsel.* The Investor shall have received from Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, counsel for the Company, an opinion, dated as of the Closing, in the form attached hereto as *Exhibit C*.

4.7 *Investors' Rights Agreement.* The Company and the Investor shall have entered into the Investors' Rights Agreement.

4.8 *Filing of the Restated Certificate.* The Restated Certificate shall have been filed with the Secretary of State of Delaware, and shall not have been amended or modified since the date of filing.

4.9 *HSR Act.* The waiting period applicable to the consummation of the transactions contemplated hereby and by that certain Collaboration Agreement between the Company and the Investor under the HSR Act shall have expired or been terminated and no action by the Department of Justice or Federal Trade Commission challenging or seeking to enjoin the consummation of such transactions shall have been instituted and be pending.

5. *Conditions of the Company's Obligations at Closing.* The obligations of the Company to the Investor under this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions by the Investor:

5.1 *Representations and Warranties.* The representations and warranties of the Investor contained in Section 3 shall be true on and as of the Closing with the same effect as though such representations and warranties had been made on and as of the Closing.

5.2 *Qualifications.* All authorizations, approvals, or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with

the lawful issuance and sale of the Securities pursuant to this Agreement shall be duly obtained and effective as of the Closing.

5.3 *Investors' Rights Agreement.* The Company and the Investor shall have entered into the Investors' Rights Agreement.

5.4 *HSR Act.* The waiting period applicable to the consummation of the transactions contemplated hereby and by that certain Collaboration Agreement between the Company and the Investor under the HSR Act shall have expired or been terminated and no action by the Department of Justice or Federal Trade Commission challenging or seeking to enjoin the consummation of such transactions shall have been instituted and be pending.

6. *Miscellaneous.*

6.1 *Survival of Warranties.* The warranties, representations and covenants of the Company and the Investor contained in or made pursuant to this Agreement shall survive the execution and delivery of this Agreement and the Closing and shall in no way be affected by any investigation of the subject matter thereof made by or on behalf of the Investor or the Company.

6.2 *Successors and Assigns.* Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties (including transferees of any Securities). Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

6.3 *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of California as applied to agreements among California residents entered into and to be performed entirely within California.

6.4 *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.5 *Titles and Subtitles.* The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

6.6 *Notices.* All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, if not, then on the next business day or (c) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. Notwithstanding the foregoing or any provision to the contrary in the Investors' Rights Agreement or the Restated Certificate, the Company agrees that when any notice is given to the Investor, whether under this Agreement, the Investors' Rights Agreement or the Restated Certificate, such notice shall not be deemed to be effectively given until a copy of such notice is transmitted to the Investor via facsimile. All notices and certificates will be addressed to the Investor at the address set forth on the signature page hereto or at such other address as the Company or the Investor may designate by ten (10) days advance written notice to the other parties hereto.

6.7 *Finder's Fee.* The Investor agrees to indemnify and to hold harmless the Company from any liability for any commission or compensation in the nature of a finders' fee (and the costs and expenses of defending against such liability or asserted liability) for which such Investor or any of its officers, partners, employees, or representatives is responsible.

The Company agrees to indemnify and hold harmless the Investor from any liability for any commission or compensation in the nature of a finders' fee (and the costs and expenses of defending

against such liability or asserted liability) for which the Company or any of its officers, employees or representatives is responsible.

6.8 *Expenses.* Irrespective of whether the Closing is effected, each party shall bear their own costs and expenses incurred with respect to the negotiation, execution, delivery and performance of this Agreement. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the Investors' Rights Agreement or the Restated Certificate, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

6.9 *Amendments and Waivers.* Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Investor. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding (including securities into which such securities are convertible), each future holder of all such securities, and the Company.

6.10 *Severability.* If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

6.11 *Confidentiality.* Any confidential information obtained by the Investor pursuant to this Agreement which is labeled or otherwise identified as confidential or proprietary shall be treated as confidential and shall not be disclosed to a third party without the prior written consent of the Company and shall not be used by the Investor for any purpose other than monitoring the Investor's investment in the Company, except that the Investor may disclose such information (i) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company, (ii) to its affiliates, officers, directors, shareholders, members and/or partners in the ordinary course of business or pursuant to disclosure obligation to affiliates, shareholders, members and/or partners; provided that such information is provided to such persons and entities with notice that such information is confidential and should be treated as such, (iii) to any prospective purchaser of the Investor's shares of the Company, provided (in the case of disclosure in clause (iii)) the recipient agrees to keep such information confidential and to use such information solely for evaluation of such proposed purchase, or (iv) as may otherwise be required by law. Notwithstanding the foregoing, such information shall not be deemed confidential for the purpose of enforcement of this Agreement and said information shall not be deemed confidential after it becomes publicly known through no fault of the recipient. The provisions of this Section 6.11 shall be in addition to, and not in substitution for, the provisions of any separate confidentiality agreement executed by the parties hereto; provided that if there is any conflict between the provisions of this Section 6.11 and the more restrictive provisions of such separate confidentiality agreement, the provisions of such separate confidentiality agreement shall prevail.

6.12 *Publicity.* No party or any affiliate of a party shall make, or cause to be made, any publicity, news release or other such general public announcement or make any other disclosure to any third party in respect of this Agreement or the transactions contemplated hereby (including, without limitation, disclosure of Investor's ownership interest in the Company) without the prior written consent of the other parties; *provided however*, that the foregoing provision is not intended to limit communications deemed reasonably necessary or appropriate by a party or its affiliates to its employees, stockholders, partners, directors, officers, potential investors, accountants and legal counsel who are under an obligation to preserve the confidentiality of the foregoing. Notwithstanding the foregoing provision, the parties and their respective affiliates shall not be prohibited from making any disclosure or release that is required by law, court order, or applicable regulation, or is considered

necessary by legal counsel to fulfill an obligation under securities laws or the rules of a national stock exchange.

6.13 *Entire Agreement.* This Agreement and the documents referred to herein constitute the entire agreement among the parties and no party shall be liable or bound to any other party in any manner by any warranties, representations, or covenants except as specifically set forth herein or therein.

6.14 *Waiver of Conflicts.* Each party to this Agreement acknowledges that Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP ("Gunderson Dettmer"), counsel for the Company, has in the past and may continue to perform legal services for certain of the Investors in the purchase of the Company's Series A, Series B, Series C, Series D, Series D-1 and Series E Preferred Stock and other matters. Accordingly, each party to this Agreement hereby (1) acknowledges that they have had an opportunity to ask for information relevant to this disclosure; (2) acknowledges that Gunderson Dettmer represented the Company in the transaction contemplated by this Agreement and has not represented any individual Investor or any individual stockholder or employee of the Company in connection with such transaction; and (3) gives its informed consent to Gunderson Dettmer's representation of certain of the Investors in such unrelated matters and to Gunderson Dettmer's representation of the Company in connection with this Agreement and the transactions contemplated hereby.

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

THERAVANCE, INC.

By: /s/ RICK E WINNINGHAM

Rick E Winningham
President and Chief Executive Officer

QuickLinks

Exhibit 10.11

INDEMNIFICATION AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into as of , 2000, between THERAVANCE INC., a Delaware corporation ("the Company"), and ("Indemnitee").

WITNESSETH THAT:

WHEREAS, Indemnitee performs a valuable service for the Company; and

WHEREAS, the Board of Directors of the Company has adopted Bylaws (the "Bylaws") providing for the indemnification of the officers and directors of the Company to the maximum extent authorized by Section 145 of the Delaware General Corporation Law, as amended ("Law"); and

WHEREAS, the Bylaws and the Law, by their nonexclusive nature, permit contracts between the Company and the officers or directors of the Company with respect to indemnification of such officers or directors; and

WHEREAS, in accordance with the authorization as provided by the Law, the Company may purchase and maintain a policy or policies of directors' and officers' liability insurance ("D & O Insurance"), covering certain liabilities which may be incurred by its officers or directors in the performance of their obligations to the Company; and

WHEREAS, in recognition of past services and in order to induce Indemnitee to continue to serve as an officer or director of the Company, the Company has determined and agreed to enter into this contract with Indemnitee;

NOW, THEREFORE, in consideration of Indemnitee's service as an officer or director after the date hereof, the parties hereto agree as follows:

1. *Indemnity of Indemnitee*. The Company hereby agrees to hold harmless and indemnify Indemnitee to the full extent authorized or permitted by the provisions of the Law, as such may be amended from time to time, and Article VI of the Bylaws, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) *Proceedings Other Than Proceedings by or in the Right of the Company*. Indemnitee shall be entitled to the rights of indemnification provided in this Section l(a) if, by reason of his Corporate Status (as hereinafter defined), he is, or is threatened to be made, a party to or participant in any Proceeding (as hereinafter defined) other than a Proceeding by or in the right of the Company. Pursuant to this Section 1(a), Indemnitee shall be indemnified against all Expenses (as hereinafter defined), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf in connection with such Proceeding or any claim, issue or matter therein, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal Proceeding, had no reasonable cause to believe his conduct was unlawful.

(b) *Proceedings by or in the Right of the Company*. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(b) if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Company. Pursuant to this Section 1(b), Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection with such Proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been adjudged to

be liable to the Company unless and to the extent that the Court of Chancery of the State of Delaware shall determine that such indemnification may be made.

(c) *Indemnification for Expenses of a Party Who is Wholly or Partly Successful*. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, he shall be indemnified to the maximum extent permitted by law against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

2. *Additional Indemnity*. In addition to, and without regard to any limitations on, the indemnification provided for in Section 1, the Company shall and hereby does indemnify and hold harmless Indemnitee against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of Indemnitee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnitee that is finally determined (under the procedures, and subject to the presumptions, set forth in Sections 6 and 7 hereof) to be unlawful under Delaware law.

3. *Contribution in the Event of Joint Liability*.

(a) Whether or not the indemnification provided in Sections 1 and 2 hereof is available, in respect of any threatened, pending or completed action, suit or proceeding in which Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), Company shall pay, in the first instance, the entire amount of any judgment or settlement of such action, suit or proceeding without requiring Indemnitee to contribute to such payment and Company hereby waives and relinquishes any right of contribution it may have against Indemnitee. Company shall not enter into any settlement of any action, suit or proceeding in which Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(b) Without diminishing or impairing the obligations of the Company set forth in the preceding subparagraph, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any threatened, pending or completed action, suit or proceeding in which Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction from which such action, suit or proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be

further adjusted by reference to the relative fault of Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other equitable considerations which the law may require to be considered. The relative fault of Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary, and the degree to which their conduct is active or passive.

(c) Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors or employees of the Company other than Indemnitee who may be jointly liable with Indemnitee.

4. *Indemnification for Expenses of a Witness*. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

5. *Advancement of Expenses*. Notwithstanding any other provision of this Agreement, the Company shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding by reason of Indemnitee's Corporate Status within ten (10) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by an undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 5 shall be unsecured and interest free. Notwithstanding the foregoing, the obligation of the Company to advance Expenses pursuant to this Section 5 shall be subject to the condition that, if, when and to the extent that the Company determines that Indemnitee would not be permitted to be indemnified under applicable law, the Company shall be entitled to be reimbursed, within thirty (30) days of such determination, by Indemnitee (who hereby agrees to reimburse the Company) for all such amounts theretofore paid; provided, however, that if Indemnitee has commenced or thereafter commences legal proceedings in a court of competent jurisdiction to secure a determination that Indemnitee should be indemnified under applicable law, any determination made by the Company that Indemnitee would not be permitted to be indemnified under applicable law shall not be binding and Indemnitee shall not be required to reimburse the Company for any advance of Expenses until a final judicial determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or lapsed).

6. *Procedures and Presumptions for Determination of Entitlement to Indemnification*. It is the intent of this Agreement to secure for Indemnitee rights of indemnity that are as favorable as may be permitted under the law and public policy of the State of Delaware. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnitee is entitled to indemnification under this Agreement:

(a) To obtain indemnification (including, but not limited to, the advancement of Expenses and contribution by the Company) under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and

information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board of Directors in writing that Indemnitee has requested indemnification.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 6(a) hereof, a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following three methods, which shall be at the election of Indemnitee: (1) by a majority vote of the disinterested directors, even though less than a quorum, or (2) by independent legal counsel ("Independent Counsel") in a written opinion, or (3) by the stockholders.

(c) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 6(b) hereof, the Independent Counsel shall be selected as provided in this Section 6(c). The Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board of Directors). Indemnitee or the Company, as the case may be, may, within 10 days after such written notice of selection shall have been given, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 13 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made and substantiated, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 6(a) hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware or other court of competent jurisdiction for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 6(b) hereof. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 6(b) hereof, and the Company shall pay all reasonable fees and expenses incident to the procedures of this Section 6(c), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 6(a) of this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion, by clear and convincing evidence.

(e) Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the

Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this Section 6(e) are satisfied, it shall in any event be presumed that Indemnitee has at all times acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion, by clear and convincing evidence.

(f) If the person, persons or entity empowered or selected under Section 6 to determine whether Indemnitee is entitled to indemnification shall not have made a determination within thirty (30) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such 30 day period may be extended for a reasonable time, not to exceed an additional fifteen (15) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 6(f) shall not apply if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 6(b) of this Agreement and if (A) within fifteen (15) days after receipt by the Company of the request for such determination the Board of Directors or the Disinterested Directors, if appropriate, resolve to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat.

(g) Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel, member of the Board of Directors, or stockholder of the Company shall act reasonably and in good faith in making a determination under the Agreement of the Indemnitee's entitlement to indemnification. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(h) The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any action, claim or proceeding to which Indemnitee is a party is resolved in any manner other than by adverse judgment against Indemnitee (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration) it shall be presumed that Indemnitee has been successful on the merits or otherwise in such action, suit or proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion, by clear and convincing evidence.

7. *Remedies of Indemnitee*.

(a) In the event that (i) a determination is made pursuant to Section 6 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 5 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 6(b) of this Agreement within 90 days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to this Agreement within ten (10) days after receipt by the Company of a written request therefor, or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 6 of this Agreement, Indemnitee shall be entitled to an adjudication in an appropriate court of the State of Delaware, or in any other court of competent jurisdiction, of his entitlement to such indemnification. Indemnitee shall commence such proceeding seeking an adjudication within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 7(a). The Company shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 7 shall be conducted in all respects as a *de novo* trial, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination under Section 6(b).

(c) If a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 7, absent a prohibition of such indemnification under applicable law.

(d) In the event that Indemnitee, pursuant to this Section 7, seeks a judicial adjudication of his rights under, or to recover damages for breach of, this Agreement, or to recover under any directors' and officers' liability insurance policies maintained by the Company the Company shall pay on his behalf, in advance, any and all expenses (of the types described in the definition of Expenses in Section 13 of this Agreement) actually and reasonably incurred by him in such judicial adjudication, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery.

(e) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 7 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement.

8. *Non-Exclusivity; Survival of Rights; Insurance; Subrogation*.

(a) The rights of indemnification as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the certificate of incorporation of the Company, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in the Law, whether by statute or judicial decision, permits greater indemnification than would be afforded currently under the Bylaws and this Agreement, it is the intent of the parties hereto that

Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies.

(c) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(d) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

9. *Exception to Right of Indemnification*. Notwithstanding any other provision of this Agreement, Indemnitee shall not be entitled to indemnification under this Agreement with respect to any Proceeding brought by Indemnitee, or any claim therein, unless (a) the bringing of such Proceeding or making of such claim shall have been approved by the Board of Directors of the Company or (b) such Proceeding is being brought by the Indemnitee to assert, interpret or enforce his rights under this Agreement.

10. *Duration of Agreement*. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee is an officer or director of the Company (or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise) and shall continue thereafter so long as Indemnitee shall be subject to any Proceeding (or any proceeding commenced under Section 7 hereof) by reason of his Corporate Status, whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives. This Agreement shall continue in effect regardless of whether Indemnitee continues to serve as an officer or director of the Company or any other Enterprise at the Company's request.

11. *Security*. To the extent requested by the Indemnitee and approved by the Board of Directors of the Company, the Company may at any time and from time to time provide security to the Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to the Indemnitee, may not be revoked or released without the prior written consent of the Indemnitee.

12. *Enforcement*.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as an officer or director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as an officer or director of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

13. *Definitions*. For purposes of this Agreement:

(a) "Corporate Status" describes the status of a person who is or was a director, officer, employee or agent or fiduciary of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which such person is or was serving at the express written request of the Company.

(b) "Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(c) "Enterprise" shall mean the Company and any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the express written request of the Company as a director, officer, employee, agent or fiduciary.

(d) "Expenses" shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a Proceeding.

(e) "Independent Counsel" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning the Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Company agrees to pay the reasonable fees of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(f) "Proceeding" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of the fact that Indemnitee is or was a director of the Company, by reason of any action taken by him or of any inaction on his part while acting as an officer or director of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other Enterprise; in each case whether or not he is acting or serving in any such capacity at the time

any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement; and excluding one initiated by an Indemnitee pursuant to Section 7 of this Agreement to enforce his rights under this Agreement.

14. *Severability*. If any provision or provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, illegal or otherwise unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

15. *Modification and Waiver*. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. *Notice By Indemnitee*. Indemnitee agrees promptly to notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation which it may have to the Indemnitee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices the Company.

17. *Notices*. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if (i) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, or (ii) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed:

(a) If to Indemnitee, to the address set forth below Indemnitee signature hereto.

(b) If to the Company, to:

901 Gateway Blvd.
South San Francisco, California 94080
Attention:

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

18. *Identical Counterparts*. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

19. *Headings*. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

20. *Governing Law.* The parties agree that this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware without application of the conflict of laws principles thereof.

21. *Gender.* Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on and as of the day and year first above written.

THERAVANCE, INC.

By: _____

Name: _____

Title: _____

Address: 901 Gateway Blvd.
South San Francisco, California 94080

INDEMNITEE

_____

Address: _____

_____

_____

_____

_____

QuickLinks

Exhibit 10.12

THERAVANCE, INC.

CLASS A COMMON

STOCK PURCHASE AGREEMENT

March 30, 2004

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THERAVANCE, INC.

CLASS A COMMON STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (the "Agreement") is made as of the 30th day of March, 2004, by and among Theravance, Inc., a Delaware corporation (the "Company"), and SmithKline Beecham Corporation, a Pennsylvania corporation (the "Investor").

WHEREAS, Glaxo Group Limited, a limited liability company organized under the laws of England and Wales ("GGL") and the Company have entered into that certain Strategic Alliance Agreement dated as of the date hereof (the "Alliance Agreement"), pursuant to which, among other things, the Company has granted GGL an option to develop and commercialize certain therapeutic compounds on an exclusive, worldwide basis;

WHEREAS, the Investor and the Company are contemporaneously entering into this Agreement, pursuant to which the Investor shall purchase shares of the Company's Class A Common Stock, par value $0.01 (the "Class A Common Stock");

WHEREAS, as a condition to the stock purchase contemplated by this Agreement and to facilitate an eventual underwritten public offering of the Company's equity securities, all outstanding shares of the Company's Preferred Stock not owned by GGL must be converted into shares of the Company's Common Stock; and

WHEREAS, in connection with the stock purchase contemplated by this Agreement, the Company intends to implement a retention plan designed to retain and incent key employees, which shall include various equity incentives following a successful underwritten public offering of the Company's equity securities.

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. *Purchase and Sale of Stock.*

1.1 *Sale and Issuance of Class A Common Stock.*

(a) On or prior to the Closing (as defined below), (i) all issued and outstanding shares of preferred stock of the Company shall have converted into common stock and (ii) the Company shall adopt and file with the Secretary of State Delaware the Restated Certificate of Incorporation in the form attached hereto as *Exhibit A* (the "Restated Certificate").

(b) On or prior to the Closing (as defined below), the Company shall have authorized the sale and issuance pursuant to this Agreement of 9,900,000 shares of its Class A Common Stock at a price of $11.00 per share. The Class A Common Stock shall have the rights, preferences, privileges and restrictions set forth in the Restated Certificate.

(c) Subject to the terms and conditions of this Agreement, the Investor agrees to purchase at the Closing and the Company agrees to sell and issue to the Investor at the Closing, 9,900,000 shares of the Company's Class A Common Stock for an aggregate purchase price of $108,900,000.

1.2 *Closing*. The purchase and sale of the Class A Common Stock shall take place at the offices of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, 155 Constitution Drive, Menlo Park, CA 94025, at 10:00 A.M., on the date all conditions to closing set forth in Sections 4 and 5 have been satisfied or effectively waived, or at such other time and place as the Company and Investor mutually agree upon orally or in writing (which time and place are designated as the "Closing"). At the Closing the Company shall deliver to the Investor a certificate representing the Class A Common Stock that the Investor is purchasing against payment of the purchase price therefor by check or wire transfer, or any combination thereof.

1.3 *Exchange of Shares of Common Stock for Shares of Class A Common Stock*. Upon the Closing, GGL shall be deemed to have automatically exchanged, as of the date of the Closing, on a one-for-one basis, each share of Common Stock held by GGL for one share of Class A Common Stock. The rights, preferences and privileges of the Common Stock and Class A Common Stock are as set forth in the Restated Certificate.

2. *Representations and Warranties of the Company*. The Company hereby represents and warrants to the Investor that, as of the date hereof, and except as set forth on a Schedule of Exceptions (the "Schedule of Exceptions") furnished to the Investor, which exceptions shall be deemed to be representations and warranties as if made hereunder:

2.1 *Organization, Good Standing and Qualification*. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to (i) execute, deliver and perform its obligations under this Agreement and the Amended and Restated Investors' Rights Agreement, by and among the Company and the investors who are parties thereto, the form of which is attached hereto as *Exhibit B* (the "Investors' Rights Agreement"), (ii) to issue and sell the Class A Common Stock hereunder, (iii) to perform its obligations under the Restated Certificate, and (iv) to carry on its business as now conducted and as proposed to be conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect on its business or properties.

2.2 *Capitalization and Voting Rights*.

(a) As of the date of this Agreement, the authorized capital of the Company consists of:

(i) *Preferred Stock*. 51,500,000 shares of Preferred Stock (the "Preferred Stock"), of which (i) 5,020,000 shares have been designated Series A Preferred Stock (the "Series A Preferred Stock"), 4,988,000 of which are outstanding; (ii) 5,100,000 shares have been designated Series B Preferred Stock (the "Series B Preferred Stock"), 5,074,000 of which are outstanding; (iii) 18,823,000 shares have been designated Series C Preferred Stock (the "Series C Preferred Stock"), 18,765,166 of which are outstanding; (iv) 1,666,666 shares have been designated Series D Preferred Stock (the "Series D Preferred Stock"), 1,666,666 of which are outstanding (which are initially convertible into 2,777,777 shares of Common Stock); (v) 13,888,889 shares have been designated Series D-1 Preferred Stock (the "Series D-1 Preferred Stock"), 13,169,905 of which are outstanding; and (vi) 4,000,000 shares have been designated Series E Preferred Stock (the "Series E Preferred Stock"), all of which are outstanding. The rights, privileges and preferences of the Preferred Stock will be as stated in the Company's Restated Certificate of Incorporation on file with the Secretary of State of the State of Delaware on the date hereof.

(ii) *Common Stock*. 120,000,000 shares of common stock, par value $0.01 ("Common Stock"), of which 11,413,885 shares are issued and outstanding.

(iii) The outstanding shares of Common Stock are all duly and validly authorized and issued, fully paid and nonassessable, and were issued in accordance with the registration or qualification provisions of the Securities Act of 1933, as amended (the "Act") and any relevant state securities laws, or pursuant to valid exemptions therefrom.

(iv) Except for (A) the conversion privileges of the Preferred Stock, (B) the rights provided in Section 2.5 of the Investors' Rights Agreement, (C) currently outstanding warrants to purchase 4,000 shares of Series A Preferred Stock, (D) currently outstanding warrants to purchase 4,000 shares of Series B Preferred Stock, (E) currently outstanding warrants to purchase 48,611 shares of Series D-1 Preferred Stock, and (F) currently

outstanding options to purchase 13,630,463 shares of Common Stock granted to employees, directors, board members, consultants and service providers, there are not outstanding any options, warrants, rights (including conversion or preemptive rights) or agreements for the purchase or acquisition from the Company of any shares of its capital stock. In addition to the aforementioned options, the Company has reserved an additional 962,000 shares of its Common Stock for issuance upon exercise of options to be granted in the future under the Company's 1997 Stock Plan. Except for the provisions of the Restated Certificate, the Investors' Rights Agreement and of that certain Amended and Restated Stockholders' Voting Agreement dated as of January 25, 1999 by and among the Company and the other parties listed therein, the Company is not a party or subject to any agreement or understanding, and, to the best of the Company's knowledge, there is no agreement or understanding between any persons and/or entities, which affects or relates to the voting or giving of written consents with respect to any security or by a director of the Company. No stock plan, stock purchase, stock option or other agreement or understanding between the Company and any holder of any equity securities or rights to purchase equity securities provides for acceleration or other changes in the vesting provisions of such agreement or understanding as the result of any merger, consolidated sale of stock or assets, change in control or any other similar transaction(s) by the Company.

(b) Immediately prior to the Closing, upon the filing of the Restated Certificate and assuming between the date hereof and the date of Closing (x) the exchange of shares of Common Stock held by the Investor for shares of Class A Common Stock pursuant to Section 1.3 hereof, (y) no issuance by the Company of its capital stock or any security exercisable for or convertible into capital stock of the Company pursuant to any employee, director or consultant compensation plan that has been approved by the majority of the Board of Directors and (z) no exercise or conversion of any outstanding option, warrant or other security exercisable for or convertible into the capital stock of the Company, the authorized capital of the Company shall consist of:

(i) *Preferred Stock*. 5,000,000 shares of Preferred Stock (the "Preferred Stock"), none of which shall be outstanding.

(ii) *Common Stock*. 175,000,000 shares of Common Stock, par value $0.01 ("Common Stock"), 56,188,733 of which shall be outstanding

(iii) *Class A Common Stock*. 13,900,000 shares of Class A Common Stock, 4,000,000 of which shall be outstanding and 9,900,000 of which shall be sold pursuant to this Agreement.

2.3 *Subsidiaries*. The Company does not presently own or control, directly or indirectly, any interest in any other corporation, association or other business entity, other than Theravance East, Inc., a Delaware corporation and a direct wholly-owned subsidiary of the Company. The Company is not a participant in any joint venture, partnership, or similar arrangement.

2.4 *Authorization*. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement, the Investors' Rights Agreement and the Governance Agreement to be entered into by the Company and the Investor (and its affiliates), in substantially the form attached hereto as *Exhibit C* (the "Governance Agreement," and collectively with this Agreement and the Investors' Rights Agreement, the "Transaction Documents"), the performance of all obligations of the Company hereunder and thereunder, and the authorization, issuance (or reservation for issuance), sale and delivery of the Class A Common Stock being sold hereunder has been taken or will be taken prior to the Closing, and the Transaction Documents constitute valid and legally binding obligations of the Company, enforceable in accordance with their respective terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general

application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, and (iii) to the extent the indemnification provisions contained in the Investors' Rights Agreement may be limited by applicable federal or state securities laws.

2.5 *Valid Issuance of Preferred and Common Stock*. The Class A Common Stock that is being purchased by the Investor hereunder, when issued, sold and delivered in accordance with the terms of this Agreement for the consideration expressed herein, will be duly and validly issued, fully paid, and nonassessable, and will be free of restrictions on transfer other than restrictions on transfer under the Transaction Documents and under applicable state and federal securities laws. The Class A Common Stock that is being purchased by the Investor hereunder will not be subject to preemptive rights or rights of first refusal that have not been waived or complied with. Prior to the filing of the Restated Certificate, the outstanding Series A, Series B, Series C, Series D, Series D-1 and Series E Preferred Stock was duly and validly issued, fully paid, and is nonassessable. Upon the filing of the Restated Certificate, the Common Stock issuable upon conversion of the outstanding Series A, Series B, Series C, Series D, Series D-1 and Series E Preferred Stock will be duly and validly reserved for issuance and, upon issuance, will be duly and validly issued, fully paid, and nonassessable and will be free of restrictions on transfer other than restrictions on transfer under the documents executed in connection with the sale of the Series A, Series B, Series C, Series D, Series D-1 and Series E Preferred Stock and under applicable state and federal securities laws. The outstanding Series A, Series B, Series C, Series D, Series D-1 and Series E Preferred Stock is not subject to preemptive rights or rights of first refusal that have not been waived or complied with and, upon the execution and delivery of the Investors' Rights Agreement by the requisite holders of Company capital stock necessary to amend and restate the "Prior Agreement" (as such term is defined in the Investors' Rights Agreement), the Common Stock and Class A Common Stock issuable upon conversion of such Preferred Stock will not be subject to preemptive rights or rights of first refusal that have not been waived or complied with.

2.6 *Governmental Consents*. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority on the part of the Company is required in connection with the consummation of the transactions contemplated by this Agreement, except (i) a filing under the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), (ii) the filing of the Restated Certificate with the Secretary of State of Delaware; and (iii) certain post-closing filings as may be required pursuant to federal securities laws and under the "Blue Sky" laws of the various states.

2.7 *Offering*. Subject in part to the truth and accuracy of the Investor's representations set forth in Section 3 of this Agreement, the offer, sale and issuance of the Class A Common Stock as contemplated by this Agreement are exempt from the registration requirements of any applicable state and federal securities laws, and neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemption.

2.8 *Litigation*. There is no action, suit, proceeding or investigation pending or, to the Company's knowledge, currently threatened against the Company that questions the validity of the Transaction Documents, or the right of the Company to enter into such agreements, or to consummate the transactions contemplated hereby or thereby, or if determined adversely, might result, either individually or in the aggregate, in (i) any material adverse changes in the assets, business or prospects of the Company, financially or otherwise or (ii) any change in the current equity ownership of the Company, nor is the Company aware that there is any basis for the foregoing. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit, proceeding or investigation by the Company currently pending or that the Company intends to initiate.

2.9 *Patents and Trademarks*. The Company owns, or has rights to use pursuant to a valid license, all patents, trademarks, service marks, trade names, copyrights, trade secrets, information, proprietary rights and processes necessary for its business as now conducted. There are no outstanding options, licenses or agreements of any kind relating to the foregoing proprietary rights, nor is the Company bound by or a party to any options, licenses or agreements of any kind with respect to the patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information and other proprietary rights and processes of any other person or entity other than such licenses or agreements arising from the purchase of "off the shelf" or standard products. The use, modification, licensing, sublicensing, sale, or any other exercise of rights involving such intellectual property does not infringe any copyright, trade secret, trademark, service mark, trade name, firm name, logo, trade dress, mask work, moral right, other intellectual property right, right of privacy or right in personal data, or to the knowledge of the Company, any patent, of any person. No claims (i) challenging the validity, effectiveness, or ownership by the Company of any of the Company's intellectual property, or (ii) to the effect that the use, reproduction, modification, manufacturing, distribution, licensing, sublicensing, sale or any other exercise of rights in any product, work, technology, service or process as used, provided or offered at any time, or as proposed for use, reproduction, modification, distribution, licensing, sublicensing, sale or any other exercise of rights, by the Company infringes or will infringe on any intellectual property or other proprietary or personal right of any person have been asserted or, to the knowledge of the Company, (A) are threatened by any person nor (B) are there any valid grounds for any bona fide claim of any such kind. To the knowledge of the Company, there is no unauthorized use, infringement or misappropriation of any of the Company's intellectual property by any third party, employee or former employee. The Company's employees are not obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of his or her best efforts to promote the interests of the Company or that would conflict with the Company's business as proposed to be conducted. Neither the execution nor delivery of the Transaction Documents, nor the carrying on of the Company's business by the employees of the Company, nor the conduct of the Company's business as proposed, will, to the best of the Company's knowledge, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated. The Company does not believe it is or will be necessary to utilize any inventions of any of its employees made prior to their employment by the Company unless such inventions are properly assigned to the Company.

2.10 *Compliance with Other Instruments*. The Company is not in violation or default in any material respect of any provision of its Restated Certificate or Bylaws, or in any material respect of any instrument, judgment, order, writ, decree or contract to which it is a party or by which it is bound, or, to the best of its knowledge, of any provision of any statute, rule or regulation applicable to the Company. The execution, delivery and performance of the Transaction Documents, and the consummation of the transactions contemplated hereby and thereby will not result in any such violation or be in conflict with or constitute, with or without the passage of time and giving of notice, either a default under any such provision, instrument, judgment, order, writ, decree or contract or an event that results in the creation of any lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, impairment, forfeiture, or nonrenewal of any material permit, license, authorization, or approval applicable to the Company, its business or operations or any of its assets or properties.

2.11 *Agreements; Action*.

(a) Except for agreements explicitly contemplated by the Transaction Documents, there are no agreements, understandings or proposed transactions between the Company and any of its officers, directors, affiliates, or any affiliate thereof.

(b) Except for this Agreement, the Governance Agreement, the Strategic Alliance Agreement and the Collaboration Agreement dated as of November 14, 2002 by and between the Company and the Investor (the "Collaboration Agreement"), there are no agreements, understandings, instruments, contracts, proposed transactions, judgments, orders, writs or decrees to which the Company is a party or by which it is bound that may involve (i) provisions restricting or affecting the development, manufacture or distribution of the Company's products or services; (ii) obligations (contingent or otherwise) of, or payments to, the Company in excess of $100,000 (other than obligations of, or payments to, the Company arising from agreements entered into in the ordinary course of business); or (iii) indemnification by the Company with respect to infringements of proprietary rights (other than indemnification obligations arising from agreements entered into in the ordinary course of business).

(c) The Company has not (i) declared or paid any dividends or authorized or made any distribution upon or with respect to any class or series of its capital stock, (ii) incurred any indebtedness for money borrowed or any other liabilities individually in excess of $1,000,000 or in the aggregate in excess of $5,000,000, (iii) made any loans or advances to any person, other than ordinary advances for travel expenses, or (iv) sold, exchanged or otherwise disposed of any of its assets or rights, other than the sale of its inventory in the ordinary course of business.

(d) For the purposes of subsection (c) above, all indebtedness and liabilities involving the same person or entity (including persons or entities the Company has reason to believe are affiliated therewith) shall be aggregated for the purpose of meeting the individual minimum dollar amounts of such subsection.

(e) The Company is not a party to and is not bound by any contract, agreement or instrument, or subject to any restriction under its Restated Certificate or Bylaws that adversely affects its business as now conducted or as proposed to be conducted, its properties or its financial condition.

(f) The Company has not engaged in the past three (3) months in any discussion (i) with any representative of any corporation or corporations regarding the consolidation or merger of the Company with or into any such corporation or corporations, (ii) with any corporation, partnership, association or other business entity or any individual regarding the sale, conveyance or disposition of all or substantially all of the assets of the Company or a transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company is disposed of, or (iii) regarding any other form of acquisition, liquidation, dissolution or winding up of the Company.

2.12 *Related-Party Transactions*. No employee, officer, or director of the Company or member of his or her immediate family is indebted to the Company, nor is the Company indebted (or committed to make loans or extend or guarantee credit) to any of them. To the Company's knowledge, none of such persons has any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated or with which the Company has a business relationship, or any firm or corporation that competes with the Company, except that employees, officers, or directors of the Company and members of their immediate families may own stock in publicly traded companies that may compete with the Company. No member of the immediate

family of any officer or director of the Company is directly or indirectly interested in any material contract with the Company.

2.13 *Permits*. The Company has all material franchises, permits, licenses, and any similar authority necessary for the conduct of its business as now being conducted by it, and the Company believes it can obtain, without undue burden or expense, any similar authority for the conduct of its business as planned to be conducted. The Company is not in default in any material respect under any of its franchises, permits, licenses, or other similar authority.

2.14 *Disclosure*. The Company has provided the Investor with all information requested by the Investor in connection with their decision to purchase the Class A Common Stock, including all information the Company believes is reasonably necessary to make such investment decision. To the Company's knowledge, neither this Agreement, the Investors' Rights Agreement, nor any other statements or certificates made or delivered in connection herewith or therewith contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements herein or therein not misleading.

2.15 *Corporate Documents*. Except for amendments necessary to satisfy representations and warranties or conditions contained herein (the form of which amendments has been approved by the Investor), the Restated Certificate and Bylaws of the Company are in the form previously provided to the Investor.

2.16 *Title to Property and Assets*. The Company owns its property and assets free and clear of all mortgages, liens, loans and encumbrances, except such encumbrances and liens that arise in the ordinary course of business and do not materially impair the Company's ownership or use of such property or assets, and has good and marketable title to such property. With respect to the property and assets it leases, the Company is in compliance with such leases and holds a valid leasehold interest free of any liens, claims or encumbrances.

2.17 *Tax Returns, Payments and Elections*. The Company has timely filed all tax returns and reports as required by law. These returns and reports are true and correct in all material respects. The Company has paid all taxes and assessments due, except those contested by it in good faith, if any. The Company has not been advised (a) that any of its federal, state or local returns are being audited as of the date hereof, or (b) of any deficiency in assessment or proposed judgment to its federal, state or other taxes. The Company has no knowledge of any tax liabilities due with respect to the Company or its properties or assets as of the date of this Agreement that are not adequately provided for.

2.18 *Environmental Law*. To the Company's knowledge, the Company is not in violation of and has no liability or potential liability under any applicable statute, law, or regulation relating to the environment, and to the best of its knowledge, no material expenditures are or will be required in order to comply with any such existing statute, law, or regulation.

2.19 *Proprietary Information and Employment Agreements*. Each current and former employee, officer and consultant of the Company has executed a standard Proprietary Information and Inventions Agreement. The Company is not aware that any of its employees, officers or consultants are in violation thereof, and the Company will use its best efforts to prevent any such violation. The Company has not entered into any employment agreements.

2.20 *Financial Statements*. The Company has made available to the Investor its audited financial statements as of December 31, 2002 and its unaudited financials as of and for the twelve-month period ended December 31, 2003 (the "Financial Statements"). The Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods indicated and with each other except that the unaudited Financial Statements may not contain all footnotes required by generally accepted accounting

principles. The Financial Statements fairly present the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein, subject in the case of the unaudited Financial Statements to normal year-end audit adjustments. Except as set forth in the Financial Statements, the Company has no material liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to the date of the Financial Statements and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under generally accepted accounting principles to be reflected in the Financial Statements, which, in both cases, individually or in the aggregate, are not material to the financial condition or operating results of the Company. Except as disclosed in the Financial Statements, the Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with generally accepted accounting principles.

2.21 *Changes*. Since December 31, 2003 there has not been:

(a) any change in the assets, liabilities, financial condition or operating results of the Company from that reflected in the Financial Statement, except changes in the ordinary course of business that have not been, in the aggregate, materially adverse;

(b) any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the assets, properties, financial condition, operating results, prospects or business of the Company (as such business is presently conducted and as it is proposed to be conducted);

(c) any waiver by the Company of a valuable right or of a material debt owed to it;

(d) any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company, except in the ordinary course of business and that is not material to the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted and as it is proposed to be conducted);

(e) any material change or amendment to a material contract or arrangement by which the Company or any of its assets or properties is bound or subject;

(f) any material change in any compensation arrangement or agreement with any employee;

(g) any sale, assignment or transfer of any patents, trademarks, copyrights, trade secrets or other intangible assets;

(h) any resignation or termination of employment of any key employee or officer of the Company; and the Company, to the best of its knowledge, does not know of the impending resignation or termination of employment of any such employee or officer;

(i) receipt of notice that there has been a loss of, or material order cancellation by, any major customer of the Company;

(j) any mortgage, pledge, transfer of a security interest in, or lien, created by the Company, with respect to any of its material properties or assets, except liens for taxes not yet due or payable;

(k) any loans or guarantees made by the Company to or for the benefit of its employees, officers or directors, or any members of their immediate families, other than travel advances and other advances made in the ordinary course of its business;

(l) any declaration, setting aside or payment or other distribution in respect of any of the Company's capital stock, or any direct or indirect redemption, purchase or other acquisition of any of such stock by the Company;

(m) to the best of the Company's knowledge, any other event or condition of any character that might materially and adversely affect the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted and as it is proposed to be conducted); or

(n) any agreement or commitment by the Company to do any of the things described in this Section 2.21.

2.22 *Registration Rights*. Except as required pursuant to the Investors' Rights Agreement, the Company is not presently under any obligation, and has not granted, any rights to register any of the Company's presently outstanding securities or any of its securities that may hereafter be issued.

2.23 *Real Property Holding Corporation*. The Company is not a real property holding corporation within the meaning of Section 897(c)(2) of the Internal Revenue Code of 1986 (the "Code"), as amended, and any regulations promulgated thereunder.

2.24 *Labor Agreements*. The Company is not bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any labor union, and no labor union has requested or, to the Company's knowledge, has sought to represent any of the employees, representatives or agents of the Company. There is no strike or other labor dispute involving the Company pending, or to the Company's knowledge, threatened, that could have a material adverse effect on its business or properties, nor is the Company aware of any labor organization activity involving its employees.

2.25 *Insurance*. The Company maintains in full force and effect such types and amounts of insurance issued by insurers of recognized responsibility insuring the Company with respect to its business and properties, in such amounts and against such losses and risks which are usual and customary in the Company's business as to amount and scope.

2.26 *Directors and Senior Management*. No plan currently maintained by the Company or agreement entered into and currently in effect with any employee of the Company (each, a "*Plan*" and, collectively, the "*Plans*") provides for the payment of separation, severance, termination or similar benefits to any person. None of the Plans obligates the Company to pay any benefits solely or partially as a result of any transaction contemplated by this Agreement or as a result of a change in the ownership or effective control of the Company within the meaning of Section 280G of the Code. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby, either alone or together with a termination of service, will (i) result in any payment (including, without limitation, severance, golden parachute, forgiveness of indebtedness or otherwise) becoming due under any Plan, whether or not such payment is contingent, (ii) increase any benefits otherwise payable under any Plan or other arrangement, or (iii) result in the acceleration of the time of payment, vesting or funding of any benefits including, but not limited to, the acceleration of the vesting and exercisability of any Company Option, whether or not contingent.

2.27 *Officer and Key Employee Incentive Plan*. The Board has approved the Officer and Key Employee Incentive Plan substantially in the form attached hereto as *Exhibit F*.

3. *Representations and Warranties of the Investor*. The Investor hereby represents and warrants that:

3.1 *Authorization*. The Investor has full power and authority to enter into the Transaction Documents, and each such Agreement constitutes its valid and legally binding obligation,

enforceable in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, and (iii) to the extent the indemnification provisions contained in the Investors' Rights Agreement may be limited by applicable federal or state securities laws.

3.2 *Purchase Entirely for Own Account*. This Agreement is made with the Investor in reliance upon the Investor's representation to the Company, which by the Investor's execution of this Agreement the Investor hereby confirms, that the Class A Common Stock to be received by the Investor (the "Securities") will be acquired for investment for the Investor's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same in violation of applicable securities laws. By executing this Agreement, the Investor further represents that the Investor does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Securities.

3.3 *Disclosure of Information*. The Investor further represents that it has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Class A Common Stock and the business, properties, prospects and financial condition of the Company. The foregoing, however, does not limit or modify the representations and warranties of the Company in Section 2 of this Agreement or the right of the Investor to rely thereon.

3.4 *Investment Experience*. The Investor is an investor in securities of companies in the development stage and acknowledges that it is able to fend for itself, can bear the economic risk of its investment, and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Class A Common Stock. The Investor also represents that it has not been organized for the purpose of acquiring the Class A Common Stock.

3.5 *Accredited Investor*. The Investor is an "accredited investor" within the meaning of Rule 501 of Regulation D adopted pursuant to the Act, as presently in effect.

3.6 *Restricted Securities*. The Investor understands that the Securities it is purchasing are characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the Act, only in certain limited circumstances. In this connection, the Investor represents that it is familiar with Rule 144 adopted pursuant to the Act, as presently in effect, and understands the resale limitations imposed thereby and by the Act.

4. *Conditions of Investor's Obligations at Closing*. The obligations of the Investor under subsection 1.1(c) of this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions, the waiver of which shall not be effective against the Investor if it does not consent thereto:

4.1 *Performance*. The Company shall have performed and complied with all agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing.

4.2 *Compliance Certificate*. The Chief Executive Officer of the Company shall deliver to the Investor at the Closing a certificate stating that the conditions specified in Sections 4.1 have been fulfilled.

4.3 *Qualifications*. All authorizations, approvals, or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be duly obtained and effective as of the Closing.

4.4 *Proceedings and Documents*. All corporate and other proceedings in connection with the transactions contemplated at the Closing and all documents incident thereto shall be reasonably satisfactory in form and substance to the Investor, and they shall have received all such counterpart original and certified or other copies of such documents as they may reasonably request.

4.5 *Opinion of Company Counsel*. The Investor shall have received from Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, counsel for the Company, an opinion, dated as of the Closing, in the form attached hereto as *Exhibit D*.

4.6 *Investors' Rights Agreement*. The Company, the Investor and the requisite holders of Company capital stock necessary to amend and restate the "Prior Agreement" (as such term is defined in the Investors' Rights Agreement) shall have entered into the Investors' Rights Agreement.

4.7 *Approval and Filing of the Restated Certificate*. The requisite holders of Company capital stock shall have approved the Restated Certificate and the Restated Certificate shall have been filed with the Secretary of State of Delaware, and shall not have been amended or modified since the date of filing.

4.8 *Conversion of Existing Preferred Stock*. All shares of the Company's Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock and Series E Preferred Stock shall have been converted into shares of Common Stock.

4.9 *Governance Agreement*. The Company and the Investor shall have entered into the Governance Agreement.

4.10 *Strategic Alliance Agreement*. The Strategic Alliance Agreement shall have become Effective (as such term is defined in the Strategic Alliance Agreement) as of the Closing.

4.11 *HSR Act*. The waiting period applicable to the consummation of the transactions contemplated hereby under the HSR Act shall have expired or been terminated and no action by the Department of Justice or Federal Trade Commission challenging or seeking to enjoin the consummation of such transactions shall have been instituted and be pending.

4.12 *Executive Lock-Up Agreements*. Each of P. Roy Vagelos, Rick E Winningham, Marty Glick and Patrick Humphrey shall have entered into an Executive Lock-Up Agreement, each substantially in the form attached hereto as *Exhibit E*.

4.13 *Conduct of the Company Business*. The Company shall not willfully have taken any affirmative action or willfully omitted to have taken any affirmative action that would cause any of the representations and warranties contained in Section 2 hereof, applied as of the Closing Date, to be breached.

5. *Conditions of the Company's Obligations at Closing*. The obligations of the Company to the Investor under this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions by the Investor:

5.1 *Representations and Warranties*. The representations and warranties of the Investor contained in Section 3 shall have been true on and as of the date of this Agreement and, in all material respects, as of the Closing.

5.2 *Qualifications*. All authorizations, approvals, or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be duly obtained and effective as of the Closing.

5.3 *Investors' Rights Agreement*. The Company, the Investor and the requisite holders of Company capital stock necessary to amend and restate the "Prior Agreement" (as such term is defined in the Investors' Rights Agreement) shall have entered into the Investors' Rights Agreement.

5.4 *Restated Certificate*. The Company shall have obtained the requisite stockholder consent to file the Restated Certificate.

5.5 *Governance Agreement*. The Company and the Investor shall have entered into the Governance Agreement.

5.6 *Strategic Alliance Agreement*. The Strategic Alliance Agreement shall have become Effective (as such term is defined in the Strategic Alliance Agreement) as of the Closing.

5.7 *HSR Act*. The waiting period applicable to the consummation of the transactions contemplated hereby under the HSR Act shall have expired or been terminated and no action by the Department of Justice or Federal Trade Commission challenging or seeking to enjoin the consummation of such transactions shall have been instituted and be pending.

5.8 *Delivery of Common Stock*. GGL shall have delivered to the Company the certificates representing the shares of Common Stock held by GGL in connection with the exchange, as described in Section 1.3.

6. *Miscellaneous*.

6.1 *Survival of Warranties*. The warranties, representations and covenants of the Company and the Investor contained in or made pursuant to this Agreement shall survive the execution and delivery of this Agreement and the Closing and shall in no way be affected by any investigation of the subject matter thereof made by or on behalf of the Investor or the Company.

6.2 *Successors and Assigns*. Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties (including transferees of any Securities). Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

6.3 *Governing Law*. This Agreement shall be governed by and construed in accordance with and governed by the law of the State of Delaware, without regard to the conflicts of laws principles thereof. Any action brought, arising out of, or relating to this Agreement shall be brought in the Court of Chancery of the State of Delaware. Each party hereby irrevocably submits to the exclusive jurisdiction of said Court in respect of any claim relating to the validity, interpretation and enforcement of this Agreement, and hereby waives, and agrees not to assert, as a defense in any action, suit or proceeding in which any such claim is made that it is not subject thereto or that such action suit or proceeding may not be brought or is not maintainable in such courts, or that the venue thereof may not be appropriate or that this agreement may not be enforced in or by such courts. The parties hereby consent to and grant the Court of Chancery of the State of Delaware jurisdiction over such parties and over the subject matter of any such claim and agree that mailing of process or other papers in connection with any such action, suit or proceeding in the manner provided in Section 6.1, or in such other manner as may be permitted by law, shall be valid and sufficient thereof.

6.4 *Counterparts*. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.5 *Titles and Subtitles*. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

6.6 *Notices*. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, if not, then on the next business day or (c) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. Notwithstanding the foregoing or any provision to the contrary in the Investors' Rights Agreement or the Restated Certificate, the Company agrees that when any notice is given to the Investor, whether under this Agreement, the Investors' Rights Agreement or the Restated Certificate, such notice shall not be deemed to be effectively given until a copy of such notice is transmitted to the Investor via facsimile. All notices and certificates will be addressed to the Investor at the address set forth on the signature page hereto or at such other address as the Company or the Investor may designate by ten (10) days advance written notice to the other parties hereto.

6.7 *Finder's Fee*. The Investor agrees to indemnify and to hold harmless the Company from any liability for any commission or compensation in the nature of a finders' fee (and the costs and expenses of defending against such liability or asserted liability) for which the Investor or any of its officers, partners, employees, or representatives is responsible.

The Company agrees to indemnify and hold harmless the Investor from any liability for any commission or compensation in the nature of a finders' fee (and the costs and expenses of defending against such liability or asserted liability) for which the Company or any of its officers, employees or representatives is responsible.

6.8 *Expenses*. Irrespective of whether the Closing is effected, each party shall bear their own costs and expenses incurred with respect to the negotiation, execution, delivery and performance of this Agreement. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the Investors' Rights Agreement or the Restated Certificate, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

6.9 *Amendments and Waivers*. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Investor. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding, each future holder of all such securities, and the Company.

6.10 *Termination*. This Agreement may be terminated and the transactions contemplated by this Agreement may be abandoned at any time prior to the Closing, notwithstanding any requisite approval and adoption of this Agreement and the transactions contemplated by this Agreement, as follows:

(a) by mutual written consent of the Company and the Investor; or

(b) by either the Company or the Investor, if the Closing shall not have occurred on or before October 1, 2004; *provided*, *however*, that the right to terminate this Agreement under this Section 6.10 (b) shall not be available to any party whose failure to fulfill any obligation

under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur.

6.11 *Severability*. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

6.12 *Confidentiality*. Any confidential information obtained by the Investor pursuant to this Agreement which is labeled or otherwise identified as confidential or proprietary shall be treated as confidential and shall not be disclosed to a third party without the prior written consent of the Company and shall not be used by the Investor for any purpose other than monitoring the Investor's investment in the Company, except that the Investor may disclose such information (i) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company, (ii) to its affiliates, officers, directors, shareholders, members and/or partners in the ordinary course of business or pursuant to disclosure obligation to affiliates, shareholders, members and/or partners; provided that such information is provided to such persons and entities with notice that such information is confidential and should be treated as such, (iii) to any prospective purchaser of the Investor's shares of the Company, provided (in the case of disclosure in clause (iii)) the recipient agrees to keep such information confidential and to use such information solely for evaluation of such proposed purchase, or (iv) as may otherwise be required by law. Notwithstanding the foregoing, such information shall not be deemed confidential for the purpose of enforcement of this Agreement and said information shall not be deemed confidential after it becomes publicly known through no fault of the recipient. The provisions of this Section 6.12 shall be in addition to, and not in substitution for, the provisions of any separate confidentiality agreement executed by the parties hereto; provided that if there is any conflict between the provisions of this Section 6.12 and the more restrictive provisions of such separate confidentiality agreement, the provisions of such separate confidentiality agreement shall prevail.

6.13 *Publicity*. No party or any affiliate of a party shall make, or cause to be made, any publicity, news release or other such general public announcement or make any other disclosure to any third party in respect of this Agreement or the transactions contemplated hereby (including, without limitation, disclosure of Investor's ownership interest in the Company) without the prior written consent of the other party; *provided however*, that the foregoing provision is not intended to limit communications deemed reasonably necessary or appropriate by a party or its affiliates to its employees, stockholders, partners, directors, officers, potential investors, accountants and legal counsel who are under an obligation to preserve the confidentiality of the foregoing. Notwithstanding the foregoing provision, the parties and their respective affiliates shall not be prohibited from making any disclosure or release that is required by law, court order, or applicable regulation, or is considered necessary by legal counsel to fulfill an obligation under securities laws or the rules of a national stock exchange.

6.14 *Entire Agreement*. This Agreement and the documents referred to herein constitute the entire agreement among the parties and no party shall be liable or bound to any other party in any manner by any warranties, representations, or covenants except as specifically set forth herein or therein.

6.15 *Legends*. It is understood that the certificates evidencing the Securities may bear one or all of the following legends:

(a) "These securities have not been registered under the Securities Act of 1933, as amended. They may not be sold, offered for sale, pledged or hypothecated in the absence of a registration statement in effect with respect to the securities under such Act or an opinion of

counsel satisfactory to the Company that such registration is not required or unless sold pursuant to Rule 144 of such Act."

(b) Any legend required by the laws of any state.

6.16 *Conduct of Business of the Company*. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Closing, the Company agrees (except to the extent that GSK shall otherwise consent in writing) to carry on its business in the usual, regular and ordinary course in substantially the same manner as currently conducted, and, to the extent consistent with such business, to use all commercially reasonable efforts consistent with past practice and policies to preserve intact its present business organization and keep available the services of its present officers and key employees. Solely for the purposes of any post-Closing remedy for breaches of representations, warranties or covenants by the Company, the Company shall not take any affirmative action or omit to take any affirmative action that results in the breach of any of the representations and warranties contained in Section 2 hereof, applied as of the Closing Date.

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

THERAVANCE, INC.

By: /s/ RICK E WINNINGHAM

Rick E Winningham
President and Chief Executive Officer

INVESTOR:

SMITHKLINE BEECHAM CORPORATION

Name of Investor

By: /s/ JEAN-PIERRE GARNIER

Signature of Authorized Person

Name: Jean-Pierre Garnier

Title: Chief Executive Officer

Address: GlaxoSmithKline

One Franklin Plaza (FP2355)

Philadelphia, PA 19102

Fax No: 215-751-5349

QuickLinks

Exhibit 10.13

THERAVANCE, INC.

AMENDED AND RESTATED

INVESTORS' RIGHTS AGREEMENT

May 11, 2004

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AMENDED AND RESTATED
INVESTORS' RIGHTS AGREEMENT

THIS AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT is made as of the 11th day of May, 2004, by and among Theravance, Inc., a Delaware corporation (the "Company"), certain of the holders of the Company's Common Stock (as defined below) listed on *Schedule A* that are signatories hereto and/or are signatories to the Prior Agreement (as defined below), each of which is herein referred to as an "Investor", and certain holders of the Company's Common Stock listed on *Schedule B*, each of which is herein referred to as an "Original Common Holder."

RECITALS

WHEREAS, certain of the Investors (the "Existing Investors") are holders of shares of the Company's Common Stock (which have been issued upon conversion of the Company's outstanding Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and/or Series D-1 Preferred Stock) and/or shares of the Company's Class A Common Stock (which have been issued upon conversion of the Company's Series E Preferred Stock) and possess registration rights, information rights, rights of first refusal and other rights pursuant to an Amended and Restated Investors' Rights Agreement dated as of December 19, 2002, by and among the Company, the Original Common Holders and such Existing Investors (the "Prior Agreement"); and

WHEREAS, the Existing Investors are holders of at least a majority of the "Registrable Securities" of the Company (as defined in the Prior Agreement), and desire to amend, supersede and replace the Prior Agreement and to accept the rights created pursuant hereto in lieu of the rights granted to them under the Prior Agreement;

WHEREAS, SmithKline Beecham Corporation, a Pennsylvania corporation ("GSK") is a party to the Class A Common Stock Purchase Agreement of even date herewith among the Company and GSK (the "Class A Agreement"), which provides that as a condition to the closing of the sale of the Class A Common Stock, this Agreement must be executed and delivered by GSK, Existing Investors holding at least a majority of the "Registrable Securities" of the Company (as defined in the Prior Agreement) and the Company; and

WHEREAS, in connection with the Class A Agreement the Company and GSK (and certain of its affiliates) have also entered into a Governance Agreement (the "Governance Agreement") which provides certain limitations with respect to issuance by the Company of its securities.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Company and the Existing Investors hereby agree that the Prior Agreement shall be amended, superseded and replaced in its entirety by this Agreement, and the parties hereto further agree as follows:

1. *Registration Rights.* The Company covenants and agrees as follows:

1.1 *Definitions.* For purposes of this Section 1:

(a) The term "Act" means the Securities Act of 1933, as amended.

(b) The term "Form S-3" means such form under the Act as in effect on the date hereof or any registration form under the Act subsequently adopted by the SEC that permits inclusion or incorporation of substantial information by reference to other documents filed by the Company with the SEC.

(c) The term "GSK Holders" means GSK, Glaxo Group Limited, a limited liability company organized under the laws of England and Wales and any of their permitted assignees pursuant to Section 1.11 owning or having the right to acquire Registrable Securities.

(d) The term "Holder" means any person owning or having the right to acquire Registrable Securities or any assignee thereof in accordance with Section 1.11 hereof;

provided, however, that the Original Common Holders shall not be deemed to be Holders for purposes of Section 1.2, 1.4 and 3.7.

(e) The term "Initial Offering" means the Company's first firm commitment underwritten public offering of its Common Stock under the Act.

(f) The term "Major Investor" means any Investor that holds on the date hereof at least (i) 750,000 shares of Common Stock or (ii) 750,000 shares of Class A Common Stock.

(g) The term "1934 Act" means the Securities Exchange Act of 1934, as amended.

(h) The term "Common Stock" means, collectively, the Company's Common Stock and Class A Common Stock, each $.01 par value.

(i) The term "register," "registered," and "registration" refer to a registration effected by preparing and filing a registration statement or similar document in compliance with the Act, and the declaration or ordering of effectiveness of such registration statement or document.

(j) The term "Registrable Securities" means (i) the shares Common Stock held by the Investors (*provided*, *however*, that prior to the Conversion Date (as such term is defined in the Restated Certificate) none of the shares of Class A Common Stock shall be deemed to be Registrable Securities for the purposes of Section 1), (ii) the shares of Common Stock held by the Original Common Holders; provided, however, that such shares of Common Stock shall not be deemed Registrable Securities for the purposes of Section 1.2, 1.4 and 3.7 and (iii) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend or other distribution with respect to, or in exchange for, or in replacement of, the shares referenced in (i) and (ii) above, excluding in all cases, however, any Registrable Securities sold by a person in a transaction in which his rights under this Section 1 are not assigned.

(k) The number of shares of "Registrable Securities" outstanding shall be determined by the number of shares of Common Stock outstanding that are, and the number of shares of Common Stock issuable pursuant to then exercisable or convertible securities that are, Registrable Securities.

(l) The term "SEC" shall mean the Securities and Exchange Commission.

1.2 *Request for Registration.*

(a) Subject to the conditions of this Section 1.2, if the Company shall receive at any time six (6) months after the effective date of the Initial Offering, a written request from the Holders of fifty percent (50%) or more of the Registrable Securities then outstanding (the "Initiating Holders") that the Company file a registration statement under the Act covering the registration of Registrable Securities, then the Company shall, within twenty (20) days of the receipt thereof, give written notice of such request to all Holders, and subject to the limitations of this Section 1.2, use all reasonable efforts to effect, as soon as practicable, the registration under the Act of all Registrable Securities that the Holders request to be registered in a written request received by the Company within twenty (20) days of the mailing of the Company's notice pursuant to this Section 1.2(a).

(b) If the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this Section 1.2 and the Company shall include such information in the written notice referred to in Section 1.2(a). In such event the right of any Holder to include its Registrable Securities in such registration shall be conditioned upon such Holder's

participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting (unless otherwise mutually agreed by a majority in interest of the Initiating Holders and such Holder) to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by a majority of the participating Holders (which underwriter or underwriters shall be reasonably acceptable to the Company). Notwithstanding any other provision of this Section 1.2, if the underwriter advises the Company that marketing factors require a limitation of the number of securities underwritten (including Registrable Securities), then the Company shall so advise all Holders of Registrable Securities that would otherwise be underwritten pursuant hereto, and the number of shares that may be included in the underwriting shall be allocated to the Holders of such Registrable Securities on a pro rata basis based on the number of Registrable Securities held by all such Holders (including the Initiating Holders); provided, however, that the number of shares of Registrable Securities to be included in such underwriting and registration shall not be reduced unless all other securities of the Company are first entirely excluded from the underwriting and registration. Any Registrable Securities excluded or withdrawn from such underwriting shall be withdrawn from the registration.

(c) The Company shall not be required to effect a registration pursuant to this Section 1.2:

(i) in any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, unless the Company is already subject to service in such jurisdiction and except as may be required under the Act; or

(ii) after the Company has effected one (1) registration pursuant to this Section 1.2, and such registration has been declared or ordered effective (provided, however, that beginning twelve (12) months following the effective date of the Initial Offering, for so long as the Company does not satisfy the eligibility requirements for utilization of a registration statement on Form S-3, the Company shall not be required to effect a registration pursuant to this Section 1.2 if the Company has, within the twelve (12) month period preceding the date of such request, already effected two registrations for the Holders pursuant to this Section 1.2); or

(iii) during the period starting with the date of the filing of, and ending on a date one hundred eighty (180) days following the effective date of, a Company-initiated registration subject to Section 1.3 below, provided that the Company is actively employing in good faith all reasonable efforts to cause such registration statement to become effective; or

(iv) if the Initiating Holders propose to dispose of Registrable Securities that may be registered on Form S-3 pursuant to Section 1.4 hereof; or

(v) if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 1.2, a certificate signed by the Company's Chief Executive Officer or Chairman of the Board stating that in the good faith judgment of the Board of Directors of the Company (the "Board"), it would be seriously detrimental to the Company and its stockholders for such registration statement to be effected at such time, in which event the Company shall have the right to defer such filing for a period of not more than ninety (90) days after receipt of the request of the Initiating Holders, provided that such right to delay a request shall be exercised by the Company not more than once in any twelve (12)-month period.

1.3 *Company Registration.*

(a) If (but without any obligation to do so) the Company proposes to register (including for this purpose a registration effected by the Company for stockholders other than the Holders) any of its stock or other securities under the Act in connection with the public offering of such securities (other than a registration relating solely to the sale of securities to participants in a Company stock plan, a registration relating to a corporate reorganization or other transaction under Rule 145 of the Act, or a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered), the Company shall, at such time, promptly give each Holder written notice of such registration. Upon the written request of each Holder given within twenty (20) days after mailing of such notice by the Company in accordance with Section 3.5, the Company shall, subject to the provisions of Section 1.3(c), use all reasonable efforts to cause to be registered under the Act all of the Registrable Securities that each such Holder has requested to be registered.

(b) *Right to Terminate Registration.* The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 1.3 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration. The expenses of such withdrawn registration shall be borne by the Company in accordance with Section 1.7 hereof.

(c) *Underwriting Requirements.* In connection with any offering involving an underwriting of shares of the Company's capital stock, the Company shall not be required under this Section 1.3 to include any of the Holders' securities in such underwriting unless they accept the terms of the underwriting as agreed upon between the Company and the underwriters selected by it (or by other persons entitled to select the underwriters) and enter into an underwriting agreement in customary form with an underwriter or underwriters selected by the Company, and then only in such quantity as the underwriters determine in their sole discretion will not jeopardize the success of the offering by the Company. If the total amount of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the amount of securities sold other than by the Company that the underwriters determine in their sole discretion is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, that the underwriters determine in their sole discretion will not jeopardize the success of the offering (the securities so included to be apportioned pro rata among the selling Holders according to the total amount of securities entitled to be included therein owned by each selling Holder or in such other proportions as shall mutually be agreed to by such selling Holders). For purposes of the preceding parenthetical concerning apportionment, for any selling stockholder that is a Holder of Registrable Securities and that is a partnership or corporation, the partners, retired partners and stockholders of such Holder, or the estates and family members of any such partners and retired partners and any trusts for the benefit of any of the foregoing persons shall be deemed to be a single "selling Holder," and any pro rata reduction with respect to such "selling Holder" shall be based upon the aggregate amount of Registrable Securities owned by all such related entities and individuals. If the underwriters determine in good faith to so limit the number of shares to be underwritten, the number of shares that may be included in the underwriting shall be allocated first to the Company, second, to the Holders on a pro rata basis; and third, to any stockholder of the Company other than a Holder on a pro rata basis. No such reduction shall reduce the amount of securities of the selling Holders below 25% of the total amount of securities included in such registration, unless such offering is the Initial

Offering and such registration does not include shares of any other selling stockholders, in which event any or all of the Registrable Securities of the Holders may be excluded.

1.4 *Form S-3 Registration.* In case the Company shall receive from the Holders of at least ten percent (10%) of the Registrable Securities a written request or requests that the Company effect a registration on Form S-3 and any related qualification or compliance with respect to all or a part of the Registrable Securities owned by such Holder or Holders, the Company shall:

(a) promptly give written notice of the proposed registration, and any related qualification or compliance, to all other Holders; and

(b) use all reasonable efforts to effect, as soon as practicable, such registration and all such qualifications and compliances as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Holders' Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any other Holders joining in such request as are specified in a written request given within fifteen (15) days after receipt of such written notice from the Company, provided, however, that the Company shall not be obligated to effect any such registration, qualification or compliance, pursuant to this Section 1.4:

(i) if Form S-3 is not available for such offering by the Holders;

(ii) if the Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at an aggregate price to the public (net of any underwriters' discounts or commissions) of less than $1,000,000;

(iii) if the Company shall furnish to the Holders a certificate signed by the Company's Chief Executive Officer or Chairman of the Board stating that in the good faith judgment of the Board, it would be seriously detrimental to the Company and its stockholders for such Form S-3 Registration to be effected at such time, in which event the Company shall have the right to defer the filing of the Form S-3 registration statement for a period of not more than ninety (90) days after receipt of the request of the Holder or Holders under this Section 1.4; provided, however, that the Company shall not utilize this right more than once in any twelve month period;

(iv) if the Company has, within the twelve (12) month period preceding the date of such request, already effected two registrations on Form S-3 for the Holders pursuant to this Section 1.4; or

(v) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance.

(c) Subject to the foregoing, the Company shall file a registration statement covering the Registrable Securities and other securities so requested to be registered as soon as practicable after receipt of the request or requests of the Holders. Registrations effected pursuant to this Section 1.4 shall not be counted as requests for registration effected pursuant to Sections 1.2.

1.5 *Obligations of the Company.* Whenever required under this Section 1 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) prepare and file with the SEC a registration statement with respect to such Registrable Securities and use all reasonable efforts to cause such registration statement to become effective, and, upon the request of the Holders of a majority of the Registrable

Securities registered thereunder, keep such registration statement effective for a period of up to one hundred twenty (120) days or, if earlier, until the distribution contemplated in the Registration Statement has been completed;

(b) prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Act with respect to the disposition of all securities covered by such registration statement;

(c) furnish to the Holders such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them;

(d) use all reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions;

(e) in the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement (including, but not limited to, reasonable due diligence), in usual and customary form, with the managing underwriter of such offering;

(f) notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Act or the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing and the Company shall amend or supplement such prospectus in order to cause such prospectus not to include any untrue statement of material fact or omit to statement a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing;

(g) cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange on which similar securities issued by the Company are then listed; and

(h) provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration.

1.6 *Information from Holder.* It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 1 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall be required to effect the registration of such Holder's Registrable Securities.

1.7 *Expenses of Registration.* All expenses other than underwriting discounts and commissions incurred in connection with registrations, filings or qualifications pursuant to Sections 1.2, 1.3 and 1.4, including (without limitation) all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company and reasonable fees of one special counsel for the selling Holders not to exceed $35,000 shall be borne by the Company. Notwithstanding the foregoing, the Company shall not be required to pay for any expenses of any

registration proceeding begun pursuant to Section 1.2 or Section 1.4 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (in which case all participating Holders shall bear such expenses pro rata based upon the number of Registrable Securities that were to be requested in the withdrawn registration), provided, however, that if at the time of such withdrawal, the Holders have learned of a material adverse change in the condition, business, or prospects of the Company from that known to the Holders at the time of their request and have withdrawn the request with reasonable promptness following disclosure by the Company of such material adverse change, then the Holders shall not be required to pay any of such expenses.

1.8 *Delay of Registration.* No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 1.

1.9 *Indemnification.* In the event any Registrable Securities are included in a registration statement under this Section 1:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, the partners or officers, directors and stockholders of each Holder, legal counsel and accountants for each Holder, any underwriter (as defined in the Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Act or the 1934 Act, against any losses, claims, damages or liabilities (joint or several) to which they may become subject under the Act, the 1934 Act or any state securities laws, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a "Violation"): (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Act, the 1934 Act, any state securities laws or any rule or regulation promulgated under the Act, the 1934 Act or any state securities laws; and the Company will reimburse each such Holder, underwriter or controlling person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the indemnity agreement contained in this subsection l.9(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld), nor shall the Company be liable in any such case for any such loss, claim, damage, liability or action to the extent that it arises out of or is based upon a Violation that occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by any such Holder, underwriter or controlling person; provided further, however, that the foregoing indemnity agreement with respect to any preliminary prospectus shall not inure to the benefit of any Holder or underwriter, or any person controlling such Holder or underwriter, from whom the person asserting any such losses, claims, damages or liabilities purchased shares in the offering, if a copy of the prospectus (as then amended or supplemented if the Company shall have furnished any amendments or supplements thereto) is provided to the Holder but was not sent or given by or on behalf of such Holder or underwriter to such person, if required by law so to have been delivered, at or prior to the written confirmation of the sale of the shares to such person, and if the prospectus (as so amended or supplemented) would have cured the defect giving rise to such loss, claim, damage or liability.

(b) To the extent permitted by law, each selling Holder will indemnify and hold harmless the Company, each of its directors, each of its officers who has signed the registration statement, each person, if any, who controls the Company within the meaning of the Act, legal counsel and accountants for the Company, any underwriter, any other Holder selling securities in such registration statement and any controlling person of any such underwriter or other Holder, against any losses, claims, damages or liabilities (joint or several) to which any of the foregoing persons may become subject, under the Act, the 1934 Act or any state securities laws, insofar as such losses, claims, damages or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder expressly for use in connection with such registration; and each such Holder will reimburse any person intended to be indemnified pursuant to this subsection l.9(b), for any legal or other expenses reasonably incurred by such person in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the indemnity agreement contained in this subsection l.9(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder (which consent shall not be unreasonably withheld), provided further that in no event shall any indemnity under this subsection l.9(b) exceed the net proceeds from the offering received by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 1.9 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 1.9, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if materially prejudicial to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 1.9, but the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 1.9.

(d) If the indemnification provided for in this Section 1.9 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to herein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage or expense, as well as any other relevant equitable considerations; provided, however, that such contribution shall not exceed the net proceeds from the offering received by such Holder. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or

by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, with the consent of the holders of a majority of the Registrable Securities, the provisions in the underwriting agreement shall control.

(f) The obligations of the Company and Holders under this Section 1.9 shall survive the completion of any offering of Registrable Securities in a registration statement under this Section 1, and otherwise.

1.10 *Reports Under Securities Exchange Act of 1934.* With a view to making available to the Holders the benefits of Rule 144 promulgated under the Act and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in SEC Rule 144, at all times after ninety (90) days after the effective date of the Initial Offering;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the Act and the 1934 Act; and

(c) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144 (at any time after ninety (90) days after the effective date of the first registration statement filed by the Company), the Act and the 1934 Act (at any time after it has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after it so qualifies), (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC that permits the selling of any such securities without registration or pursuant to such form.

1.11 *Assignment of Registration Rights.* The rights to cause the Company to register Registrable Securities pursuant to this Section 1 may be assigned (but only with all related obligations) by a Holder to a transferee or assignee of such securities that (i) is a subsidiary, parent, partner, limited partner, retired partner or stockholder of a Holder or is controlling, controlled by or under common control with, the Holder, (ii) is a Holder's family member or trust for the benefit of an individual Holder, or (iii) after such assignment or transfer, holds at least 50,000 shares of Registrable Securities (subject to appropriate adjustment for stock splits, stock dividends, combinations and other recapitalizations), provided: (a) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned; and (b) such transferee or assignee agrees in writing to be bound by and subject to the terms and conditions of this Agreement, including without limitation the provisions of Section 1.12 below.

1.12 *"Market Stand-Off" Agreement.* Each Holder hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the Company's initial public offering and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (l80) days) (i) lend, offer, pledge, sell, contract to sell, sell any option or contract to

purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock (whether such shares or any such securities are then owned by the Holder or are thereafter acquired), or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. This Section 1.12 shall not apply to transactions relating to shares of Common Stock acquired in open market transactions after completion of the Company's initial public offering. The foregoing provisions of this Section 1.12 shall only be applicable to the Holders if all non-selling officers and directors and greater than two percent (2%) stockholders of the Company enter into similar agreements. The underwriters in connection with the Company's initial public offering are intended third party beneficiaries of this Section 1.12 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to the Registrable Securities of each Holder (and the shares or securities of every other person subject to the foregoing restriction) until the end of such period.

1.13 *Termination of Registration Rights.*

(a) No Holder, other than GSK Holders, shall be entitled to exercise any right provided for in this Section 1 after five (5) years following the consummation of the Initial Offering or, as to any Holder holding two percent (2%) or less of the outstanding capital stock of the Company, such earlier time at which all Registrable Securities held by such Holder (and any affiliate of the Holder with whom such Holder must aggregate its sales under Rule 144) can be sold in a single transaction without registration in compliance with Rule 144 of the Act.

(b) No GSK Holder shall be entitled to exercise any right provided for in this Section 1 after seven (7) years following the Call/Put Termination Date (as defined in the Governance Agreement) or, as to any GSK Holder holding two percent (2%) or less of the outstanding capital stock of the Company, such earlier time at which all Registrable Securities held by such GSK Holder (and any affiliate of the GSK Holder with whom such GSK Holder must aggregate its sales under Rule 144) can be sold in a single transaction without registration in compliance with Rule 144 of the Act.

1.14 *Limitation on Subsequent Registration Rights.* From and after the date of this Agreement, the Company shall not, without the prior written consent of the holders of a majority of the Registrable Securities then outstanding, enter into any agreement with any holder or prospective holder of any securities of the Company that would grant such holder registration rights senior to those granted to the Holders hereunder.

2. *Covenants of the Company.*

2.1 *Delivery of Annual Financial Statements.* The Company shall deliver to each Investor as soon as practicable, but in any event within ninety (90) days after the end of each fiscal year of the Company, an income statement for such fiscal year, a balance sheet of the Company and statement of stockholder's equity as of the end of such year, and a statement of cash flows for such year, such year-end financial reports to be in reasonable detail, prepared in accordance with US generally accepted accounting principles ("GAAP"), and audited and certified by independent public accountants of nationally recognized standing selected by the Company.

2.2 *Delivery of Other Financial Information.* The Company shall deliver to each Major Investor:

(a) as soon as practicable, but in any event within forty-five (45) days after the end of each of the first three (3) quarters of each fiscal year of the Company, an unaudited income statement, statement of cash flows for such fiscal quarter and an unaudited balance sheet as of the end of such fiscal quarter.

(b) within thirty (30) days of the end of each month, an unaudited income statement and statement of cash flows and balance sheet for and as of the end of such month, in reasonable detail including comparison figures;

(c) as soon as practicable, but in any event at least thirty (30) days prior to the end of each fiscal year, a budget and business plan for the next fiscal year, prepared on a monthly basis, including balance sheets, income statements and statements of cash flows for such months and, as soon as prepared, any other budgets or revised budgets prepared by the Company;

(d) with respect to the financial statements called for in subsections (a) and (b) of this Section 2.2, an instrument executed by the Chief Financial Officer or President of the Company certifying that such financials were prepared in accordance with GAAP consistently applied with prior practice for earlier periods (with the exception of footnotes that may be required by GAAP) and fairly present the financial condition of the Company and its results of operation for the period specified, subject to year-end audit adjustment; and

(e) such other information relating to the financial condition, business, prospects or corporate affairs of the Company as the Investor or any assignee of the Investor may from time to time request, provided, however, that the Company shall not be obligated under this subsection (e) or any other subsection of Sections 2.1 and 2.2 to provide information that it deems in good faith to be a trade secret or similar confidential information.

2.3 *Inspection.* The Company shall permit each Major Investor, at such Major Investor's expense, to visit and inspect the Company's properties, to examine its books of account and records and Board minutes and to discuss the Company's affairs, finances and accounts with its officers, all at such reasonable times as may be requested by the Major Investor; provided, however, that the Company shall not be obligated pursuant to this Section 2.3 to provide access to any information that the Board determines in good faith to be a trade secret or similar confidential information.

2.4 *Termination of Information and Inspection Covenants.* The covenants set forth in Sections 2.1, 2.2 and 2.3 shall terminate as to each Investor and Major Investor and be of no further force or effect when the sale of securities pursuant to a registration statement filed by the Company under the Act in connection with the firm commitment underwritten offering of its securities to the general public is consummated or when the Company first becomes subject to the periodic reporting requirements of Sections 12(g) or 15(d) of the 1934 Act, whichever event shall first occur.

2.5 *Right of First Offer.* Subject to GSK's preemptive rights set forth in Article II, Section 2.1(d) of the Governance Agreement, and further subject to the terms and conditions specified in this Section 2.5, the Company hereby grants to each Investor that holds at least 25,000 shares of Common Stock ("Minimum Investor") a right of first offer with respect to future sales by the Company of its Shares (as hereinafter defined). For purposes of this Section 2.5, a Minimum Investor includes any general partners and affiliates of a Minimum Investor. A Minimum Investor shall be entitled to apportion the right of first offer hereby granted it among itself and its partners and affiliates in such proportions as it deems appropriate.

Each time the Company proposes to offer any shares of, or securities convertible into or exchangeable or exercisable for any shares of, any class of its capital stock ("Shares"), the Company shall first make an offering of such Shares to each Investor in accordance with the following provisions.

(a) The Company shall deliver a notice in accordance with Section 3.5 ("Notice") to the Investors stating (i) its bona fide intention to offer such Shares, (ii) the number of such Shares to be offered, and (iii) the price and terms upon which it proposes to offer such Shares.

(b) By written notification received by the Company, within twenty (20) calendar days after receipt of the Notice, the Investor may elect to purchase or obtain, at the price and on the terms specified in the Notice, up to that portion of such Shares that equals the proportion that the number of shares of Common Stock issued and held by such Investor bears to the total number of shares of Common Stock of the Company then outstanding (assuming full conversion and exercise of all securities convertible or exercisable for shares of Common Stock).

(c) If all Shares that Investors are entitled to obtain pursuant to subsection 2.5(b) are not elected to be obtained as provided in subsection 2.5(b) hereof, the Company may, during the ninety (90) day period following the expiration of the period provided in subsection 2.5(b) hereof, offer the remaining unsubscribed portion of such Shares to any person or persons at a price not less than, and upon terms no more favorable to the offeree than those specified in the Notice. If the Company does not enter into an agreement for the sale of the Shares within such period, or if such agreement is not consummated within ninety (90) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such Shares shall not be offered unless first reoffered to the Investors in accordance herewith.

(d) The right of first offer in this Section 2.5 shall not be applicable to (i) the issuance or sale of shares of Common Stock (or options therefor) to employees, directors and consultants for the primary purpose of soliciting or retaining their services pursuant to a plan approved by the Board; (ii) the issuance of shares of Class A Common Stock pursuant to the Class A Agreement, (iii) the issuance of securities pursuant to a bona fide, firmly underwritten public offering of shares of Common Stock, registered under the Act, (iv) the issuance of securities pursuant to the conversion or exercise of convertible or exercisable securities, (v) the issuance of securities in connection with a bona fide business acquisition of or by the Company, whether by merger, consolidation, sale of assets, sale or exchange of stock or otherwise, (vi) the issuance of stock, warrants or other securities or rights to persons or entities with which the Company has business relationships provided such issuances are for other than primarily equity financing purposes and have been approved by the Board, (vii) the issuance of any equity security, including any security convertible into or exercisable for any equity security, that is not senior to the Company's Common Stock with respect to dividends, liquidation, redemption or voting, provided that such securities are issued to a person or entity that has a research, development, clinical, regulatory, marketing, sales or other operational or strategic relationship with the Company or (viii) the issuance of any securities to GSK or its affiliates pursuant to the terms of the Governance Agreement or the Strategic Alliance Agreement dated as of March 30, 2004 by and between the Company and GSK.

(e) In the event of any conflict between the provisions of this Section 2.5 and those of Section 2.1 of the Governance Agreement, those of Section 2.1 of the Governance Agreement shall prevail.

2.6 *Termination of Certain Covenants.* The covenant set forth in Section 2.5 shall terminate and be of no further force or effect upon the consummation of the sale of securities pursuant to a bona fide, firmly underwritten public offering of shares of common stock, registered under the Act.

2.7 *Proprietary Information Agreements.* The Company covenants that it will cause each employee and consultant of the Company to execute a Proprietary Information and Inventions Agreement in the form previously provided to the Investors.

3. *Miscellaneous.*

3.1 *Successors and Assigns.* Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties (including transferees of any shares of Registrable Securities); provided that, except as explicitly provided herein, the rights hereunder may not be assigned to a person without a corresponding transfer of shares to such person. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

3.2 *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of Delaware as applied to agreements among Delaware residents entered into and to be performed entirely within Delaware. Any action with respect to this Agreement shall be brought in the state courts of Delaware or the US District Court for the District of Delaware.

3.3 *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

3.4 *Titles and Subtitles.* The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

3.5 *Notices.* All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, if not, then on the next business day or (c) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices and certificates will be addressed to an Investor at the address set forth in the books and records of the Company or at such other address as the Company or the Investor may designate by ten (10) days advance written notice to the other parties hereto.

3.6 *Expenses.* If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

3.7 *Entire Agreement: Amendments and Waivers.* This Agreement (including the Schedules hereto) constitutes the full and entire understanding and agreement among the parties with regard to the subjects hereof and thereof and expressly supercedes and replaces the Prior Agreement in its entirety. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the holders of a majority of the Registrable Securities; provided, however, that in the event that such amendment or waiver adversely affects the obligations and/or rights of the Original Common Holders in a different manner than the other Holders, such amendment or waiver shall also require the written consent of the holders of a majority in interest of the Original Common Holders. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any Registrable Securities, each future holder of all such Registrable Securities, each Original Common Holder, each future Original Common Holder and the Company.

3.8 *Severability.* If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

3.9 *Aggregation of Stock.* All shares of Registrable Securities held or acquired by affiliated entities or persons shall be aggregated together for the purpose of determining the availability of any rights under this Agreement, including, but not limited to, for purposes of Sections 1.1(e), 1.3(c) and 1.11.

3.10 *Waiver of Right of First Offer.* Each Existing Investor hereby waives its right of first offer as set forth in the Prior Agreement (including any notice provisions therein) with respect to the sale of shares of Class A Common Stock pursuant to the terms of the Class A Agreement. Such waiver shall be binding upon all parties to the Prior Agreement.

3.11 *Prior Agreement.* The Prior Agreement is hereby amended and restated in its entirety and shall be of no further force or effect.

3.12 *Conflict with Governance Agreement.* For the avoidance of doubt, in the event of any conflict between the provisions of this Agreement and the Governance Agreement, the provisions set forth in the Governance Agreement shall prevail.

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

THERAVANCE, INC.

By: /s/ RICK E WINNINGHAM

Rick E Winningham
Chief Executive Officer

SIGNATURE PAGE TO THERAVANCE, INC.
AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

ORIGINAL COMMON HOLDER:

Name of Original Common Holder

By:

Signature of Authorized Person
Name:
Title:

Address:

SIGNATURE PAGE TO THERAVANCE, INC.
AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

INVESTOR:

SMITHKLINE BEECHAM CORPORATION

Name of Investor

By: /s/ DONALD F. PARMAN

Signature of Authorized Person

Name: Donald F. Parman

Title: Vice President and Secretary

Address: One Franklin Plaza FP2355

200 N. 16th St.

Philadelphia, PA 19102

SIGNATURE PAGE TO THERAVANCE, INC.
AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

INVESTOR:

Name of Investor

By:

Signature of Authorized Person
Name:
Title:

Address:

SIGNATURE PAGE TO THERAVANCE, INC.
AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

SCHEDULE A

INVESTORS

SCHEDULE B

ORIGINAL COMMON HOLDERS

James Tananbaum
George Whitesides
John Griffin
Mathai Mammen
The Marianthi Foundation, Inc
Andrew S. Vagelos
Randall H. Vagelos
Ellen T. Vagelos
Cynthia M. Vagelos Roberts
Cara Diana Roberts Trust Dated 9/2/94
Olivia Sophia Vagelos Trust Dated 9/2/94
Lydia Joan Roberts Trust Dated 10/26/95

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Exhibit 10.14

AMENDED AND RESTATED GOVERNANCE AGREEMENT

This AMENDED AND RESTATED GOVERNANCE AGREEMENT (this "Agreement") is dated as of June , 2004 among SmithKline Beecham Corporation, a Pennsylvania corporation ("GSK"), Theravance, Inc., a Delaware corporation (the "Company"), solely with respect to Articles III, IV and VI hereof, GlaxoSmithKline plc, an English public limited company ("GlaxoSmithKline"), and, solely with respect to Articles II, IV and VI hereof, Glaxo Group Limited, a limited liability company organized under the laws of England and Wales ("GGL" and with each of GSK, GlaxoSmithKline and the Company, a "Party").

WHEREAS, GGL and the Company have entered into that certain Strategic Alliance Agreement dated as of March 30, 2004 (the "Alliance Agreement"), pursuant to which, among other things, the Company has granted GGL an option to develop and commercialize certain therapeutic compounds on an exclusive, worldwide basis;

WHEREAS, GSK and the Company have entered into that certain Class A Common Stock Purchase Agreement dated as of March 30, 2004 (the "Class A Stock Purchase Agreement"), pursuant to which GSK has purchased shares of the Company's Class A Common Stock;

WHEREAS, as a condition to the stock purchase contemplated by the Class A Stock Purchase Agreement and to facilitate an eventual underwritten public offering of the Company's equity securities, all outstanding shares of the Company's Preferred Stock have been converted into shares of the Company's Common Stock (the "Common Stock");

WHEREAS, GGL through a previous stock purchase agreement held shares of the Company's preferred stock that were converted into common stock and then exchanged for shares of the Company's Class A Common Stock pursuant to Section 1.3 of the Class A Common Stock Purchase Agreement;

WHEREAS, GSK and the Company have agreed to establish in this Agreement certain terms and conditions concerning the corporate governance of the Company;

WHEREAS, GSK, GGL and the Company also have agreed to establish in this Agreement certain terms and conditions concerning the acquisition, disposition and voting of securities of the Company beneficially owned by GSK and its Affiliates (as defined herein); and

WHEREAS, GSK, GlaxoSmithKline, GGL and the Company have agreed to set forth in this Agreement the terms and conditions upon which the Company shall redeem the Common Stock;

WHEREAS, each of the parties hereto has entered into that certain Governance Agreement, dated as of May 11, 2004 (the "Prior Agreement");

WHEREAS, each of the parties hereto desire to amend and restate the Prior Agreement as set forth in this Agreement; and

WHEREAS, each of the parties hereto hereby agrees to waive all rights granted to each such Party under the Prior Agreement and to accept the rights created pursuant hereto in lieu of the rights created under the Prior Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and agreements contained herein, each Party hereto hereby agrees as follows:

ARTICLE I

BOARD OF DIRECTORS AND CERTAIN CORPORATE ACTIONS

SECTION 1.1. *Initial Composition of Board of Directors at the Effective Date.*

(a) The number of directors comprising the full Board of Directors of the Company (the "Board") immediately after the Effective Date shall be 12. The directors of the Company following the Effective Date shall be the directors of the Company immediately prior to the Effective Date, and shall serve until their successors have been duly elected or appointed and qualified or until the earlier death, resignation or removal in accordance with the Company's Restated Certificate of Incorporation (the "Certificate of Incorporation"), the Company's Bylaws and this Agreement. GSK shall have the right, but not the obligation, to nominate an individual to serve as a member of the Board (in which case the size of the Board will be increased by one) or alternatively to designate an individual to serve as an observer at Board meetings. Notwithstanding the foregoing, GSK shall have no right to nominate or designate any individual to serve as a member or observer of the Board under this Section 1.1 if, (i) GSK's Percentage Interest (as defined below) has fallen below 15% or (ii) directly as a result of any sale or other disposition by GSK of Voting Stock, GSK's Percentage Interest has fallen below 19.0%, and the term of any such existing member or observer shall automatically cease upon such reduction in GSK's Percentage Interest. In addition, GSK's right to nominate or designate an individual to serve as a member or observer to the Board under this Section 1.1 shall be suspended for the duration of any period in which GSK is otherwise entitled to nominate directors pursuant to Section 1.2 or Section 1.3 below.

(b) Any individual designated by GSK pursuant to paragraph (a) of this Section 1.1 to be an observer to the Board shall have the right to attend all meetings of its Board in a nonvoting observer capacity and, in this respect, the Company shall give such observer copies of all notices, minutes, consents and other materials that it provides to its directors; provided, however, that such observer shall not be permitted to attend any meeting of the Board unless such individual signs an agreement to hold such materials in confidence and trust and to act in a fiduciary manner with respect to the Company with respect to all information so provided as if such individual was a GSK Director (as defined below); and, provided further, that the Company reserves the right to withhold any information and to exclude such observer from any meeting or portion thereof if access to such information or attendance at such meeting (i) could adversely affect the attorney-client privilege between the Company and its counsel or (ii) would result in the disclosure of competitive or other sensitive information to GSK or its observer in such a manner that any GSK Director would need to be recused to abide by their fiduciary duties to the Company and its stockholders.

SECTION 1.2. *Composition of the Board Following 50.1% or Greater Ownership by GSK.* (a) The Company agrees that after, and so long as, GSK's Percentage Interest is 50.1% or greater, the Board shall include (i) such number of nominees designated by GSK equal to one-third of the then aggregate number of directors comprising the Board (the "GSK Directors") and (ii) two officers of the Company nominated by the nominating committee of the Board. The remaining directors of the Board shall be composed of Independent Directors. For purposes of this Agreement, an "Independent Director" shall mean a director who complies with the independence requirements for directors with respect to the Company (without reference to any applicable exemptions from such requirements) for companies listed on the Nasdaq National Market and shall be individuals who have business or technical experience, stature and character as is commensurate with service on the board of a publicly traded enterprise. With respect to any GSK Independent Nominees (as defined below), each such nominee, in

addition to meeting the independence requirements with respect to the Company as described in the immediately preceding sentence, shall also meet such independence requirements with respect to GlaxoSmithKline and any of its Affiliates as if such Independent Director was a director of GlaxoSmithKline or one of its Affiliates. So long as GSK's Percentage Interest is 50.1% or greater, the Board shall be comprised of nine members, or any greater number that is divisible by three.

(b) With respect to the Independent Directors referred to above in paragraph (a) and so long as GSK's Percentage Interest is 50.1% or greater, GSK shall, upon its request, be entitled to designate nominees (the "GSK Independent Nominees") for one-half of the total number of Independent Directors. Subject to the approval of the majority of the members of the Board other than the GSK Directors and GSK Independent Nominees (the "Non-GSK Directors"), such approval not to be unreasonably withheld or delayed, the GSK Independent Nominees shall be included as nominees to be voted upon by the Company's stockholders. An equal number of Independent Directors shall be nominated by the Non-GSK Directors. Subject to the approval of the GSK Directors, such approval not to be unreasonably withheld or delayed, such nominees shall be included as nominees to be voted upon by the Company's stockholders. In the event that approval of any Independent Director nominee is properly withheld, the nominating directors (the GSK Directors or the Non-GSK Directors, as the case may be) shall be entitled to propose an alternate candidate (who shall be subject to the relevant approval described in this paragraph (b)) for nomination as an Independent Director in accordance with this Section 1.2. For purposes of this Agreement, "GSK's Percentage Interest" shall mean the percentage of voting power, determined on the basis of the number of shares of Voting Stock actually outstanding, that is controlled directly or indirectly by GSK and its Affiliates and held prior to the date of this Agreement or obtained in accordance with this Agreement, the Class A Stock Purchase Agreement and the Certificate of Incorporation. Notwithstanding the foregoing, GSK shall have no right to designate any nominees for directors under this Section 1.2 at any time after GSK's Percentage Interest has fallen below 50.1%, and the term of each then existing GSK Director and GSK Independent Nominees nominated pursuant to this Section 1.2 shall automatically cease upon such reduction in GSK's Percentage Interest. (For the avoidance of doubt, nothing in this section shall limit or affect GSK's rights pursuant to Section 1.1(a)).

SECTION 1.3. *Composition of the Board following 35.1% or Greater Ownership by GSK.* From and after the Call/Put Termination Date (as defined in Section 6.10) and until September 1, 2008 or, if on or after September 1, 2008, GSK commences an offer to purchase additional shares of Voting Stock as contemplated by Section 2.1(b)(viii), the expiration date of such offer (which shall not occur later than October 15, 2008) (the "Interim Period"), so long as, during the Interim Period, GSK's Percentage Interest is 35.1% or greater and less than 50.1%, the Board shall be comprised of no less than six members and shall include, (i) one nominee designated by GSK (who shall be deemed to be a "GSK Director") and (ii) two officers of the Company nominated by the nominating committee of the Board. The remaining members of the Board shall be Independent Directors. GSK, upon its request, shall be entitled to designate nominees (who shall be deemed to be "GSK Independent Nominees") for a number of Independent Directors equal to GSK's Percentage Interest at such time times the total number of such Independent Directors (with such number being rounded to the nearest whole number) and provided further, that such nominees shall meet the independence requirements for GSK Independent Nominees as set forth in Section 1.2 above. Such nominees shall be subject to the approval, not to be unreasonably withheld or delayed, of the majority of the then existing directors (other than any director nominated by GSK). In the event that approval of any Independent Director nominee proposed by GSK is properly withheld by the then existing directors, GSK shall be entitled to propose an alternate candidate (who shall be subject to the relevant approval described in this Section 1.3) for nomination as an Independent Director in accordance with this Section 1.3. The rights set forth in this Section 1.3 shall terminate upon the expiration of the Interim Period, and the term of each GSK Director and GSK Independent Nominee under this Section 1.3 shall automatically cease on

such date; provided however, that the termination of such rights shall not affect GSK's right to immediately nominate one or more directors pursuant to Section 1.1 or 1.2.

SECTION 1.4. *Other Matters Related to the Board.*

(a) The Company agrees to increase or decrease, as the case may be, the size of the Board, and to fill the newly created directorships created by any such increase, as appropriate in order to achieve the composition required by Sections 1.1, 1.2 and 1.3. Any directors elected to fill a vacancy shall serve until the next annual meeting of stockholders. Whenever necessary pursuant to a decrease in the size of the Board, GSK will cause directors nominated by GSK to resign from the Board to maintain the composition required by Sections 1.2 and 1.3, and the Company shall cause such number of Non-GSK Directors to resign as necessary to maintain the composition required by Sections 1.2 and 1.3. To facilitate compliance with the provisions of this Article I, GSK shall cause each GSK Director and GSK Independent Nominee, and the Company shall cause each other director of the Board, to enter into an agreement with the Company that provides for the resignation of such director upon the occurrence of the events requiring such resignation as set forth in this Agreement; provided, however, that this sentence shall only come into effect two weeks prior to the Call/Put Termination Date.

(b) The Company shall always have the right to decrease the size of the Board without GSK's consent (and, if desired, and subject to the provisions of Section 1.2(a), to increase it again without GSK's consent to no more than 13 seats); provided, however, that in no event will GSK lose its right to designate or nominate the GSK Director(s) or GSK Independent Nominees pursuant to Sections 1.1, 1.2 or 1.3 of this Agreement.

(c) GSK and the Non-GSK Directors shall have the right to nominate any replacement for a director nominated by GSK or nominated by the Non-GSK Directors, respectively, at the termination of such director's term or upon death, resignation, retirement, disqualification, removal from office or other cause, subject to any rights of approval set forth in Sections 1.2 and 1.3. To the extent permitted by the Certificate of Incorporation or Bylaws of the Company, the Board shall appoint each person so designated or nominated.

(d) No individual nominated by GSK shall serve as a director unless such individual has such business or technical experience, stature and character as is commensurate with service on the board of a publicly held enterprise. No such individual who is an officer, director, partner or principal stockholder of any competitor of the Company and its subsidiaries (other than GSK and its Affiliates) shall serve as a director of the Company except by agreement of the Independent Directors in their sole discretion.

(e) So long as GSK's Percentage Interest is 50.1% or greater, each committee of the Board (other than any Common Stock committee or committee of Independent Directors constituted for the purposes of making any determination that is to be made under the terms of this Agreement or the Certificate of Incorporation or as expressly prohibited by applicable law, regulation or stock exchange or trading system listing requirement) shall at all times include at least one GSK Director and no action by any such committee shall be valid unless taken at a meeting for which adequate notice has been duly given to or waived by all of the members of such committee. Such notice shall include a description of the general nature of the business to be transacted at the meeting and no other business may be transacted at such committee meeting. Any committee member unable to attend any committee meeting in person shall be given the opportunity to participate by telephone. Prior to the Initial Public Offering, the GSK Director designated to serve on any such committee may designate as his/her alternate another GSK Director.

SECTION 1.5. *Director Approval Required for Certain Actions.* (a) After, and so long as GSK's Percentage Interest is 50.1% or greater, the approval of a majority of GSK Directors (for clarity,

should there be an even number of GSK Directors, such approval shall mean that more GSK Directors voted for approval than against) shall be required to approve any of the following:

(i) the acquisition by the Company of any business or assets that would constitute a substantial portion of the business or assets of the Company, whether such acquisition be by merger or consolidation or the purchase of stock or assets or otherwise;

(ii) the sale, lease, license, transfer or other disposal of a substantial portion of the business or assets, tangible or intangible, of the Company; provided, however, that the approval of a majority of the GSK Directors shall not be required for the sale, license or transfer to another party, in the ordinary course of business, of any Company asset (regardless of its value or what portion of the Company's business or assets it may represent) over which GSK has no contractual rights in accordance with the provisions of the Alliance Agreement; or

(iii) the repurchase or redemption of any Equity Security or other capital stock of the Company, other than (A) redemptions required by the terms thereof, (B) purchases made at fair market value in connection with any deferred compensation plan maintained by the Company and (C) repurchases of unvested or restricted stock at or below cost pursuant to any employee, officer, director or consultant compensation plan. For purposes of this Agreement, "Equity Security" means any (i) Voting Stock of the Company, (ii) securities of the Company convertible into or exchangeable for Voting Stock and (iii) options, rights and warrants issued by the Company to acquire Voting Stock. "Voting Stock" shall mean the outstanding securities of the Company having the right to vote generally in any election of directors of the Board.

(b) During the Interim Period, any of the actions described in Section 1.5(a) or Section 1.6(b) shall require the approval of a majority of the Independent Directors.

SECTION 1.6. *GSK Approval for Certain Issuances of Equity Securities.*

(a) Prior to the Call/Put Termination Date, the Company shall not, without the prior written consent of GSK, issue any Equity Security other than (i) shares of Common Stock, (ii) options to acquire Common Stock and (iii) to the extent constituting an Equity Security, Permitted Indebtedness; provided, however, the Company shall only issue such Equity Securities if as a consequence of such issuance, the aggregate number of Callable/Puttable Shares (as defined in Section 6.10) would not exceed 84,000,000 (such amount to be adjusted for stock splits, stock dividends, combinations and other recapitalizations); provided further, that, in determining such aggregate number of Callable/Puttable Shares, the number of any Callable/Puttable Shares subject to Executive Lock-Up Agreements entered into pursuant to the Class A Purchase Agreement shall not be included.

(b) If GSK's Percentage Ownership is 35.1% or greater on the Call/Put Termination Date, following the Call/Put Termination Date and until the End of the Equity Limitation Period (as defined below), the Company shall not issue any Equity Security other than Permitted Equity Issuances. "Permitted Equity Issuances" shall mean (i) the issuance of Equity Securities pursuant to any employee, officer, director or consultant compensation plan that has been approved by the majority of the Board or (ii) issuances by the Company of Equity Securities to third parties (other than as contemplated by the preceding clause (i)), including pursuant to the exercise, conversion or exchange of Equity Securities other than Callable/Puttable Shares issued prior to the Call Date or the final day of the Put Period, as the case may be, provided that, the aggregate number of shares of any such Equity Securities issued to such third parties following the Call/Put Termination Date and until the End of the Equity Limitation Period shall in no event exceed the equivalent of 25,000,000 shares of Common Stock (on an as converted basis) (such amount to be adjusted for stock splits, stock dividends, combinations and other recapitalizations). The "End of the Equity

Limitation Period" shall mean: (x) September 1, 2012, if GSK's Percentage Interest is 50.1% or greater on the Call/Put Termination Date or if GSK's Percentage Interest is less than 50.1% on the Call/Put Termination Date, but exceeds 50.1% at any time on or prior to December 31, 2008 and (y) in all other cases, December 31, 2008.

SECTION 1.7. *Limitation on Indebtedness Prior to Call/Put Termination Date*. Except with respect to Permitted Indebtedness (as defined in Section 6.10), prior to the Call/Put Termination Date, the Company shall not borrow money or otherwise incur Indebtedness to the extent that the Company on a consolidated basis has financial Indebtedness that exceeds cash and cash equivalents under US generally accepted accounting principles at any time prior to the Call/Put Termination Date.

SECTION 1.8. *Directors and Officers Liability Insurance.* From and after the date that GSK nominates one or more directors to serve on the Board, the Company shall maintain directors and officers liability insurance coverage to the extent and in the amounts common to comparable companies. To the extent that such insurance coverage is in place, the GSK nominees shall be named as designated insureds under such policy.

SECTION 1.9. *Consolidation with GlaxoSmithKline.* At such time as GlaxoSmithKline is required by applicable accounting standards to include the Company's results in the consolidated financial results for GlaxoSmithKline, the Company (i) shall provide such information based on or derived from the Company's U.S. GAAP financial reporting and (ii) shall provide such additional information and take such steps that are reasonably requested by GlaxoSmithKline to comply with applicable law or to prepare its consolidated financial statements on such time schedule as GlaxoSmithKline may reasonably request for purposes of preparation of GlaxoSmithKline's consolidated financial results; provided, however, that GSK or any of its affiliates shall be required to pay all incremental documented expenses (personnel or otherwise) arising out of the Company's obligations pursuant to subsection (ii) of this Section 1.9. The Company shall take all such steps necessary in order to comply with its obligations (if any) under the Sarbanes-Oxley Act of 2002 and the rules and regulations adopted pursuant thereto.

ARTICLE II

LIMITATIONS RELATING TO COMPANY EQUITY SECURITIES

SECTION 2.1. *Acquisition of Company Equity Securities.*

(a) *Acquisition of Equity Securities.* Except as contemplated by this Agreement, as permitted by Section 2.1(b), (c) or (d) or as otherwise agreed in writing by the Company (following approval of a majority of the Independent Directors), GSK and its Affiliates will not (and will not assist or encourage others to) directly or indirectly in any manner:

(i) acquire, or agree to acquire, directly or indirectly, alone or in concert with others, by purchase, gift or otherwise, any direct or indirect beneficial ownership (within the meaning of Rule l3d-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) or interest in any securities or direct or indirect rights, warrants or options to acquire, or securities convertible into or exchangeable for, any Equity Securities;

(ii) make, or in any way participate in, directly or indirectly, alone or in concert with others, any "solicitation" of "proxies" to vote (as such terms are used in the proxy rules of the Securities and Exchange Commission (the "SEC") promulgated pursuant to Section 14 of the Exchange Act); provided, however, that the prohibition in this Section 2.1(a)(ii) shall not apply to solicitations exempted from the proxy solicitation rules by Rule 14a-2 under the Exchange Act or any successor provision;

(iii) form, join or in any way participate in a "group" within the meaning of Section 13(d)(3) of the Exchange Act with any person not bound by the terms of this Agreement (other than persons deemed to be a member of such group solely by virtue of being an Affiliate of GSK) with respect to any Voting Stock;

(iv) acquire or agree to acquire, directly or indirectly, alone or in concert with others, by purchase, exchange or otherwise, (A) any of the assets, tangible or intangible, of the Company or (B) direct or indirect rights, warrants or options to acquire any assets of the Company, except for (X) such assets as are then being offered for sale by the Company or (Y) acquisitions of assets of the Company pursuant to or as contemplated by the Alliance Agreement or the Collaboration Agreement between GSK and the Company dated as of November 14, 2002 (the "Collaboration Agreement");

(v) enter into any arrangement or understanding with others to do any of the actions restricted or prohibited under Sections 2.1 (a) (i), (ii), (iii) or (iv);

(vi) otherwise act in concert with others, to seek to offer to the Company or any of its stockholders any business combination, restructuring, recapitalization or similar transaction to or with the Company or otherwise seek in concert with others, to control, change or influence the management, board of directors or policies of the Company or nominate any person as a director of the Company who is not nominated by the then incumbent directors, or propose any matter to be voted upon by the stockholders of the Company; or

(vii) prior to August 31, 2007, request that the Company (or the Board) amend or waive any provisions of this Section 2.1.

(b) *Exceptions for Certain Acquisitions of Equity Securities of the Company.* Nothing herein shall prevent GSK or its Affiliates (or in the case of Section 2.1(b)(v), their employees) from:

(i) purchasing the Class A Stock of the Company on the Effective Date;

(ii) purchasing additional Equity Securities of the Company pursuant to the provisions of Article III of this Agreement and Article IV of the Certificate of Incorporation;

(iii) purchasing additional Equity Securities of the Company after the Effective Date to maintain GSK's Percentage Interest in accordance with Section 2.1(d) hereof;

(iv) acquiring securities of the Company issued in connection with stock splits or recapitalizations or pursuant to Section 2.5 of that certain Investors' Rights Agreement dated as of May 11, 2004 (the "Investors' Rights Agreement");

(v) following the Company's initial public offering of Voting Stock (the "Initial Offering"), purchasing Equity Securities of the Company for (A) a pension plan established for the benefit of GSK's employees, (B) any employee benefit plan of GSK, (C) any stock portfolios not controlled by GSK or any of its Affiliates that invest in the Company among other companies, or (D) any account of a GSK employee in such employee's personal capacity;

(vi) acquiring securities of another biotechnology or pharmaceutical company that beneficially owns any of the Equity Securities, provided that any Equity Securities so acquired shall be subject to the provisions of Sections 2.1(a), 2.2 and 2.3 of this Agreement on the same basis as the Class A Common Stock purchased pursuant to the Class A Stock Purchase Agreement;

(vii) in the event that GSK's Percentage Interest is 50.1% or greater at any time on or after the Call/Put Termination Date, on or after September 1, 2012, GSK and/or its Affiliates may make an offer that does not include any condition as to financing to the Company's

stockholders to merge the Company or otherwise to acquire outstanding Voting Stock that would bring GSK's Percentage Interest to 100%, provided that such offer is approved by a majority of the Independent Directors and includes a condition to consummation of the transaction that a majority of the shares of the then outstanding Voting Stock not owned by GSK or any of its Affiliates shall have accepted the offer by tendering such shares or voting such shares in favor thereof;

(viii) in the event that GSK's Percentage Interest is less than 50.1% on the Call/Put Termination Date, on or after September 1, 2008, GSK and/or its Affiliates may make an offer that does not include any condition as to financing to the Company's stockholders to acquire outstanding Voting Stock that would bring GSK's Percentage Interest to no greater than 60%, provided that such offer is approved by a majority of the Independent Directors and includes a condition to consummation of the transaction that a majority of the shares of the then outstanding Voting Stock not owned by GSK or any of its Affiliates shall have accepted the offer by tendering such shares in the offer; provided, further, that, any Equity Securities so acquired shall be subject to the provisions of Sections 2.1(a), 2.2 and 2.3 of this Agreement on the same basis as the Class A Common Stock purchased pursuant to the Class A Stock Purchase Agreement (for the avoidance of doubt, the parties acknowledge that, if the GSK Percentage Interest is less than 50.1% on the Call/Put Termination Date, GSK shall not, prior to September 1, 2012, be permitted to make an offer to acquire additional outstanding Equity Securities of the Company except as expressly permitted in this Section 2.1(b) or Sections 2.1(c) or (d));

(ix) at any time following the Call/Put Termination Date and prior to September 1, 2012 that the GSK Percentage Interest is 50.1% or greater, GSK and/or its Affiliates may make an offer that does not include any condition as to financing to acquire outstanding Voting Stock that would bring GSK's Percentage Interest to 100%; provided that, any such offer shall be approved by a majority of the Independent Directors and includes a condition to consummation of the transaction that a majority of the shares of the then outstanding Voting Stock not owned by GSK or any of its Affiliates shall have accepted the offer by tendering such shares or voting such shares in favor thereof and that such offer be for not less than the greater of (i) the Fair Market Value Per Share (as defined in Section 6.10) on the date immediately preceding the date of the first public announcement of such offer or (ii) $105 per share of Common Stock or Common Stock equivalent (appropriately adjusted to take into account stock dividends, stock splits, recapitalizations and the like); and

(x) only after, and so long as, GSK's Percentage Interest is 50.1% or greater, with such Voting Stock acquired in accordance with the terms of this Agreement and the Certificate of Incorporation, purchasing additional Equity Securities of the Company if the Company has otherwise determined to sell Equity Securities to pay all or any portion of the milestones that it may owe to GSK pursuant to Section 6.2.3 of the Collaboration Agreement. In this event, GSK shall have the first right to purchase such additional Equity Securities on the terms under which the Company intends to sell such Equity Securities.

(c) *Third Party Offers*. Nothing herein shall prevent GSK or its Affiliates from, in the event that (A) the Board formally acts to cause the Company to (i) enter into a written agreement pursuant to which a Change in Control transaction with a third party is provided for, (ii) amend the Rights Plan (as defined in Section 6.10) in order to render the Rights Plan inapplicable with respect to any third party or (iii) render inapplicable to any third party the restrictions contained in Section 203 of the DGCL or any similar anti-takeover provision or (B) a person or group (within the meaning of 13(d)(3) of the Exchange Act and not including GSK or any of its Affiliates or any underwriter in connection with a public offering) (each, a "Third Party Acquiror") acquires 20% or more of the then outstanding Voting Stock (a "Significant Third Party

Acquisition"), making an offer to acquire, and acquiring, Equity Securities pursuant to the terms of GSK's offer; provided that GSK's offer must be an offer for 100% of the Voting Stock of the Company that does not include any condition as to financing and includes a condition to consummation of the transaction that a majority of the shares of the then outstanding Voting Stock not owned by GSK or any of its Affiliates or by any such Third Party Acquiror (or its or their Affiliates) shall have accepted the offer by tendering such shares or voting such shares in favor of thereof.

(d) *Exceptions for Acquisitions to Maintain GSK's Percentage Interest.*

(i) In the event that the Company proposes to issue (an "Offering") any Equity Securities (other than pursuant to exercise of options or vesting of restricted shares issued as compensation to directors, officers, employees or consultants of the Company) the Company shall deliver to GSK at least fifteen (15) days prior to the issuance of such Equity Securities, a notice (the "Offer Notification") stating (i) its bona fide intention to offer such Equity Securities, (ii) the number of such Equity Securities to be offered, and (iii) the price, or if relevant, the anticipated range of prices, and other terms upon which the Company proposes to offer such Equity Securities. By written notification received by the Company prior to the issuance of Equity Securities described in the Offer Notification, GSK may elect to purchase in such Offering (or, if such purchase is not then permitted under applicable laws, rules or regulations, as soon thereafter as such purchase is so permitted), Equity Securities (the "First Offer Shares") at the same price as the Equity Securities are sold to others in such Offering and up to such amount as required to maintain GSK's Percentage Interest at the same level as immediately prior to such issuance. With respect to any purchase by GSK of First Offer Shares prior to the Call/Put Termination Date in connection with an Offering that is of Common Stock, the First Offer Shares purchased by GSK shall consist of one-half ($^1/_2$) Common Stock and one-half ($^1/_2$) Class A Common Stock. With respect to any purchase by GSK of First Offer Shares prior to the Call/Put Termination Date in connection with an Offering of an Equity Security other than Common Stock (the "Non-Common Stock Security"), the First Offer Shares shall consist entirely of the Non-Common Stock Security; provided, however, if such Non-Common Stock Security is convertible into Common Stock prior to the Call/Put Termination Date, one-half ($^1/_2$) of such securities purchased by GSK shall be convertible into Common Stock and one-half ($^1/_2$) convertible into Class A Common Stock. With respect to any purchase by GSK of First Offer Shares following the Call/Put Termination Date, the First Offer Shares shall consist entirely of the Equity Securities offered in the Offering. Notwithstanding anything to the contrary in the foregoing, in the event that the Offering is the Company's Initial Offering and GSK elects to purchase First Offer Shares, (a) the First Offer Shares shall consist entirely of Class A Common Stock and (b) GSK shall purchase the First Offer Shares in a private placement upon the closing of the Initial Offering or at such later date as is necessary to comply with any federal or state securities or antitrust laws or the rules and regulations of the SEC, the National Association of Securities Dealers, Inc. ("NASD"), NASDAQ National Market ("NASDAQ"), or any other such self-regulating organization.

(ii) With respect to exercise of stock options or vesting of restricted stock, on a quarterly basis, GSK shall be afforded the opportunity by the Company to purchase shares of Common Stock, or, if before the Call/Put Termination Date, Class A Common Stock, sufficient to maintain GSK's Percentage Interest at the same level as prior to the exercises and vestings during such quarter. The Company shall deliver to GSK as soon as reasonably practicable, but in any event within forty-five (45) days after the end of each quarter of each fiscal year, a schedule (the "Schedule") setting forth the number of shares of Equity Securities issued upon exercise of options and the number of shares of restricted stock that have vested during such

quarter. The Schedule shall also set forth the number of shares of Common Stock, or, if before the Call/Put Termination Date, Class A Common Stock, necessary for GSK to purchase to maintain its Percentage Interest pursuant to this Section 2.1(d)(ii) (the "Catch-up Shares"). By written notification received by the Company within twenty (20) days after receipt of the Schedule, GSK may elect to purchase the Catch-up Shares from the Company. GSK or its Affiliates shall acquire the Catch-up Shares either from the Company at the then Fair Market Value Per Share on the date of such notification or, at the discretion of the Company, via written notification to GSK, through open market purchases.

(iii) If GSK's Percentage Interest is 50.1% or greater on the Call/Put Termination Date solely as a result of the exercise of the Put, if at any time following the Call/Put Termination Date and until September 1, 2012, the Company issues Equity Securities (other than pursuant to exercise of options or vesting of restricted shares issued as compensation to directors, officers, employees or consultants of the Company) and GSK declines to purchase Equity Securities in such offering pursuant to its rights under Section 2.1(d)(i), GSK, for a period of six months following such issuance of Equity Securities by the Company, shall, nonetheless, have the right to cause the Company to issue Common Stock to GSK (the "Post Put Offer Shares") in such amount as required to maintain GSK's Percentage Interest at the same level as GSK's Percentage Interest on the Call/Put Termination Date and at a price equal to the greater of (i) the Fair Market Value Per Share of Equity Securities on the date of the notification by GSK as provided in the following sentence or (ii) the price per share of the Equity Securities issued by the Company in the transaction that resulted in GSK's rights pursuant to this Section 2.1(d)(iii) (where the consideration does not consist solely of cash, the fair market value of the non-cash consideration as determined in good faith by the Independent Directors). By written notification to the Company prior to the end of the six month period, GSK may elect to purchase the Post Put Offer Shares. The Company shall use its commercially reasonable efforts to issue the Post Put Offer Shares to GSK within thirty (30) days after receipt of notice from GSK or such later date as is necessary to comply with any federal or state securities or antitrust laws or the rules and regulations of the SEC, NASD, NASDAQ, or any other such self-regulating organization.

(iv) If GSK's Percentage Interest is 50.1% or greater on the Call/Put Termination Date solely as a result of the exercise of the Call, if at any time following the Call/Put Termination Date and until September 1, 2012, the Company issues Equity Securities (other than pursuant to exercise of options or vesting of restricted shares issued as compensation to directors, officers, employees or consultants of the Company) and GSK declines to purchase Equity Securities in such offering pursuant to its rights under Section 2.1(d)(i), GSK, for so long as the GSK Percentage Interest is 50.1% or greater, shall have the right to purchase Common Stock (the "Post Call Offer Shares") in such amount as required to maintain GSK's Percentage Interest at the same level as GSK's Percentage Interest on the Call/Put Termination Date and at the price per share of the Equity Securities issued by the Company in the transaction that resulted in GSK's rights pursuant to this Section 2.1(d)(iv) (where the consideration does not consist solely of cash, the fair market value of the non-cash consideration as determined in good faith by the Independent Directors). During such time as the GSK Percentage Interest is 50.1% or greater, by written notification to the Company, GSK may elect to purchase the Post Call Offer Shares. The Company shall use its commercially reasonable efforts to issue the Post Call Offer Shares to GSK within thirty (30) days after receipt of notice from GSK or such later date as is necessary to comply with any federal or state securities or antitrust laws or the rules and regulations of the SEC, NASD, NASDAQ, or any other such self-regulating organization.

(v) Notwithstanding anything contained in this Section 2.1(d)(i), (ii), (iii) and (iv), if the Company shall issue Permitted Indebtedness consisting of securities exchangeable or convertible into Voting Stock, the Company shall provide written notice to GSK of the conversion or exchange of any such Permitted Indebtedness within ten (10) days following any such conversion or exchange. GSK shall notify the Company within twenty (20) days following the receipt of such notice if it intends to purchase that number of shares of Voting Stock from the Company required to maintain GSK's Percentage Interest as measured immediately prior to the date of such conversion or exchange of Permitted Indebtedness at a price per share equal to the greater of (x) the conversion or exchange price of such Permitted Indebtedness or (y) the Fair Market Value Per Share on the date of such purchase by GSK. The Company shall use its commercially reasonable efforts to issue such shares of Voting Stock to GSK within thirty (30) days after receipt of notice from GSK of its intention to purchase such shares or such later date as is necessary to comply with any federal or state securities or antitrust laws or the rules and regulations of the SEC, NASD, NASDAQ, or any other such self-regulating organization.

(vi) In the event that GSK's Percentage Interest falls below 50.1% (or, in the case of Sections 1.3, 1.6 and 2.3, 35.1%, or in the case of Section 1.1(a), 19.0%) solely as a consequence of any issuance of Equity Securities with respect to which GSK has the right to acquire further Equity Securities under this Section 2.1(d), GSK's Percentage Interest shall be deemed to be greater than 50.1% for purposes of Articles I and II, 35.1% for purposes of Sections 1.3, 1.6 and 2.3, and 19.0% for purposes of Section 1.1(a), unless and until GSK declines to purchase the Equity Securities it is entitled to purchase under this Section 2.1(d).

(e) *Rights Plan.* The Company will, subject to the Board's exercise of its fiduciary duties, implement a Rights Plan on or before the Initial Offering. The Company shall take all necessary action to render inapplicable to GSK the Rights Plan, Section 203 of the Delaware General Corporation Law (the "DGCL") and any other applicable similar anti-takeover provision.

SECTION 2.2. *Disposition of Equity Securities.*

(a) *Prior to the Call/Put Termination Date.* Prior to the Call/Put Termination Date, neither GSK nor any of its Affiliates shall dispose of beneficial ownership of any Voting Stock held by them without the prior approval of a majority of the Board other than any director nominated by GSK, except: (A) to any other Affiliate of GSK who agrees in writing to be bound hereunder; or (B) pursuant to a Change in Control transaction of the Company approved by a majority of the Board other than any director nominated by GSK and consummated prior to August 1, 2007.

(b) *Following the Call/Put Termination Date.*

(i) Following the Call/Put Termination Date, neither GSK nor any of its Affiliates shall dispose of beneficial ownership of Voting Stock without the prior approval of a majority of the Independent Directors prior to (A) September 1, 2008 if GSK's Percentage Interest is less than 50.1% on the Call/Put Termination Date, or (B) September 1, 2012 if GSK's Percentage Interest is 50.1% or more on the Call/Put Termination Date. If GSK's Percentage Interest is less than 50.1% on the Call/Put Termination Date but is increased to 50.1% or more at any time prior to September 1, 2012 neither GSK nor any of its Affiliates shall dispose of any beneficial ownership of Voting Stock from and after the date GSK's Percentage Interest first equals or exceeds 50.1% until September 1, 2012. In the event that GSK's Percentage Interest is 50.1% or greater and GSK breaches its obligation not to dispose of beneficial ownership of Voting Stock prior to September 1, 2012 pursuant to Section 2.2(b)(i)(B), the "Research Term" under the Alliance Agreement shall lapse simultaneously with such breach and in accordance with Section 3.1.1 of the Alliance Agreement, GSK's future opt-in rights to the Company's Discovery Programs on or after the date of such breach shall terminate.

(ii) In the event that the prohibition on disposition of Voting Stock set forth in Subsection 2.2(b)(i) expires on September 1, 2008, neither GSK nor any of its Affiliates shall dispose of beneficial ownership of Voting Stock prior to September 1, 2012 except (A) pursuant to a public offering registered under the Securities Act of 1933, as amended (the "Securities Act") of Equity Securities (in which public offering the securities are broadly distributed and neither GSK nor any of its Affiliates selects the purchasers); or (B) pursuant to Rule 144 under the Securities Act (provided that if Rule 144(k) is available, such disposition nevertheless is within the volume limits and manner of sale requirements applicable to non-144(k) transfers under Rule 144).

(iii) In the event that the prohibition on disposition of Voting Stock set forth in Section 2.2(b)(i) expires on September 1, 2012, if GSK or any of its Affiliates disposes of Voting Stock after that date, neither GSK nor any of its Affiliates may purchase any Voting Securities without the prior approval of a majority of Independent Directors for one year after the date of any such disposition.

(iv) Neither GSK nor any of its Affiliates may make any public disclosure of any holdings of or disposition of beneficial ownership of the Voting Stock unless such disclosure is approved in advance in writing by the Company, such approval not to be unreasonably withheld or delayed. Notwithstanding the foregoing, no consent of the Company shall be required for any filing that GSK or any of its Affiliates is required to make under applicable Law in any jurisdiction, including without limitation any Form 144 under the Securities Act, any Form 4 under the Exchange Act, or any Schedule 13D or 13G or any amendments thereto under the Exchange Act; provided that, prior to making any such filings, GSK shall use reasonable efforts to (A) to provide the Company notice and a copy of such proposed filings and (B) consult with the Company on the content of such filings.

(v) Notwithstanding the foregoing, GSK shall be permitted to dispose of beneficial ownership of any Voting Stock pursuant to a Change in Control transaction of the Company approved by a majority of Independent Directors.

(c) *Required Dispositions.* Notwithstanding anything to the contrary contained herein, GSK shall be permitted to dispose of beneficial ownership of Voting Stock as and to the extent (but only to the extent) GSK reasonably determines such disposition to be necessary in order for it to comply with its obligations under Section 3.5.

SECTION 2.3. *Voting.* (a) Except as set forth in Sections 2.3(b) and 2.3(c), prior to the Initial Offering, GSK shall ensure that all Voting Stock beneficially owned by GSK and/or any GSK Affiliate is voted (i) for Company nominees to the Board in accordance with Article I and (ii) on all other matters to be voted on by stockholders, in accordance with the recommendation of a majority of the Board other than any GSK Director. Except as set forth in Sections 2.3(b) and 2.3(c), following the Initial Offering, GSK shall ensure that all Voting Stock beneficially owned by GSK and/or any GSK Affiliate shall be voted on all matters, at the election of GSK, either (i) in accordance with the recommendation of the Independent Directors of the Board or (ii) in proportion to the votes cast by the other holders of the Company's Voting Stock.

(b) Subject to paragraph (c) below with respect to the Interim Period, so long as GSK's Percentage Interest is less than 50.1%, GSK shall ensure that all Voting Stock beneficially owned by GSK and/or any GSK Affiliate is voted as set forth in Section 2.3(a), *unless* the matter being voted upon involves any of the following:

(i) any proposal to amend the provisions in the Certificate of Incorporation related to the Put and Call;

(ii) any proposal to issue Equity Securities to one or more parties in one transaction or a series of transactions that result in any person or group (within the meaning Section 13(d)(3) of the Exchange Act) owning or having the right to acquire or intent to acquire beneficial ownership of Equity Securities with aggregate voting power of greater than 20% or more of the aggregate voting power of all outstanding Equity Securities (for the avoidance of doubt, in no event shall any such proposed issuance covered by this clause (ii) include a sale of the Company's securities in a public offering); or

(iii) any Change in Control.

(c) (A) After, and so long as, GSK's Percentage Interest is 50.1% or greater and (B) during the Interim Period so long as the GSK Percentage Interest is 35.1% or greater, GSK shall ensure that all Voting Stock beneficially owned by GSK and/or any GSK Affiliate is voted as set forth in this Section 2.3(a), *unless* the matter being voted upon involves any of the following:

(i) any Change in Control;

(ii) the acquisition by the Company of any business or assets that would constitute a substantial portion of the business or assets of the Company, whether such acquisition be by merger or consolidation or the purchase of stock or assets or otherwise;

(iii) the sale, lease, license, transfer or other disposal of all or a substantial portion of the business or assets of the Company; provided, however that the sale, license or transfer to another party, in the ordinary course of business, of any Company asset (regardless of its value or what portion of the Company's business or assets it may represent) over which GSK has no contractual rights in accordance with the provisions of the Alliance Agreement shall be considered an ordinary matter pursuant to which GSK must vote its shares in accordance with the recommendation of the Independent Directors of the Board;

(iv) any proposal to issue Equity Securities to one or more parties in one transaction or a series of transactions that result in any person or group (within the meaning Section 13(d)(3) of the Exchange Act) owning or having the right to acquire or intent to acquire beneficial ownership of Equity Securities with aggregate voting power of greater than 20% or more of the aggregate voting power of all outstanding Equity Securities (for the avoidance of doubt, in no event shall any such proposed issuance covered by this clause (iv) include a sale of the Company's securities in a public offering); or

(v) any proposal to amend the provisions in the Certificate of Incorporation related to the Put and Call.

(d) Notwithstanding anything to the contrary herein, following a Significant Third Party Acquisition, GSK shall be entitled to vote its Voting Stock without any restrictions.

(e) GSK hereby grants to the Board, and appoints the Board as, its irrevocable proxy to vote, or execute and deliver written consents or otherwise act with respect to all Voting Stock now owned or hereafter acquired by GSK in the manner in which GSK is obligated to vote, consent or act pursuant to this Section 2.3. Such proxy shall be irrevocable until this Agreement terminates pursuant to its terms or this Section 2.3 is amended to remove such grant of proxy in accordance with Section 6.2 hereof, and is coupled with an interest in all voting stock owned by GSK. This Agreement shall constitute the proxy granted pursuant hereto.

SECTION 2.4. *Collaboration Agreement.* The provisions of this Article II shall apply to all Equity Securities beneficially owned by GSK and/or its Affiliates and supersedes in its entirety Article 15 of the Collaboration Agreement.

ARTICLE III

REDEMPTION AND REPURCHASE OF COMMON STOCK

SECTION 3.1. *Redemption and Repurchase of Common Stock.*

(a) GSK shall, in the period between June 1, 2007 and July 1, 2007, inform the Company in writing whether or not it desires to request the redemption of certain Common Stock pursuant to Section C.4 of Article IV of the Certificate of Incorporation. If GSK does request the redemption, it shall provide the desired date for redemption of such Common Stock (the "Call Date") in such notice. Subject to Section 3.1(c), the Company shall, promptly upon receipt of such written request from GSK for the redemption of certain Common Stock, designate a depositary (the "Depositary") for such redemption in accordance with Section C.6(a) of Article IV of the Certificate of Incorporation and notify GSK of such designation. The Company shall give, or cause to be given, the Call Notification (as defined in Section C.4(b) of Article IV of the Certificate of Incorporation) in accordance with such Section C.4(b) of Article IV of the Certificate of Incorporation. The Company shall set as the date of redemption the Call Date; provided that such date shall be consistent with the notice requirements of such paragraph (b). The calculation of the Call Price per share of Common Stock, which shall be made in accordance with paragraphs (a) and (c) of Section C.4 of Article IV of the Certificate of Incorporation, shall be verified with GSK prior to the mailing of such notice. GSK or GlaxoSmithKline shall deposit with the Company at least one business day prior to the Call Price Deposit Date (as defined in Section C.6(a)(i) of Article IV of the Certificate of Incorporation) sufficient funds to pay the Call Amount (as defined in Section C.4(d) of Article IV of the Certificate of Incorporation) and the Company shall deposit those funds with the Depositary in accordance with Section C.6(a)(i) of Article IV of the Certificate of Incorporation. The Company shall only use the funds received from GSK, GlaxoSmithKline or their Affiliates to fund the Depositary for the purposes of effecting the Call pursuant to this Article III. In exchange for such payment, the Company will issue to GSK (or to its designated Affiliate), on the Call Date as specified in the Call Notification, a number of duly authorized and validly issued shares of Class A Common Stock equal to the number of shares of Common Stock acquired thereby by the Company upon cancellation of the Common Stock subject to the Call pursuant to Section C.6(a) of Article IV of the Certificate of Incorporation.

(b) At least ten, but not more than thirty, days prior to the commencement of the Put Period (as defined in Section C.11(e) of Article IV of the Certificate of Incorporation), or, in the event of an acceleration of the Put in accordance with the terms of Section C.7 of Article IV of the Certificate of Incorporation, as soon as practicable following the date of the occurrence of the Insolvency Event (as defined in Section C.7 of Article IV of the Certificate of Incorporation) giving rise to such acceleration (but in no event later than the tenth day following such date), the Company shall (i) designate the Depositary for making payments to, and receiving shares from, holders of Common Stock in connection with exercises of the Put (as defined in Section C.5 of Article IV of the Certificate of Incorporation) in accordance with Section C.5 of Article IV of the Certificate of Incorporation and notify GSK and GlaxoSmithKline of such designation and (ii) give, or cause to be given, the Put Notification (as defined in Section C.11 of Article IV of the Certificate of Incorporation) in accordance with Section C.5(b) of Article IV of the Certificate of Incorporation or Section C.7 thereof, as the case may be. The Company shall set as the Put Period the period required to be set pursuant such Section C.5 or Section C.7, as the case may be.

(c) The Company's obligations under Sections 3.1(a) and 3.1(b) hereof shall be suspended during any period when, in the good faith judgment of the majority of the Company's Independent Directors, the redemption of the Common Stock would be prohibited under the DGCL or other applicable Laws.

(d) Subject to the provisions of Section 3.1(c), the Company hereby irrevocably appoints GSK and GlaxoSmithKline its attorneys-in-fact for purposes of redeeming the Common Stock in accordance with the terms of Sections 3.1(a) and 3.1(b) hereof and the Certificate of Incorporation.

(e) Any Depositary selected by the Company shall have at the time of its selection short-term credit ratings of not less than A-1 from Standard & Poor's Rating Services ("S&P") and not less than P-1 from Moody's Investors Service, Inc. ("Moody's"), and shall have at the time of its selection long-term credit ratings of not less than AA from S&P and not less than Aa2 from Moody's.

SECTION 3.2. *Indemnification.* GSK and GlaxoSmithKline shall indemnify the Company and its directors, officers, employees and agents against all losses, claims, damages, liabilities and expenses (including attorneys' fees) arising out of the redemption (pursuant to the Call or the Put (each as defined in the Certificate of Incorporation) of the Common Stock in accordance with the provisions of this Agreement (including, without limitation, in the event of the Company's consummation of the redemption of Common Stock in contravention of Section 160 of the DGCL or any other law for the protection of creditors), other than any such losses, claims, damages, liabilities and expenses that result primarily from actions taken or omitted in bad faith by the indemnified person or from the indemnified person's gross negligence or willful misconduct.

SECTION 3.3. *Options, Warrants and Other Convertible Securities.* GSK and the Company will make appropriate provisions to assure that any options, warrants, rights or securities issued by the Company, convertible into or exercisable or exchangeable for shares of Common Stock that constitute Callable/Puttable Shares, become convertible into or exercisable or exchangeable for consideration of the same type and amount as the holders thereof would have received had they converted, exercised or exchanged such options, warrants, rights or securities prior to the Call Date. If the Call is exercised by GSK, the consideration payable to a holder of options, warrants, rights or securities issued by the Company, convertible into or exercisable or exchangeable for shares of Common Stock that constitute Callable/Puttable Shares shall be paid upon the date of conversion, exercise or exchange of such option, warrant, right or security. Nothing herein shall be deemed or construed as a waiver of any other rights that a holder of any such securities may have.

SECTION 3.4. *Capital Contribution and Assumption of Put Obligations.*

(a) GSK or GlaxoSmithKline (or one or more of their Affiliates) shall contribute to the Company, immediately prior to the time that any amounts become due and payable to the holders of Common Stock pursuant to Section C.5 of Article IV of the Certificate of Incorporation, (i) funds in an amount equal to the product of the number of Callable/Puttable Shares with respect to which the Put has been properly exercised multiplied by the Put Price (as defined in Section C.5 of Article IV of the Certificate of Incorporation) plus (ii) such additional funds, if any, sufficient to permit the Company to redeem the Callable/Puttable Shares with respect to which the Put has been properly exercised without violating Section 160 of the DGCL, any bankruptcy or insolvency law or other law or regulation for the protection of creditors. In exchange for such payment, the Company will issue to GSK (or to its designated Affiliate), within five business days following the end of the Put Period, a number of duly authorized and validly issued shares of Class A Common Stock equal to the number of shares of Common Stock acquired thereby by the Company. Notwithstanding the foregoing, in the event that GSK or GlaxoSmithKline is required to make any contributions under clause (ii) of the first sentence of this paragraph (a), GSK's and GlaxoSmithKline's obligation to make any such payment to the Company under this Section 3.4 shall be void and of no further force and effect if, in lieu thereof, GSK or GlaxoSmithKline shall (or shall cause one of its Affiliates to) elect to purchase, and make all arrangements necessary (including compliance by GSK or GlaxoSmithKline, or any such Affiliate or Affiliates, with the

Exchange Act, the Securities Act and any other applicable Federal or state securities laws) to purchase, at the expiration of the Put Period, directly from each holder of Common Stock, the Callable/Puttable Shares which such holders elect to have purchased (up to 50% of all Callable/Puttable Shares owned by such holder) at a price per share equal to the Put Price. Notwithstanding anything to the contrary contained herein or in the Certificate of Incorporation, unless otherwise agreed to in writing by GSK, in no event shall the amount required to be paid by GSK or GlaxoSmithKline to the Company and/or to holders of Common Stock in connection with the Put exceed $525,000,000.

(b) Notwithstanding any other term or provision hereof or of the Alliance Agreement, Section C of Article IV of the Certificate of Incorporation or any other agreement, GSK or GlaxoSmithKline shall either (i) make (or cause one or more of its Affiliates to make) the aggregate payments required to be made under the first sentence of Section 3.4(a) hereof or (ii) if such payments are not made for any reason, make (or cause one of its Affiliates to make) the election to purchase referred to in the third sentence of Section 3.4(a) hereof and comply (or cause one of its Affiliates to comply) fully with such sentence; provided, however, that if an Insolvency Event (as defined in Section C.7 of Article IV of the Certificate of Incorporation) occurs, GSK or GlaxoSmithKline shall, within 10 days after the occurrence of such Insolvency Event, either (x) contribute (or cause one or more of its Affiliates to contribute) to the Company an amount equal to the aggregate amount that would be required to be contributed to the Company under the first sentence of Section 3.4(a) hereof assuming (for purposes of clause (i) of such sentence) that the holders of all Callable/Puttable Shares were to exercise the Put with respect to 50% of the Callable/Puttable Shares owned by such holder or (y) elect (or cause one of its Affiliates to elect) to purchase, and make all arrangements necessary (including compliance by GSK or GlaxoSmithKline, or any such Affiliate, with the Exchange Act, the Securities Act and any other Federal or state securities laws) to purchase, at the expiration of the Put Period, directly from the holders of Common Stock at the Put Price the shares of Callable/Puttable Shares which such stockholders elect to have purchased (up to 50% of all Callable/Puttable Shares owned by such holder). In exchange for the payment by GSK or GlaxoSmithKline or any of their Affiliates of the amount specified in clause (x) of the immediately preceding sentence (which amount shall be invested by the Company in a money market fund which holds primarily U.S. government obligations until such time as any amounts are paid to creditors or stockholders (it being specified that the returns on such investment shall be paid to GSK or GlaxoSmithKline upon demand)), the Company will issue to GSK (or its designated Affiliate) a number of duly authorized and validly issued shares of Class A Common Stock equal to 50% the number of Callable/Puttable Shares. Immediately following the expiration of the Put Period, if the Put has not been exercised with respect to 50% of the then Callable/Puttable Shares and if GSK or GlaxoSmithKline shall have complied with clause (x) of the first sentence of this Section 3.4(b), (1) the Company shall refund to GSK or GlaxoSmithKline, as the case may be, (or their designated Affiliate) an amount (together with any interest actually earned thereon) equal to the product of the Put Price times the number of Callable/Puttable Shares with respect to which the Put has not been exercised and (2) GSK (or by its designated Affiliate) shall, in exchange for such payment by the Company, contribute to the Company a number of shares of Class A Common Stock equal to the number of Callable/Puttable Shares with respect to which the Put has not been exercised. In the event that GSK or GlaxoSmithKline pays the amount specified in clause (x) of the first sentence of this Section 3.4(b), GSK or GlaxoSmithKline and any of their Affiliates shall not be entitled to any payments or other distributions on or in respect of any Equity Security unless and until the Company has redeemed all of the shares of Common Stock with respect to which the Put has been properly exercised.

(c) It is understood and agreed that, if GSK so elects, the obligation of GSK and GlaxoSmithKline to purchase shares of Common Stock pursuant to any of the provisions in this

Section 3.4 may, at the election of GSK, be assigned by GSK to any Affiliate of GSK (other than the Company). No assignment pursuant to this Section 3.4(c) shall relieve GSK or GlaxoSmithKline of any of its obligations under this Section 3.4 or otherwise.

(d) The Company shall take (and shall have no corporate power or capacity to refuse to take) such actions as may be necessary to enforce the obligations of GSK and GlaxoSmithKline under this Section 3.4 directly against GSK and GlaxoSmithKline, or in the event of assignment by GSK, against GSK and any Affiliate of GSK to which any assignment is made.

(e) The Company shall only use the funds received from GSK, GlaxoSmithKline or their Affiliates to fund the Depositary for the purposes of effecting the Put pursuant to this Article III.

SECTION 3.5. *Required Regulatory Filings.* GSK, GlaxoSmithKline and the Company agree to take all actions necessary to make all required filings and thereafter make any other required submissions with respect to the transactions contemplated under this Agreement under any applicable law, including, without limitation, any applicable federal or state securities Law, the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act") and foreign antitrust regulations. With respect to the transactions contemplated by the Put and Call, in furtherance of the foregoing, GSK, GlaxoSmithKline and the Company agree to take all necessary actions to make any required filings under the HSR Act and any applicable foreign antitrust regulations prior to February 1, 2007. GSK, GlaxoSmithKline and the Company shall respond as promptly as practicable to all inquiries or requests received from any such antitrust regulator. The parties shall cooperate with each other in connection with the making of all such filings or requests. GSK, GlaxoSmithKline and the Company shall take all required action to cause any waiting period (and any extension thereof) applicable to the transactions contemplated hereunder to expire or be terminated under the HSR Act and any waiting period (and any extension thereof) applicable to the transactions contemplated hereunder under any foreign antitrust Law (or any approval thereunder) to expire or be terminated or be obtained prior to June 1, 2007.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

SECTION 4.1. *Representations of the Company.*

(a) The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby are within the Company's corporate powers and have been duly authorized by all necessary corporate action. This Agreement constitutes a valid and binding agreement of the Company.

(b) The execution, delivery and performance by the Company of this Agreement require no action by or in respect of, or filing with, any governmental body, agency, official or authority.

(c) The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby do not and will not (i) contravene or conflict with the Certificate of Incorporation or Bylaws of the Company, and (ii) contravene or conflict with or constitute a violation of any provision of any law, regulation, judgment, injunction, order or decree binding upon or applicable to the Company.

SECTION 4.2. *Representations of GSK, GlaxoSmithKline and GGL.*

Each of GSK, GlaxoSmithKline and GGL represent that:

(a) The execution, delivery and performance by it of this Agreement and the consummation by it of the transactions contemplated hereby are within its corporate powers and have been duly

authorized by all necessary corporate action. This Agreement constitutes its valid and binding agreement.

(b) The execution, delivery and performance by it of this Agreement require no action by or in respect of, or filing with, any governmental body, agency, official or authority.

(c) The execution, delivery and performance by it of this Agreement and the consummation by it of the transactions contemplated hereby do not and will not (i) contravene or conflict with its charter or Bylaws, and (ii) contravene or conflict with or constitute a violation of any provision of any law, regulation, judgment, injunction, order or decree binding upon or applicable to it.

ARTICLE V

SEVERANCE ARRANGEMENTS

SECTION 5.1. *Severance Arrangements.* The Company will not and will not permit any of its subsidiaries to, (i) enter into any contract, agreement, plan or arrangement covering any director, officer or employee of the Company or any subsidiary that provides for the making of any payments, the acceleration of vesting of any benefit or right or any other entitlement contingent upon (A) (x) the stock purchase by GSK pursuant to the Class A Stock Purchase Agreement, (y) the exercise by GSK of any of its rights under this Agreement to representation on the Board (and its committees) or (z) any acquisition by GSK of securities of the Company (whether by merger, tender offer, private or market purchases or otherwise) not prohibited by this Agreement or (B) the termination of employment after the occurrence of any such contingency if such payment, acceleration or entitlement would not otherwise have been provided but for such contingency or (ii) amend any existing contract, agreement, plan or arrangement to so provide. Notwithstanding anything to the contrary in the foregoing, GSK agrees to the adoption by the Company of the Company's "Change In Control Severance Plan" in effect as of the date of this Agreement.

ARTICLE VI

MISCELLANEOUS

SECTION 6.1. *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including facsimile or similar writing) and shall be given:

If to the Company:

Theravance, Inc.
901 Gateway Boulevard
South San Francisco, CA 94080
Facsimile: 650-808-6095
Attn: General Counsel

With a copy to:

Gunderson Dettmer et al.
155 Contitution Drive
Menlo Park, CA 94025
Facsimile: 650-321-2800
Attn: Christopher D. Dillon
Jay K. Hachigian

If to GSK:

SmithKline Beecham Corporation
One Franklin Plaza (FP2355)
200 N. 16th Street
Philadelphia, PA 19102
Attn: Company Secretary
Facsimile: 215-751-5349

With a copy to:

GlaxoSmithKline
One Franklin Plaza (FP2355)
200 N. 16th Street
Philadelphia, PA 19102
Facsimile: 215-751-5349
Attn: Corporate Law

and with a copy to:

GlaxoSmithKline
Greenford Road
Greenford
Middlesex
UB6 0HE
United Kingdom
Attn: Vice President, Worldwide Business Development
Facsimile: 011 44 208-966-5371

and with a copy to:

Glaxo Group Limited
Glaxo Wellcome House
Berkeley Avenue
Greenford
Middlesex UB6 0NN
United Kingdom
Attn: Company Secretary
Facsimile: 011 44 208-047-6904

or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. Each such notice, request or other communication shall be effective (i) if given by facsimile when such facsimile is transmitted to the facsimile number specified in this Section and the appropriate answerback is received or (ii) if given by any other means, when delivered at the address specified in this Section 6.1.

SECTION 6.2. *Amendments; Waivers.*

(a) Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by GSK and the Company, or in the case of a waiver, by the party against whom the waiver is to be effective; provided that, in the case of the Company, no such amendment or waiver shall be effective without the approval of a majority of the Independent Directors.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other

or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 6.3. *Successors and Assigns.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the written consent of the other party hereto.

SECTION 6.4. *Governing Law.* This Agreement shall be governed by and construed in accordance with and governed by the law of the State of Delaware, without regard to the conflicts of laws principles thereof. Any action brought, arising out of, or relating to this Agreement shall be brought in the Court of Chancery of the State of Delaware. Each party hereby irrevocably submits to the exclusive jurisdiction of said Court in respect of any claim relating to the validity, interpretation and enforcement of this Agreement, and hereby waives, and agrees not to assert, as a defense in any action, suit or proceeding in which any such claim is made that it is not subject thereto or that such action suit or proceeding may not be brought or is not maintainable in such courts, or that the venue thereof may not be appropriate or that this agreement may not be enforced in or by such courts. The parties hereby consent to and grant the Court of Chancery of the State of Delaware jurisdiction over such parties and over the subject matter of any such claim and agree that mailing of process or other papers in connection with any such action, suit or proceeding in the manner provided in Section 6.1, or in such other manner as may be permitted by law, shall be valid and sufficient thereof.

SECTION 6.5. *Counterparts; Effectiveness.* This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original and which together shall constitute one and the same document.

SECTION 6.6. *Specific Performance.* Each party acknowledges and agrees that their respective remedies at law for a breach or threatened breach of any of the provisions of this Agreement would be inadequate and, in recognition of that fact, agrees that, in the event of a breach or threatened breach by the Company, on the one hand, or GSK, GGL and GlaxoSmithKline (the "Glaxo Parties"), on the other hand, of the provisions of this Agreement, in addition to any remedies at law, the Glaxo Parties and the Company, respectively, without posting any bond shall be entitled to obtain equitable relief in the form of specific performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy which may then be available.

SECTION 6.7. *Termination.* This Agreement (other than Sections 3.2 and 3.3 hereof) shall terminate at the earliest of (i) such time as GSK and its Affiliates beneficially own 100% of the outstanding Voting Stock, (ii) the effective time of a Change in Control, and (iii) September 1, 2015.

SECTION 6.8. *Severability.* In the event of the invalidity of any provisions of this Agreement or if this Agreement contains any gaps, the parties agree that such invalidity or gap shall not affect the validity of the remaining provisions of this Agreement. The parties will replace an invalid provision or fill any gap with valid provisions which most closely approximate the purpose and economic effect of the invalid provision or, in case of a gap, the parties' presumed intentions. In the event that the terms and conditions of this Agreement are materially altered as a result of the preceding sentences, the parties shall renegotiate the terms and conditions of this Agreement in order to resolve any inequities. Nothing in this Agreement shall be interpreted so as to require either party to violate any applicable laws, rules or regulations.

SECTION 6.9. *Registration and Filing of This Agreement.* To the extent, if any, that either the Company, on the one hand, or the Glaxo Parties, on the other hand, concludes in good faith that such party or the other party is required to file or register this Agreement or a notification thereof with any governmental authority, including without limitation the SEC, the Competition Directorate of the

Commission of the European Communities or the U.S. Federal Trade Commission, in accordance with Law, such party shall inform the other party thereof. Should the Company and the Glaxo Parties jointly agree that either of them is required to submit or obtain any such filing, registration or notification, they shall cooperate, each at its own expense, in such filing, registration or notification and shall execute all documents reasonably required in connection therewith. In such filing, registration or notification, the parties shall request confidential treatment of sensitive provisions of this Agreement, to the extent permitted by Law. The parties shall promptly inform each other as to the activities or inquiries of any such Governmental Authority relating to this Agreement, and shall reasonably cooperate to respond to any request for further information therefrom on a timely basis.

SECTION 6.10. *Certain Definitions.*

(a) As used in this Agreement, the following terms shall have the following meanings:

(i) "Affiliate" of a party means any Person, whether de jure or de facto, which directly or indirectly controls, is controlled by, or is under common control with such Person for so long as such control exists, where "control" means the decision-making authority as to such Person and, further, where such control shall be presumed to exist where a Person owns more than fifty percent (50%) of the equity (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) having the power to vote on or direct the affairs of the entity; it being specified that for purposes of this Agreement, the Company and its direct and indirect subsidiaries, if any, shall not be deemed to be Affiliates of GSK.

(ii) "Call" shall have the meaning set forth in Section 4 of Article IV of the Certificate of Incorporation.

(iii) "Callable/Puttable Shares" means (i) all outstanding shares of Common Stock that are not subject to repurchase by the Company pursuant to any employee, officer, director or consultant compensation plan as of the Call Date or the final day of the Put Period, as the case may be, (ii) all shares of Common Stock subject to issuance upon the exercise of options to acquire Common Stock granted pursuant to any employee, officer, director or consultant compensation plan that are or will be fully vested as of the Call Date or the final day of the Put Period, as the case may be, (iii) all shares of Common Stock subject to issuance upon the exercise, exchange or conversion of warrants, exchangeable or convertible securities (other than any such options described in clause (ii)) that are by their terms exercisable, exchangeable or convertible as of the Call Date or the final day of the Put Period, as the case may be.

(iv) "Call/Put Termination Date" shall have the meaning set forth in Section C.8 of Article IV of the Certificate of Incorporation.

(v) "Change in Control" means, with respect to (A) the Company, any transaction or series of related transactions (including mergers, consolidations and other forms of business consolidations) following which continuing stockholders of the Company hold less than 50% of the outstanding voting securities of either the Company, the entity surviving such transaction or any direct or indirect parent entity of such continuing or surviving entity or (B) the sale, lease, license, transfer or other disposal of all or substantially all of the business or assets of the Company (provided, however, that the sale, license or transfer to another party, in the ordinary course of business, of any Company asset (regardless of its value or what portion of the Company's business or assets it may represent) over which GSK has no contractual rights in accordance with the provisions of the Alliance Agreement shall not be considered a Change in Control transaction); it being understood that GSK's exercise of its rights or performance of its obligations pursuant to the Put or Call shall not be deemed a Change in Control.

(vi) "Effective Date" means May 11, 2004 (the first business day following the date on which the last of the conditions contained in Section 15.14 of the Alliance Agreement was satisfied).

(vii) "Fair Market Value Per Share" means, with respect to an Equity Security as of a particular date, (a) if the Equity Security is traded on a securities exchange or through NASDAQ, the closing price of the Equity Security on such exchange or system on such date or (b) if the Equity Security is not traded on a securities exchange or through NASDAQ, the value on such date as determined in good faith after consultation with a nationally recognized financial advisor by a majority of the Independent Directors.

(viii) "Indebtedness" of any Person means, without duplication, the following, (a) all Obligations of such Person for borrowed money, (b) all Obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all Obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable or accruals arising in the ordinary course of business, (d) all Obligations of such Person in respect of any capital lease, (e) all Obligations of such Person to repurchase or redeem equity securities, whether or not pursuant to the terms thereof, other than the Put and except to the extent such Obligations are payable solely in the form of other equity securities, and (f) all Obligations of such Person with respect to any financial hedging arrangements. For purposes of this definition, "Obligations" shall mean any principal, interest, penalties, fees, guarantees, reimbursements, damages, costs of unwinding and other liabilities payable under the documentation governing any Indebtedness.

(ix) "Initial Offering" means the closing of the Company's sale of its securities pursuant to a bona fide, firmly underwritten public offering of shares of Common Stock, registered under the Securities Act.

(x) "Law" means any law, statute, rule, regulation, ordinance and other pronouncement having the binding effect of any court, tribunal, arbitrator, agency, legislative body, commission, official or other instrumentality of (x) any government of any country, (y) a federal, state, province, county, city or other political subdivision thereof or (z) any supranational body.

(xi) "Permitted Indebtedness" means any Indebtedness of the Company that is issued prior to the Call/Put Termination Date and in an amount equal to or less than $100 million; *provided*, *however*, if such indebtedness may be convertible or exchangeable into Voting Stock, the terms of such indebtedness shall provide that any such conversion or exchange may not occur prior to the Call/Put Termination Date.

(xii) "Person" means any natural person, corporation, general partnership, limited partnership, limited liability company, joint venture, proprietorship or other business organization.

(xiii) "Put" shall have the meaning set forth in Section 5 of Article IV of the Certificate of Incorporation.

(xiv) "Rights Plan" means any rights plan adopted by the Company that has the effect (or similar effect) of providing, upon the acquisition of a specified percentage of Voting Stock by a third party without the approval of the Board, stockholders (other than such acquiring party) the right to acquire Voting Stock of the Company in a manner designed to significantly dilute the ownership stake of such acquiring party.

(b) The following terms shall have the meanings defined for such terms in the Sections of this Agreement set forth below:

Term	Section
Agreement	Preamble
Alliance Agreement	Recitals
Board	1.1(a)
Call Date	3.1(a)
Catch-up Shares	2.1(d)(ii)
Certificate of Incorporation	1.1(a)
Common Stock	Recitals
Class A Stock Purchase Agreement	Recitals
Collaboration Agreement	2.1(a)(iv)
Company	Preamble
DGCL	2.1(e)
Depositary	3.1(a)
End of the Equity Limitation Period	1.6(b)
Equity Security	1.5(a)(iii)
Exchange Act	2.1(a)(i)
First Offer Shares	2.1(d)(i)
Glaxo Parties	6.6
GlaxoSmithKline	Preamble
GSK	Preamble
GSK Directors	1.2(a)
GSK Independent Nominees	1.2(b)
GSK's Percentage Interest	1.2(b)
HSR Act	3.5
Independent Directors	1.2(a)
Initial Offering	2.1(b)(v)
Investors' Rights Agreement	2.1(b)(iv)
NASD	2.1(d)(i)
NASDAQ	2.1(d)(i)
Non-GSK Directors	1.2(b)
Offer Notification	2.1(d)(i)
Offering	2.1(d)(i)
Party	Preamble
Post Call Offer Shares	2.1(d)(iv)
Post Put Offer Shares	2.1(d)(iii)
Prior Agreement	Recitals
Schedule	2.1(d)(ii)
SEC	2.1(a)(ii)
Securities Act	2.2(b)(ii)
Third Party Acquiror	2.1(c)
Voting Stock	1.5(a)(iii)

SECTION 6.11. *Captions.* The captions, headings and arrangements used in this Agreement are for convenience only and do not in any way limit or amplify the terms and provisions hereof.

SECTION 6.12. *Prior Agreement.* The Prior Agreement is hereby amended and restated in its entirety and shall be of no further force or effect.

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

THERAVANCE, INC.

By: /s/ RICK E WINNINGHAM

Name: Rick E Winningham

Title: Chief Executive Officer

SMITHKLINE BEECHAM CORPORATION

By: /s/ DONALD F. PARMAN

Name: Donald F. Parman

Title: Vice President and Secretary

GLAXOSMITHKLINE plc
[solely with respect to Articles III, IV and VI]

By: /s/ GLAXOSMITHKLINE PLC

Name:

Title:

GLAXO GROUP LIMITED
[solely with respect to Articles II, IV and VI]

By: /s/ GLAXO GROUP LIMITED

Name:

Title:

QuickLinks

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

Exhibit 10.15

STRATEGIC ALLIANCE AGREEMENT

by and between

THERAVANCE, INC.

and

GLAXO GROUP LIMITED

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List of Schedules

Schedule 1.36	Existing Discovery Programs
Schedule 1.66	Long Acting Muscarinic Antagonist Respiratory Discovery Criteria
Schedule 1.72	Muscarinic Antagonist-Beta Agonist Respiratory Discovery Criteria
Schedule 6.1.2(A)	Class A Common Stock Purchase Agreement
Schedule 6.1.3(A)	Governance Agreement

STRATEGIC ALLIANCE AGREEMENT

This STRATEGIC ALLIANCE AGREEMENT ("Agreement") dated March 30, 2004, is made by and between THERAVANCE, INC., a Delaware corporation, and having its principal office at 901 Gateway Boulevard, South San Francisco, California 94080 ("Theravance"), and GLAXO GROUP LIMITED, a United Kingdom corporation, and having its principal office at Glaxo Wellcome House, Berkeley Avenue, Greenford, Middlesex, UB6 0NN, United Kingdom ("GSK"). Theravance and GSK may be referred to as a "Party" or together, the "Parties".

RECITALS

WHEREAS, GSK and Theravance have previously entered into a Collaboration Agreement dated as of November 14, 2002 (the "LABA Collaboration Agreement"); and

WHEREAS, Theravance is engaged in drug discovery for other compounds outside the LABA Collaboration Agreement;

WHEREAS, GSK desires to receive from Theravance and Theravance desires to grant to GSK the right to Develop and Commercialize other compounds discovered by Theravance on an exclusive, worldwide basis in accordance with the terms and conditions of this Agreement;

WHEREAS, GSK and Theravance are willing to undertake research, Development and Commercialization activities and investment and to coordinate such activities and investment as provided by this Agreement with respect to the Alliance Products; and

WHEREAS, GSK and Theravance believe that a strategic alliance pursuant to this Agreement for the performance of research, Development and Commercialization of Alliance Products in which Theravance conducts experimental and research work in certain program areas to discover chemical entities suitable for development and GSK, at its option, undertakes the development and commercialization of such chemical entities would be desirable and compatible with their respective business objectives.

NOW, THEREFORE, in consideration of the foregoing premises and the representations, covenants and agreements contained herein, Theravance and GSK, intending to be legally bound, hereby agree as follows:

ARTICLE 1
DEFINITIONS

For purposes of this Agreement, the following initially capitalized terms, whether used in the singular or plural, shall have the following meanings:

1.1 "Alliance" shall mean the Parties' strategic alliance pursuant to this Agreement.

1.2 "Alliance Product" means any Theravance Compound for which GSK has exercised its Opt-In Right subject to and in accordance with the terms of this Agreement, which such Alliance Product can be used as a single agent and/or in combination with other therapeutically active components for [*] applications. The term "Alliance Product" shall also include [*].

1.3 "Alliance Program" shall mean any Discovery Program for which GSK has exercised its Opt-In Right.

1.4 "Alliance Program Acceptance Date" shall have the meaning set forth in Section 13.1.1.

1.5 "Additional Respiratory Discovery Program" shall mean any new, additional Respiratory Discovery Program initiated [*]. The foregoing shall be without prejudice to the possibility that other

additional Discovery Programs in other therapeutic areas may be initiated by Theravance as contemplated by Sections 1.36 and 4.1.4.

1.6 "Adverse Drug Experience" means any of: an "adverse drug experience," a "life-threatening adverse drug experience," a "serious adverse drug experience," or an "unexpected adverse drug experience," as those terms are defined at either 21 C.F.R.(S)312.32 or 21 C.F.R.(S)314.80.

1.7 "Affiliate" of a Party means any Person, whether de jure or de facto, which directly or indirectly controls, is controlled by, or is under common control with such Person for so long as such control exists, where "control" means the decision-making authority as to such Person and, further, where such control shall be presumed to exist where a Person owns more than fifty percent (50%) of the equity (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) having the power to vote on or direct the affairs of the entity.

1.8 "API Compound" means bulk quantities of each active pharmaceutical ingredient compound of a particular Alliance Product prior to the commencement of secondary manufacturing.

1.9 "Breaching Alliance Program" shall have the meaning set forth in Section 14.2.

1.10 "Breaching Party" shall have the meaning set forth in Section 14.2.

1.11 "Business Day" means any day on which banking institutions in both New York City, New York, United States and London, England are open for business.

1.12 "Calendar Month" means for each Calendar Year, each of the one-month periods.

1.13 "Calendar Quarter" means for each Calendar Year, each of the three month periods ending March 31, June 30, September 30 and December 31; provided, however, that the first calendar quarter for the first Calendar Year shall extend from the Effective Date to the end of the first complete calendar quarter thereafter.

1.14 "Calendar Year" means, for the first calendar year, the period commencing on the Effective Date and ending on December 31 of the calendar year during which the Effective Date occurs, and each successive period beginning on January 1 and ending twelve (12) consecutive calendar months later on December 31.

1.15 "Change in Control" means, with respect to a Party, any transaction or series of related transactions following which continuing stockholders of such Party hold less than 50% of the outstanding voting securities of either such Party or the entity surviving such transaction.

1.16 "Claim" means all charges, complaints, actions, suits, proceedings, hearings, investigations, claims and demands.

1.17 "Closing Condition" shall have the meaning set forth in Section 15.14.

1.18 "Combination Product" means an Alliance Product that contains one or more therapeutically active agents in addition to the Theravance Compound.

1.19 "Commercial Conflict" means a situation where Theravance determines that GSK's decision related to [*] is likely to result in [*], and that such decision is not based on [*] but primarily [*] whereby GSK is likely to achieve [*].

1.20 "Commercial Failure" means failure [*] for reasons other than [*], based on the determination that such product will result in [*] that is materially worse than [*]. The [*] will be based on [*] from such product not taking into account [*].

1.21 "Commercialization" means any and all activities directed to marketing, promoting, distributing, offering for sale and selling an Alliance Product, importing an Alliance Product (to the extent applicable) and conducting Phase IV Studies. When used as a verb, "Commercialize" means to engage in Commercialization.

1.22 "Competing Product" means a product that [*].

1.23 "Confidential Information" means all secret, confidential or proprietary information, data or Know-How (including GSK Know-How and Theravance Know-How) whether provided in written, oral, graphic, video, computer or other form, provided by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") pursuant to this Agreement or generated pursuant to this Agreement, including but not limited to, information relating to the Disclosing Party's existing or proposed research, development efforts, patent applications, business or products, the terms of this Agreement and any other materials that have not been made available by the Disclosing Party to the general public. Confidential Information shall not include any information or materials that the Receiving Party can document with competent written proof:

1.23.1 were already known to the Receiving Party (other than under an obligation of confidentiality), at the time of disclosure by the Disclosing Party;

1.23.2 were generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party;

1.23.3 became generally available to the public or otherwise part of the public domain after its disclosure or development, as the case may be, and other than through any act or omission of a Party in breach of such Party's confidentiality obligations under this Agreement;

1.23.4 were disclosed to a Party, other than under an obligation of confidentiality, by a Third Party who had no obligation to the Disclosing Party not to disclose such information to others; or

1.23.5 were independently discovered or developed by or on behalf of the Receiving Party without the use of the Confidential Information belonging to the other Party.

1.24 "Co-Promote" shall mean, as applied to Theravance, [*] and to otherwise engage in activities as contemplated and/or mutually agreed by the Parties under Section 5.3.

1.25 "Co-Promotion Option" shall have the meaning set forth in Section 5.3.2(a).

1.26 "Country" means any generally recognized sovereign entity.

1.27 "Creditable taxes" shall have the meaning set forth in Section 6.9.2.

1.28 "Date of Final Delivery of Opt-In Data" shall have the meaning set forth in Sections 4.2.1(a), 4.2.2(a) and 4.2.2(b).

1.29 "Designated Foreign Filings" shall have the meaning set forth in Section 13.1.2(b).

1.30 "Development Candidate Data" means the material, data and supporting documentation relating to a Respiratory Compound prepared by Theravance and delivered to GSK which demonstrates that such compound meets the applicable Respiratory Discovery Criteria. The Development Candidate Data will be presented in sufficient detail to enable GSK, to determine whether or not to exercise its Opt-In Right with respect to such Respiratory Compound in accordance with Section 4.2.1.

1.31 "Development" or "Develop" means preclinical and clinical drug development activities, including, among other things: test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, current Good Manufacturing Practices audits, current Good Clinical Practices audits, current Good Laboratory

Practices audits, analytical method validation, manufacturing process validation, cleaning validation, scale-up and post approval changes, quality assurance/quality control development, statistical analysis and report writing, preclinical and clinical studies, regulatory filing submission and approval, and regulatory affairs related to the foregoing. When used as a verb, "Develop" means to engage in Development.

1.32 "Development Milestone" shall have the meaning set forth in Section 6.2.1

1.33 "Development Plan" means the outline plan for each Alliance Product in an Alliance Program designed to achieve the Development for such Alliance Product, including, without limitation, the nature, number and schedule of Development activities as such may be amended in accordance with the terms of this Agreement.

1.34 "Diligent Efforts" means [*] based on [*], with the objective of [*] and the other terms and conditions of this Agreement. Diligent Efforts requires that: (i) each Party [*], (ii) each Party [*], and (iii) each Party [*].

1.35 "Disclosing Party" shall have the meaning set forth in Section 1.23.

1.36 "Discovery Program" means [*] having the goal of [*]. A list of existing Discovery Programs as of the Effective Date is attached as Schedule 1.36. Theravance shall notify GSK of the initiation of any additional Discovery Program during the Research Term in accordance with Section 4.1.4.

1.37 "Effective Date" means the first business day following the date on which the last of the conditions contained in Section 15.14 of this Agreement has been satisfied.

1.38 "European Union" or "Europe" means collectively the Countries of the European Union.

1.39 "FDA" means the United States Food and Drug Administration and any successor agency thereto.

1.40 "Filing for Regulatory Approval" shall have the meaning set forth in Section 6.2.2.

1.41 "First Commercial Sale" means the first shipment of commercial quantities of any Alliance Product sold to a Third Party by a Party or its sublicensees in any Country after receipt of Marketing Authorization Approval for such Alliance Product in such Country. Sales for test marketing, sampling and promotional uses, clinical trial purposes or compassionate or similar uses shall not be considered to constitute a First Commercial Sale.

1.42 "First Theravance Compound" shall have the meaning set forth in Sections 4.2.1(a), 4.2.2(a) and 4.2.2(b).

1.43 "Force Majeure Event" shall have the meaning set forth in Section 15.3

1.44 "Governmental Authority" means any court, tribunal, arbitrator, agency, legislative body, commission, official or other instrumentality of (i) any government of any Country, (ii) a federal, state, province, county, city or other political subdivision thereof or (iii) any supranational body, including without limitation the European Agency for the Evaluation of Medicinal Products.

1.45 "GSK Invention" means an Invention that is invented by an employee or agent of GSK solely or jointly with a Third Party.

1.46 "GSK Know-How" means all present and future information directly relating to the Alliance Products including without limitation all data, records, and regulatory filings relating to Alliance Products, that is required for Theravance to perform its obligations or exercise its rights under this Agreement, and which during the Term are in GSK's or any of its Affiliates' possession or control and are or become owned by, or otherwise may be licensed to (provided there is no restriction on GSK thereof), GSK. GSK Know-How does not include any GSK Patents.

1.47 "GSK Patents" means all present and future patents and patent applications including United States provisional applications and any continuations, continuations-in-part, divisionals, registrations, confirmations, revalidations, reissues, Patent Cooperation Treaty applications, certificates of addition, utility models, design patents, petty patents as well as all other intellectual property related to the application or patent including extensions or restorations of terms thereof, pediatric use extensions, supplementary protection certificates or any other such right covering Alliance Product(s) or the GSK Inventions which are or become owned by GSK or GSK's Affiliates, or as to which GSK or GSK's Affiliates otherwise are or become licensed, now or in the future, where GSK has the right to grant the sublicense rights granted to Theravance under this Agreement, which such patent rights cover the making, having made, use, offer for sale, sale or importation of the Alliance Products. For the avoidance of doubt, GSK Patents shall include GSK's interest in any patents covering Joint Inventions.

1.48 "GSK Property" shall have the meaning set forth in Section 14.5.2(b)(iv).

1.49 "GSK's Percentage Interest" means the percentage of voting power, determined on the basis of the number of shares of Voting Stock actually outstanding, that is controlled directly or indirectly by GSK and its Affiliates.

1.50 "Hatch-Waxman Certification" shall have the meaning set forth in Section 13.3.

1.51 "Housemark" means the name and logo of GSK or Theravance or any of their respective Affiliates as identified by one Party to the other from time to time.

1.52 "Indemnified Party" shall have the meaning set forth in Section 12.3.1.

1.53 "Indemnifying Party" shall have the meaning set forth in Section 12.3.1.

1.54 "Initial Due Diligence Commencement Date" shall have the meaning set forth in Sections 4.2.1(a), 4.2.2(a) and 4.2.2(b).

1.55 "Initiation of a Phase I Study" shall have the meaning set forth in Section 6.2.2.

1.56 "Initiation of a Phase III Study" shall have the meaning set forth in Section 6.2.2.

1.57 "Interim Period" shall have the meaning set forth in Section 4.3.2.

1.58 "Invention" means any discovery (whether patentable or not) invented during the Term as a result of research, Development or manufacturing activities and specifically related to an Alliance Product hereunder.

1.59 "Investigational Authorization" means, with respect to a Country, the regulatory authorization required to investigate an Alliance Product in such Country as granted by the relevant Governmental Authority.

1.60 "Joint Invention" means an Invention that is invented jointly by employees and/or agents of both Theravance and GSK hereunder and the patent rights in such Invention.

1.61 "Joint Program Committee" shall have the meaning set forth in Section 3.3.

1.62 "Joint Steering Committee" shall have the meaning set forth in Section 3.2.

1.63 "Launch" shall have the meaning set forth in Section 6.2.2.

1.64 "Laws" means all laws, statutes, rules, regulations (including, without limitation, current Good Manufacturing Practice Regulations as specified in 21 C.F.R. (S) 210 and 211; Investigational New Drug Application regulations at 21 C.F.R. (S) 312; NDA regulations at 21 C.F.R. (S) 314, relevant provisions of the Federal Food, Drug and Cosmetic Act, and other laws and regulations enforced by the FDA), ordinances and other pronouncements having the binding effect of law of any Governmental Authority.

1.65 "Litigation Condition" shall have the meaning set forth in Section 12.3.2.

1.66 "Long Acting Muscarinic Antagonist Respiratory Discovery Criteria" shall have the meaning set forth in Schedule 1.66.

1.67 "Losses" means any and all damages (including all incidental, consequential, statutory and treble damages), awards, deficiencies, settlement amounts, defaults, assessments, fines, dues, penalties, costs, fees, liabilities, obligations, taxes, liens, losses, lost profits and expenses (including without limitation court costs, interest and reasonable fees of attorneys, accountants and other experts) incurred by or awarded to Third Parties and required to be paid to Third Parties with respect to a Claim by reason of any judgment, order, decree, stipulation or injunction, or any settlement entered into in accordance with the provisions of this Agreement, together with all documented out-of-pocket costs and expenses incurred in complying with any judgments, orders, decrees, stipulations and injunctions that arise from or relate to a Claim of a Third Party.

1.68 "Major Market Country" means each of [*].

1.69 "Marketing Authorization" means, with respect to a Country, the regulatory authorization required to market and sell an Alliance Product in such Country as granted by the relevant Governmental Authority.

1.70 "Marketing Authorization Approval" means approval by a Governmental Authority for sale of a pharmaceutical product for human use, including any applicable pricing, final labeling or reimbursement approvals.

1.71 "Marketing Plan" means for each relevant Alliance Product the global plan prepared by GSK identifying the core strategic, commercial and promotional claims and objectives for the specific Alliance Product as reviewed under Section 5.1.

1.72 "Muscarinic Antagonist-Beta Agonist Respiratory Discovery Criteria" shall have the meaning set forth in Schedule 1.72.

1.73 "NDA" means a new drug application or supplemental new drug application or any amendments thereto submitted to the FDA in the United States.

1.74 "NDA Acceptance" shall mean the written notification by the FDA that the NDA has met all the criteria for filing acceptance pursuant to 21 C.F.R. (S)314.101.

1.75 "Net Sales" means [*], less the following to the extent [*]: (a) [*]; (b) [*](c) [*]; (d) [*]. Net Sales shall exclude [*].

1.76 "Net Sales Report" shall have the meaning set forth in Section 6.4.2.

1.77 "Non-validated Target" means a biological drug target against which no drug has received Marketing Authorization Approval.

1.78 "Officers" shall have the meaning set forth in Section 3.2.5.

1.79 "Opt-In Right" shall have the meaning set forth in Section 4.2.

1.80 "OUS Filings" shall have the meaning set forth in Section 13.1.1.

1.81 "Patent Infringement Claim" shall have the meaning set forth in Section 13.2.1.

1.82 "Patent Infringement Notice" shall have the meaning set forth in Section 13.2.2.

1.83 "PCT" shall have the meaning set forth in Section 13.1.1.

1.84 "Person" means any natural person, corporation, general partnership, limited partnership, limited liability company, joint venture, proprietorship or other business organization.

1.85 "Phase I Studies" means that portion of the Development Plan or Development relating to each Alliance Product which provides for the first introduction into humans of such Alliance Product including small scale clinical studies conducted in normal volunteers to obtain information on such Alliance Product's safety, tolerability, pharmacological activity, pharmacokinetics, drug metabolism and mechanism of action, as well as early evidence of effectiveness.

1.86 "Phase II Studies" means that portion of the Development Plan or Development relating to each Alliance Product which provides for well controlled clinical trials of such Alliance Product in patients, including clinical studies conducted in patients with the disease or condition, and designed to evaluate clinical efficacy and safety for such Alliance Product for one or more indications, and/or to obtain an indication of the dosage regimen required.

1.87 "Phase IIa Study" means a controlled study conducted in patients with the disease or condition designed to evaluate clinical efficacy and safety for such Alliance Product for one or more indications using generally accepted primary clinical endpoint(s). For the avoidance of doubt, a Phase IIa Study shall not be a study designed [*].

1.88 "Phase IIb Study" means the definitive study or studies in patients with the disease or condition designed to evaluate clinical efficacy and safety for such Alliance Product for one or more indications, and/or to obtain the dosage regimen required for subsequent Phase III Studies.

1.89 "Phase III Studies" means that portion of the Development Plan or Development relating to each Alliance Product which provides for large scale, pivotal, clinical studies conducted in a sufficient number of patients and whose primary objective is to obtain a definitive evaluation of the therapeutic efficacy and safety of the Alliance Product in patients for the particular indication in question that is needed to evaluate the overall risk-benefit profile of the Alliance Product and to provide adequate basis for obtaining requisite regulatory approval(s) and product labeling.

1.90 "Phase IV Studies" means a study or studies for an Alliance Product that is initiated after receipt of a Marketing Authorization for an Alliance Product and is principally intended to support the marketing and Commercialization of such Alliance Product, including without limitation investigator initiated trials, clinical experience trials and studies conducted to fulfill local commitments made as a condition of any Marketing Authorization.

1.91 "POC Validated Target Data" means the material, data and supporting documentation relating to achievement of clinical proof of concept by a Theravance Compound, prepared by Theravance and delivered to GSK in sufficient detail and which enables GSK to determine whether or not to exercise its Opt-In Right with respect to such Discovery Program in accordance with Section 4.2.2(a).

1.92 "POC Non-Validated Target Data" means the material, data and supporting documentation relating to achievement of clinical proof of concept by a Theravance Compound, prepared by Theravance and delivered to GSK in sufficient detail and which enables GSK to determine whether or not to exercise its Opt-In Right with respect to such Discovery Program in accordance with Section 4.2.2(b).

1.93 "Product Supplier" means any manufacturer, packager or processor of an Alliance Product for development, marketing and sale.

1.94 "Promotional Materials" means the core written, printed, video or graphic advertising, promotional, educational and communication materials (other than Alliance Product labeling) for marketing, advertising and promotion of the Alliance Products.

1.95 "Receiving Party" shall have the meaning set forth in Section 1.23.

1.96 "Recording Party" shall have the meaning set forth in Section 6.10.

1.97 "Respiratory Compound" means a compound discovered by Theravance intended for the treatment of respiratory disease [*] and that meets the Respiratory Discovery Criteria.

1.98 Respiratory Discovery Criteria" means the requirements that a compound within a Respiratory Discovery Program must meet before the Development Candidate Data is then delivered to GSK under Section 4.2.1. The Long-Acting Muscarinic Antagonist Compound Criteria and the Muscarinic Antagonist—Beta Agonist Bronchodilator Compound Criteria are each attached hereto as Schedule 1.66 and 1.72, respectively. The Respiratory Discovery Criteria for any Additional Respiratory Discovery Program initiated pursuant to the Alliance formed under this Agreement will be (i) comparable in scope and detail with the criteria set forth in Schedules 1.66 and 1.72 hereto, and (ii) established by mutual written agreement of the Parties at the time of notification of initiation of such Additional Respiratory Discovery Program by Theravance to GSK pursuant to Section 4.1.

1.99 "Respiratory Discovery Program" shall mean any Theravance Discovery Program having the goal of [*].

1.100 "Research Term" shall have the meaning set forth in Section 3.1.1.

1.101 "Reversion Program" shall have the meaning set forth in Sections 4.2.1(a), 4.2.2(a) and 4.2.2(b)(i).

1.102 "ROW" means Countries other than the Major Market Countries.

1.103 "Samples" means Alliance Product packaged and distributed as a complimentary trial for use by patients in the Territory.

1.104 "Specific Alliance Product Development & Commercialization Appendix" shall have the meaning set forth in Sections 4.2.1(a), 4.2.2(a)(i) and 4.2.2(b)(i).

1.105 "Subsequent Theravance Compound" shall have the meaning set forth in Sections 4.2.1(b), 4.2.2(a)(ii) and 4.2.2(b)(ii).

1.106 "Successful completion of a Phase II Study" shall have the meaning set forth in Section 6.2.2.

1.107 "Taxes" shall have the meaning set forth in Section 6.9.1.

1.108 "Technical Failure" means [*], or [*].

1.109 "Technology Transfer Package" means all Theravance Confidential Information and Theravance Know-How relating to: (1) [*]; (2) [*]; and (3) [*]. Any material supplied by Theravance to GSK as contemplated hereunder shall comply with any specification agreed by GSK and Theravance.

1.110 "Term" means, on a Country-by-Country and Alliance Product-by-Alliance Product basis, the period [*], or (b) [*], unless this Agreement is terminated earlier in accordance with Article 14.

1.111 "Terminated Alliance Product" means a Terminated Development Alliance Product or a Terminated Commercialized Alliance Product.

1.112 "Terminated Commercialized Alliance Product" shall have the meaning set forth in Section 14.4.

1.113 "Terminated Development Alliance Product" shall have the meaning set forth in Section 14.3.

1.114 "Terminated Non-Respiratory Commercialized Alliance Product" shall have the meaning set forth in Section 14.5.3(a).

1.115 "Terminated Non-Respiratory Development Alliance Product" shall have the meaning set forth in Section 14.5.2(a).

1.116 "Terminated Respiratory Commercialized Alliance Product" shall have the meaning set forth in Section 14.5.3(b).

1.117. "Terminated Respiratory Development Alliance Product" shall have the meaning set forth in Section 14.5.2(b).

1.118 "Territory" means worldwide.

1.119 "Theravance Compound" means a chemical entity, including all of [*], that results from a Discovery Program.

1.120 "Theravance Invention" means an Invention that is invented by an employee or agent of Theravance solely or jointly with a Third Party.

1.121 "Theravance Know-How" means all present and future information directly relating to an Alliance Product that is required for GSK to perform its obligations or exercise its rights under this Agreement and which up until five (5) years after the First Commercial Sale of such Alliance Product is in Theravance's or any of its Affiliates' possession or control and is or are, or becomes owned by, or otherwise may be licensed (provided there are no restrictions on Theravance thereof) by, Theravance. Theravance Know-How does not include any Theravance Patents.

1.122 "Theravance Patents" means all present and future patents and patent applications including United States provisional applications and any continuations, continuations-in-part, divisionals, registrations, confirmations, revalidations, reissues, Patent Cooperation Treaty applications, certificates of addition, utility models, design patents, petty patents as well as all other intellectual property related to the application or patent including extensions or restorations of terms thereof, pediatric use extensions, supplementary protection certificates or any other such right covering an Alliance Product(s) or the Theravance Inventions which are or become owned by Theravance or Theravance's Affiliates, or as to which Theravance or Theravance's Affiliates are or become licensed, now or in the future, with the right to grant the sublicense rights granted to GSK under this Agreement, which patent rights cover the making, having made, use, offer for sale, sale or importation of the Alliance Product(s). For the avoidance of doubt, Theravance Patents shall include Theravance's interest in any patents covering Joint Inventions.

1.123 "Third Party" means a Person who is not a Party or an Affiliate of a Party.

1.124 "Third Party Claim" shall have the meaning set forth in Section 12.3.1.

1.125 "Top-Up Fees" shall have the meaning set forth in Section 4.3.2

1.126 "Trademarks" shall have the meaning set forth in Section 2.3.1.

1.127 "United States" means the United States, its territories and possessions.

1.128 "Valid Claim" means any claim(s) pending in a patent application or in an unexpired patent which has not been held unenforceable, unpatentable or invalid by a decision of a court or other governmental agency of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, and which has not has been admitted to be invalid or unenforceable through reissue or disclaimer.

1.129 "Validated Target" means a biological drug target against which any drug has received Marketing Authorization Approval.

1.130 "Voting Stock" means the outstanding securities of Theravance having the right to vote generally in any election of Directors to the Board of Directors of Theravance.

1.131 "Weighted Average Sales Price" means [*], where applicable.

1.132 "Withholding Party" shall have the meaning set forth in Section 6.9.1.

ARTICLE 2
RIGHTS AND OBLIGATIONS

2.1 *License Grants from Theravance to GSK.*

2.1.1 *Development License.* Effective only upon a Theravance Compound becoming an Alliance Product and on an Alliance Product-by-Alliance Product basis, and subject to the terms of this Agreement, including without limitation Section 2.2, Theravance grants to GSK, and GSK accepts, an exclusive (except as to Theravance and its Affiliates) license under the Theravance Patents and Theravance Know-How to make, have made, use and Develop Alliance Products for Commercialization in the Territory.

2.1.2 *Commercialization License.* Subject to the terms of this Agreement, including without limitation Section 2.2 and Theravance's Co-Promotion rights in Section 5.3.2, Theravance hereby grants to GSK, and GSK accepts, an exclusive license under the Theravance Patents and Theravance Know-How to make, have made, use, sell, offer for sale and import Alliance Products in the Territory.

2.1.3 *Manufacturing License.* Subject to the terms of this Agreement, including without limitation Section 2.2, Theravance grants to GSK an exclusive license under the Theravance Patents and Theravance Know-How to make and have made API Compound or formulated Alliance Product in the Territory.

2.1.4 *Licenses to Third Parties.* The licenses granted to GSK under Sections 2.1.1, 2.1.2 and 2.1.3 shall not prevent Theravance from granting licenses to Third Parties under Theravance Patents and Theravance Know-How for a purpose other than the research in connection with or the Development, manufacture or Commercialization of an Alliance Product. For the avoidance of doubt, in no event shall any such license to a Third Party as contemplated by the preceding sentence of this Section 2.1.4 conflict with the terms and provisions of this Agreement, including but not limited to Theravance's obligations, and GSK's concomitant rights, in respect of the delivery up of any Discovery Program, and GSK's Opt-In Rights thereof, as more particularly set forth in Article 4.

2.2 *Sublicensing and Subcontracting.* GSK may sublicense or subcontract its rights to Develop, Manufacture or Commercialize the Alliance Products in whole or in part to one or more of its Affiliates, provided that the rights sublicensed or subcontracted to such Affiliate shall automatically terminate upon any event in connection with which such Affiliate ceases to be an Affiliate of GSK. GSK may also sublicense or subcontract any of GSK's rights to Develop or Manufacture the Alliance Products, in whole or in part, to one or more Third Parties. In the event GSK wishes to sublicense or subcontract any of GSK's rights to Commercialize the Alliance Products, in whole or in part, to one or more Third Parties, GSK shall obtain the prior written consent of Theravance, such consent not to be unreasonably withheld, provided always that no such restriction shall apply in respect of those countries of the Territory wherein GSK is or has been required under applicable local laws to appoint a Third Party as its distributor or marketing partner. GSK shall secure all appropriate covenants, obligations and rights from any such sublicensee or subcontractor granted by it under this Agreement, including, but not limited to, intellectual property rights and confidentiality obligations in any such agreement or other relationship, to ensure that such sublicensee can comply with all of GSK's covenants and obligations to Theravance under this Agreement. GSK's rights to sublicense, subcontract or otherwise transfer its rights granted under Section 2.1 are limited to those expressly set forth in this Section 2.2.

2.3 *Trademarks and Housemarks.*

2.3.1 *Trademarks.* The Alliance Products shall be Commercialized under trademarks (the "Trademarks") and trade dress selected by the Joint Program Committee and approved by the

Joint Steering Committee. Prior to any such proposed Trademark(s) being submitted to the Joint Program Committee, GSK shall be responsible for undertaking their preliminary selection. GSK shall exclusively own all Trademarks, and shall be responsible for the procurement, filing and maintenance of trademark registrations for such Trademarks and all costs and expenses related thereto. GSK shall also exclusively own all trade dress and copyrights associated with the Alliance Products. Nothing herein shall create any ownership rights of Theravance in and to the Trademarks or the copyrights and trade dress associated with the Alliance Products.

2.3.2 *Housemarks.* Each Party shall enter into appropriate licenses and covenants in respect of its or its Affiliates' use of the other Party's Housemarks at such time as the Joint Steering Committee determines prior to Commercialization of the applicable Alliance Product. Such licenses shall ensure that each Party acknowledges the goodwill and reputation that has been associated with the other Party's Housemarks over the years, and shall use such Housemarks in a manner that maintains and promotes such goodwill and reputation and is consistent with trademark guidelines. Further, such licenses shall ensure that each Party shall take all reasonable precautions and actions to protect the goodwill and reputation that has inured to the other Party's Housemarks, shall refrain from doing any act that is reasonably likely to impair the reputation of such Housemarks, and shall cooperate fully to protect such Housemarks.

ARTICLE 3
GOVERNANCE OF RESEARCH, DEVELOPMENT AND COMMERCIALIZATION OF ALLIANCE PRODUCTS

3.1 *Discovery Programs.* Subject to the terms of this Agreement, GSK will have an option to obtain exclusive rights to any Discovery Program that exists or that is initiated during the Research Term. For the avoidance of doubt, in respect of any new Discovery Program that is initiated by Theravance during the Research Term, the provisions of Article 4 shall apply in respect of both Theravance's obligation to offer such Discovery Program to the Alliance and GSK's Opt-In Rights in relation thereto, even if at the time such Discovery Program is actually ready to be offered by Theravance to GSK under Section 4.2 the Research Term may have then expired.

3.1.1 *Research Term.* Subject to the terms of this Agreement, Theravance shall have sole responsibility for the conduct of all activities under each Discovery Program. The Research Term (the "Research Term") will be the period beginning on the Effective Date and ending on September 1, 2007 unless (i) terminated earlier in accordance with the provisions of this Agreement or (ii) extended by mutual agreement of the Parties or (iii) automatically extended for an additional five (5) year period commencing on September 1, 2007 if, pursuant to the Governance Agreement to be entered into between the Parties in the form attached hereto as Schedule 6.1.3(A), GSK's Percentage Interest exceeds fifty per cent (50%) at the Call/Put Termination Date (as defined in the Governance Agreement). If however, pursuant to the Governance Agreement, GSK's Percentage Interest is 50.1% or greater and thereafter GSK breaches its obligation not to dispose of beneficial ownership of Voting Stock prior to September 1, 2012, the Research Term shall end simultaneously with such breach and accordingly all of GSK's future Opt-In Rights to Theravance's Discovery Programs on or after such date of breach (but not, for the avoidance of doubt, any pre-existing Alliance Program in respect of which GSK has already exercised its Opt-In Right) shall terminate forthwith.

3.2 *Joint Steering Committee.*

3.2.1 *Purpose.* The purposes of the Joint Steering Committee shall be (i) to determine the overall strategy for this alliance between the Parties and (ii) to coordinate the Parties' activities hereunder. The Parties intend that their respective organizations will work together and will use Diligent Efforts to assure success of the alliance.

3.2.2 *Members; Officers.* Within thirty (30) days after the Effective Date, the Parties shall establish a joint steering committee (the "Joint Steering Committee"), which shall consist of eight (8) members, four (4) of whom shall be designated by each of GSK and Theravance and shall have appropriate expertise, with at least one (1) member from GSK being its Senior Vice-President, Drug Discovery, and one member from Theravance being its Executive Vice President, Research. Subject to the foregoing requirement, each of GSK and Theravance may replace its other representatives on the Joint Steering Committee at any time upon written notice to the other Party. A Party may designate a substitute to temporarily attend and perform the functions of such Party's designee at any meeting of the Joint Steering Committee. GSK and Theravance each may, on advance written notice to the other Party, invite non-member representatives of such Party to attend meetings of the Joint Steering Committee. The Joint Steering Committee shall be chaired on an annual rotating basis by a representative of either Theravance or GSK, as applicable, on the Joint Steering Committee, with Theravance providing the first such chairperson. The chairperson shall appoint a secretary of the Joint Steering Committee, who shall be a representative of the other Party and who shall serve for the same annual term as such chairperson.

3.2.3 *Responsibilities.* The Joint Steering Committee shall perform the following functions:

(a) Review the status and progress of all Discovery Programs (through updates provided to the Joint Steering Committee by Theravance as contemplated and required by Section 4.1), including any additional work related to any Discovery Program as contemplated by Sections 4.2.1(b) and 4.2.2(b);

(b) Oversee the Development and Commercialization of the Alliance Products pursuant to the terms of this Agreement;

(c) Review the Development Plans and the Marketing Plans for Alliance Products and any material amendments to the Development Plans and Marketing Plans;

(d) At each meeting of the Joint Steering Committee, review Net Sales for the year-to-date as available;

(e) Review the progress of any Joint Program Committee;

(f) Review the Trademarks selected under Section 2.3;

(g) Subject to GSK's termination rights under and in accordance with Article 14, review and approve "go/no-go" decisions and other matters referred to the Joint Steering Committee, including, without limitation, the continued Development of a particular Alliance Product except that, notwithstanding the foregoing, GSK shall always be required, through the Joint Steering Committee, to notify Theravance of, and obtain Theravance's consent (such consent not to be unreasonably withheld) to:

(i) any anticipated and/or actual cumulative delay of more than [*] between each key progression point in the Development of a particular Alliance Product (where "key progression point in the Development of a particular Alliance Product" for this purpose shall mean the planned initiation of either a Phase I Study, a Phase II Study or a Phase III Study for such Alliance Product, as applicable); and

(ii) any GSK wish to cease Development of a lead Theravance Compound in an Alliance Program (other than for Technical Failure) where, instead of termination of the relevant Alliance Program under Section 14, GSK wishes to progress Development of the relevant back-up Theravance Compound in such Alliance Program and such proposed activity will or is likely to result in a corresponding delay in Development within such Alliance Program of more than [*];

(h) Oversee life cycle management of, and intellectual property protection for, the Alliance Products;

(i) In accordance with the procedures established in Section 3.2.5, resolve disputes, disagreements and deadlocks unresolved by the Joint Program Committee; and

(j) Have such other responsibilities as may be assigned to the Joint Steering Committee pursuant to this Agreement or as may be mutually agreed upon by the Parties from time to time.

3.2.4 *Meetings.* The Joint Steering Committee shall meet at least quarterly during every Calendar Year (of which at least two such meetings shall be face-to-face meetings), and more or less frequently (i) as mutually agreed by the Parties or (ii) as required to resolve disputes, disagreements or deadlocks in the Joint Program Committee, on such dates, and at such places and times, as such Parties shall agree; provided that the Parties shall endeavor to have the first meeting of the Joint Steering Committee within thirty (30) days after the establishment of the Joint Steering Committee. The Joint Steering Committee shall arrange to meet in person or convene otherwise to review any Development Plans or Marketing Plans, if any, submitted to the Joint Steering Committee in each Calendar Year so that such plans will be reviewed within thirty (30) days following submission to the Joint Steering Committee. To the extent any such Development Plans or Marketing Plans need to be reformulated by the Joint Program Committee, such plans shall be reviewed by the Joint Steering Committee as soon as reasonably practicable after resubmission of same. Meetings of the Joint Steering Committee that are held in person shall alternate between offices of GSK and Theravance, or such other place as the Parties may agree. In addition to face to face meetings the Joint Steering Committee may also be held by means of telecommunications or, video conferences as deemed appropriate by the Parties.

3.2.5 *Decision-Making.*

(a) The Joint Steering Committee may make decisions with respect to any subject matter that is subject to the Joint Steering Committee's decision-making authority and functions as set forth in Section 3.2.3. Except as specified in Section 3.2.5(b), all decisions of the Joint Steering Committee shall be made by consensus, with the representatives from each Party presenting a unified position on behalf of such Party. The Joint Steering Committee shall use Diligent Efforts to resolve the matters within its roles and functions or otherwise referred to it.

(b) With respect to any issue, if the Joint Steering Committee cannot reach consensus within ten (10) Business Days after the matter has been brought to the Joint Steering Committee's attention, then such issue shall be referred to the Chief Executive Officer of Theravance and either the Chairman of GSK R&D (if the issue relates to a discovery and/or development matter) or the Chief Executive Officer of GSK (if the issue relates to a commercial matter) (collectively, the "Officers") for resolution. The Parties accept that the use of the Officers for resolution of any unresolved issues will be on an exceptional basis. In the event that the use of the Officers occurs on more than two occasions in any consecutive twelve (12) month period and such disputes are not related to Commercial Conflict issues, then GSK will from then on retain the final vote within the Joint Steering Committee for all issues other than Commercial Conflict. If the Officers are unable to reach consensus within thirty (30) days after the matter has been referred to them, the final decision on such disputed issue will reside with GSK; provided, however, that if the disputed issue involves [*], then the final decision will be made by [*].

3.3 *Joint Program Committee.*

3.3.1 *Purpose.* The purposes of each Joint Program Committee shall be to manage the Parties' day-to-day activities hereunder with respect to each corresponding Alliance Program. For the avoidance of doubt, there will be a separate Joint Program Committee for each Alliance Program (unless, in certain circumstances, the Parties mutually agree upon the appropriateness of combining two or more Joint Program Committees).

3.3.2 *Members; Officers.* Within ten (10) days after each relevant Theravance Compound in a Discovery Program is accepted by GSK as an Alliance Product, the Parties shall establish a Program Committee for such Alliance Product (the "Joint Program Committee"), and GSK and Theravance shall designate an equal number of representatives, up to a maximum total of eight (8) members on such Joint Program Committee, with a maximum of four (4) from each Party. Each of GSK and Theravance may replace any or all of its representatives on the Joint Program Committee at any time upon written notice to the other Party. Such representatives shall include individuals who have the relevant experience and expertise for the next twelve months as included in the Development Plan for the relevant Alliance Product. A Party may designate a substitute to temporarily attend and perform the functions of such Party's designee at any meeting of the Joint Program Committee. GSK and Theravance each may, on advance written notice to the other Party, invite non-member representatives of such Party to attend meetings of the Joint Program Committee. The Joint Program Committee shall be chaired by a representative of GSK. The chairperson shall appoint a secretary of the Joint Program Committee, who shall be a representative of Theravance.

3.3.3 *Responsibilities.* Each Joint Program Committee shall perform the following functions:

(a) Review the Development Plan(s) in relation to the relevant Alliance Product as prepared by GSK;

(b) On an annual rolling basis beginning within six months of the establishment of the Joint Program Committee, update and amend any initial Development Plan and review the Development Plan for the relevant Alliance Product for the following Calendar Year so that it can immediately thereafter submit such proposed Development Plan to the Joint Steering Committee for review;

(c) At each meeting of the Joint Program Committee, review and recommend to the Joint Steering Committee any material amendments or modifications to the Development Plan(s) for such Alliance Product;

(d) Review and recommend to the Joint Steering Committee "go/no-go" decisions for the Development of the relevant Alliance Product;

(e) Review the Marketing Plans where appropriate;

(f) Review and recommend to the Joint Steering Committee any material amendments or modifications to the Marketing Plans;

(g) Discuss the state of the markets for the relevant Alliance Product and opportunities and issues concerning the Commercialization of such Alliance Product, including consideration of marketing and promotional strategy, marketing research plans, labeling, Alliance Product positioning and Alliance Product profile issues;

(h) At each meeting of the Joint Program Committee, review the status of all Studies conducted on the relevant Alliance Product and any results therefrom;

(i) At each meeting of the Joint Program Committee, review Net Sales in relation to the relevant Alliance Product for the year-to-date, as available; and

(j) Have such other responsibilities as may be assigned to the Joint Program Committee pursuant to this Agreement or as may be mutually agreed upon by the Parties through the Joint Steering Committee from time to time.

3.3.4 *Meetings.* The Joint Program Committee shall meet at least once during every Calendar Quarter, and more frequently as GSK and Theravance mutually agree on such dates, and at such places and times, as such Parties shall agree; provided that the Parties shall endeavor to have the first meeting of the Joint Program Committee as a face to face meeting within thirty (30) days after the establishment of the Joint Program Committee. Meetings of the Joint Program Committee that are held in person shall alternate between the offices of GSK and Theravance, or such other place as the Parties may agree and such face to face meetings shall occur no less than twice a year. The remaining meetings may be held by means of telecommunications or video conferences as deemed appropriate. Following Commercialization of the relevant Alliance Product in the first Major Market, the Joint Program Committee shall meet twice a year with only one annual face to face meeting required.

3.3.5 *Decision-Making.* The Joint Program Committee may make decisions with respect to any subject matter that is subject to the Joint Program Committee's decision-making authority and functions as set forth in Section 3.3.3. All decisions of the Joint Program Committee shall be made by consensus, with the representatives from each Party presenting a unified position on behalf of such Party. If the Joint Program Committee cannot reach consensus within ten (10) Business Days after it has first met and attempted to reach such consensus, the matter shall be referred on the eleventh (11^{th}) Business Day to the Joint Steering Committee for resolution.

3.4 *Minutes of Committee Meetings.* Definitive minutes of all committee meetings shall be finalized no later than thirty (30) days after the meeting to which the minutes pertain as follows:

3.4.1 *Distribution of Minutes.* Within ten (10) days after a committee meeting, the secretary of such committee shall prepare and distribute to all members of such committee draft minutes of the meeting. Such minutes shall provide a list of any issues yet to be resolved, either within such committee or through the relevant resolution process.

3.4.2 *Review of Minutes.* The Party members of each committee shall have ten (10) days after receiving such draft minutes to collect comments thereon and provide them to the secretary of such committee.

3.4.3 *Discussion of Comments.* Upon the expiration of such second ten (10) day period, the Parties shall have an additional ten (10) days to discuss each other's comments and finalize the minutes. The secretary and chairperson(s) of such committee shall each sign and date the final minutes. The signature of such chairperson(s) and secretary upon the final minutes shall indicate each Party's assent to the minutes.

3.5 *Expenses.* Each Party shall be responsible for all travel and related costs and expenses for its members and other representatives to attend meetings of, and otherwise participate on, a committee.

3.6 *General Guidelines and Initial Coordination Efforts.* In all matters related to the collaboration established by this Agreement, the Parties shall strive to balance as best they can the legitimate interests and concerns of the Parties and to maximize the economic potential of Alliance Products. In all matters relating to this Agreement, the Parties shall seek to comply with good pharmaceutical and environmental practices. The Parties intend, following the Effective Date, to organize meetings of internal staff to communicate and explain the provisions of this Agreement to ensure the efficient and timely Development and Commercialization of the Alliance Products.

ARTICLE 4
DELIVERY OF THERAVANCE COMPOUNDS AND
DEVELOPMENT OF ALLIANCE PRODUCTS

4.1 *Delivery of Theravance Compounds.* During the Research Term it is Theravance's goal to discover and deliver to the Alliance:

(i) in the case of each Respiratory Discovery Program, [*];

(ii) in the case of each non-respiratory Discovery Program directed at a Validated Target, [*]; and

(iii) in the case of each non-respiratory Discovery Program directed at a Non-validated Target, [*].

In relation to its achievement of the foregoing goals, Theravance shall use Diligent Efforts at all times, it being understood, however, that Theravance shall maintain at all times sole decision making authority with respect to its Discovery Programs, including without limitation decisions relating to initiation and termination of Discovery Programs, and staffing and resource allocation between and among Discovery Programs. Through the Joint Steering Committee, Theravance shall provide GSK with updates of the status and progress of each Existing Discovery Program and any Additional Discovery Program that has been initiated, or whose initiation is at such time under consideration and shall consider any comments and further input from GSK in relation to same.

4.1.2 *Theravance Funding Responsibility.* Theravance shall bear all costs and expenses associated with any Discovery Program.

4.1.3 *GSK Assistance.* Without prejudice to the foregoing, GSK will endeavor to provide Theravance, upon Theravance's request, and at GSK's sole discretion, such assistance as may be reasonably required by Theravance to achieve this objective, which such assistance may include providing directly or through GSK's vendors, assistance in (i) [*], (ii) [*], (iii) [*], (iv) [*], and (v) [*].

4.1.4. *Additional Discovery Programs.* Theravance shall use Diligent Efforts at all times to initiate at least three new full Discovery Programs during the Research Term. Theravance shall inform GSK, through the Joint Steering Committee, of the initiation of any Additional Discovery Program and the Parties, through the Joint Steering Committee, shall also mutually agree at that point whether or not such Additional Discovery Program is directed at Validated or Non-Validated Targets. For the avoidance of doubt, the Parties agree that Theravance's existing programs set forth on Schedule 1.36 are each Discovery Programs directed at Validated Targets.

4.2 *GSK Opt-In Rights.* GSK shall have the exclusive option (in each case, an "Opt-in Right") on a Discovery Program-by-Discovery Program basis, to Develop and Commercialize any Theravance Compound arising out of each such Discovery Program pursuant to the terms and conditions of this Agreement, and as more fully set forth below in this Section 4.2. For the avoidance of doubt, GSK may exercise its Opt-In Right at any time up through the applicable sixty (60) day periods following the Date of Final Delivery of Opt-In Data set forth in Sections 4.2.1 and 4.2.2.

4.2.1 *Existing and Additional Respiratory Discovery Programs.*

(a) At the appropriate time in respect of each Existing or Additional Respiratory Discovery Program, and upon the provision to GSK of at least two (2) days advance written notice, Theravance shall deliver on such date ("Initial Due Diligence Commencement Date") and to GSK's appointed designee (in a manner and format to be specified by GSK), all available Development Candidate Data on the first Theravance Compound ("First Theravance Compound") in an Existing or Additional Respiratory Discovery Program (it being recognized,

and it being in the contemplation of the Parties, that not all but a substantial amount of Development Candidate Data on the First Theravance Compound in the relevant Discovery Program will be made available at this point). At such time, and in light of GSK's funding obligations under Section 4.3.2, Theravance shall also deliver up to GSK an outline budget of its proposed expenditures in relation to such Discovery Program for the next one hundred and twenty (120) days) (which such proposed expenditures shall be proposed net external expenditures only, including any planned Third Party contracting and future committed expenditures, but shall not, for the avoidance of doubt include the internal salary costs of Theravance employees). If such outline budget is [*] or less, it shall remain in Theravance's sole discretion; provided, however, GSK shall be permitted to bring to Theravance's attention areas of potential cost savings or comparable efficiencies and Theravance will reasonably consider any recommendations by GSK in this regard. To the extent that the outline budget exceeds [*], the Parties shall as promptly as possible meet and attempt to mutually agree either to changes in the schedule of activities such that the total budget for the relevant period does not exceed [*] or alternatively, if GSK agrees that the circumstances warrant activities that justify a budget in excess of such amount, a higher maximum budget. If the Parties cannot reach mutual agreement on any excess budgeted amounts then GSK shall not be obligated to pay for such excess budgeted amounts under Section 4.3.2. Within a further sixty days of the Initial Due Diligence Commencement Date, Theravance shall deliver to GSK final and complete Development Candidate Data in respect of such First Theravance Compound ("Date of Final Delivery of Opt-In Data"). To facilitate GSK's review throughout the aforesaid periods, Theravance shall deliver all such materials to GSK in a diligent, prompt and timely manner and shall respond promptly and fully to any GSK requests and/or queries raised as part of such review. It is hereby anticipated and acknowledged by the Parties that such process as contemplated hereunder shall take the form of as many face-to-face meetings between the Parties as GSK shall reasonably request of Theravance. GSK shall also notify Theravance of its most likely plans for Development in respect of such Alliance Program and such intent shall form the basis of the first Development Plan to be drawn up pursuant to Section 3.3.3. It is anticipated that the Parties will also endeavor to agree, where appropriate, any specific and/or additional terms related to GSK's proposed future Development and Commercialization activities in relation to such Alliance Program, particularly where appropriate provisions are not contained in this Agreement or, if such provisions are contained in this Agreement, such provisions are not, for whatever reason, relevant. It is further envisaged that such specific and/or additional terms will then be appended to this Agreement as a Specific Alliance Product Development & Commercialization Appendix. Within a further sixty (60) days after the Date of Final Delivery of Opt-In Data, GSK shall notify Theravance in writing as to whether or not it is exercising its Opt-In Right with respect to such Discovery Program. If GSK notifies Theravance in writing of its wish to exercise its Opt-In Right in respect of such Discovery Program, such notice of exercise shall not take effect until the date of satisfaction of the Alliance Program Closing Condition (the "Effective Date of GSK's Exercise of its Opt-In Right"). On the Effective Date of GSK's Exercise of its Opt-In Right, (i) such Discovery Program for which GSK has notified Theravance of its wish to exercise its Opt-In Right shall become an Alliance Program; (ii) any payment and/or compensation that becomes payable by GSK to Theravance as a consequence, including but not limited to the payment of an Opt-In Fee and/or any relevant Development Milestone, shall be paid by GSK to Theravance (subject to and in accordance with the further provisions of Article 6); and (iii) Theravance shall promptly deliver to GSK at no cost to GSK the Technology Transfer Package. If GSK elects not to exercise its Opt-In Right for such Discovery Program, or if the Alliance Program Closing Condition is not satisfied or is terminated pursuant to Section 15.15, the Discovery Program will revert in full to Theravance

(a "Reversion Program") and Theravance will be entitled to pursue development of all compounds from such Reversion Program outside the Alliance alone or with a Third Party.

(b) If at the Date of Final Delivery of Opt-In Data, only data related to the First Theravance Compound is available, then, without prejudice to GSK's exercise of its Opt-In Right with respect to such Discovery Program in accordance with Section 4.2.1(a) (including but not limited to the specified process and timelines related thereto), Theravance shall, at Theravance's expense, diligently work toward the goal of delivering up to GSK within a further [*] from the Date of Final Delivery of Opt-In Data further discovery data related to such Discovery Program including but not limited to data related to any back-up Respiratory Compound which meets the relevant Respiratory Discovery Criteria ("Subsequent Theravance Compound(s)"). Further, if Development of the First Theravance Compound is subsequently discontinued and/or terminated by GSK for reasons of Technical Failure and for whatever reason no Subsequent Theravance Compound(s) in such Discovery Program exists or has been made available to GSK by Theravance or does not meet the relevant Respiratory Discovery Criteria on or before the expiration of [*] from the Date of Final Delivery of Opt-In Data, then the next payment to be made by GSK to Theravance under this Agreement (whether an Opt-In Fee, Development Milestone or any other payment) shall [*].

(c) If GSK elects not to exercise its Opt-In Right for any Discovery Program under Section 4.2.1, it will no longer have any Opt-In Right for any subsequent Theravance Compound arising out of the same Discovery Program.

4.2.2 *Non-respiratory Discovery Programs.*

(a) *Discovery Programs Directed at Validated Targets*

(i) At the appropriate time in respect of each non-respiratory, Validated Target Discovery Program, and upon the provision to GSK of at least two (2) days advance written notice, Theravance shall deliver on such date ("the Initial Due Diligence Commencement Date") and to GSK's appointed designee (in a manner and format to be specified by GSK), all available POC Validated Target Data on the first Theravance Compound ("First Theravance Compound") in such non-respiratory, validated target Discovery Program (it being recognized, and it being in the contemplation of the Parties, that not all but a substantial amount of POC Validated Target Data on the First Theravance Compound in such non-respiratory, validated target Discovery Program will be made available at this point). At such time, and in light of GSK's funding obligations under Section 4.3.2, Theravance shall also deliver up to GSK an outline budget of its proposed expenditures in relation to such Discovery Program for the next one hundred and twenty (120) days) (which such proposed expenditures shall be proposed net external expenditures only, including any planned Third Party contracting and future committed expenditures, but shall not, for the avoidance of doubt include the internal salary costs of Theravance employees). If such outline budget is [*] or less, it shall remain in Theravance's sole discretion; provided, however, GSK shall be permitted to bring to Theravance's attention areas of potential cost savings or comparable efficiencies and Theravance will reasonably consider any recommendations by GSK in this regard. To the extent that the outline budget exceeds [*], the Parties shall as promptly as possible meet and attempt to mutually agree either to changes in the schedule of activities such that the total budget for the relevant period does not exceed [*] or alternatively, if GSK agrees that the circumstances warrant activities that justify a budget in excess of such amount, a higher maximum budget. If the Parties cannot reach mutual agreement on any excess budgeted amounts then GSK shall not be obligated to pay for such excess budgeted amounts under Section 4.3.2. Within a further sixty days of the Initial Due Diligence

Commencement Date, Theravance shall deliver to GSK final and complete POC Validated Target Data in respect of such First Theravance Compound ("Date of Final Delivery of Opt-In Data"). To facilitate GSK's review throughout the aforesaid periods, Theravance shall deliver all such materials to GSK in a diligent, prompt and timely manner and shall respond promptly and fully to any GSK requests and/or queries raised as part of such review. It is hereby anticipated and acknowledged by the Parties that such process as contemplated hereunder shall take the form of as many face-to-face meetings between the Parties as GSK shall reasonably request of Theravance. GSK shall also notify Theravance of its most likely plans for Development in respect of such Alliance Program and such intent shall form the basis of the first Development Plan to be drawn up pursuant to Section 3.3.3. It is anticipated that, within such sixty (60) day period the Parties will also endeavor to agree, where appropriate, any specific and/or additional terms related to GSK's proposed future Development and Commercialization activities in relation to such Alliance Program, particularly where appropriate provisions are not contained in this Agreement or, if such provisions are contained in this Agreement, such provisions are not, for whatever reason, relevant. It is further envisaged that such specific and/or additional terms will then be appended to this Agreement as a Specific Alliance Product Development & Commercialization Appendix. Within a further sixty (60) days after Date of Final Delivery of Opt-In Data, GSK shall notify Theravance in writing as to whether or not it is exercising its Opt-In Right with respect to such Discovery Program. If GSK notifies Theravance in writing of its wish to exercise its Opt-In Right in respect of such Discovery Program, such notice of exercise shall not take effect until the date of satisfaction of the Alliance Program Closing Condition (the "Effective Date of GSK's Exercise of its Opt-In Right"). On the Effective Date of GSK's Exercise of its Opt-In Right, (i) such Discovery Program for which GSK has notified Theravance of its wish to exercise its Opt-In Right shall become an Alliance Program; (ii) any payment and/or compensation that becomes payable by GSK to Theravance as a consequence, including but not limited to the payment of an Opt-In Fee and/or any relevant Development Milestone, shall be paid by GSK to Theravance (subject to and in accordance with the further provisions of Article 6); and (iii) Theravance shall promptly deliver to GSK at no cost to GSK the Technology Transfer Package. If GSK elects not to exercise its Opt-In Right for such Discovery Program, or if the Alliance Program Closing Condition is not satisfied or is terminated pursuant to Section 15.15, the Discovery Program will become a Reversion Program (a "Reversion Program") and Theravance will be entitled to pursue development of all compounds from such Reversion Program outside the Alliance alone or with a Third Party.

(ii) Subject to the exclusion contained in Section 4.1(ii), if at the Date of Final Delivery of Opt-In Data, only data related to the First Theravance Compound is available, then, without prejudice to GSK's exercise of its Opt-In Right with respect to such Discovery Program in accordance with Section 4.2.2(a)(i) (including but not limited to the specified process and timelines related thereto), Theravance shall, at Theravance's expense, diligently work toward the goal of delivering up to GSK within a further [*] from the Date of Final Delivery of Opt-In Data further discovery data related to such Discovery Program including but not limited to data related to any back-up Non-respiratory Compound ("Subsequent Theravance Compound(s)"). Further, if Development of the First Theravance Compound is subsequently discontinued and/or terminated by GSK for reasons of Technical Failure and for whatever reason no Subsequent Theravance Compound(s) in such Discovery Program exists or has been made available to GSK by Theravance on or before the expiration of [*] from the Date of Final Delivery of Opt-In Data, then the next payment to be made by GSK to Theravance under

this Agreement (whether an Opt-In Fee, Development Milestone or any other payment) shall [*].

(iii) If GSK elects not to exercise its Opt-In Right for any Discovery Program under Section 4.2.2(a)(i), it will no longer have any Opt-In Right for any subsequent Theravance Compound arising out of the same Discovery Program.

(b) *Discovery Programs Directed at Non-validated Targets.*

(i) At the appropriate time in respect of each non-respiratory, Non-Validated Target Discovery Program, and upon the provision to GSK of at least two (2) days advance written notice, Theravance shall deliver on such date ("the Initial Due Diligence Commencement Date") and to GSK's appointed designee (in a manner and format to be specified by GSK), all available POC Non-Validated Target Data on the first Theravance Compound ("First Theravance Compound") in such non-respiratory, non-validated target Discovery Program (it being recognized, and it being in the contemplation of the Parties, that not all but a substantial amount of POC Non-Validated Target Data on the First Theravance Compound in such non-respiratory, non-validated target Discovery Program will be made available at this point). At such time, and in light of GSK's funding obligations under Section 4.3.2, Theravance shall also deliver up to GSK an outline budget of its proposed expenditures in relation to such Discovery Program for the next one hundred and twenty (120) days) (which such proposed expenditures shall be proposed net external expenditures only, including any planned Third Party contracting and future committed expenditures, but shall not, for the avoidance of doubt include the internal salary costs of Theravance employees). If such outline budget is [*] or less, it shall remain in Theravance's sole discretion; provided, however, GSK shall be permitted to bring to Theravance's attention areas of potential cost savings or comparable efficiencies and Theravance will reasonably consider any recommendations by GSK in this regard. To the extent that the outline budget exceeds [*], the Parties shall as promptly as possible meet and attempt to mutually agree either to changes in the schedule of activities such that the total budget for the relevant period does not exceed [*] or alternatively, if GSK agrees that the circumstances warrant activities that justify a budget in excess of such amount, a higher maximum budget. If the Parties cannot reach mutual agreement on any excess budgeted amounts then GSK shall not be obligated to pay for such excess budgeted amounts under Section 4.3.2. Within a further sixty days of the Initial Due Diligence Commencement Date, Theravance shall deliver to GSK final and complete POC Non-Validated Target Data in respect of such First Theravance Compound ("Date of Final Delivery of Opt-In Data"). To facilitate GSK's review throughout the aforesaid periods, Theravance shall deliver all such materials to GSK in a diligent, prompt and timely manner and shall respond promptly and fully to any GSK requests and/or queries raised as part of such review. It is hereby anticipated and acknowledged by the Parties that such process as contemplated hereunder shall take the form of as many face-to-face meetings between the Parties as GSK shall reasonably request of Theravance. GSK shall also notify Theravance of its most likely plans for Development in respect of such Alliance Program and such intent shall form the basis of the first Development Plan to be drawn up pursuant to Section 3.3.3. It is anticipated that, within such sixty (60) day period the Parties will also endeavor to agree, where appropriate, any specific and/or additional terms related to GSK's proposed future Development and Commercialization activities in relation to such Alliance Program, particularly where appropriate provisions are not contained in this Agreement or, if such provisions are contained in this Agreement, such provisions are not, for whatever reason, relevant. It is further envisaged that such specific and/or additional terms will then be appended to this Agreement as a

Specific Alliance Product Development & Commercialization Appendix. Within a further sixty (60) days after Date of Final Delivery of Opt-In Data, GSK shall notify Theravance in writing as to whether or not it is exercising its Opt-In Right with respect to such Discovery Program. If GSK notifies Theravance in writing of its wish to exercise its Opt-In Right in respect of such Discovery Program, such notice of exercise shall not take effect until the date of satisfaction of the Alliance Program Closing Condition (the "Effective Date of GSK's Exercise of its Opt-In Right"). On the Effective Date of GSK's Exercise of its Opt-In Right, (i) such Discovery Program for which GSK has notified Theravance of its wish to exercise its Opt-In Right shall become an Alliance Program; (ii) any payment and/or compensation that becomes payable by GSK to Theravance as a consequence, including but not limited to the payment of an Opt-In Fee and/or any relevant Development Milestone, shall be paid by GSK to Theravance (subject to and in accordance with the further provisions of Article 6); and (iii) Theravance shall promptly deliver to GSK at no cost to GSK the Technology Transfer Package. If GSK elects not to exercise its Opt-In Right for such Discovery Program, or if the Alliance Program Closing Condition is not satisfied or is terminated pursuant to Section 15.15, the Discovery Program will become a Reversion Program (a "Reversion Program") and Theravance will be entitled to pursue development of all compounds from such Reversion Program outside the Alliance alone or with a Third Party.

(ii) If at the Date of Final Delivery of Opt-In Data, only data related to the First Theravance Compound is available, then, without prejudice to GSK's exercise of its Opt-In Right with respect to such Discovery Program in accordance with Section 4.2.2(b)(i) (including but not limited to the specified process and timelines related thereto), Theravance shall, at Theravance's expense, diligently work toward the goal of delivering up to GSK within a further [*] from the Date of Final Delivery of Opt-In Data further discovery data related to such Discovery Program including but not limited to data related to any back-up Non-respiratory Compound ("Subsequent Theravance Compound(s)"). Further, if Development of the First Theravance Compound is subsequently discontinued and/or terminated by GSK for reasons of Technical Failure and for whatever reason no Subsequent Theravance Compound(s) in such Discovery Program exists or has been made available to GSK by Theravance on or before the expiration of [*] from the Date of Final Delivery of Opt-In Data, then the next payment to be made by GSK to Theravance under this Agreement (whether an Opt-In Fee, Development Milestone or any other payment) shall [*].

(iii) If GSK elects not to exercise its Opt-In Right for any Discovery Program under Section 4.2.2(b)(i), it will no longer have any Opt-In Right for any subsequent Theravance Compound arising out of the same Discovery Program.

4.2.3 *Early Opt-In* Nothing contained herein shall prevent GSK from exercising an Opt-In Right with respect to a Discovery Program at any time earlier than set forth in Sections 4.2.1 and 4.2.2 in which case such Discovery Program shall become an Alliance Program. Should GSK determine that it would like to consider exercising its Opt-In Right with respect to a Discovery Program prior to the expected or anticipated Initial Due Diligence Date, GSK shall notify Theravance through the Joint Steering Committee and the parties shall use their reasonable efforts to mutually agree on the information requirements and timetables applicable to such a decision.

4.3 *Obligations for Development.*

4.3.1 *General; GSK.* GSK will, subject to the other terms of this Agreement (including Section 3.2.3(g)), endeavor to move Alliance Products forward in Development from each Discovery Program for which GSK has exercised an Opt-In Right provided always that it is understood and hereby acknowledged by the Parties that any GSK decision to pursue Development of [*] shall not, for the avoidance of doubt, constitute a breach of GSK's Diligent Efforts obligations under this Agreement. GSK shall have the overall responsibility for, and use Diligent Efforts in, the performance of all such Development activities which shall include, where applicable, relevant regulatory filings (as contemplated under Article 8) for any such Alliance Product moved forward in Development. Further, GSK shall use Diligent Efforts to advance such Alliance Product through Development in accordance with the Go/No-Go checkpoints identified in the then current Development Plan for such Alliance Product. GSK shall also use Diligent Efforts to develop an optimal formulation of such Alliance Product.

4.3.2 *GSK Funding Responsibility.* As of the Effective Date of GSK's Exercise of its Opt-In Right with respect to any Alliance Program, GSK shall bear all subsequent costs and expenses associated with the Development of Alliance Products from such Alliance Program (excepting at all times, for the avoidance of doubt, any costs related to any Theravance continuing work on Subsequent Theravance Compounds in relation to such Alliance Program as contemplated by Sections 4.2.1(b), 4.2.2(a)(ii) and 4.2.2(b)(ii), which such costs shall be excluded from such computation). Further, if GSK elects to exercise its Opt-In Right for any Discovery Program and, subject to satisfaction under Section 15.15 of the Alliance Program Closing Condition, the Discovery Program thereby becomes an Alliance Program then, during the period [*] (the "Interim Period"), and recognizing the increase in the value of the licences granted hereunder as a result of the work performed by Theravance in the Interim Period, the Opt-In Fee payable under Section 6.1.4 will [*] (the "Top-Up Fees") and GSK shall reimburse Theravance for such Top-Up Fees provided always that unless otherwise agreed by the Parties the amount of any such Top-Up Fees shall be strictly in accordance with the budget established by the Parties pursuant to Sections 4.2.1 (a), 4.2.2 (a)(i) or 4.2.2(b)(i), as applicable. Notwithstanding the foregoing, the Parties hereby acknowledge and recognize that the timing of GSK's payment to Theravance of the aforesaid Top-Up Fees may not necessarily be simultaneous with the timing of GSK's payment of the relevant Opt-In Fee, since the payment of the Top-Up Fees by GSK will require prior submission from Theravance to GSK of an appropriate and suitable invoice for monies spent and GSK shall have thirty (30) days to reimburse Theravance from the date of GSK's receipt of said invoice.

4.3.3 *Decisions with Respect to Alliance Products.*

(a) GSK shall have the sole discretion with respect to Development decisions for Alliance Products subject to and in accordance with Sections 3.2.5, 3.3.5, and 4.3.1.

(b) GSK will provide the Joint Program Committee with (i) a notification within thirty (30) days of the initiation (i.e. the first person dosed) of any Study involving an Alliance Product, and (ii) a "top line results" report within sixty (60) days following the last person dosed/last visit in any Study involving an Alliance Product.

4.3.4 *Development Timelines.* It is hereby acknowledged that the Parties' mutual strategic objective is to move Alliance Products into Development and subsequent Commercialization at the earliest opportunity. GSK will consult with the Joint Program Committee and will share, modify and further develop all applicable Development Plans and timelines in that forum. GSK will use Diligent Efforts to secure the necessary resources and will keep the Joint Program Committee informed on the progress of individual studies and activities relating to Alliance Products in accordance with Section 3.2.3.

4.4 *Activity Outside of the Alliance.* The Parties acknowledge that the research, Development and Commercialization objectives of this Alliance are intended to be complementary to GSK's other research, development and commercialization efforts outside this Alliance. Accordingly, the Parties agree that GSK shall be free to discover and develop other compounds for the treatment of diseases targeted by Alliance Products outside of this Agreement, subject to GSK's obligations hereunder with respect to any Alliance Product for which GSK has exercised its Opt-In Right.

ARTICLE 5
COMMERCIALIZATION

5.1 *Global Marketing Plans.*

5.1.1 *General.* The Joint Program Committee shall be responsible for reviewing a Global Marketing Plan for each Alliance Product ("Marketing Plan"). Each Marketing Plan shall define the goals and objectives for Commercializing the Alliance Products in the pertinent Calendar Year consistent with the applicable Development Plan.

5.1.2 *Contents of Each Marketing Plan.* The Marketing Plan for each Alliance Product shall be prepared during the Calendar Year wherein, and where applicable, Phase III Studies for such Alliance Product have commenced and shall be a rolling, three-year plan, updated annually and shall contain at a minimum and as appropriate to current knowledge:

(a) Results of market research and strategy, including market size, dynamics, growth, customer segmentation, customer targeting, competitive analysis and global Alliance Product positioning;

(b) Annual sales forecasts for Major Market Countries;

(c) For each major Market Country (as available): sales plans, which will include target number of sales representatives, detail order and target number of details;

(d) Core, global advertising and promotion programs and strategies, including literature, media plans, symposia and speaker programs; and

(e) Core Phase III/Phase IIIb Studies to be conducted.

5.2 *Obligations for Commercialization.* GSK shall use Diligent Efforts to Commercialize the Alliance Products.

5.3 *Commercialization.*

5.3.1 *GSK Responsibility.* Subject to Section 5.3.2:

(a) GSK shall have the sole right and responsibility for Commercialization of Alliance Products for distribution and sale. GSK shall bear all costs and expenses associated with the Commercialization of Alliance Products for sale or distribution;

(b) GSK shall have the sole right and responsibility to distribute, sell, record sales and collect payments for Alliance Products;

(c) GSK shall have the sole right and responsibility for establishing and modifying the terms and conditions with respect to the sale of Alliance Products, including, without limitation, the price or prices at which the Alliance Products will be sold, any discount applicable to payments or receivables, all managed care contracting issues and any other similar matters; and

(d) GSK will be responsible for storage, order receipt, order fulfillment, shipping and invoicing of Alliance Products.

5.3.2 *Limited Co-Promotion in the United States.* Theravance may elect to Co-Promote in the United States an Alliance Product where such Alliance Product is primarily targeted to specialist and/or hospital-based healthcare providers in the United States in the manner and to the extent set forth below. The limited right to Co-Promote as set forth herein is non-exclusive, and also may not be sublicensed or sub-contracted by Theravance to a Third Party.

(a) *Co-Promotion Option.* Theravance will notify GSK in writing if it wishes to Co-Promote an Alliance Product, not later than the date of the filing of the New Drug Application for an Alliance Product in the United States. If GSK is willing to progress discussions, the parties will then meet as soon as practicable to further discuss and agree in good faith suitable terms provided always that any such proposed arrangement shall always be [*]. Any such terms that are agreed shall be documented separately, executed by the Parties and/or their Affiliate(s), as applicable, and a copy thereof appended to this Agreement.

(b) *Co-Promotion Plan.* The Co-Promotion Plan will be an amendment to the Marketing Plan and will be finalized not later than six (6) months before launch in the United States.

5.3.3 *Semi-Annual Reports.* GSK shall provide the Joint Program Committee reports semi-annually. Such reports shall set forth in summary form the results of GSK's Commercialization activities performed during such semi-annual period in the Major Markets.

5.3.4 *Exports to the United States.* To the extent permitted by Law, the Parties shall use Diligent Efforts to prevent the Alliance Products distributed for sale in a particular Country other than the United States from being exported to the United States for sale.

ARTICLE 6
FINANCIAL PROVISIONS

6.1 *Option Fee; Equity Investment; Governance Agreement; Opt-In Fee.*

6.1.1 *Option Fee.* In partial consideration for the right to Opt-In for Discovery Programs hereunder, GSK shall on the Effective Date, pay to Theravance a non-refundable amount of Twenty Million United States Dollars (U.S. $20,000,000).

6.1.2 *Equity Investment.* On the Effective Date, GSK shall purchase nine million nine hundred thousand (9,900,000) newly issued shares of Theravance Class A Common Stock at a price of U.S. $11.00 per share for total consideration of One Hundred Eight Million Nine Hundred Thousand United States Dollars (U.S. $108,900,000.00). Such purchase will be made pursuant to the Stock Purchase Agreement attached hereto as Schedule 6.1.2(A).

Simultaneously with the foregoing payment and investment by GSK, all outstanding Theravance Preferred Stock not owned by GSK will be converted into shares of Theravance Common Stock, and all outstanding shares of Theravance Preferred Stock owned by GSK will be converted into shares of Theravance Class A Common Stock.

6.1.3 *Governance Agreement.* On the Effective Date the Parties also will enter into the Governance Agreement attached hereto as Schedule 6.1.3(A).

6.1.4 *Opt-In Fee.* Upon the Effective Date of GSK's Exercise of its Opt-In Right with respect to any Discovery Program, it shall simultaneously pay to Theravance a non-refundable fee in partial consideration for the acquisition of license rights under the Theravance Patents and the Theravance Know-How by GSK under this Agreement, as follows:

(i) for a Discovery Program in which the lead Theravance Compound [*] as of the Initial Due Diligence Commencement Date: [*];

(ii) for a Discovery Program in which the lead Theravance Compound [*] as of the Initial Due Diligence Commencement Date: [*]; and

(iii) for a Discovery Program in which the lead Theravance Compound [*] as of the Initial Due Diligence Commencement Date: [*].

provided always that, in recognition of the increased value of the licences granted hereunder as a result of the work performed by Theravance in the Interim Period, [*].

6.2 *Milestone Payments.*

6.2.1 *General.* In further consideration for the acquisition of license rights under the Theravance Patents and Theravance Know How, GSK shall also pay to Theravance the payments set forth below for each such Development milestone referred to therein (each, a "Development Milestone"); provided always that each such payment shall be made only one time for each Alliance Product regardless of how many times such Development Milestones are achieved for such Alliance Product, and no payment shall be owed for a Development Milestone which is not reached (except that, upon achievement of a Development Milestone for a particular Alliance Product, any previous Development Milestone for that Alliance Product for which payment was not made shall be deemed achieved and payment therefore shall be made); provided further that, in the event that more than one Development Milestone is achieved with respect to the same Alliance Product at one time, then all applicable payments under Section 6.2 shall be made. For example, if a single-agent Alliance Product and a Combination Product are approved in the same Marketing Authorization Approval, then in addition to the relevant milestone for the single-agent Alliance Product, the relevant milestone for the Combination Product shall be paid simultaneously. In the event of termination of development of a particular Alliance Product for Technical Failure and an alternative Alliance Product in the same Discovery Program replaces such Terminated Alliance Product then milestone payments for such alternative Alliance Product shall not be paid in respect of milestones already achieved by the Terminated Alliance Product.

6.2.2 *Specific Milestones.* GSK shall make the following milestone payments to Theravance upon the achievement of the indicated Development Milestone for each of the first single agent Alliance Product and the first Combination Alliance Product per Alliance Program:

Milestone	Amount
Initiation of [*]*	[*]
Successful completion of [*]** (where [*] means [*] for a Validated Target and [*] for a Non-Validated Target, as such Validated/Non-Validated Targets will have been agreed by the Parties pursuant to Section 4.1.4).	[*]
Initiation of [*]	[*]
Filing for Regulatory Approval	
[*]	[*]
[*]	[*]
[*]	[*]
Launch	
[*]	[*]
[*]	[*]
[*]	[*]

* [*] milestone is only payable for Theravance Compounds from Discovery Programs for which GSK has given notice of its wish to exercise its Opt-In Right prior to initiation of a [*] for the first Theravance Compound in such Discovery Program.

** [*] milestone is only payable for Theravance Compounds from Discovery Programs for which GSK has given notice of its wish to exercise its Opt-In Right prior to initiation of a [*] for the first Theravance Compound in such Discovery Program.

For the purpose of this Section 6.2, the following definitions shall apply:

"Initiation of [*]" means [*] for the applicable Alliance Product

"Successful completion of [*]" means [*] conducted in the target population for the applicable Alliance Product.

"Initiation of [*]" means [*] for the applicable Alliance Product.

"Filing for Regulatory Approval" means (i) in the case of [*], the date on which [*] in relation to the applicable Alliance Product [*]; (ii) in the case of [*], the earlier of (aa) the date on which the appropriate regulatory authorities in [*] for the applicable Alliance Product filed by or on behalf of GSK in such Country or (bb) the date on which [*] or any successor thereto [*] for the applicable Alliance Product filed by or on behalf of GSK; and (iii) in the case of [*], the date on which the relevant governmental authority in [*] for the applicable Alliance Product filed by or on behalf of GSK in [*].

"Launch" means the date of First Commercial Sale in either [*], as applicable.

If GSK, either individually or as a member of the Joint Steering Committee or Joint Program Committee, discontinues the Development of [*] for reasons other than Technical Failure, and the Theravance Compound that comprises such Alliance Product is also in a [*], GSK will not compensate Theravance for the unpaid milestone payments otherwise due to Theravance under Section 6.2.2 except where, and notwithstanding GSK's intent to commercialize only [*], treatment with [*] also forms a distinct part of the [*] for that [*] (so, for example, the safety and efficacy of the [*] is evaluated in a

separate group of patients in a [*]) such that the aforesaid milestone is also achieved for the [*] in which case such milestone shall be due and payable by GSK. And, for the avoidance of doubt, if in such a situation, notwithstanding GSK's original intent to commercialize only [*], GSK then decides to commercialize [*] and the Filing and Launch milestones are achieved in respect of such [*], then such milestones shall also be due and payable by GSK.

6.2.3 *Notification and Payment.* In the event an Alliance Product achieves a Development Milestone, GSK shall promptly, but in no event more than ten (10) days after the achievement of each such Development Milestone, notify Theravance in writing of the achievement of same. For all Development Milestones achieved, but subject always to satisfaction under Section 15.15 of the relevant Alliance Program Closing Condition, GSK shall promptly, but in no event more than thirty (30) days after notification of the achievement of each such Development Milestone, remit payment to Theravance for such Development Milestone.

6.3 *Payment of Royalties on Net Sales.*

6.3.1 *[*] Royalty on Single-Agent Alliance Products from Discovery Programs for Which GSK Exercised its Opt -In Right [*] for the First Theravance Compound in Such Discovery Program.* As further consideration for the acquisition of license rights under the Theravance Patents under this Agreement, and in those Countries of the Territory in which there is a Valid Claim of a Theravance Patent covering the Alliance Product in the Country of sale at the time such Net Sales occur (for the avoidance of doubt, "covering" as used in this Section and subsequent Sections shall include the making, using, selling, offering for sale, or importing the Alliance Product), GSK shall pay Theravance, within twenty (20) days after the end of each Calendar Quarter, royalty payments for each such Alliance Product based on Net Sales in such Calendar Quarter on a Country by Country basis, as follows:

[*]

6.3.2 *[*] Royalty on Single-Agent Alliance Products from Discovery Programs for Which GSK Exercised its Opt -In Right [*] for the First Theravance Compound in Such Discovery Program.* As further consideration for the acquisition of license rights under the Theravance Patents under this Agreement, and in those Countries of the Territory where an obligation to pay royalties under Section 6.3.1 has applied during the Term but is no longer applicable (as a result of subsequent expiration or termination of the last Valid Claim of a Theravance Patent covering the Alliance Product in the Country of sale at the time such Net Sales occur), GSK shall pay Theravance, within twenty (20) days after the end of each Calendar Quarter, royalty payments for each such Alliance Product based on Net Sales in such Calendar Quarter on a Country by Country basis, as follows:

[*]

6.3.3 *[*] Royalty on Single-Agent Alliance Products from Discovery Programs for Which GSK Exercised its Opt -In Right [*] for the First Theravance Compound in Such Discovery Program.* As further consideration for the acquisition of Theravance Know-How by GSK under this Agreement, and in those countries which are not subject to the royalty obligation referred to in either Sections 6.3.1 or 6.3.2, GSK shall pay Theravance, within twenty (20) days after the end of each Calendar Quarter, royalty payments for each such Alliance Product based on Net Sales in such Calendar Quarter on a Country by Country basis, as follows:

[*]

6.3.4 *[*] Royalty on Single-Agent Alliance Products from Discovery Programs for Which GSK Exercised its Opt -In Right [*] for the First Theravance Compound in Such Discovery Program.* As further consideration for the acquisition of license rights under the Theravance Patents under this

Agreement, and in those Countries of the Territory in which there is a Valid Claim of a Theravance Patent covering the Alliance Product in the Country of sale at the time such Net Sales occur, GSK shall pay Theravance, within twenty (20) days after the end of each Calendar Quarter, royalty payments for each such Alliance Product based on Net Sales in such Calendar Quarter on a Country by Country basis, as follows:

[*]

6.3.5 *[*] Royalty on Single-Agent Alliance Products from Discovery Programs for Which GSK Exercised its Opt -In Right [*] for the First Theravance Compound in Such Discovery Program.* As further consideration for the acquisition of license rights under the Theravance Patents under this Agreement, and in those Countries of the Territory where an obligation to pay royalties under Section 6.3.4 has applied during the Term but is no longer applicable (as a result of subsequent expiration or termination of the last Valid Claim of a Theravance Patent covering the Alliance Product in the Country of sale at the time such Net Sales occur), GSK shall pay Theravance, within twenty (20) days after the end of each Calendar Quarter, royalty payments for each such Alliance Product based on Net Sales in such Calendar Quarter on a Country by Country basis, as follows:

[*]

6.3.6 *[*] Royalty on Single-Agent Alliance Products from Discovery Programs for Which GSK Exercised its Opt -In Right [*] for the First Theravance Compound in Such Discovery Program.* As further consideration for the acquisition of Theravance Know-How by GSK under this Agreement, and in those countries which are not subject to the royalty obligation referred to in either Sections 6.3.4 or 6.3.5, GSK shall pay Theravance, within twenty (20) days after the end of each Calendar Quarter, royalty payments for each such Alliance Product based on Net Sales in such Calendar Quarter on a Country by Country basis, as follows:

[*]

6.3.7 *Royalty on Combination Products.* For the purpose of determining royalty payments, then if the Combination Product is commercialized but the Theravance single agent is not sold separately in finished form, [*] of the royalty rates referred to in Sections 6.3.1 - 6.3.6 inclusive (whichever is applicable) shall apply. If the Combination Product is commercialized and the relevant Theravance single agent in such Combination Product is also separately commercialized for which Theravance is receiving separate royalty payments then, if there are [*] active ingredients in such Combination Product and one such active ingredient is such Theravance single agent, [*] of the royalty rates referred to in Sections 6.3.1 - 6.3.6 inclusive (whichever is applicable) shall apply; and if there are [*] active ingredients in such Combination Product and one such active ingredient is the Theravance single agent, [*] of the royalty rates referred to in Sections 6.3.1 - 6.3.6 inclusive (whichever is applicable) shall apply.

6.3.8 *Estimates.* The quarterly royalty payments made hereunder may be based on estimated Net Sales. Within thirty (30) days after the end of each Calendar Quarter, GSK shall calculate the actual amount of Net Sales for the previous Calendar Quarter and either credit or debit the difference between such actual and projected amount on the succeeding Calendar Quarter's royalty payment to Theravance. GSK will also provide Theravance with those estimates of future Net Sales as it provides in accordance with its own internal procedures.

6.3.9 *Duration of Royalty Payments*

(a) *Commencement* All royalties payable hereunder shall be paid on a Country-by-Country basis [*] and additionally, in the case of Sections 6.3.1 and 6.3.4, [*].

(b) *Duration of* [*] *Royalties* Royalty obligations under Sections 6.3.1 and 6.3.4 in each Country of the Territory shall remain until [*].

(c) *Duration of [*] Royalties* Royalty obligations under Sections 6.3.2 and 6.3.5 in each Country of the Territory shall apply [*] (where, for the avoidance of doubt, such period would include, and not be additional to, the time for which a [*] royalty was previously payable under either Section 6.3.1 or Section 6.3.4, as applicable).

(d) *Duration of [*] Royalties* Royalty obligations under Sections 6.3.3 and 6.3.6 in each Country of the Territory shall apply for a maximum period of [*].

6.4 *Royalty Responsibilities; Net Sales Reports.*

6.4.1 *Payments to Third Parties.*

(a) If, as a result of a settlement approved by both Parties or as a result of a final non-appealable judgment, GSK is required to pay any amounts to a Third Party directly because using or selling a Theravance Compound is found to infringe the rights of such Third Party, GSK shall deduct [*] of any such amount paid to such Third Party from the royalties otherwise due Theravance for the Alliance Product containing such Theravance Compound, provided in no event shall the aggregate of any such reduction(s) reduce the royalties otherwise payable to Theravance during any Calendar Year by more than [*]; provided, further, that any excess deduction shall be carried over into subsequent years of this Agreement until the full deduction is taken. In the event that at the time GSK elects to exercise its Opt-In Right with respect to a Discovery Program, either (a) the formulation containing the relevant Theravance Compound or (b) the process used to prepare the relevant Theravance Compound that has been used or will be used for clinical trial material or commercial supply, requires a license from a Third Party, the same reduction in royalties payable to Theravance as set forth hereinabove shall apply.

(b) GSK shall pay any amounts owed to a Third Party as a result of the use of GSK Patents or GSK Know-How or for any other reason other than in connection with 6.4.1 (a) with respect to sales of Alliance Products and shall not deduct any of such amounts from the royalties due Theravance.

6.4.2 *Net Sales Report.* Within thirty (30) days after the end of each Calendar Quarter, GSK shall submit to Theravance a written report setting forth Net Sales in the Territory on a Country-by-Country and Alliance Product-by-Alliance Product basis during such Calendar Quarter, total royalty payments due Theravance, relevant market share data and any payments made to any Third Party pursuant to Section 6.4.1(a) (each a "Net Sales Report").

6.5 *IFRS.* All financial terms and standards defined or used in this Agreement for sales or activities occurring in the Territory shall be governed by and determined in accordance with the generally accepted accounting principles as referred to in the International Financial Reporting Standards ("IFRS").

6.6 *Currencies.* Monetary conversion from the currency of a foreign country in which Alliance Product is sold into US Dollars shall be calculated in accordance with the methodology referred to in GSK's then current Corporate Finance Reporting Policy. The following summarizes GSK's current methodology applied in accordance with its current Corporate Finance Reporting System: the cumulative year-to-date Average Rates are calculated by determining the average of (i) the preceding 31st December Spot Rate plus (ii) the Closing Spot Rates of the relevant months to date using the exact figures provided by the Reuters 2000 download. (By way of example, the Average Rate for the five months from January, 2005 to May, 2005 would be computed by taking the sum of the Spot Rates

for the preceding 31st December, 2004, plus the month-end Spot Rates for the five months to May, 2005, divided by six).

6.7 *Manner of Payments.* All sums due under this Article 6 shall be payable in United States Dollars by bank wire transfer in immediately available funds to such bank account(s) as Theravance shall designate. GSK shall notify Theravance as to the date and amount of any such wire transfer to Theravance at least five (5) Business Days prior to such transfer.

6.8 *Interest on Late Payments.* If GSK shall fail to make a timely payment pursuant to this Article 6, any such payment that is not paid on or before the date such payment is due under this Agreement shall bear interest, to the extent permitted by applicable law, at the average one-month London Inter-Bank Offering Rate (LIBOR) for the United States Dollar as reported from time to time in *The Wall Street Journal*, effective for the first date on which payment was delinquent and calculated on the number of days such payment is overdue or, if such rate is not regularly published, as published in such source as the Joint Steering Committee agrees.

6.9 *Tax Withholding.*

6.9.1 Any taxes, levies or other duties ("Taxes") paid or required to be withheld under the appropriate local tax laws by one of the Parties ("Withholding Party") on account of monies payable to the other Party under this Agreement shall, subject to Sections 6.9.2 and 6.9.3, be deducted from the amount of monies otherwise payable to the other Party under this Agreement. The Withholding Party shall secure and send to the other Party within a reasonable period of time proof of any such Taxes paid or required to be withheld by Withholding Party for the benefit of the other Party.

6.9.2 If GSK or any GSK Affiliate is or becomes liable to withhold any taxes from payments made to Theravance under Sections 6.1 and/or 6.2, then GSK shall pay to Theravance an amount equal to the amount GSK or the applicable GSK Affiliate owes to the relevant tax authority provided always that if Theravance is able to obtain credit for any taxes withheld ("Creditable Taxes") against any liability to tax either in the year in which the receipt is taxable or any preceding years, Theravance shall reimburse to GSK an amount equivalent to the Creditable Taxes. Theravance shall provide GSK with such reasonable evidence as GSK may reasonably request to determine whether the taxes are creditable against taxes payable by Theravance.

6.9.3 If GSK or any GSK Affiliate is or becomes liable to withhold any taxes from payments made to Theravance under Section 6.3, then such taxes may be withheld by GSK or the applicable GSK Affiliate up to a limit of [*] of the relevant payment. GSK shall pay to Theravance an amount equal to the amount GSK owes to the relevant tax authority in excess of such [*] provided always that if Theravance is able to obtain any Creditable Taxes against any liability to tax either in the year in which the receipt is taxable or any preceding years, Theravance shall reimburse to GSK an amount equivalent to the Creditable Taxes. Theravance shall provide GSK with such reasonable evidence as GSK may reasonably request to determine whether the taxes are creditable against taxes payable by Theravance.

6.10 *Financial Records; Audits.* GSK shall keep, and shall cause its Affiliates and sublicensees to keep, such accurate and complete records of Net Sales as are necessary to determine the amounts due to Theravance under this Agreement and such records shall be retained by GSK or any of its Affiliates or sublicensees (in such capacity, the "Recording Party") for at least the three subsequent Calendar Years to which the Net Sales relate. During normal business hours and with reasonable advance notice to the Recording Party, such records shall be made available for inspection, review and audit, at the request and expense of Theravance, by an independent certified public accountant, or the local equivalent, appointed by Theravance and reasonably acceptable to the Recording Party for the sole purpose of verifying the accuracy of the Recording Party's accounting reports and payments made or to

be made pursuant to this Agreement; provided, however that such audits may not be performed by Theravance more than once per Calendar Year. Such accountants shall be instructed not to reveal to Theravance the details of its review, except for (i) such information as is required to be disclosed under this Agreement and (ii) such information presented in a summary fashion as is necessary to report the accountants' conclusions to Theravance, and all such information shall be deemed Confidential Information of the Recording Party; provided, however, that in any event such information may be presented to Theravance in a summary fashion as is necessary to report the accountants' conclusions. All costs and expenses incurred in connection with performing any such audit shall be paid by Theravance unless the audit discloses at least a [*] shortfall, in which case the Recording Party will bear the full cost of the audit for such Calendar Year. Theravance will be entitled to recover any shortfall in payments due to it as determined by such audit, plus interest thereon calculated in accordance with Section 6.8, or alternatively shall have the right to offset and deduct any such shortfall in payments due to it against payments Theravance is otherwise required to make to the Reporting Party under this Agreement. The documents from which were calculated the sums due under this Article 6 shall be retained by the relevant Party during the Term.

ARTICLE 7
COMMUNICATIONS, PROMOTIONAL MATERIALS AND SAMPLES

7.1 *Communications and Promotional Materials.*

7.1.1 *Housemark Exposure.* To the extent allowed by applicable Law, and further to the extent reasonably practicable, all communications and Promotional Materials will indicate the contribution of the license from Theravance for the Alliance Products. Subject to the foregoing, the Theravance Housemark and the GSK Housemark shall both be given exposure and prominence on all communications and promotional materials, labeling, package inserts or outserts and packaging for the Alliance Products.

7.1.2 *Review of Core Promotional Materials.* Subject to applicable Law, in accordance with the direction of the Joint Program Committee and *only* in the event of a co-promotion under Section 5.3.2, (i) the Parties will jointly, through consultation and with the assistance of each other, review the core Promotional Materials, and (ii) the relevant legal or regulatory personnel of each Party shall have the opportunity to review and comment on all such core Promotional Materials prior to use and such comments shall be considered by the Joint Program Committee in the review of such core Promotional Materials.

7.2 *Samples.* Packaging, package inserts and outserts, Sample labels and labeling shall each contain reference to Theravance and GSK indicating, in the case of Theravance, the contribution of the license from Theravance for the Alliance Products, if appropriate, and as may be required under applicable FDA rules and regulations.

7.3 *Statements Consistent with Labeling.* GSK shall ensure that its sales representatives detail the Alliance Products in a fair and balanced manner and consistent with the requirements of the Federal Food, Drug and Cosmetic Act of the United States, as amended, including, but not limited to, the regulations at 21 C.F.R. (S) 202 in the United States.

7.4 *Implications of Change in Control in Theravance.* In the event that there is a Change in Control of Theravance that does not involve GSK or its Affiliates and the references contemplated in Sections 7.1.2 and 7.2 are no longer made to "Theravance," then other than to the extent required by applicable Law, GSK shall have the right, not to be unreasonably exercised, to terminate its obligations under Sections 7.1 and 7.2.

ARTICLE 8
REGULATORY MATTERS

8.1 *Governmental Authorities.* GSK shall be solely responsible for communicating with Governmental Authorities in connection with the Development and Commercialization of an Alliance Product and will keep Theravance informed, through the Joint Program Committee and Joint Steering Committee, of any significant issue or issues arising therefrom.

8.2 *Filings.* Subject to any necessary transitional arrangements that may be identified and agreed by the Parties under Section 4.2, and which would then form part of the Specific Alliance Product Development & Commercialization Appendix for same, GSK shall also be solely responsible for filing drug approval applications for Alliance Products and will use Diligent Efforts in seeking appropriate approvals in those Countries of the Territory for Alliance Products as GSK reasonably determines and sees fit. Such regulatory documents for each filing shall be centralized and held at the offices of GSK. Theravance shall provide such reasonable assistance as may be required by GSK where liaison between the Parties is, or may be, necessary to enable GSK to fulfill its responsibilities hereunder. GSK shall be responsible for maintaining the Approvals obtained under this Section 8.2 and shall solely own all such Approvals in the Territory. GSK shall be fully responsible for bearing all costs and expense associated with undertaking and completing said registration activities in the Territory, including but not limited to the costs of preparing and prosecuting applications for such Approvals and fees payable to regulatory agencies in obtaining and maintaining same.

8.3 *Exchange of Drug Safety Information.* Subject to and upon completion of appropriate Safety Exchange requirements and/or transfer of all appropriate safety data identified and agreed by the Parties under Section 4.2 (and which would then form part of the Specific Alliance Product Development & Commercialization Appendix for same), at the time a Theravance Compound becomes an Alliance Product under this Agreement GSK shall be responsible for recording, investigating, summarizing, notifying, reporting and reviewing all Adverse Drug Experiences in relation to Alliance Products in accordance with Law and shall require that its Affiliates (i) adhere to all requirements of applicable Laws which relate to the reporting and investigation of Adverse Drug Experiences, and (ii) keep the Joint Program Committee apprised on a regular basis of such matters arising therefrom.

8.4 *Recalls or Other Corrective Action.* Each Party shall, as soon as practicable, notify the other Party of any recall information received by it in sufficient detail to allow the Parties to comply with any and all applicable Laws. GSK shall promptly notify Theravance of any material actions to be taken by GSK with respect to any recall or market withdrawal or other corrective action related to an Alliance Product prior to such action to permit Theravance a reasonable opportunity to consult with GSK with respect thereto. All costs and expenses with respect to a recall, market withdrawal or other corrective action shall be borne by GSK unless such recall, market withdrawal or other corrective action was due solely to the negligence, willful misconduct or breach of this Agreement by Theravance. GSK shall have sole responsibility for and shall make all decisions with respect to any recall, market withdrawals or any other corrective action related to the Alliance Products.

8.5 *Events Affecting Integrity or Reputation.* During the Term, the Parties shall notify each other immediately of any circumstances of which they are aware and which could impair the integrity and reputation of the Alliance Products or if a Party is threatened by the unlawful activity of any Third Party in relation to the Alliance Products, which circumstances shall include, by way of illustration, deliberate tampering with or contamination of the Alliance Products by any Third Party as a means of extorting payment from the Parties or another Third Party. In any such circumstances, the Parties shall use Diligent Efforts to limit any damage to the Parties and/or to the Alliance Products. The Parties shall promptly call a Joint Steering Committee meeting to discuss and resolve such circumstances.

ARTICLE 9
ORDERS; SUPPLY AND RETURNS

9.1 *Orders and Terms of Sale.* Except as otherwise expressly stated in this Agreement, GSK shall have the sole right to (i) receive, accept and fill orders for the Alliance Products, (ii) control invoicing, order processing and collection of accounts receivable for the Alliance Products sales, (iii) record the Alliance Products sales in its books of account, and (iv) establish and modify the commercial terms and conditions with respect to the sale and distribution of the Alliance Products, including without limitation matters such as the price at which the Alliance Products will be sold [*].

9.2 *Supply of API Compound and Formulated Alliance Product for Development.*

9.2.1 *Supply of API Compound for Development.* Subject to the terms and conditions of this Agreement, GSK shall conduct or have conducted any chemical process development required to develop a commercially acceptable process for making API Compound and obtain supply for worldwide requirements of API Compound. Notwithstanding the foregoing, Theravance shall transfer on or after the Effective Date of GSK's Exercise of its Opt-In Right, at cost, all reasonable quantities of API supply it has on hand of a Theravance Compound for which GSK has exercised its Opt-In Right and/or intermediate materials for API manufacture and provided also that such API supplies shall always be in conformity with GSK's own requirements. API Compound requirements for Development activities shall be set forth in the relevant Development Plan and shall be periodically updated by the Joint Program Committee. For the purposes of this Section 9.2.1, "at cost" means [*], as applicable, to GSK; such calculation being based upon accepted contract manufacturing industry standards or generally accepted accounting principles.

9.2.2 *Supply of Formulated Alliance Products for Development.* Subject to the terms and conditions of this Agreement, GSK shall be solely responsible for manufacture and supply for worldwide requirements of formulated Alliance Products. Notwithstanding the foregoing, Theravance agrees to transfer to GSK on or after the Effective Date of GSK's Exercise of its Opt-In Right, at cost, all reasonable quantities of formulated Alliance Product for which GSK has exercised its Opt-In Right and provided also that such formulated Alliance Product shall always be in conformity with GSK's own requirements. Formulated Alliance Product requirements for Development activities shall be set forth in the relevant Development Plan and shall be periodically updated by the Joint Project Committee (in the form and at the times the Joint Project Committee determines).

9.2.3 *At Cost.* For the purposes of this Section 9.2, "at cost" means [*], as applicable, to GSK; such calculation being based upon accepted contract manufacturing industry standards or generally accepted accounting principles.

9.3 *Supply of API Compound for Commercial Requirements.* Subject to the terms and conditions of this Agreement, GSK shall be solely responsible for the manufacture and supply of API Compound. A forecast for API Compound requirements for Commercialization of the Alliance Products shall be prepared and periodically updated by the Joint Program Committee (in the form and at the times the Joint Program Committee determines), and coordinated with the applicable Marketing Plans for Alliance Products.

9.4 *Supply of Alliance Products for Commercialization.* Subject to the terms and conditions of this Agreement, GSK shall be solely responsible for the manufacture and supply of commercial requirements of formulated, packaged and labeled Alliance Products. Such formulated, packaged and labeled Alliance Products shall be manufactured and supplied in accordance with all applicable Laws and current Good Manufacturing Practices. GSK shall be solely responsible for secondary manufacture (formulation of finished drug product), packaging and labeling of the Alliance Product.

9.5 *Inventories.* GSK and its Product Suppliers shall maintain an inventory of API Compound and Alliance Products in accordance with their normal practices and so as to ensure fulfillment of its respective supply obligations herein.

9.6 *Potential Differences in Supply/Manufacturing Needs on an Alliance Product by Alliance Product Basis.* The provisions of Sections 9.2-9.5 inclusive shall apply in respect of each Alliance Product save where the Parties mutually agree otherwise to amend and/or supplement such terms for any Alliance Product. Any such mutually agreed terms would then form part of the Specific Alliance Product Development & Commercialization Appendix for such Alliance Product.

ARTICLE 10
CONFIDENTIAL INFORMATION

10.1 *Confidential Information.* Each of GSK and Theravance shall keep all Confidential Information received from the other Party with the same degree of care it maintains the confidentiality of its own Confidential Information. Neither Party shall use such Confidential Information for any purpose other than in performance of this Agreement or disclose the same to any other Person other than to such of its agents who have a need to know such Confidential Information to implement the terms of this Agreement or enforce its rights under this Agreement. A Receiving Party shall advise any agent who receives such Confidential Information of the confidential nature thereof and of the obligations contained in this Agreement relating thereto, and the Receiving Party shall ensure that all such agents comply with such obligations as if they had been a Party hereto. Upon termination of this Agreement, the Receiving Party shall return or destroy all documents, tapes or other media containing Confidential Information of the Disclosing Party that remain in the Receiving Party's or its agents' possession, except that the Receiving Party may keep one copy of the Confidential Information in the legal department files of the Receiving Party, solely for archival purposes. Such archival copy shall be deemed to be the property of the Disclosing Party, and shall continue to be subject to the provisions of this Article 10. Notwithstanding anything to the contrary in this Agreement, the Receiving Party shall have the right to disclose this Agreement or Confidential Information provided hereunder if, in the reasonable opinion of the Receiving Party's legal counsel, such disclosure is necessary to comply with the terms of this Agreement, or the requirements of any Law. Where possible, the Receiving Party shall notify the Disclosing Party of the Receiving Party's intent to make such disclosure pursuant to the provision of the preceding sentence sufficiently prior to making such disclosure so as to allow the Disclosing Party adequate time to take whatever action the Disclosing Party may deem to be appropriate to protect the confidentiality of the information. The Receiving Party will cooperate reasonably with the Disclosing Party's efforts to protect the confidentiality of the information. Each Party will be liable for breach of this Article 10 by any of its Affiliates or agents.

10.2 *Permitted Disclosure and Use.* Notwithstanding Section 10.1, a Party may disclose Confidential Information belonging to the other Party only to the extent such disclosure is reasonably necessary to: (a) obtain Marketing Authorization of an Alliance Product; (b) enforce the provisions of this Agreement; or (c) comply with Laws. If a Party deems it necessary to disclose Confidential Information of the other Party pursuant to this Section 10.2, such Party shall give reasonable advance notice of such disclosure to the other Party to permit such other Party sufficient opportunity to object to such disclosure or to take measures to ensure confidential treatment of such information. The Receiving Party will cooperate reasonably with the Disclosing Party's efforts to protect the confidentiality of the information.

10.3 *Publications.* Subject to any Third Party rights existing as of the Effective Date, each Party shall submit to the Joint Program Committee for review and approval all proposed academic, scientific and medical publications and public presentations relating to an Alliance Product or any Development activities under this Agreement for review in connection with preservation of related patent rights, and trade secrets and/or to determine whether Confidential Information should be modified or deleted

from the proposed publication or public presentation. Written copies of such proposed publications and presentations shall be submitted to the Joint Program Committee no later than sixty (60) days before submission for publication or presentation and the Joint Program Committee shall provide its comments with respect to such publications and presentations within ten (10) Business Days of its receipt of such written copy. The review period may be extended for an additional sixty (60) days if a representative of the non-publishing Party on the Joint Program Committee can demonstrate a reasonable need for such extension including, but not limited to, the preparation and filing of patent applications. By mutual agreement of the Parties, this period may be further extended. The Parties will each comply with standard academic practice regarding authorship of scientific publications and recognition of contribution of other Parties in any publications relating to the Alliance Products or any Development activities under this Agreement.

10.4 *Public Announcements.* Except as may be expressly permitted under Section 10.3 or required by applicable Laws and subject to the final two sentences of this Section 10.4, neither Party will make any public announcement of any information regarding this Agreement, the Alliance Products or any Development activities under this Agreement without the prior written approval of the other Party, which approval shall not be withheld unreasonably. Once any statement is approved for disclosure by the Parties or information is otherwise made public in accordance with the preceding sentence, either Party may make a subsequent public disclosure of the contents of such statement without further approval of the other Party. Notwithstanding the foregoing, within sixty (60) days following the Effective Date, appropriate representatives of the Parties will meet and agree upon a process and principles for reaching timely consensus on how the Parties will make public disclosure concerning this Agreement, the Alliance Products or any Development activities under this Agreement.

10.5 *Confidentiality of This Agreement.* The terms of this Agreement shall be Confidential Information of each Party and, as such, shall be subject to the provisions of this Article 10. Either Party may disclose the terms of this Agreement if, in the opinion of its counsel, such disclosure is required by Law. In such event, the Disclosing Party will seek appropriate confidentiality of those portions of the Agreement for which confidential treatment is typically permitted by the relevant Governmental Authority.

10.6 *Further Agreements Concerning Confidentiality.* In connection with any due diligence activities conducted by GSK prior to making a decision on exercising GSK's Opt-In Right under Article 4, GSK shall execute confidentiality agreement(s) relating to Theravance's intellectual property and the chemistry being reviewed, such confidentiality agreements to be substantially similar to those executed by GSK in connection with its review of Theravance's intellectual property in connection with the LABA Collaboration Agreement.

10.7 *Survival.* The obligations and prohibitions contained in this Article 10 shall survive the expiration or termination of this Agreement for a period of ten (10) years.

ARTICLE 11
REPRESENTATIONS AND WARRANTIES; COVENANTS

11.1 *Mutual Representations and Warranties.* Theravance and GSK each represents and warrants to the other as of the Effective Date that:

11.1.1 Such Party (a) is a company duly organized, validly existing, and in good standing under the Laws of its incorporation; (b) is duly qualified as a corporation and in good standing under the Laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, where the failure to be so qualified would have a material adverse effect on its financial condition or its ability to perform its obligations hereunder; (c) has the requisite corporate power and authority and the legal right to conduct its business as now conducted and hereafter contemplated to be conducted; (d) has or will obtain all necessary

licenses, permits, consents, or approvals from or by, and has made or will make all necessary notices to, all Governmental Authorities having jurisdiction over such Party, to the extent required for the ownership and operation of its business, where the failure to obtain such licenses, permits, consents or approvals, or to make such notices, would have a material adverse effect on its financial condition or its ability to perform its obligations hereunder; and (e) is in compliance with its charter documents;

11.1.2 The execution, delivery and performance of this Agreement by such Party and all instruments and documents to be delivered by such Party hereunder (a) are within the corporate power of such Party; (b) have been duly authorized by all necessary or proper corporate action; (c) do not conflict with any provision of the charter documents of such Party; (d) will not, to the best of such Party's knowledge, violate any law or regulation or any order or decree of any court of governmental instrumentality; (e) will not violate or conflict with any terms of any indenture, mortgage, deed of trust, lease, agreement, or other instrument to which such Party is a Party, or by which such Party or any of its property is bound, which violation would have a material adverse effect on its financial condition or on its ability to perform its obligations hereunder;

11.1.3 This Agreement has been duly executed and delivered by such Party and constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as such enforceability may be limited by applicable insolvency and other Laws affecting creditors' rights generally, or by the availability of equitable remedies; and

11.1.4 All of its employees, officers, and consultants have executed agreements or have existing obligations under law requiring assignment to such Party of all Inventions made by such individuals during the course of and as the result of their association with such Party, and obligating such individuals to maintain as confidential such Party's Confidential Information.

11.1.5 Nothing contained in this Agreement shall give a Party the right to use the Confidential Information received from the other Party in connection with any activity other than Development and Commercialization of an Alliance Product consistent with this Agreement.

11.2 *Additional GSK Representations and Warranties.* GSK further represents, warrants and covenants to Theravance that neither GSK nor any of its Affiliates is a Party to or otherwise bound by any oral or written contract or agreement that will result in any Person obtaining any interest in, or that would give to any Person any right to assert any claim in or with respect to, any of GSK's rights granted under this Agreement.

11.3 *Additional Theravance Representations and Warranties.* Theravance further represents and warrants to GSK as of the Effective Date that:

11.3.1 In the normal course of business in connection with each Discovery Program, Theravance carries out diligent literature searches in relation to the Theravance Patents, and will disclose to GSK's counsel any conflict or likely future conflict of which Theravance is aware with the intellectual property rights of any Third Party with respect to Theravance Patents for the relevant Theravance Compounds in the Discovery Program during the course of any due diligence by GSK in connection with GSK's Opt-In Right decision under Article 4.

11.3.2 Theravance has not received notice from any Third Party of a claim that an issued patent of such Third Party would be infringed by the manufacture, distribution, marketing or sale of the potential Alliance Products existing as of the date of signature of this Agreement;

11.3.3 To Theravance's knowledge, none of Theravance's current patent rights are subject to any pending or any threatened re-examination, opposition, interference or litigation proceedings;

11.3.4 Theravance has not received notice from any Third Party of a claim asserting the invalidity, misuse, unregisterability or unenforceability of any of Theravance's current patent rights,

or challenging its right to use or ownership of any of Theravance's current patent rights or Theravance's know-how, or making any adverse claim of ownership thereof; and

11.3.5 Theravance has not received notice from any Third Party that any trade secrets or other intellectual property rights of such Third Party would be misappropriated by the development and reduction to practice of Theravance's current patent rights and Theravance's know-how.

11.3.6 Theravance will not at any time during the Term disclose to any Third Party(ies) and/or publish in the public domain any proprietary and secret Theravance Know-How that is proprietary and secret as of the date this Agreement is signed by the Parties.

11.4 *Covenants.* Each Party hereby covenants and agrees during the Term that it shall carry out its obligations or activities hereunder in accordance with (i) the terms of this Agreement and (ii) all applicable Laws.

11.5 *Disclaimer of Warranty.* Subject to the specific warranties and representations given under Sections 11.1 through and including 11.3, nothing in this Agreement shall be construed as a warranty or representation by either Party (i) that any Alliance Product made, used, sold or otherwise disposed of under this Agreement is or will be free from infringement of patents, copyrights, trademarks, industrial design or other intellectual property rights of any Third Party, (ii) regarding the effectiveness, value, safety, non-toxicity, patentability, or non-infringement of any patent technology, the Alliance Products or any information or results provided by either Party pursuant to this Agreement or (iii) that any Alliance Product will obtain Marketing Authorization or appropriate pricing approval. Each Party explicitly accepts all of the same as experimental and for development purposes, and without any express or implied warranty from the other Party. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY EXPRESSLY DISCLAIMS, WAIVES, RELEASES, AND RENOUNCES ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 12
INDEMNIFICATION

12.1 *Indemnification by GSK.* Subject to Sections 12.3, 12.4 and 13.2, GSK shall defend, indemnify and hold harmless Theravance and its Affiliates and each of their officers, directors, shareholders, employees, successors and assigns from and against all Claims of Third Parties, and all associated Losses, to the extent arising out of (a) GSK's negligence or willful misconduct in performing any of its obligations under this Agreement, (b) a breach by GSK of any of its representations, warranties, covenants or agreements under this Agreement, or (c) the manufacture, use, handling, storage, marketing, sale, distribution or other disposition of Alliance Products by GSK, its Affiliates, agents or sublicensees, except to the extent such losses result from the negligence or willful misconduct of Theravance.

12.2 *Indemnification by Theravance.* Subject to Sections 12.3, 12.4 and 13.2, Theravance shall defend, indemnify and hold harmless GSK and its Affiliates and each of their officers, directors, shareholders, employees, successors and assigns from and against all Claims of Third Parties, and all associated Losses, to the extent arising out of (a) Theravance's negligence or willful misconduct in performing any of its obligations under this Agreement, (b) a breach by Theravance of any of its representations, warranties, covenants or agreements under this Agreement, or (c) any API Compound or Formulated Alliance Product transferred from Theravance to GSK pursuant to Section 9.2.1 or 9.2.2, respectively, which is not in compliance with GSK's own requirements, except to the extent such losses result from the negligence or willful misconduct of GSK.

12.3 *Procedure for Indemnification.*

12.3.1 *Notice.* Each Party will notify promptly the other in writing if it becomes aware of a Claim (actual or potential) by any Third Party (a "Third Party Claim") for which indemnification may be sought by that Party and will give such information with respect thereto as the other Party shall reasonably request. If any proceeding (including any governmental investigation) is instituted involving any Party for which such Party may seek an indemnity under Section 12.1 or 12.2, as the case may be (the "Indemnified Party"), the Indemnified Party shall not make any admission or statement concerning such Third Party Claim, but shall promptly notify the other Party (the "Indemnifying Party") orally and in writing and the Indemnifying Party and Indemnified Party shall meet to discuss how to respond to any Third Party Claims that are the subject matter of such proceeding. The Indemnifying Party shall not be obligated to indemnify the Indemnified Party to the extent any admission or statement made by the Indemnified Party or any failure by such Party to notify the Indemnifying Party of the claim materially prejudices the defense of such claim.

12.3.2 *Defense of Claim.* If the Indemnifying Party elects to defend or, if local procedural rules or laws do not permit the same, elects to control the defense of a Third Party Claim, it shall be entitled to do so provided it gives notice to the Indemnified Party of its intention to do so within forty-five (45) days after the receipt of the written notice from the Indemnified Party of the potentially indemnifiable Third Party Claim (the "Litigation Condition"). The Indemnifying Party expressly agrees the Indemnifying Party shall be responsible for satisfying and discharging any award made to or settlement reached with the Third Party pursuant to the terms of this Agreement without prejudice to any provision in this Agreement or right at law which will allow the Indemnifying Party subsequently to recover any amount from the Indemnified Party to the extent the liability under such settlement or award was attributable to the Indemnified Party. Subject to compliance with the Litigation Condition, the Indemnifying Party shall retain counsel reasonably acceptable to the Indemnified Party (such acceptance not to be unreasonably withheld, refused, conditioned or delayed) to represent the Indemnified Party and shall pay the reasonable fees and expenses of such counsel related to such proceeding. In any such proceeding, the Indemnified Party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party. The Indemnified Party shall not settle any claim for which it is seeking indemnification without the prior written consent of the Indemnifying Party which consent shall not be unreasonably withheld, refused, conditioned or delayed. The Indemnified Party shall, if requested by the Indemnifying Party, cooperate in all reasonable respects in the defense of such claim that is being managed and/or controlled by the Indemnifying Party. The Indemnifying Party shall not, without the written consent of the Indemnified Party (which consent shall not be unreasonably withheld, refused, conditioned or delayed), effect any settlement of any pending or threatened proceeding in which the Indemnified Party is, or based on the same set of facts could have been, a Party and indemnity could have been sought hereunder by the Indemnified Party, unless such settlement includes an unconditional release of the Indemnified Party from all liability on claims that are the subject matter of such proceeding. If the Litigation Condition is not met, then neither Party shall have the right to control the defense of such Third Party Claim and the Parties shall cooperate in and be consulted on the material aspects of such defense at each Party's own expense; provided that if the Indemnifying Party does not satisfy the Litigation Condition, the Indemnifying Party may at any subsequent time during the pendency of the relevant Third Party Claim irrevocably elect, if permitted by local procedural rules or laws, to defend and/or to control the defense of the relevant Third Party Claim so long as the Indemnifying Party also agrees to pay the reasonable fees and costs incurred by the Indemnified Party in relation to the defense of such Third Party Claim from the inception of the Third Party Claim until the date the Indemnifying Party assumes the defense or control thereof.

12.4 *Assumption of Defense.* Notwithstanding anything to the contrary contained herein, an Indemnified Party shall be entitled to assume the defense of any Third Party Claim with respect to the Indemnified Party, upon written notice to the Indemnifying Party pursuant to this Section 12.4, in which case the Indemnifying Party shall be relieved of liability under Section 12.1 or 12.2, as applicable, solely for such Third Party Claim and related Losses.

12.5 *Insurance.* During the Term of this Agreement and for a period of [*] after the termination or expiration of this Agreement, GSK shall obtain and/or maintain at its sole cost and expense, product liability insurance (including any self-insured arrangements) in amounts which are reasonable and customary in the U.S. pharmaceutical industry for companies of comparable size and activities. Such product liability insurance or self-insured arrangements shall insure against all liability, including without limitation personal injury, physical injury, or property damage arising out of the manufacture, sale, distribution, or marketing of the Alliance Products. GSK shall provide written proof of the existence of such insurance to Theravance upon request. Theravance represents and covenants to GSK that Theravance shall, for the period of the Term and for a period of [*] thereafter maintain at its sole cost and expense general liability insurance and product liability insurance (as it relates to Theravance's early stage clinical development activities) which is reasonable and customary in the U.S. pharmaceutical industry for a company of comparable size and activity provided always that such levels of insurance will not be lower than [*]. Theravance shall provide written proof of the existence of such insurance to GSK upon request.

ARTICLE 13
PATENTS and INVENTIONS

13.1 *Prosecution and Maintenance of Patents.*

13.1.1 *Prosecution and Maintenance of Theravance Patents.* Theravance shall have the exclusive right and the obligation to (subject to Theravance's election not to file, prosecute, or maintain pursuant to Section 13.1.4) or to cause its licensors to, prepare, file, prosecute in a diligent manner (including without limitation by conducting interferences, oppositions and reexaminations or other similar proceedings), maintain (by timely paying all maintenance fees, renewal fees, and other such fees and costs required under applicable Laws) and extend all Theravance Patents and related applications. Following the Effective Date of Exercise by GSK of its Opt-In Right with respect to a particular Alliance Program hereunder (the "Alliance Program Acceptance Date"), Theravance shall regularly advise GSK of the status of all pending applications relating to such Alliance Program, including with respect to any hearings or other proceedings before any Governmental Authority, and, at GSK's request, shall provide GSK with copies of all documentation concerning such applications, including all correspondence to and from any Governmental Authority. Theravance shall consult with GSK prior to abandoning any Theravance Patents or related applications that are material to such Alliance Program. Subject to Section 13.6, Theravance shall solicit GSK's advice and review of the nature and text of such patent applications and important prosecution matters related thereto in reasonably sufficient time prior to filing thereof, and Theravance shall take into account GSK's reasonable comments related thereto; provided, however, Theravance shall have the final decision authority with respect to any action relating to any Theravance Patent. If the Alliance Program Acceptance Date is within the priority period for a particular Theravance Patent, Theravance shall agree with GSK regarding the countries outside the United States in which corresponding applications should be filed ("OUS Filings"). It is presumed that a corresponding Patent Cooperation Treaty ("PCT") application will be filed unless otherwise agreed by the Parties. Theravance shall effect filing of all such OUS applications within the priority period. The Parties may, if mutually agreed during the Term of this Agreement, agree to lists of countries that are relevant for particular Inventions in which Theravance Patents will be filed within the priority period.

Subject to Section 13.1.4, Theravance shall be responsible for all costs incurred in the United States in connection with procuring Theravance Patents, including applications preparation, filing fees, prosecution, maintenance and costs associated with reexamination and interference proceedings in the United States Patent and Trademark Office and United States Courts. GSK shall be responsible for all out-of-pocket costs and expenses incurred by Theravance after the relevant Alliance Program Acceptance Date which such costs and expenses are associated with procuring OUS patents corresponding to the relevant Theravance Patents related to such Alliance Program, including without limitation PCT and individual country filing fees, translations, maintenance, annuities, and protest proceedings. For all such OUS patent applications, Theravance will invoice GSK on a quarterly basis beginning with the Alliance Program Acceptance Date, setting forth all such expenses incurred since the Alliance Program Acceptance Date. Notwithstanding the foregoing, if GSK exercises its Opt-In Right in relation to a Respiratory Discovery Program, GSK shall also reimburse Theravance for all reasonable expenses incurred from the Effective Date to the Alliance Program Acceptance Date in connection with OUS patent applications corresponding to the relevant Theravance Patents related to such Alliance Program. Reimbursement will be made to Theravance in United States Dollars within thirty (30) days of receipt of such invoice by GSK. GSK will within thirty (30) days following the Effective Date identify the GSK representative that should receive such invoices from Theravance. GSK's obligations hereunder are in addition to any obligations of GSK under Section 13.1.2(b).

13.1.2 *Prosecution and Maintenance of Patents Covering Joint Inventions.*

(a) For Patents covering Joint Inventions, the Parties shall agree, without prejudice to ownership, which Party shall have the right to prepare and file a priority patent application, and prosecute such application(s) and maintain any patents derived therefrom, with the Parties equally sharing the reasonable out-of-pocket costs for the preparation, filing, prosecution and maintenance of such priority patent application. The Parties will reasonably cooperate to obtain any export licenses that might be required for such activities. Should the agreed upon Party elect not to prepare and/or file any such priority patent application, it shall (i) provide the other Party with written notice as soon as reasonably possible after making such election but in any event no later than sixty (60) days before the other Party would be faced with a possible loss of rights, (ii) give the other Party the right, at the other Party's discretion and sole expense, to prepare and file the priority application(s), and (iii) offer reasonable assistance in connection with such preparation and filing at no cost to the other Party except for reimbursement of reasonable out-of-pocket expenses incurred by the agreed upon Party in rendering such assistance. The other Party, at its discretion and cost, shall prosecute such application(s) and maintain sole ownership of any patents derived therefrom.

(b) Within nine (9) months after the filing date of a priority application directed to an Invention, the Party filing the priority application shall request that the other Party identify those non-priority, non-PCT ("foreign") Countries in which the other Party desires that the Party filing the priority application file corresponding patent applications. Within thirty (30) days after receipt by the other Party of such request from the Party filing the priority application, the other Party shall provide to the Party filing the priority application a written list of such foreign countries in which the other Party wishes to effect corresponding foreign patent applications filings. The Parties will then agree on the particular countries in which such applications will be filed, provided that in the event agreement is not reached, the application will be filed in the disputed as well as the non-disputed countries (all such filings referred to hereinafter as "Designated Foreign Filings"). Thereafter, within twelve (12) months after the filing date of the priority application, the Party filing the priority application shall effect all such Designated Foreign Filings. It is presumed unless otherwise agreed in writing by the Parties, that a corresponding PCT application will be filed designating all PCT member countries. As to each Designated Foreign Filing and PCT application,

GSK shall bear the costs for the filing and prosecutions of such Designated Foreign Filing and PCT application (including entering national phase in all agreed countries). Should the Party filing the priority application not agree to file or cause to be filed a Designated Foreign Filing, the other Party will have the right to effect such Designated Foreign Filing.

(c) Should the filing Party pursuant to Section 13.1.2(a) or 13.1.2(b) no longer wish to prosecute and/or maintain any patent application or patent resulting from such application, the filing Party shall (i) provide the non-filing Party with written notice of its wish no later than sixty (60) days before the patent or patent applications would otherwise become abandoned, (ii) give the non-filing Party the right, at the non-filing Party's election and sole expense, to prosecute and/or maintain such patent or patent application, and (iii) offer reasonable assistance to the non-filing Party in connection with such prosecution and/or maintenance at no cost to the non-filing Party except for reimbursement of the filing Party's reasonable out-of-pocket expenses incurred by the filing Party in rendering such assistance.

(d) Should the non-filing Party pursuant to Section 13.1.2(c) not wish to incur its share of preparation, filing, prosecution and/or maintenance costs for a patent application filed pursuant to Section 13.1.2(a) or 13.1.2(b) or patents derived therefrom, it shall (i) provide the filing Party with written notice of its wish, and (ii) continue to offer reasonable assistance to the filing Party in connection with such prosecution or post-grant matters at no cost to the filing Party except for reimbursement of the non-filing Party's reasonable out-of-pocket expenses incurred by the non-filing Party in rendering such assistance.

(e) The Parties agree to cooperate in the preparation and prosecution of all patent applications filed under Section 13.1.2(a) and 13.1.2(b), including obtaining and executing necessary powers of attorney and assignments by the named inventors, providing relevant technical reports to the filing Party concerning the invention disclosed in such patent application, obtaining execution of such other documents which shall be needed in the filing and prosecution of such patent applications, and, as requested, updating each other regarding the status of such patent applications.

13.1.3 *Prosecution and Maintenance of GSK Patents.* GSK shall have the exclusive right and obligation to (subject to GSK's election not to file, prosecute or maintain pursuant to Section 13.1.5) or to cause its licensors to, prepare, file and prosecute in a diligent manner (including without limitation by conducting interferences, oppositions and reexaminations or other similar proceedings), maintain (by timely paying all maintenance fees, renewal fees, and other such fees and costs required under applicable Laws) and extend all GSK Patents and related applications. Consistent with Section 13.6, GSK will consult with Theravance within the priority period for any patent application that is material to this Agreement concerning Countries in which corresponding applications will be filed provided always that GSK shall not be required to consult with Theravance under this Section 13.1.3 in relation to patent applications that GSK reasonably considers significant to activities beyond the scope of this Agreement, such as devices, delivery technology and/or any other proprietary GSK technology(ies). In the event the Parties cannot agree, GSK shall make the final decision. GSK shall consult with Theravance prior to abandoning any GSK Patents or related applications that are material to the matters contemplated in this Agreement. GSK shall regularly advise Theravance of the status of all pending applications, including with respect to any hearings or other proceedings before any Governmental Authority, and, at Theravance's request, shall provide Theravance with copies of documentation relating to such applications, including all correspondence to and from any Governmental Authority. Subject to Section 13.6, GSK shall solicit Theravance's advice and review of the nature and text of such patent applications and important prosecution matters related thereto in reasonably sufficient time prior to filing thereof, and GSK shall take into account Theravance's reasonable comments relating

thereto; provided that GSK shall have the final decision authority with respect to any action relating to a GSK Patent.

13.1.4 *GSK Step-In Rights.* If Theravance elects not to file, prosecute or maintain the Theravance Patents or claims encompassed by such Theravance Patents necessary for GSK to exercise its rights hereunder in any Country, Theravance shall give GSK notice thereof within a reasonable period prior to allowing such Theravance Patents, or such claims encompassed by such Theravance Patents, to lapse or become abandoned or unenforceable, and GSK shall thereafter have the right, at its sole expense, to prepare, file, prosecute and maintain such Theravance Patents in such Country.

13.1.5 *Theravance Step-In Rights.* If GSK elects not to file, prosecute or maintain the GSK Patents or claims encompassed by such GSK Patents necessary for Theravance to exercise its license rights hereunder in any Country, GSK shall give Theravance notice thereof within a reasonable period prior to allowing such GSK Patents, or such claims encompassed by such GSK Patents, to lapse or become abandoned or unenforceable, and Theravance shall thereafter have the right, at its sole expense, to prepare, file, prosecute and maintain such GSK Patents in such Country; provided always that nothing herein shall give Theravance any Step-In Rights in respect of any proprietary *Diskus* technology(ies).

13.1.6 *Execution of Documents by Agents.* Each of the Parties shall execute or have executed by its appropriate agents such documents as may be necessary to obtain, perfect or maintain any Patent Rights filed or to be filed pursuant to this Agreement, and shall cooperate with the other Party so far as reasonably necessary with respect to furnishing all information and data in its possession reasonably necessary to obtain or maintain such Patent Rights.

13.1.7 *Patent Term Extensions.* The Parties shall cooperate with each other in gaining patent term extension where applicable to an Alliance Product. The Joint Steering Committee shall determine which patents relating to a particular Alliance Product the Parties shall endeavor to have extended. All filings for such extension will be made by the Party to whom the patent is assigned after consultation with the other Party. In the event the Joint Steering Committee can not agree, the Party Commercializing the Theravance Compound will make the decision.

13.2 *Patent Infringement.*

13.2.1 *Infringement Claims.* With respect to any and all Claims instituted by Third Parties against Theravance or GSK or any of their respective Affiliates for patent infringement involving the manufacture, use, license, marketing or sale of an Alliance Product in the United States during the Term (each, a "Patent Infringement Claim") as applicable, Theravance and GSK will assist one another and cooperate in the defense and settlement of such Patent Infringement Claims at the other Party's request.

13.2.2 *Infringement of Theravance Patents.* In the event that Theravance or GSK becomes aware of actual or threatened infringement of a Theravance Patent during the Term, that Party will promptly notify the other Party in writing (a "Patent Infringement Notice"). Theravance will have the right but not the obligation to bring an infringement action against any Third Party. If Theravance elects to pursue such infringement action, Theravance shall be solely responsible for the costs and expenses associated with such action and retain all recoveries. During the Term, in the event that Theravance does not undertake such an infringement action, upon Theravance's written consent, which shall not be unreasonably withheld, refused, conditioned or delayed, GSK shall be permitted to do so in Theravance's or the relevant Theravance Affiliate's name and on Theravance's or the relevant Theravance Affiliate's behalf. If Theravance has consented to an infringement action but GSK is not recognized by the applicable court or other relevant body as having the requisite standing to pursue such action, then GSK may join Theravance as

party-plaintiff. If GSK elects to pursue such infringement action, Theravance may be represented in such action by attorneys of its own choice and its own expense with GSK taking the lead in such action. If Theravance recommends not to pursue an infringement action, and GSK elects to pursue such infringement action by joining Theravance as a party plaintiff, then GSK agrees to indemnify and hold harmless Theravance for all losses and damages arising from said infringement action.

13.2.3 *Infringement of GSK Patents.* In the event that GSK or Theravance becomes aware of actual or threatened infringement of a GSK Patent during the Term, that Party will promptly notify the other Party in writing. GSK will have the right but not the obligation to bring an infringement action against any Third Party. If GSK elects to pursue such infringement action, GSK shall be solely responsible for the costs and expenses associated with such action and retain all recoveries. During the Term, in the event that GSK does not undertake such an infringement action, upon GSK's written consent, which shall not be unreasonably withheld, refused, conditioned or delayed, Theravance shall be permitted to do so in GSK's or the relevant GSK Affiliate's name and on GSK's or the relevant GSK Affiliate's behalf. If GSK has consented to an infringement action but Theravance is not recognized by the applicable court or other relevant body as having the requisite standing to pursue such action, then Theravance may join GSK as a party-plaintiff. If Theravance elects to pursue such infringement action, GSK may be represented in such action by attorneys of its own choice and at its own expense, with Theravance taking the lead in such action. If GSK recommends not to pursue an infringement action, and Theravance elects to pursue such infringement action by joining GSK as a party plaintiff, then Theravance agrees to indemnify and hold harmless GSK for all losses and damages arising from said infringement action.

13.2.4 *Notice and Cooperation.* In the event that GSK or Theravance becomes aware of actual or threatened infringement of a Joint Patent, that Party will promptly notify the other Party in writing. In such event the matter will be handled the same as provided for GSK Patents in Section 13.2.3 and Theravance will cooperate as reasonably required by GSK in connection with such enforcement.

13.3 *Notice of Certification.* GSK and Theravance each shall immediately give notice to the other of any certification filed under the "U.S. Drug Price Competition and Patent Term Restoration Act of 1984" (or its foreign equivalent) claiming that a GSK Patent or a Theravance Patent is invalid or that infringement will not arise from the manufacture, use or sale of any Alliance Product by a Third Party ("Hatch-Waxman Certification").

13.3.1 *Notice.* If a Party decides not to bring infringement proceedings against the entity making such a certification, such Party shall give notice to the other Party of its decision not to bring suit within twenty-one (21) days after receipt of notice of such certification.

13.3.2 *Option.* Such other Party then may, but is not required to, bring suit against the entity that filed the certification. If the other Party decides to bring suit, the provisions of Section 13.2.2 or Section 13.2.3 shall apply as appropriate.

13.3.3 *Name of Party.* Any suit by Theravance or GSK shall either be in the name of Theravance or in the name of GSK, (or any Affiliate) or jointly in the name of Theravance and GSK (or any Affiliate), as may be required by law.

13.4 *Assistance.* For purposes of this Article 13, the Party not bringing suit shall execute such legal papers necessary for the prosecution of such suit as may be reasonably requested by the Party bringing suit. The out-of-pocket costs and expenses of the Party bringing suit shall be reimbursed first out of any damages or other monetary awards recovered in favor of GSK or Theravance. The documented out-of-pocket costs and expenses of the other Party shall then be reimbursed out of any remaining damages or other monetary awards. The Party initiating and prosecuting the action to

completion will retain any remaining damages or other monetary awards following such reimbursements.

13.5 *Settlement.* No settlement or consent judgment or other voluntary final disposition of a suit under this Article may be entered into without the joint written consent of GSK and Theravance (which consent will not be withheld unreasonably).

13.6 *Ownership of Inventions.* Each Party shall promptly disclose to the other Party all Inventions made by it during the Term; provided that GSK will be allowed a reasonable time to file patent applications covering GSK Inventions prior to disclosing the GSK Invention to Theravance, and Theravance will be allowed a reasonable time to file patent applications covering Theravance Inventions prior to disclosing the Theravance Invention to GSK. Theravance shall own all Theravance Inventions and GSK shall own all GSK Inventions. All Joint Inventions shall be owned jointly by Theravance and GSK, and each Party hereby consents (without granting any license) to the exercise, assignment or license or other disposition by the other Party of its joint interests in Joint Inventions without accounting or the need to seek the consent of the other Party to such assignment or license or other disposition; provided that any such assignment, license or other disposition shall at all times be subject to the grant of rights and accompanying conditions under Sections 2.1 and 2.2 and Article 14. The determination of inventorship for Inventions shall be made in accordance with applicable laws relating to inventorship set forth in the patent laws of the United States (Title 35, United States Code).

ARTICLE 14
TERM AND TERMINATION

14.1 *Term and Expiration of Term.* Except as otherwise mutually agreed to by the Parties, this Agreement shall commence on the Effective Date and shall end upon expiration of the Term, unless terminated early as contemplated hereunder. Unless terminated early under this Article 14, the licenses granted by Theravance to GSK pursuant to Section 2.1 with respect to the Alliance Products shall be considered fully-paid and shall become non-exclusive upon expiration of the Term.

14.2 *Termination for Material Breach.* Either Party may, without prejudice to any other remedies available to it at law or in equity, terminate only that portion of the Agreement as such relates to the relevant Alliance Program (and not, for the avoidance of doubt any other Alliance Program) in the event that the other Party (as used in this subsection, the "Breaching Party") shall have materially breached or defaulted in the performance of any of its obligations in relation to such Alliance Program (the "Breaching Alliance Program"). The Breaching Party shall, if such breach can be cured, have sixty (60) days after written notice thereof was provided to the Breaching Party by the non-breaching Party to remedy such default (or, if such default cannot be cured within such 60-day period, the Breaching Party must commence and diligently continue actions to cure such default during such 60-day period). Any such termination shall become effective at the end of such 60-day period unless the Breaching Party has cured any such breach or default prior to the expiration of such 60-day period (or, if such default is capable of being cured but cannot be cured within such 60-day period, the Breaching Party has commenced and diligently continued actions to cure such default provided always that, in such instance, such cure must have occurred within one hundred twenty (120) days after written notice thereof was provided to the Breaching Party by the non-breaching Party to remedy such default).

14.3 *GSK Right to Terminate Development of an Alliance Product.* On an Alliance Product-by-Alliance Product basis, and at any time during Development and prior to First Commercial Sale of the applicable Alliance Product, GSK shall have the right to terminate Development of such Alliance Product (upon the provision of ninety (90) days written notice) for reasons of Technical Failure or Commercial Failure following communication to, and assessment of such proposed termination by, the Joint Program Committee and Joint Steering Committee (in which case such Alliance Product shall be referred to as a "Terminated Development Alliance Product").

14.4 *GSK Right to Terminate Commercialization of an Alliance Product Following First Commercial Sale.* On an Alliance Product-by-Alliance Product basis, and on a Country-by-Country basis, at any time after First Commercial Sale of the applicable Alliance Product in such country, GSK shall have the right to terminate Commercialization of such Alliance Product (upon the provision of one hundred and eighty (180) days written notice) for reasons of Commercial Failure or Technical Failure and following communication to, and assessment of such proposed termination by, the Joint Program Committee and Joint Steering Committee (in which case, such Alliance Product shall be referred to as a "Terminated Commercialized Alliance Product").

14.5 *Effects of Termination.*

14.5.1 *Effect of Termination for Material Breach.*

(a) *Material Breach by Theravance.* In the event that the Breaching Alliance Program is terminated by GSK pursuant to Section 14.2 for material breach by Theravance, all licenses in respect of such Breaching Alliance Program granted by Theravance to GSK under this Agreement shall survive, subject to GSK's continued obligation to pay royalties to Theravance hereunder. In such event, GSK shall be entitled to set-off against any monies payable to Theravance hereunder all amounts GSK reasonably believes constitute its damages incurred by such breach, subject to final judicial resolution or settlement, without prejudice to any and all of GSK's rights to bring an action against Theravance for damages and any other available remedies in law or equity. Also, Theravance shall, at its sole expense, promptly return to GSK or destroy at GSK's request all relevant records and materials in its possession or control containing Confidential Information of GSK (provided that Theravance may keep one copy of such Confidential Information of GSK for archival purposes only in accordance with Section 10.1).

(b) *Material Breach by GSK.* In the event that the Breaching Alliance Program is terminated by Theravance for material breach by GSK pursuant to Section 14.2, the provisions of Section 14.5.2 or Section 14.5.3 shall apply to such Breaching Alliance Program depending upon the Development or Commercialization status of same. In addition, Theravance shall be entitled to set-off against any monies payable to GSK hereunder all amounts Theravance reasonably believes constitute its damages incurred by such breach, subject to final judicial resolution or settlement, without prejudice to any and all of Theravance's rights to bring an action against GSK for damages and any other available remedies in law or equity.

14.5.2 *Effect of Termination of Development of an Alliance Product.*

(a) *Non-Respiratory Alliance Products.* In the event that GSK terminates Development of an Alliance Product under Section 14.3 and such Alliance Product is a Non-Respiratory Alliance Product (hereinafter "Terminated Non-Respiratory Development Alliance Product"), and provided that such Terminated Non-Respiratory Development Alliance Product is not being or has not been replaced by an alternative Non-Respiratory Development Alliance

Product, the following shall occur in respect of such Terminated Non-Respiratory Development Alliance Product:

(i) *Return of Materials.* GSK shall [*] transfer to Theravance copies of all material data, reports, records and materials in its possession or control that relate to the Terminated Non-Respiratory Development Alliance Product and/or destroy at Theravance's request, all relevant records and materials in its possession or control containing Confidential Information of Theravance (provided that GSK may keep one copy of such Confidential Information of Theravance for archival purposes only in accordance with Section 10.1).

(ii) *Transfer of Regulatory Filings.* GSK shall [*] transfer to Theravance, or shall cause its designee(s) to transfer to Theravance, ownership of all regulatory filings made or filed for any such Terminated Non-Respiratory Development Alliance Product (to the extent that any are held in GSK's or such designee(s)'s name), and such transfer to be as permitted by applicable Laws and regulations. GSK shall cooperate as reasonably necessary to permit Theravance to exercise its rights hereunder; provided, however, that if such transfer cannot be effected by GSK in a particular Country within [*] of the effective date of termination for such Terminated Non-Respiratory Development Alliance Product (for example, as a result of Theravance not having the appropriate entity in any such Country to whom ownership of such regulatory filing(s) would be required to be transferred) then GSK, after the expiration of such aforesaid period, shall forthwith be entitled to surrender ownership of such regulatory filing(s) and/or applications for cancellation in respect of such Country.

(iii) *Return of License Rights to Theravance.* All licenses granted by Theravance to GSK with respect to the Terminated Non-Respiratory Development Alliance Product under this Agreement shall terminate.

(iv) *Grant of License Rights.* [*] to such intellectual property rights [*] provided always that [*]. For the avoidance of doubt, [*].

(v) *Trademark Assignment.* Upon the request of Theravance, GSK shall prepare a global assignment to Theravance of any Trademark extensively and publicly used by GSK and Theravance in connection with the Terminated Non-Respiratory Development Alliance Product. If Theravance elects to record the Assignment, Theravance shall undertake such recordal tasks and shall bear the costs and fees associated with the recordal, including but not limited to all filing fees, agent fees, and costs of notarization and legalizations. GSK shall cooperate with Theravance as reasonably necessary. Notwithstanding the foregoing, in the event that any Trademark is used by GSK on any other product, GSK shall not assign such Trademark as contemplated in the preceding sentence but shall license such Trademark to Theravance on a non-exclusive basis and subject to any further license terms to be agreed by the Parties in good faith at the time.

(vi) *Stock Return and Supply.* GSK shall return to Theravance all available formulated and API stocks (if such stocks exist) of the Terminated Non-Respiratory Development Alliance Product and which are then held by GSK or cause such API stocks to be provided to Theravance if held by a vendor or other Third Party on behalf of GSK. [*].

(b) *Respiratory Alliance Products.* In the event that GSK terminates Development of an Alliance Product under Section 14.3 and such Alliance Product is a Respiratory Alliance Product (hereinafter "Terminated Respiratory Development Alliance Product"), and provided that such Terminated Respiratory Development Alliance Product is not being or has not been

replaced by an alternative Respiratory Development Alliance Product the following shall occur in respect of such Terminated Respiratory Development Alliance Product:

(i) *Return of Materials.* GSK shall [*] transfer to Theravance copies of all material data, reports, records and materials in its possession or control that relate to the Terminated Respiratory Development Alliance Product, but only insofar as the Terminated Respiratory Development Alliance Product is a single agent product and contains the Theravance Compound as a single agent, and/or destroy at Theravance's request, all relevant records and materials in its possession or control containing Confidential Information of Theravance (provided that GSK may keep one copy of such Confidential Information of Theravance for archival purposes only in accordance with Section 10.1).

(ii) *Transfer of Regulatory Filings.* GSK shall [*] transfer to Theravance, or shall cause its designee(s) to transfer to Theravance, ownership of all regulatory filings made or filed for any Terminated Respiratory Development Alliance Product (to the extent that any are held in GSK's or such designee(s)'s name), but only where the Terminated Respiratory Development Alliance Product is a single agent product and contains the Theravance Compound as the single agent, and such transfer to be as permitted by applicable Laws and regulations. GSK shall cooperate as reasonably necessary to permit Theravance to exercise its rights hereunder; provided, however, that if such transfer cannot be effected by GSK in a particular Country within one hundred fifty (150) days of the effective date of termination for such Terminated Respiratory Development Alliance Product (for example, as a result of Theravance not having the appropriate entity in any such Country to whom ownership of such regulatory filing(s) would be required to be transferred) then GSK, after the expiration of such aforesaid period, shall forthwith be entitled to surrender ownership of such regulatory filing(s) and/or applications for cancellation in respect of such Country.

(iii) *Return of License Rights to Theravance.* All licenses granted by Theravance to GSK with respect to the Terminated Respiratory Development Alliance Product under this Agreement shall terminate.

(iv) *Grant of License Rights to Theravance.* [*]. For the avoidance of doubt, any such licenses granted by GSK [*].

(v) *Trademark Assignment.* Upon the request of Theravance, GSK shall prepare a global assignment to Theravance of any Trademark extensively and publicly used by GSK and Theravance in connection with the Terminated Respiratory Development Alliance Product. If Theravance elects to record the Assignment, Theravance shall undertake such recordal tasks and shall bear the costs and fees associated with the recordal, including but not limited to all filing fees, agent fees, and costs of notarization and legalizations. GSK shall cooperate with Theravance as reasonably necessary. Notwithstanding the foregoing, in the event that any Trademark is used by GSK on any other product, GSK shall not assign such Trademark as contemplated in the preceding sentence but shall license such Trademark to Theravance on a non-exclusive basis and subject to any further license terms to be agreed by the Parties in good faith at the time.

(vi) *Stock Return.* GSK shall return to Theravance all available formulated and API stocks (if such stocks exist) of the Terminated Respiratory Development Alliance Product (but only insofar as the Terminated Respiratory Development Alliance Product is a single agent product and contains the Theravance Compound as a single agent) and which are then held by GSK or cause such API stocks to be provided to Theravance if held by a vendor or other Third Party on behalf of GSK. The Parties shall also consider

the appropriateness of entering into any interim supply arrangements to facilitate the transfer contemplated herein.

(vii) *[*] Theravance*

(aa) Subject to sub-paragraph (bb) below, [*] will result in [*] as follows [*].

(bb) The provisions of sub-paragraph (aa) shall not apply [*] if any of the following apply in respect of the Terminated Respiratory Development Alliance Product:

(xx) A Technical Failure has occurred (either in respect of the relevant Lead Theravance Compound and/or any back-up within the relevant Alliance Program); or

(yy) As of the effective date of termination, GSK has not commenced any clinical study or studies related to and/or directed at the Terminated Respiratory Development Alliance Product in any proprietary GSK device(s), including *Diskus*; or

(zz) The Theravance Compound contained in the Terminated Respiratory Development Alliance Product is contained in another Alliance Product being Developed hereunder.

14.5.3 *Effect of Termination by GSK of a Terminated Commercialized Alliance Product.*

(a) *Non-Respiratory Alliance Products.* In the event that GSK terminates Commercialization of an Alliance Product under Section 14.4 and such Alliance Product is a Non-Respiratory Alliance Product (hereinafter "Terminated Non-Respiratory Commercialized Alliance Product"), and provided that such Terminated Non-Respiratory Commercialized Alliance Product is not being or has not been replaced by an alternative Non-Respiratory Alliance Product, the following shall occur:

(i) *Theravance Rights to Commercialize.* If GSK terminates a Non-Respiratory Commercialized Alliance Product after First Commercial Sale of such Alliance Product in one or more of the Major Market Countries, Theravance shall have the right in its sole discretion and at its sole expense, for its own benefit or together with a Third Party, to commercialize such Terminated Commercialized Alliance Product in any of such Major Market Countries where it has been terminated. If GSK terminates a Non-Respiratory Commercialized Alliance Product in all Countries of the Territory following the first commercial sale in any Country of the Territory, Theravance shall have the right in its sole discretion and at it sole expense, for its own benefit or together with a Third Party, to Commercialize such Terminated Non-Respiratory Commercialized Alliance Product in the Territory. In either case, GSK will use reasonable efforts to assist Theravance in locating a mutually acceptable Third Party to carry out the rights and activities contemplated herein.

(ii) *Return of Materials.* GSK shall [*] transfer to Theravance copies of all data, reports, records and materials in its possession or control that relate to the Terminated Non-Respiratory Commercialized Alliance Product or destroy at Theravance's request, all relevant records and materials in its possession or control containing Confidential Information of Theravance (provided that GSK may keep one copy of such Confidential Information of Theravance for archival purposes only in accordance with Section 10.1).

(iii) *Transfer of Regulatory Filings.* GSK shall [*] transfer to Theravance, or shall cause its designee(s) to transfer to Theravance, ownership of all regulatory filings made or filed for any Terminated Non-Respiratory Commercialized Alliance Product (to the extent that any are held in GSK's or such designee(s)'s name) and such transfer to be as

permitted by applicable Laws and regulations. GSK shall cooperate as reasonably necessary to permit Theravance to exercise its rights hereunder; provided, however, that if such transfer cannot be effected by GSK in a particular Country [*] of the effective date of termination for such Terminated Non-Respiratory Commercialized Alliance Product (for example, as a result of Theravance not having the appropriate entity in any such Country to whom ownership of such regulatory filing(s) would be required to be transferred) then GSK, after the expiration of such aforesaid period, shall forthwith be entitled to surrender ownership of such regulatory filing(s) and/or applications for cancellation in respect of such Country.

(iv) *Return of License Rights to Theravance.* All licenses granted by Theravance to GSK with respect to the Terminated Non-Respiratory Commercialized Alliance Product under this Agreement shall terminate.

(v) *Grant of License Rights to Theravance*. [*] provided always that [*]. For the avoidance of doubt, any such licenses granted by GSK [*]. GSK shall also provide Theravance with all such information and data which [*].

(vi) *Trademark Assignment.* Upon the request of Theravance, GSK shall prepare a global assignment to Theravance of any Trademark extensively and publicly used by GSK and Theravance in connection with the Terminated Non-Respiratory Commercialized Alliance Product. If Theravance elects to record the Assignment, Theravance shall undertake such recordal tasks and shall bear the costs and fees associated with the recordal, including but not limited to all filing fees, agent fees, and costs of notarization and legalizations. GSK shall cooperate with Theravance as reasonably necessary. Notwithstanding the foregoing, in the event that any Trademark is used by GSK on any other product, GSK shall not assign such Trademark as contemplated in the preceding sentence but shall license such Trademark to Theravance on a non-exclusive basis and subject to any further license terms to be agreed by the Parties in good faith at the time.

(vii) *Supply.* [*] for any Terminated Non-Respiratory Commercialized Alliance Product which shall ensure that, based on [*], Theravance has [*] provided always that such period of time shall not exceed a period of [*] from the effective date of termination.

(b) *Respiratory Alliance Products.* In the event that GSK terminates Commercialization of an Alliance Product under Section 14.4 and such Alliance Product is a Respiratory Alliance Product (hereinafter "Terminated Respiratory Commercialized Alliance Product"), and provided that such Terminated Respiratory Commercialized Alliance Product is not being or has not been replaced by an alternative Respiratory Alliance Product and provided further that, in GSK's good faith reasonable judgment, the exercise by Theravance alone or with a Third Party of any of the rights or activities contemplated by this Section 14.5.3(b) will not materially damage GSK's continued development, regulatory or commercial use of GSK Property the following shall occur:

(i) *Theravance Rights to Commercialize.* If GSK terminates a Respiratory Commercialized Alliance Product after First Commercial Sale of such Alliance Product in one or more of the Major Market Countries, Theravance shall have the right in its sole discretion and at its sole expense, for its own benefit or together with a Third Party, to commercialize such Terminated Respiratory Commercialized Alliance Product in any of such Major Market Countries where it has been terminated. If GSK terminates a Respiratory Commercialized Alliance Product in all Countries of the Territory following the first commercial sale in any Country of the Territory, Theravance shall have the right in its sole discretion and at it sole expense, for its own benefit or together with a Third

Party, to Commercialize such Terminated Respiratory Commercialized Alliance Product in the Territory. In either case, GSK will use reasonable efforts to assist Theravance in locating a mutually acceptable Third Party to carry out the rights and activities contemplated herein.

(ii) *Return of Materials.* GSK shall [*] transfer to Theravance copies of all material data, reports, records and materials in its possession or control that relate to the Terminated Respiratory Commercialized Alliance Product but only insofar as the Terminated Respiratory Commercialized Alliance Product is a single agent product and contains the Theravance Compound as a single agent, and/or destroy at Theravance's request, all relevant records and materials in its possession or control containing Confidential Information of Theravance (provided that GSK may keep one copy of such Confidential Information of Theravance for archival purposes only in accordance with Section 10.1).

(iii) *Transfer of Regulatory Filings.* GSK shall [*] transfer to Theravance, or shall cause its designee(s) to transfer to Theravance, ownership of all regulatory filings made or filed for any Terminated Respiratory Commercialized Alliance Product (to the extent that any are held in GSK's or such designee(s)'s name) but only where the Terminated Respiratory Commercialized Alliance Product is a single agent product and contains the Theravance Compound as a single agent, and such transfer to be as permitted by applicable Laws and regulations. GSK shall cooperate as reasonably necessary to permit Theravance to exercise its rights hereunder; provided, however, that if such transfer cannot be effected by GSK in a particular Country [*] of the effective date of termination for such Terminated Respiratory Commercialized Alliance Product (for example., as a result of Theravance not having the appropriate entity in any such Country to whom ownership of such regulatory filing(s) would be required to be transferred) then GSK, after the expiration of such aforesaid period, shall forthwith be entitled to surrender ownership of such regulatory filing(s) and/or applications for cancellation in respect of such Country.

(iv) *Return of License Rights to Theravance.* All licenses granted by Theravance to GSK with respect to the Terminated Respiratory Commercialized Alliance Product under this Agreement shall terminate.

(v) *Grant of License Rights to Theravance.* [*] provided always that [*]. For the avoidance of doubt, any such licenses granted by GSK [*]. GSK shall also provide Theravance with all such information and data which [*].

(vi) *Trademark Assignment.* Upon the request of Theravance, GSK shall prepare a global assignment to Theravance of any Trademark extensively and publicly used by GSK and Theravance in connection with the Terminated Respiratory Commercialized Alliance Product. If Theravance elects to record the Assignment, Theravance shall undertake such recordal tasks and shall bear the costs and fees associated with the recordal, including but not limited to all filing fees, agent fees, and costs of notarization and legalizations. GSK shall cooperate with Theravance as reasonably necessary. Notwithstanding the foregoing, in the event that any Trademark is used by GSK on any other product, GSK shall not assign such Trademark as contemplated in the preceding sentence but shall license such Trademark to Theravance on a non-exclusive basis and subject to any further license terms to be agreed by the Parties in good faith at the time.

(vii) *Supply.* [*] which shall ensure that [*] provided always that such period of time shall not exceed a period of [*] from the effective date of termination.

14.6 *Effect of Post-Termination Provisions on a Change in Control in Theravance.* In the event of a Change in Control of Theravance prior to termination by GSK under Section 14.4 (other than a Change in Control of Theravance involving GSK or a GSK Affiliate) none of the provisions under Section 14.5.3 shall survive as they pertain to any Alliance Product other than to an Alliance Product that contains a Theravance Compound as a single agent or a Combination Product containing another agent that is not GSK Property and the Parties will meet in good faith to explore other potential commercial options, e.g. use of one or more Third Parties for possible continued Commercialization of such Terminated Commercialized Alliance Product.

14.7 *Milestone Payments.* GSK shall not be obligated to make a Development Milestone payment under Section 6.2 which is triggered by an event occurring after the effective date of termination of this Agreement with respect to an Alliance Product or after the effective date of termination of Development or Commercialization of such Alliance Product, as applicable.

14.8 *Accrued Rights; Surviving Obligations.* Termination, relinquishment or expiration of this Agreement for any reason shall be without prejudice to any rights that shall have accrued to the benefit of any Party prior to such termination, relinquishment or expiration. Such termination, relinquishment or expiration shall not relieve any Party from obligations which are expressly or by implication intended to survive termination, relinquishment or expiration of this Agreement, including without limitation Article 10, and shall not affect or prejudice any provision of this Agreement which is expressly or by implication provided to come into effect on, or continue in effect after, such termination, relinquishment or expiration.

ARTICLE 15
MISCELLANEOUS

15.1 *Relationship of the Parties.* Each Party shall bear its own costs incurred in the performance of its obligations hereunder without charge or expense to the other except as expressly provided in this Agreement. Neither Party shall have any responsibility for the hiring, termination or compensation of the other Party's employees or for any employee benefits of such employee. No employee or representative of a Party shall have any authority to bind or obligate the other Party to this Agreement for any sum or in any manner whatsoever, or to create or impose any contractual or other liability on the other Party without said Party's approval. For all purposes, and notwithstanding any other provision of this Agreement to the contrary, GSK's legal relationship under this Agreement to Theravance shall be that of independent contractor. This Agreement is not a partnership agreement and nothing in this Agreement shall be construed to establish a relationship of co-partners or joint venturers between the Parties.

15.2 *Registration and Filing of This Agreement.* To the extent, if any, that either Party concludes in good faith that it or the other Party is required to file or register this Agreement or a notification thereof with any Governmental Authority, including without limitation the U.S. Securities and Exchange Commission, the Competition Directorate of the Commission of the European Communities or the U.S. Federal Trade Commission, in accordance with Law, such Party shall inform the other Party thereof. Should both Parties jointly agree that either of them is required to submit or obtain any such filing, registration or notification, they shall cooperate, each at its own expense, in such filing, registration or notification and shall execute all documents reasonably required in connection therewith. In such filing, registration or notification, the Parties shall request confidential treatment of sensitive provisions of this Agreement, to the extent permitted by Law. The Parties shall promptly inform each other as to the activities or inquiries of any such Governmental Authority relating to this Agreement, and shall reasonably cooperate to respond to any request for further information there from on a timely basis.

15.3 *Force Majeure.* The occurrence of an event which materially interferes with the ability of a Party to perform its obligations or duties hereunder which is not within the reasonable control of the Party affected or any of its Affiliates, not due to malfeasance by such Party or its Affiliates, and which could not with the exercise of due diligence have been avoided (each, a "Force Majeure Event"), including, but not limited to, an injunction, order or action by a Governmental Authority, fire, accident, labor difficulty, strike, riot, civil commotion, act of God, inability to obtain raw materials, delay or errors by shipping companies or change in law, shall not excuse such Party from the performance of its obligations or duties under this Agreement, but shall merely suspend such performance during the continuation of the Force Majeure. The Party prevented from performing its obligations or duties because of a Force Majeure Event shall promptly notify the other Party of the occurrence and particulars of such Force Majeure and shall provide the other Party, from time to time, with its best estimate of the duration of such Force Majeure Event and with notice of the termination thereof. The Party so affected shall use Diligent Efforts to avoid or remove such causes of nonperformance as soon as is reasonably practicable. Upon termination of the Force Majeure Event, the performance of any suspended obligation or duty shall promptly recommence. The Party subject to the Force Majeure Event shall not be liable to the other Party for any direct, indirect, consequential, incidental, special, punitive, exemplary or other damages arising out of or relating to the suspension or termination of any of its obligations or duties under this Agreement by reason of the occurrence of a Force Majeure Event, provided such Party complies in all material respects with its obligations under this Section 15.3.

15.4 *Governing Law.* This Agreement shall be construed, and the respective rights of the Parties determined, according to the substantive law of the State of Delaware notwithstanding the provisions governing conflict of laws under such Delaware law to the contrary, except matters of intellectual property law which shall be determined in accordance with the intellectual property laws relevant to the intellectual property in question.

15.5 *Attorneys' Fees and Related Costs.* In the event that any legal proceeding is brought to enforce or interpret any of the provisions of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees, court costs and expenses of litigation whether or not the action or proceeding proceeds to final judgment.

15.6 *Assignment.* This Agreement may not be assigned by either Party without the prior written consent of the other Party; provided, however that either Party may assign this Agreement, in whole or in part, to any of its Affiliates if such Party guarantees the performance of this Agreement by such Affiliate; and provided further that either Party may assign this Agreement to a successor to all or substantially all of the assets of such Party whether by merger, sale of stock, sale of assets or other similar transaction. This Agreement shall be binding upon, and subject to the terms of the foregoing sentence, inure to the benefit of the Parties hereto, their permitted successors, legal representatives and assigns.

15.7 *Notices.* All demands, notices, consents, approvals, reports, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally, by facsimile with confirmation of receipt, by mail (first class, postage prepaid), or by overnight delivery using a globally-recognized carrier, to the Parties at the following addresses:

Theravance:
Theravance, Inc.
901 Gateway Boulevard
South San Francisco, CA 94080
Facsimile: 650-827-8683
Attn: Senior Vice President, Commercial Development

GSK:	Glaxo Group Limited 980 Great West Road Brentford Middlesex TW8 9GS United Kingdom Attn: Company Secretary Facsimile: 011 44 208-047-6912
With a copy to:	GlaxoSmithKline plc 980 Great West Road Brentford Middlesex TW8 9GS United Kingdom Attn: Corporate Law Facsimile: 011 44 208-047-6912
and with a copy to:	GlaxoSmithKline Research & Development Greenford Road Greenford Middlesex UB6 0HE United Kingdom Attn: Vice President, Worldwide Business Development Facsimile: 011 44 208 966 5371

or to such other address as the addressee shall have last furnished in writing in accord with this provision to the addressor. All notices shall be deemed effective upon receipt by the addressee.

15.8 *Severability.* In the event of the invalidity of any provisions of this Agreement or if this Agreement contains any gaps, the Parties agree that such invalidity or gap shall not affect the validity of the remaining provisions of this Agreement. The Parties will replace an invalid provision or fill any gap with valid provisions which most closely approximate the purpose and economic effect of the invalid provision or, in case of a gap, the Parties' presumed intentions. In the event that the terms and conditions of this Agreement are materially altered as a result of the preceding sentences, the Parties shall renegotiate the terms and conditions of this Agreement in order to resolve any inequities. Nothing in this Agreement shall be interpreted so as to require either Party to violate any applicable laws, rules or regulations.

15.9 *Waiver.* Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. Except as expressly set forth in this Agreement, all rights and remedies available to a Party, whether under this Agreement or afforded by law or otherwise, will be cumulative and not in the alternative to any other rights or remedies that may be available to such Party.

15.10 *Entire Agreement.* This Agreement (including the exhibits and schedules hereto) constitutes the entire agreement between the Parties hereto with respect to the within subject matter and supersedes all previous agreements and understandings between the Parties, whether written or oral. This Agreement may be altered, amended or changed only in writing and by making specific reference to this Agreement and signed by duly authorized representatives of Theravance and GSK.

15.11 *No License.* Nothing in this Agreement shall be deemed to constitute the grant of any license or other right in either Party, to or in respect of any Alliance Product, patent, trademark, Confidential Information, trade secret or other data or any other intellectual property of the other Party, except as expressly set forth herein.

15.12 *Third Party Beneficiaries.* None of the provisions of this Agreement shall be for the benefit of or enforceable by any Third Party, including without limitation any creditor of either Party hereto. No such Third Party shall obtain any right under any provision of this Agreement or shall by reasons of any such provision make any Claim in respect of any debt, liability or obligation (or otherwise) against either Party hereto.

15.13 *Counterparts.* This Agreement may be executed in any two counterparts, each of which, when executed, shall be deemed to be an original and both of which together shall constitute one and the same document.

15.14 *Agreement Closing Condition.* The obligation of each Party to consummate the transaction contemplated hereby is subject to the satisfaction of the following condition (the "Closing Condition"): All filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and any other similar laws that are necessary in any jurisdiction with respect to the transaction contemplated hereby shall have been made and any required waiting period under such laws shall have expired or been terminated and any Governmental Authority in a jurisdiction with an applicable mandatory pre-closing waiting period that has power under or authority to enforce such laws shall have, if applicable, approved, cleared or decided neither to initiate proceedings or otherwise intervene in respect of the transaction contemplated hereby nor to refer the transaction to any other competent Governmental Authority. Each Party shall use good faith efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Party in doing, all things necessary, proper or advisable to consummate and make effective the transaction contemplated by this Agreement, including, but not limited to satisfaction of the Closing Condition and each Party shall keep the other Party reasonably apprised of the status of matters relating to the completion of same. In connection with the foregoing, the Parties hereby agree to negotiate in good faith to make as soon as practicable any modification or amendment to this Agreement or any agreement related hereto that is required by the United States Federal Trade Commission, Department of Justice or equivalent Governmental Authority, provided that no Party shall be required to agree to any modification or amendment that, in the reasonable opinion of such Party's external legal or financial counsel, would be adverse to such Party. This Agreement may be terminated by either Party upon written notice any time after September 30, 2004 if the transactions contemplated by this Agreement shall not have been consummated by September 30, 2004 due to failure to satisfy the Closing Condition; provided, however, that the terminating Party shall not have breached in any material respect its obligations under this Agreement in any manner that shall have been the proximate cause of, or resulted in, the failure to satisfy the Closing Condition or otherwise to consummate the transactions contemplated by this Agreement by such date.

15.15 *Alliance Program Closing Condition.*

(a) If GSK notifies Theravance in writing of its wish to exercise its Opt-In Right in respect of a particular Discovery Program pursuant to Section 4.2.1(a), Section 4.2.2(a) or Section 4.2.2(b), such notice of exercise shall not take effect until satisfaction of the condition set forth in Section 15.15 (b) below, if applicable (the "Alliance Program Closing Condition").

(b) All filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and any other similar laws that are necessary in any jurisdiction with respect to the exercise of such Opt-In Right contemplated hereby shall have been made and any required waiting period under such laws shall have expired or been terminated and any Governmental Authority in a jurisdiction with an applicable mandatory pre-closing waiting period that has power under or authority to enforce such

laws shall have, if applicable, approved, cleared or decided neither to initiate proceedings or otherwise intervene in respect of the exercise of such Opt-In Right contemplated hereby nor to refer same to any other competent Governmental Authority. Each Party shall use good faith efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Party in doing, all things necessary, proper or advisable to consummate and make effective the exercise of any such Opt-In Right contemplated by this Agreement, including, but not limited to satisfaction of the Alliance Program Closing Condition and each Party shall keep the other Party reasonably apprised of the status of matters relating to the completion of same. In connection with the foregoing, the Parties shall use all reasonable efforts to make any such filing(s), if applicable, within five (5) business days of the date GSK notifies Theravance in writing of its wish to exercise its Opt-In Right in respect of a particular Discovery Program pursuant to Section 4.2.1(a), Section 4.2.2(a) or Section 4.2.2(b). Further, the Parties hereby agree to negotiate in good faith to make as soon as practicable any modification or amendment to this Agreement or any agreement related hereto that is required by the United States Federal Trade Commission, Department of Justice or equivalent Governmental Authority, provided that no Party shall be required to agree to any modification or amendment that, in the reasonable opinion of such Party's external legal or financial counsel, would be adverse to such Party. GSK's rights to exercise any such Opt-In Right in respect of a particular Discovery Program under this Agreement may be terminated by either Party upon written notice any time after 180 days (one hundred and eighty days) from the relevant Initial Due Diligence Commencement Date if the exercise of such Opt-In Right contemplated hereby shall not have been consummated by the aforesaid 180 days (one hundred and eighty days) due to failure to satisfy the Alliance Program Closing Condition; provided, however, that the terminating Party shall not have breached in any material respect its obligations under this Agreement in any manner that shall have been the proximate cause of, or resulted in, the failure to satisfy the Alliance Program Closing Condition or otherwise to consummate the exercise of such Opt-In Right contemplated by this Agreement by such date.

IN WITNESS WHEREOF, Theravance and GSK, by their duly authorized officers, have executed this Agreement on March 30, 2004.

THERAVANCE, INC.	GLAXO GROUP LIMITED
By: /s/ RICK E WINNINGHAM	By: /s/ JEAN-PIERRE GARNIER
Rick E Winningham Chief Executive Officer	Jean-Pierre Garnier Chief Executive Officer

Existing Discovery Programs

Non-Respiratory

Modified Glycopeptide	—Antibiotic for Treatment of Gram Positive Bacteria
Overactive Bladder	—M2 Muscarinic Antagonist for OAB
5-HT4	—Agonist for GI Motility Disorders
SASH	—Short Acting Sedative Hypnotic

Respiratory

LAMA—Long Acting Muscarinic Antagonist for Treatment of Respiratory Disease

MABA—Pan-Muscarinic Antagonist and Beta Agonist for use in Respiratory Disease

[*]

[*]

Class A Common Stock Purchase Agreement

THERAVANCE, INC.

CLASS A COMMON

STOCK PURCHASE AGREEMENT

March 30, 2004

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THERAVANCE, INC.

CLASS A COMMON STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (the "Agreement") is made as of the 30th day of March, 2004, by and among Theravance, Inc., a Delaware corporation (the "Company"), and SmithKline Beecham Corporation, a Pennsylvania corporation (the "Investor").

WHEREAS, Glaxo Group Limited, a limited liability company organized under the laws of England and Wales ("GGL") and the Company have entered into that certain Strategic Alliance Agreement dated as of the date hereof (the "Alliance Agreement"), pursuant to which, among other things, the Company has granted GGL an option to develop and commercialize certain therapeutic compounds on an exclusive, worldwide basis;

WHEREAS, the Investor and the Company are contemporaneously entering into this Agreement, pursuant to which the Investor shall purchase shares of the Company's Class A Common Stock, par value $0.01 (the "Class A Common Stock");

WHEREAS, as a condition to the stock purchase contemplated by this Agreement and to facilitate an eventual underwritten public offering of the Company's equity securities, all outstanding shares of the Company's Preferred Stock not owned by GGL must be converted into shares of the Company's Common Stock; and

WHEREAS, in connection with the stock purchase contemplated by this Agreement, the Company intends to implement a retention plan designed to retain and incent key employees, which shall include various equity incentives following a successful underwritten public offering of the Company's equity securities.

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. *Purchase and Sale of Stock.*

1.1 *Sale and Issuance of Class A Common Stock.*

(a) On or prior to the Closing (as defined below), (i) all issued and outstanding shares of preferred stock of the Company shall have converted into common stock and (ii) the Company shall adopt and file with the Secretary of State Delaware the Restated Certificate of Incorporation in the form attached hereto as *Exhibit A* (the "Restated Certificate").

(b) On or prior to the Closing (as defined below), the Company shall have authorized the sale and issuance pursuant to this Agreement of 9,900,000 shares of its Class A Common Stock at a price of $11.00 per share. The Class A Common Stock shall have the rights, preferences, privileges and restrictions set forth in the Restated Certificate.

(c) Subject to the terms and conditions of this Agreement, the Investor agrees to purchase at the Closing and the Company agrees to sell and issue to the Investor at the Closing, 9,900,000 shares of the Company's Class A Common Stock for an aggregate purchase price of $108,900,000.

1.2 *Closing*. The purchase and sale of the Class A Common Stock shall take place at the offices of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, 155 Constitution Drive, Menlo Park, CA 94025, at 10:00 A.M., on the date all conditions to closing set forth in Sections 4 and 5 have been satisfied or effectively waived, or at such other time and place as the Company and Investor mutually agree upon orally or in writing (which time and place are designated as the "Closing"). At the Closing the Company shall deliver to the Investor a certificate representing the Class A Common Stock that the Investor is purchasing against payment of the purchase price therefor by check or wire transfer, or any combination thereof.

1.3 *Exchange of Shares of Common Stock for Shares of Class A Common Stock*. Upon the Closing, GGL shall be deemed to have automatically exchanged, as of the date of the Closing, on a one-for-one basis, each share of Common Stock held by GGL for one share of Class A Common Stock. The rights, preferences and privileges of the Common Stock and Class A Common Stock are as set forth in the Restated Certificate.

2. *Representations and Warranties of the Company*. The Company hereby represents and warrants to the Investor that, as of the date hereof, and except as set forth on a Schedule of Exceptions (the "Schedule of Exceptions") furnished to the Investor, which exceptions shall be deemed to be representations and warranties as if made hereunder:

2.1 *Organization, Good Standing and Qualification*. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to (i) execute, deliver and perform its obligations under this Agreement and the Amended and Restated Investors' Rights Agreement, by and among the Company and the investors who are parties thereto, the form of which is attached hereto as *Exhibit B* (the "Investors' Rights Agreement"), (ii) to issue and sell the Class A Common Stock hereunder, (iii) to perform its obligations under the Restated Certificate, and (iv) to carry on its business as now conducted and as proposed to be conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect on its business or properties.

2.2 *Capitalization and Voting Rights*.

(a) As of the date of this Agreement, the authorized capital of the Company consists of:

(i) *Preferred Stock*. 51,500,000 shares of Preferred Stock (the "Preferred Stock"), of which (i) 5,020,000 shares have been designated Series A Preferred Stock (the "Series A Preferred Stock"), 4,988,000 of which are outstanding; (ii) 5,100,000 shares have been designated Series B Preferred Stock (the "Series B Preferred Stock"), 5,074,000 of which are outstanding; (iii) 18,823,000 shares have been designated Series C Preferred Stock (the "Series C Preferred Stock"), 18,765,166 of which are outstanding; (iv) 1,666,666 shares have been designated Series D Preferred Stock (the "Series D Preferred Stock"), 1,666,666 of which are outstanding (which are initially convertible into 2,777,777 shares of Common Stock); (v) 13,888,889 shares have been designated Series D-1 Preferred Stock (the "Series D-1 Preferred Stock"), 13,169,905 of which are outstanding; and (vi) 4,000,000 shares have been designated Series E Preferred Stock (the "Series E Preferred Stock"), all of which are outstanding. The rights, privileges and preferences of the Preferred Stock will be as stated in the Company's Restated Certificate of Incorporation on file with the Secretary of State of the State of Delaware on the date hereof.

(ii) *Common Stock*. 120,000,000 shares of common stock, par value $0.01 ("Common Stock"), of which 11,413,885 shares are issued and outstanding.

(iii) The outstanding shares of Common Stock are all duly and validly authorized and issued, fully paid and nonassessable, and were issued in accordance with the registration or qualification provisions of the Securities Act of 1933, as amended (the "Act") and any relevant state securities laws, or pursuant to valid exemptions therefrom.

(iv) Except for (A) the conversion privileges of the Preferred Stock, (B) the rights provided in Section 2.5 of the Investors' Rights Agreement, (C) currently outstanding warrants to purchase 4,000 shares of Series A Preferred Stock, (D) currently outstanding warrants to purchase 4,000 shares of Series B Preferred Stock, (E) currently outstanding warrants to purchase 48,611 shares of Series D-1 Preferred Stock, and (F) currently

outstanding options to purchase 13,630,463 shares of Common Stock granted to employees, directors, board members, consultants and service providers, there are not outstanding any options, warrants, rights (including conversion or preemptive rights) or agreements for the purchase or acquisition from the Company of any shares of its capital stock. In addition to the aforementioned options, the Company has reserved an additional 962,000 shares of its Common Stock for issuance upon exercise of options to be granted in the future under the Company's 1997 Stock Plan. Except for the provisions of the Restated Certificate, the Investors' Rights Agreement and of that certain Amended and Restated Stockholders' Voting Agreement dated as of January 25, 1999 by and among the Company and the other parties listed therein, the Company is not a party or subject to any agreement or understanding, and, to the best of the Company's knowledge, there is no agreement or understanding between any persons and/or entities, which affects or relates to the voting or giving of written consents with respect to any security or by a director of the Company. No stock plan, stock purchase, stock option or other agreement or understanding between the Company and any holder of any equity securities or rights to purchase equity securities provides for acceleration or other changes in the vesting provisions of such agreement or understanding as the result of any merger, consolidated sale of stock or assets, change in control or any other similar transaction(s) by the Company.

(b) Immediately prior to the Closing, upon the filing of the Restated Certificate and assuming between the date hereof and the date of Closing (x) the exchange of shares of Common Stock held by the Investor for shares of Class A Common Stock pursuant to Section 1.3 hereof, (y) no issuance by the Company of its capital stock or any security exercisable for or convertible into capital stock of the Company pursuant to any employee, director or consultant compensation plan that has been approved by the majority of the Board of Directors and (z) no exercise or conversion of any outstanding option, warrant or other security exercisable for or convertible into the capital stock of the Company, the authorized capital of the Company shall consist of:

(i) *Preferred Stock*. 5,000,000 shares of Preferred Stock (the "Preferred Stock"), none of which shall be outstanding.

(ii) *Common Stock*. 175,000,000 shares of Common Stock, par value $0.01 ("Common Stock"), 56,188,733 of which shall be outstanding

(iii) *Class A Common Stock*. 13,900,000 shares of Class A Common Stock, 4,000,000 of which shall be outstanding and 9,900,000 of which shall be sold pursuant to this Agreement.

2.3 *Subsidiaries*. The Company does not presently own or control, directly or indirectly, any interest in any other corporation, association or other business entity, other than Theravance East, Inc., a Delaware corporation and a direct wholly-owned subsidiary of the Company. The Company is not a participant in any joint venture, partnership, or similar arrangement.

2.4 *Authorization*. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement, the Investors' Rights Agreement and the Governance Agreement to be entered into by the Company and the Investor (and its affiliates), in substantially the form attached hereto as *Exhibit C* (the "Governance Agreement," and collectively with this Agreement and the Investors' Rights Agreement, the "Transaction Documents"), the performance of all obligations of the Company hereunder and thereunder, and the authorization, issuance (or reservation for issuance), sale and delivery of the Class A Common Stock being sold hereunder has been taken or will be taken prior to the Closing, and the Transaction Documents constitute valid and legally binding obligations of the Company, enforceable in accordance with their respective terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general

application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, and (iii) to the extent the indemnification provisions contained in the Investors' Rights Agreement may be limited by applicable federal or state securities laws.

2.5 *Valid Issuance of Preferred and Common Stock*. The Class A Common Stock that is being purchased by the Investor hereunder, when issued, sold and delivered in accordance with the terms of this Agreement for the consideration expressed herein, will be duly and validly issued, fully paid, and nonassessable, and will be free of restrictions on transfer other than restrictions on transfer under the Transaction Documents and under applicable state and federal securities laws. The Class A Common Stock that is being purchased by the Investor hereunder will not be subject to preemptive rights or rights of first refusal that have not been waived or complied with. Prior to the filing of the Restated Certificate, the outstanding Series A, Series B, Series C, Series D, Series D-1 and Series E Preferred Stock was duly and validly issued, fully paid, and is nonassessable. Upon the filing of the Restated Certificate, the Common Stock issuable upon conversion of the outstanding Series A, Series B, Series C, Series D, Series D-1 and Series E Preferred Stock will be duly and validly reserved for issuance and, upon issuance, will be duly and validly issued, fully paid, and nonassessable and will be free of restrictions on transfer other than restrictions on transfer under the documents executed in connection with the sale of the Series A, Series B, Series C, Series D, Series D-1 and Series E Preferred Stock and under applicable state and federal securities laws. The outstanding Series A, Series B, Series C, Series D, Series D-1 and Series E Preferred Stock is not subject to preemptive rights or rights of first refusal that have not been waived or complied with and, upon the execution and delivery of the Investors' Rights Agreement by the requisite holders of Company capital stock necessary to amend and restate the "Prior Agreement" (as such term is defined in the Investors' Rights Agreement), the Common Stock and Class A Common Stock issuable upon conversion of such Preferred Stock will not be subject to preemptive rights or rights of first refusal that have not been waived or complied with.

2.6 *Governmental Consents*. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority on the part of the Company is required in connection with the consummation of the transactions contemplated by this Agreement, except (i) a filing under the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), (ii) the filing of the Restated Certificate with the Secretary of State of Delaware; and (iii) certain post-closing filings as may be required pursuant to federal securities laws and under the "Blue Sky" laws of the various states.

2.7 *Offering*. Subject in part to the truth and accuracy of the Investor's representations set forth in Section 3 of this Agreement, the offer, sale and issuance of the Class A Common Stock as contemplated by this Agreement are exempt from the registration requirements of any applicable state and federal securities laws, and neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemption.

2.8 *Litigation*. There is no action, suit, proceeding or investigation pending or, to the Company's knowledge, currently threatened against the Company that questions the validity of the Transaction Documents, or the right of the Company to enter into such agreements, or to consummate the transactions contemplated hereby or thereby, or if determined adversely, might result, either individually or in the aggregate, in (i) any material adverse changes in the assets, business or prospects of the Company, financially or otherwise or (ii) any change in the current equity ownership of the Company, nor is the Company aware that there is any basis for the foregoing. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit, proceeding or investigation by the Company currently pending or that the Company intends to initiate.

2.9 *Patents and Trademarks*. The Company owns, or has rights to use pursuant to a valid license, all patents, trademarks, service marks, trade names, copyrights, trade secrets, information, proprietary rights and processes necessary for its business as now conducted. There are no outstanding options, licenses or agreements of any kind relating to the foregoing proprietary rights, nor is the Company bound by or a party to any options, licenses or agreements of any kind with respect to the patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information and other proprietary rights and processes of any other person or entity other than such licenses or agreements arising from the purchase of "off the shelf" or standard products. The use, modification, licensing, sublicensing, sale, or any other exercise of rights involving such intellectual property does not infringe any copyright, trade secret, trademark, service mark, trade name, firm name, logo, trade dress, mask work, moral right, other intellectual property right, right of privacy or right in personal data, or to the knowledge of the Company, any patent, of any person. No claims (i) challenging the validity, effectiveness, or ownership by the Company of any of the Company's intellectual property, or (ii) to the effect that the use, reproduction, modification, manufacturing, distribution, licensing, sublicensing, sale or any other exercise of rights in any product, work, technology, service or process as used, provided or offered at any time, or as proposed for use, reproduction, modification, distribution, licensing, sublicensing, sale or any other exercise of rights, by the Company infringes or will infringe on any intellectual property or other proprietary or personal right of any person have been asserted or, to the knowledge of the Company, (A) are threatened by any person nor (B) are there any valid grounds for any bona fide claim of any such kind. To the knowledge of the Company, there is no unauthorized use, infringement or misappropriation of any of the Company's intellectual property by any third party, employee or former employee. The Company's employees are not obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of his or her best efforts to promote the interests of the Company or that would conflict with the Company's business as proposed to be conducted. Neither the execution nor delivery of the Transaction Documents, nor the carrying on of the Company's business by the employees of the Company, nor the conduct of the Company's business as proposed, will, to the best of the Company's knowledge, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated. The Company does not believe it is or will be necessary to utilize any inventions of any of its employees made prior to their employment by the Company unless such inventions are properly assigned to the Company.

2.10 *Compliance with Other Instruments*. The Company is not in violation or default in any material respect of any provision of its Restated Certificate or Bylaws, or in any material respect of any instrument, judgment, order, writ, decree or contract to which it is a party or by which it is bound, or, to the best of its knowledge, of any provision of any statute, rule or regulation applicable to the Company. The execution, delivery and performance of the Transaction Documents, and the consummation of the transactions contemplated hereby and thereby will not result in any such violation or be in conflict with or constitute, with or without the passage of time and giving of notice, either a default under any such provision, instrument, judgment, order, writ, decree or contract or an event that results in the creation of any lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, impairment, forfeiture, or nonrenewal of any material permit, license, authorization, or approval applicable to the Company, its business or operations or any of its assets or properties.

2.11 *Agreements; Action*.

(a) Except for agreements explicitly contemplated by the Transaction Documents, there are no agreements, understandings or proposed transactions between the Company and any of its officers, directors, affiliates, or any affiliate thereof.

(b) Except for this Agreement, the Governance Agreement, the Strategic Alliance Agreement and the Collaboration Agreement dated as of November 14, 2002 by and between the Company and the Investor (the "Collaboration Agreement"), there are no agreements, understandings, instruments, contracts, proposed transactions, judgments, orders, writs or decrees to which the Company is a party or by which it is bound that may involve (i) provisions restricting or affecting the development, manufacture or distribution of the Company's products or services; (ii) obligations (contingent or otherwise) of, or payments to, the Company in excess of $100,000 (other than obligations of, or payments to, the Company arising from agreements entered into in the ordinary course of business); or (iii) indemnification by the Company with respect to infringements of proprietary rights (other than indemnification obligations arising from agreements entered into in the ordinary course of business).

(c) The Company has not (i) declared or paid any dividends or authorized or made any distribution upon or with respect to any class or series of its capital stock, (ii) incurred any indebtedness for money borrowed or any other liabilities individually in excess of $1,000,000 or in the aggregate in excess of $5,000,000, (iii) made any loans or advances to any person, other than ordinary advances for travel expenses, or (iv) sold, exchanged or otherwise disposed of any of its assets or rights, other than the sale of its inventory in the ordinary course of business.

(d) For the purposes of subsection (c) above, all indebtedness and liabilities involving the same person or entity (including persons or entities the Company has reason to believe are affiliated therewith) shall be aggregated for the purpose of meeting the individual minimum dollar amounts of such subsection.

(e) The Company is not a party to and is not bound by any contract, agreement or instrument, or subject to any restriction under its Restated Certificate or Bylaws that adversely affects its business as now conducted or as proposed to be conducted, its properties or its financial condition.

(f) The Company has not engaged in the past three (3) months in any discussion (i) with any representative of any corporation or corporations regarding the consolidation or merger of the Company with or into any such corporation or corporations, (ii) with any corporation, partnership, association or other business entity or any individual regarding the sale, conveyance or disposition of all or substantially all of the assets of the Company or a transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company is disposed of, or (iii) regarding any other form of acquisition, liquidation, dissolution or winding up of the Company.

2.12 *Related-Party Transactions*. No employee, officer, or director of the Company or member of his or her immediate family is indebted to the Company, nor is the Company indebted (or committed to make loans or extend or guarantee credit) to any of them. To the Company's knowledge, none of such persons has any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated or with which the Company has a business relationship, or any firm or corporation that competes with the Company, except that employees, officers, or directors of the Company and members of their immediate families may own stock in publicly traded companies that may compete with the Company. No member of the immediate

family of any officer or director of the Company is directly or indirectly interested in any material contract with the Company.

2.13 *Permits*. The Company has all material franchises, permits, licenses, and any similar authority necessary for the conduct of its business as now being conducted by it, and the Company believes it can obtain, without undue burden or expense, any similar authority for the conduct of its business as planned to be conducted. The Company is not in default in any material respect under any of its franchises, permits, licenses, or other similar authority.

2.14 *Disclosure*. The Company has provided the Investor with all information requested by the Investor in connection with their decision to purchase the Class A Common Stock, including all information the Company believes is reasonably necessary to make such investment decision. To the Company's knowledge, neither this Agreement, the Investors' Rights Agreement, nor any other statements or certificates made or delivered in connection herewith or therewith contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements herein or therein not misleading.

2.15 *Corporate Documents*. Except for amendments necessary to satisfy representations and warranties or conditions contained herein (the form of which amendments has been approved by the Investor), the Restated Certificate and Bylaws of the Company are in the form previously provided to the Investor.

2.16 *Title to Property and Assets*. The Company owns its property and assets free and clear of all mortgages, liens, loans and encumbrances, except such encumbrances and liens that arise in the ordinary course of business and do not materially impair the Company's ownership or use of such property or assets, and has good and marketable title to such property. With respect to the property and assets it leases, the Company is in compliance with such leases and holds a valid leasehold interest free of any liens, claims or encumbrances.

2.17 *Tax Returns, Payments and Elections*. The Company has timely filed all tax returns and reports as required by law. These returns and reports are true and correct in all material respects. The Company has paid all taxes and assessments due, except those contested by it in good faith, if any. The Company has not been advised (a) that any of its federal, state or local returns are being audited as of the date hereof, or (b) of any deficiency in assessment or proposed judgment to its federal, state or other taxes. The Company has no knowledge of any tax liabilities due with respect to the Company or its properties or assets as of the date of this Agreement that are not adequately provided for.

2.18 *Environmental Law*. To the Company's knowledge, the Company is not in violation of and has no liability or potential liability under any applicable statute, law, or regulation relating to the environment, and to the best of its knowledge, no material expenditures are or will be required in order to comply with any such existing statute, law, or regulation.

2.19 *Proprietary Information and Employment Agreements*. Each current and former employee, officer and consultant of the Company has executed a standard Proprietary Information and Inventions Agreement. The Company is not aware that any of its employees, officers or consultants are in violation thereof, and the Company will use its best efforts to prevent any such violation. The Company has not entered into any employment agreements.

2.20 *Financial Statements*. The Company has made available to the Investor its audited financial statements as of December 31, 2002 and its unaudited financials as of and for the twelve-month period ended December 31, 2003 (the "Financial Statements"). The Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods indicated and with each other except that the unaudited Financial Statements may not contain all footnotes required by generally accepted accounting

principles. The Financial Statements fairly present the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein, subject in the case of the unaudited Financial Statements to normal year-end audit adjustments. Except as set forth in the Financial Statements, the Company has no material liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to the date of the Financial Statements and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under generally accepted accounting principles to be reflected in the Financial Statements, which, in both cases, individually or in the aggregate, are not material to the financial condition or operating results of the Company. Except as disclosed in the Financial Statements, the Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with generally accepted accounting principles.

2.21 *Changes*. Since December 31, 2003 there has not been:

(a) any change in the assets, liabilities, financial condition or operating results of the Company from that reflected in the Financial Statement, except changes in the ordinary course of business that have not been, in the aggregate, materially adverse;

(b) any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the assets, properties, financial condition, operating results, prospects or business of the Company (as such business is presently conducted and as it is proposed to be conducted);

(c) any waiver by the Company of a valuable right or of a material debt owed to it;

(d) any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company, except in the ordinary course of business and that is not material to the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted and as it is proposed to be conducted);

(e) any material change or amendment to a material contract or arrangement by which the Company or any of its assets or properties is bound or subject;

(f) any material change in any compensation arrangement or agreement with any employee;

(g) any sale, assignment or transfer of any patents, trademarks, copyrights, trade secrets or other intangible assets;

(h) any resignation or termination of employment of any key employee or officer of the Company; and the Company, to the best of its knowledge, does not know of the impending resignation or termination of employment of any such employee or officer;

(i) receipt of notice that there has been a loss of, or material order cancellation by, any major customer of the Company;

(j) any mortgage, pledge, transfer of a security interest in, or lien, created by the Company, with respect to any of its material properties or assets, except liens for taxes not yet due or payable;

(k) any loans or guarantees made by the Company to or for the benefit of its employees, officers or directors, or any members of their immediate families, other than travel advances and other advances made in the ordinary course of its business;

(l) any declaration, setting aside or payment or other distribution in respect of any of the Company's capital stock, or any direct or indirect redemption, purchase or other acquisition of any of such stock by the Company;

(m) to the best of the Company's knowledge, any other event or condition of any character that might materially and adversely affect the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted and as it is proposed to be conducted); or

(n) any agreement or commitment by the Company to do any of the things described in this Section 2.21.

2.22 *Registration Rights*. Except as required pursuant to the Investors' Rights Agreement, the Company is not presently under any obligation, and has not granted, any rights to register any of the Company's presently outstanding securities or any of its securities that may hereafter be issued.

2.23 *Real Property Holding Corporation*. The Company is not a real property holding corporation within the meaning of Section 897(c)(2) of the Internal Revenue Code of 1986 (the "Code"), as amended, and any regulations promulgated thereunder.

2.24 *Labor Agreements*. The Company is not bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any labor union, and no labor union has requested or, to the Company's knowledge, has sought to represent any of the employees, representatives or agents of the Company. There is no strike or other labor dispute involving the Company pending, or to the Company's knowledge, threatened, that could have a material adverse effect on its business or properties, nor is the Company aware of any labor organization activity involving its employees.

2.25 *Insurance*. The Company maintains in full force and effect such types and amounts of insurance issued by insurers of recognized responsibility insuring the Company with respect to its business and properties, in such amounts and against such losses and risks which are usual and customary in the Company's business as to amount and scope.

2.26 *Directors and Senior Management*. No plan currently maintained by the Company or agreement entered into and currently in effect with any employee of the Company (each, a "*Plan*" and, collectively, the "*Plans*") provides for the payment of separation, severance, termination or similar benefits to any person. None of the Plans obligates the Company to pay any benefits solely or partially as a result of any transaction contemplated by this Agreement or as a result of a change in the ownership or effective control of the Company within the meaning of Section 280G of the Code. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby, either alone or together with a termination of service, will (i) result in any payment (including, without limitation, severance, golden parachute, forgiveness of indebtedness or otherwise) becoming due under any Plan, whether or not such payment is contingent, (ii) increase any benefits otherwise payable under any Plan or other arrangement, or (iii) result in the acceleration of the time of payment, vesting or funding of any benefits including, but not limited to, the acceleration of the vesting and exercisability of any Company Option, whether or not contingent.

2.27 *Officer and Key Employee Incentive Plan*. The Board has approved the Officer and Key Employee Incentive Plan substantially in the form attached hereto as *Exhibit F*.

3. *Representations and Warranties of the Investor*. The Investor hereby represents and warrants that:

3.1 *Authorization*. The Investor has full power and authority to enter into the Transaction Documents, and each such Agreement constitutes its valid and legally binding obligation,

enforceable in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, and (iii) to the extent the indemnification provisions contained in the Investors' Rights Agreement may be limited by applicable federal or state securities laws.

3.2 *Purchase Entirely for Own Account*. This Agreement is made with the Investor in reliance upon the Investor's representation to the Company, which by the Investor's execution of this Agreement the Investor hereby confirms, that the Class A Common Stock to be received by the Investor (the "Securities") will be acquired for investment for the Investor's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same in violation of applicable securities laws. By executing this Agreement, the Investor further represents that the Investor does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Securities.

3.3 *Disclosure of Information*. The Investor further represents that it has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Class A Common Stock and the business, properties, prospects and financial condition of the Company. The foregoing, however, does not limit or modify the representations and warranties of the Company in Section 2 of this Agreement or the right of the Investor to rely thereon.

3.4 *Investment Experience*. The Investor is an investor in securities of companies in the development stage and acknowledges that it is able to fend for itself, can bear the economic risk of its investment, and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Class A Common Stock. The Investor also represents that it has not been organized for the purpose of acquiring the Class A Common Stock.

3.5 *Accredited Investor*. The Investor is an "accredited investor" within the meaning of Rule 501 of Regulation D adopted pursuant to the Act, as presently in effect.

3.6 *Restricted Securities*. The Investor understands that the Securities it is purchasing are characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the Act, only in certain limited circumstances. In this connection, the Investor represents that it is familiar with Rule 144 adopted pursuant to the Act, as presently in effect, and understands the resale limitations imposed thereby and by the Act.

4. *Conditions of Investor's Obligations at Closing*. The obligations of the Investor under subsection 1.1(c) of this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions, the waiver of which shall not be effective against the Investor if it does not consent thereto:

4.1 *Performance*. The Company shall have performed and complied with all agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing.

4.2 *Compliance Certificate*. The Chief Executive Officer of the Company shall deliver to the Investor at the Closing a certificate stating that the conditions specified in Sections 4.1 have been fulfilled.

4.3 *Qualifications*. All authorizations, approvals, or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be duly obtained and effective as of the Closing.

4.4 *Proceedings and Documents*. All corporate and other proceedings in connection with the transactions contemplated at the Closing and all documents incident thereto shall be reasonably satisfactory in form and substance to the Investor, and they shall have received all such counterpart original and certified or other copies of such documents as they may reasonably request.

4.5 *Opinion of Company Counsel*. The Investor shall have received from Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, counsel for the Company, an opinion, dated as of the Closing, in the form attached hereto as *Exhibit D*.

4.6 *Investors' Rights Agreement*. The Company, the Investor and the requisite holders of Company capital stock necessary to amend and restate the "Prior Agreement" (as such term is defined in the Investors' Rights Agreement) shall have entered into the Investors' Rights Agreement.

4.7 *Approval and Filing of the Restated Certificate*. The requisite holders of Company capital stock shall have approved the Restated Certificate and the Restated Certificate shall have been filed with the Secretary of State of Delaware, and shall not have been amended or modified since the date of filing.

4.8 *Conversion of Existing Preferred Stock*. All shares of the Company's Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock and Series E Preferred Stock shall have been converted into shares of Common Stock.

4.9 *Governance Agreement*. The Company and the Investor shall have entered into the Governance Agreement.

4.10 *Strategic Alliance Agreement*. The Strategic Alliance Agreement shall have become Effective (as such term is defined in the Strategic Alliance Agreement) as of the Closing.

4.11 *HSR Act*. The waiting period applicable to the consummation of the transactions contemplated hereby under the HSR Act shall have expired or been terminated and no action by the Department of Justice or Federal Trade Commission challenging or seeking to enjoin the consummation of such transactions shall have been instituted and be pending.

4.12 *Executive Lock-Up Agreements*. Each of P. Roy Vagelos, Rick E Winningham, Marty Glick and Patrick Humphrey shall have entered into an Executive Lock-Up Agreement, each substantially in the form attached hereto as *Exhibit E*.

4.13 *Conduct of the Company Business*. The Company shall not willfully have taken any affirmative action or willfully omitted to have taken any affirmative action that would cause any of the representations and warranties contained in Section 2 hereof, applied as of the Closing Date, to be breached.

5. *Conditions of the Company's Obligations at Closing*. The obligations of the Company to the Investor under this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions by the Investor:

5.1 *Representations and Warranties*. The representations and warranties of the Investor contained in Section 3 shall have been true on and as of the date of this Agreement and, in all material respects, as of the Closing.

5.2 *Qualifications*. All authorizations, approvals, or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be duly obtained and effective as of the Closing.

5.3 *Investors' Rights Agreement*. The Company, the Investor and the requisite holders of Company capital stock necessary to amend and restate the "Prior Agreement" (as such term is defined in the Investors' Rights Agreement) shall have entered into the Investors' Rights Agreement.

5.4 *Restated Certificate*. The Company shall have obtained the requisite stockholder consent to file the Restated Certificate.

5.5 *Governance Agreement*. The Company and the Investor shall have entered into the Governance Agreement.

5.6 *Strategic Alliance Agreement*. The Strategic Alliance Agreement shall have become Effective (as such term is defined in the Strategic Alliance Agreement) as of the Closing.

5.7 *HSR Act*. The waiting period applicable to the consummation of the transactions contemplated hereby under the HSR Act shall have expired or been terminated and no action by the Department of Justice or Federal Trade Commission challenging or seeking to enjoin the consummation of such transactions shall have been instituted and be pending.

5.8 *Delivery of Common Stock*. GGL shall have delivered to the Company the certificates representing the shares of Common Stock held by GGL in connection with the exchange, as described in Section 1.3.

6. *Miscellaneous*.

6.1 *Survival of Warranties*. The warranties, representations and covenants of the Company and the Investor contained in or made pursuant to this Agreement shall survive the execution and delivery of this Agreement and the Closing and shall in no way be affected by any investigation of the subject matter thereof made by or on behalf of the Investor or the Company.

6.2 *Successors and Assigns*. Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties (including transferees of any Securities). Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

6.3 *Governing Law*. This Agreement shall be governed by and construed in accordance with and governed by the law of the State of Delaware, without regard to the conflicts of laws principles thereof. Any action brought, arising out of, or relating to this Agreement shall be brought in the Court of Chancery of the State of Delaware. Each party hereby irrevocably submits to the exclusive jurisdiction of said Court in respect of any claim relating to the validity, interpretation and enforcement of this Agreement, and hereby waives, and agrees not to assert, as a defense in any action, suit or proceeding in which any such claim is made that it is not subject thereto or that such action suit or proceeding may not be brought or is not maintainable in such courts, or that the venue thereof may not be appropriate or that this agreement may not be enforced in or by such courts. The parties hereby consent to and grant the Court of Chancery of the State of Delaware jurisdiction over such parties and over the subject matter of any such claim and agree that mailing of process or other papers in connection with any such action, suit or proceeding in the manner provided in Section 6.1, or in such other manner as may be permitted by law, shall be valid and sufficient thereof.

6.4 *Counterparts*. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.5 *Titles and Subtitles*. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

6.6 *Notices*. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, if not, then on the next business day or (c) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. Notwithstanding the foregoing or any provision to the contrary in the Investors' Rights Agreement or the Restated Certificate, the Company agrees that when any notice is given to the Investor, whether under this Agreement, the Investors' Rights Agreement or the Restated Certificate, such notice shall not be deemed to be effectively given until a copy of such notice is transmitted to the Investor via facsimile. All notices and certificates will be addressed to the Investor at the address set forth on the signature page hereto or at such other address as the Company or the Investor may designate by ten (10) days advance written notice to the other parties hereto.

6.7 *Finder's Fee*. The Investor agrees to indemnify and to hold harmless the Company from any liability for any commission or compensation in the nature of a finders' fee (and the costs and expenses of defending against such liability or asserted liability) for which the Investor or any of its officers, partners, employees, or representatives is responsible.

The Company agrees to indemnify and hold harmless the Investor from any liability for any commission or compensation in the nature of a finders' fee (and the costs and expenses of defending against such liability or asserted liability) for which the Company or any of its officers, employees or representatives is responsible.

6.8 *Expenses*. Irrespective of whether the Closing is effected, each party shall bear their own costs and expenses incurred with respect to the negotiation, execution, delivery and performance of this Agreement. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the Investors' Rights Agreement or the Restated Certificate, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

6.9 *Amendments and Waivers*. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Investor. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding, each future holder of all such securities, and the Company.

6.10 *Termination*. This Agreement may be terminated and the transactions contemplated by this Agreement may be abandoned at any time prior to the Closing, notwithstanding any requisite approval and adoption of this Agreement and the transactions contemplated by this Agreement, as follows:

(a) by mutual written consent of the Company and the Investor; or

(b) by either the Company or the Investor, if the Closing shall not have occurred on or before October 1, 2004; *provided*, *however*, that the right to terminate this Agreement under this Section 6.10 (b) shall not be available to any party whose failure to fulfill any obligation

under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur.

6.11 *Severability*. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

6.12 *Confidentiality*. Any confidential information obtained by the Investor pursuant to this Agreement which is labeled or otherwise identified as confidential or proprietary shall be treated as confidential and shall not be disclosed to a third party without the prior written consent of the Company and shall not be used by the Investor for any purpose other than monitoring the Investor's investment in the Company, except that the Investor may disclose such information (i) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company, (ii) to its affiliates, officers, directors, shareholders, members and/or partners in the ordinary course of business or pursuant to disclosure obligation to affiliates, shareholders, members and/or partners; provided that such information is provided to such persons and entities with notice that such information is confidential and should be treated as such, (iii) to any prospective purchaser of the Investor's shares of the Company, provided (in the case of disclosure in clause (iii)) the recipient agrees to keep such information confidential and to use such information solely for evaluation of such proposed purchase, or (iv) as may otherwise be required by law. Notwithstanding the foregoing, such information shall not be deemed confidential for the purpose of enforcement of this Agreement and said information shall not be deemed confidential after it becomes publicly known through no fault of the recipient. The provisions of this Section 6.12 shall be in addition to, and not in substitution for, the provisions of any separate confidentiality agreement executed by the parties hereto; provided that if there is any conflict between the provisions of this Section 6.12 and the more restrictive provisions of such separate confidentiality agreement, the provisions of such separate confidentiality agreement shall prevail.

6.13 *Publicity*. No party or any affiliate of a party shall make, or cause to be made, any publicity, news release or other such general public announcement or make any other disclosure to any third party in respect of this Agreement or the transactions contemplated hereby (including, without limitation, disclosure of Investor's ownership interest in the Company) without the prior written consent of the other party; *provided however*, that the foregoing provision is not intended to limit communications deemed reasonably necessary or appropriate by a party or its affiliates to its employees, stockholders, partners, directors, officers, potential investors, accountants and legal counsel who are under an obligation to preserve the confidentiality of the foregoing. Notwithstanding the foregoing provision, the parties and their respective affiliates shall not be prohibited from making any disclosure or release that is required by law, court order, or applicable regulation, or is considered necessary by legal counsel to fulfill an obligation under securities laws or the rules of a national stock exchange.

6.14 *Entire Agreement*. This Agreement and the documents referred to herein constitute the entire agreement among the parties and no party shall be liable or bound to any other party in any manner by any warranties, representations, or covenants except as specifically set forth herein or therein.

6.15 *Legends*. It is understood that the certificates evidencing the Securities may bear one or all of the following legends:

(a) "These securities have not been registered under the Securities Act of 1933, as amended. They may not be sold, offered for sale, pledged or hypothecated in the absence of a registration statement in effect with respect to the securities under such Act or an opinion of

counsel satisfactory to the Company that such registration is not required or unless sold pursuant to Rule 144 of such Act."

(b) Any legend required by the laws of any state.

6.16 *Conduct of Business of the Company*. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Closing, the Company agrees (except to the extent that GSK shall otherwise consent in writing) to carry on its business in the usual, regular and ordinary course in substantially the same manner as currently conducted, and, to the extent consistent with such business, to use all commercially reasonable efforts consistent with past practice and policies to preserve intact its present business organization and keep available the services of its present officers and key employees. Solely for the purposes of any post-Closing remedy for breaches of representations, warranties or covenants by the Company, the Company shall not take any affirmative action or omit to take any affirmative action that results in the breach of any of the representations and warranties contained in Section 2 hereof, applied as of the Closing Date.

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

THERAVANCE, INC.

By: /s/ RICK E WINNINGHAM

Rick E Winningham
President and Chief Executive Officer

INVESTOR:

SMITHKLINE BEECHAM CORPORATION

Name of Investor

By: /s/ JEAN-PIERRE GARNIER

Signature of Authorized Person

Name: Jean-Pierre Garnier

Title: Chief Executive Officer

Address: GlaxoSmithKline

One Franklin Plaza (FP2355)

Philadelphia, PA 19102

Fax No: 215-751-5349

EXHIBIT A
RESTATED CERTIFICATE OF INCORPORATION

EXHIBIT B
AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

EXHIBIT C
GOVERNANCE AGREEMENT

EXHIBIT D
OPINION OF COUNSEL FOR THE COMPANY

EXHIBIT E
FORM OF EXECUTIVE LOCK-UP AGREEMENT

EXHIBIT F
SUMMARY OF TERMS OF THE OFFICER AND KEY EMPLOYEE INCENTIVE PLAN

Governance Agreement

GOVERNANCE AGREEMENT

This GOVERNANCE AGREEMENT (this "Agreement") is dated as of May 11, 2004 among SmithKline Beecham Corporation, a Pennsylvania corporation ("GSK"), Theravance, Inc., a Delaware corporation (the "Company"), solely with respect to Articles III, IV and VI hereof, GlaxoSmithKline plc, an English public limited company ("GlaxoSmithKline"), and, solely with respect to Articles II, IV and VI hereof, Glaxo Group Limited, a limited liability company organized under the laws of England and Wales ("GGL").

WHEREAS, GGL and the Company have entered into that certain Strategic Alliance Agreement dated as of March 30, 2004 (the "Alliance Agreement"), pursuant to which, among other things, the Company has granted GGL an option to develop and commercialize certain therapeutic compounds on an exclusive, worldwide basis;

WHEREAS, GSK and the Company have entered into that certain Class A Common Stock Purchase Agreement dated as of March 30, 2004 (the "Class A Stock Purchase Agreement"), pursuant to which GSK shall purchase shares of the Company's Class A Common Stock;

WHEREAS, as a condition to the stock purchase contemplated by the Class A Stock Purchase Agreement and to facilitate an eventual underwritten public offering of the Company's equity securities, all outstanding shares of the Company's Preferred Stock have been converted into shares of the Company's Common Stock (the "Common Stock");

WHEREAS, GGL through a previous stock purchase agreement owns shares of the Company's preferred stock that have been converted into common stock and will be exchanged for shares of the Company's Class A Common Stock pursuant to Section 1.3 of the Class A Common Stock Purchase Agreement;

WHEREAS, GSK and the Company have agreed to establish in this Agreement certain terms and conditions concerning the corporate governance of the Company;

WHEREAS, GSK, GGL and the Company also have agreed to establish in this Agreement certain terms and conditions concerning the acquisition, disposition and voting of securities of the Company beneficially owned by GSK and its Affiliates (as defined herein); and

WHEREAS, GSK and the Company have agreed to set forth in this Agreement the terms and conditions upon which the Company shall redeem the Common Stock.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and agreements contained herein, GSK and the Company hereby agree as follows:

ARTICLE I

BOARD OF DIRECTORS AND CERTAIN CORPORATE ACTIONS

SECTION 1.1. *Initial Composition of Board of Directors at the Effective Date*.

(a) The number of directors comprising the full Board of Directors of the Company (the "Board") immediately after the Effective Date shall be 12. The directors of the Company following the Effective Date shall be the directors of the Company immediately prior to the Effective Date, and shall serve until their successors have been duly elected or appointed and qualified or until the earlier death, resignation or removal in accordance with the Company's Restated Certificate of Incorporation (the "Certificate of Incorporation"), the Company's Bylaws and this Agreement. GSK shall have the right, but not the obligation, to nominate an individual to serve as a member of the Board (in which case the size of the Board will be increased by one) or alternatively to designate an individual to serve as an observer at Board meetings. Notwithstanding the foregoing, GSK shall have no right to nominate or designate any individual to serve as a member or observer of the Board under this Section 1.1 if, (i) GSK's Percentage Interest (as defined below) has fallen below 15% or (ii) directly as a result of any sale or other disposition by GSK of Voting Stock, GSK's Percentage Interest has fallen below 19.0%, and the term of any such existing member or observer shall automatically cease upon such reduction in GSK's Percentage Interest. In addition,

GSK's right to nominate or designate an individual to serve as a member or observer to the Board under this Section 1.1 shall be suspended for the duration of any period in which GSK is otherwise entitled to nominate directors pursuant to Section 1.2 or Section 1.3 below.

(b) Any individual designated by GSK pursuant to paragraph (a) of this Section 1.1 to be an observer to the Board shall have the right to attend all meetings of its Board in a nonvoting observer capacity and, in this respect, the Company shall give such observer copies of all notices, minutes, consents and other materials that it provides to its directors; provided, however, that such observer shall not be permitted to attend any meeting of the Board unless such individual signs an agreement to hold such materials in confidence and trust and to act in a fiduciary manner with respect to the Company with respect to all information so provided as if such individual was a GSK Director (as defined below); and, provided further, that the Company reserves the right to withhold any information and to exclude such observer from any meeting or portion thereof if access to such information or attendance at such meeting (i) could adversely affect the attorney-client privilege between the Company and its counsel or (ii) would result in the disclosure of competitive or other sensitive information to GSK or its observer in such a manner that any GSK Director would need to be recused to abide by their fiduciary duties to the Company and its stockholders.

SECTION 1.2. *Composition of the Board Following 50.1% or Greater Ownership by GSK*. (a) The Company agrees that after, and so long as, GSK's Percentage Interest is 50.1% or greater, the Board shall include (i) such number of nominees designated by GSK equal to one-third of the then aggregate number of directors comprising the Board (the "GSK Directors") and (ii) two officers of the Company nominated by the nominating committee of the Board. The remaining directors of the Board shall be composed of Independent Directors. For purposes of this Agreement, an "Independent Director" shall mean a director who complies with the independence requirements for directors with respect to the Company (without reference to any applicable exemptions from such requirements) for companies listed on the Nasdaq National Market and shall be individuals who have business or technical experience, stature and character as is commensurate with service on the board of a publicly traded enterprise. With respect to any GSK Independent Nominees (as defined below), each such nominee, in addition to meeting the independence requirements with respect to the Company as described in the immediately preceding sentence, shall also meet such independence requirements with respect to GlaxoSmithKline and any of its Affiliates as if such Independent Director was a director of GlaxoSmithKline or one of its Affiliates. So long as GSK's Percentage Interest is 50.1% or greater, the Board shall be comprised of nine members, or any greater number that is divisible by three.

(b) With respect to the Independent Directors referred to above in paragraph (a) and so long as GSK's Percentage Interest is 50.1% or greater, GSK shall, upon its request, be entitled to designate nominees (the "GSK Independent Nominees") for one-half of the total number of Independent Directors. Subject to the approval of the majority of the members of the Board other than the GSK Directors and GSK Independent Nominees (the "Non-GSK Directors"), such approval not to be unreasonably withheld or delayed, the GSK Independent Nominees shall be included as nominees to be voted upon by the Company's stockholders. An equal number of Independent Directors shall be nominated by the Non-GSK Directors. Subject to the approval of the GSK Directors, such approval not to be unreasonably withheld or delayed, such nominees shall be included as nominees to be voted upon by the Company's stockholders. In the event that approval of any Independent Director nominee is properly withheld, the nominating directors (the GSK Directors or the Non-GSK Directors, as the case may be) shall be entitled to propose an alternate candidate for nomination as an Independent Director in accordance with this Section 1.2. For purposes of this Agreement, "GSK's Percentage Interest" shall mean the percentage of voting power, determined on the basis of the number of shares of Voting Stock actually outstanding, that is controlled directly or indirectly by GSK and its Affiliates and held prior to the date of this

Agreement or obtained in accordance with this Agreement, the Class A Stock Purchase Agreement and the Certificate of Incorporation. Notwithstanding the foregoing, GSK shall have no right to designate any nominees for directors under this Section 1.2 at any time after GSK's Percentage Interest has fallen below 50.1%, and the term of each then existing GSK Director and GSK Independent Nominees nominated pursuant to this Section 1.2 shall automatically cease upon such reduction in GSK's Percentage Interest. (For the avoidance of doubt, nothing in this section shall limit or affect GSK's rights pursuant to Section 1.1(a)).

SECTION 1.3. *Composition of the Board following 35.1% or Greater Ownership by GSK*. From and after the Call/Put Termination Date and until September 1, 2008 or, if on or after September 1, 2008, GSK commences an offer to purchase additional shares of Voting Stock as contemplated by Section 2.1(b)(viii), the expiration date of such offer (which shall not occur later than October 15, 2008) (the "Interim Period"), so long as, during the Interim Period, GSK's Percentage Interest is 35.1% or greater and less than 50.1%, the Board shall be comprised of no less than six members and shall include, (i) one nominee designated by GSK (who shall be deemed to be a "GSK Director") and (ii) two officers of the Company nominated by the nominating committee of the Board. The remaining members of the Board shall be Independent Directors. GSK, upon its request, shall be entitled to designate nominees (who shall be deemed to be "GSK Independent Nominees") for a number of Independent Directors equal to GSK's Percentage Interest at such time times the total number of such Independent Directors (with such number being rounded to the nearest whole number) and provided further, that such nominees shall meet the independence requirements for GSK Independent Nominees as set forth in Section 1.2 above. Such nominees shall be subject to the approval, not to be unreasonably withheld or delayed, of the majority of the then existing directors (other than any director nominated by GSK). In the event that approval of any Independent Director nominee proposed by GSK is properly withheld by the then existing directors, GSK shall be entitled to propose an alternate candidate for nomination as an Independent Director in accordance with this Section 1.3. The rights set forth in this Section 1.3 shall terminate upon the expiration of the Interim Period, and the term of each GSK Director and GSK Independent Nominee under this Section 1.3 shall automatically cease on such date; provided however, that the termination of such rights shall not affect GSK's right to immediately nominate one or more directors pursuant to Section 1.1 or 1.2.

SECTION 1.4. *Other Matters Related to the Board.*

(a) The Company agrees to increase or decrease, as the case may be, the size of the Board, and to fill the newly created directorships created by any such increase, as appropriate in order to achieve the composition required by Sections 1.1, 1.2 and 1.3. Any directors elected to fill a vacancy shall serve until the next annual meeting of stockholders. Whenever necessary pursuant to a decrease in the size of the Board, GSK will cause directors nominated by GSK to resign from the Board to maintain the composition required by Sections 1.2 and 1.3, and the Company shall cause such number of Non-GSK Directors to resign as necessary to maintain the composition required by Sections 1.2 and 1.3. To facilitate compliance with the provisions of this Article I, GSK shall cause each GSK Director and GSK Independent Nominee, and the Company shall cause each other director of the Board, to enter into an agreement with the Company that provides for the resignation of such director upon the occurrence of the events requiring such resignation as set forth in this Agreement; provided, however, that this sentence shall only come into effect two weeks prior to the Call/Put Termination Date.

(b) The Company shall always have the right to decrease the size of the Board without GSK's consent (and, if desired, and subject to the provisions of Section 1.2(a), to increase it again without GSK's consent to no more than 13 seats); provided, however, that in no event will GSK lose its right to designate or nominate the GSK Director(s) or GSK Independent Nominees pursuant to Sections 1.1, 1.2 or 1.3 of this Agreement.

(c) GSK and the Non-GSK Directors shall have the right to nominate any replacement for a director nominated by GSK or nominated by the Non-GSK Directors, respectively, at the termination of such director's term or upon death, resignation, retirement, disqualification, removal from office or other cause, subject to any rights of approval set forth in Sections 1.2 and 1.3. To the extent permitted by the Certificate of Incorporation or Bylaws of the Company, the Board shall appoint each person so designated or nominated.

(d) No individual nominated by GSK shall serve as a director unless such individual has such business or technical experience, stature and character as is commensurate with service on the board of a publicly held enterprise. No such individual who is an officer, director, partner or principal stockholder of any competitor of the Company and its subsidiaries (other than GSK and its Affiliates) shall serve as a director of the Company except by agreement of the Independent Directors in their sole discretion.

(e) So long as GSK's Percentage Interest is 50.1% or greater, each committee of the Board (other than any Common Stock committee or committee of Independent Directors constituted for the purposes of making any determination that is to be made under the terms of this Agreement or the Certificate of Incorporation or as expressly prohibited by applicable law, regulation or stock exchange or trading system listing requirement) shall at all times include at least one GSK Director and no action by any such committee shall be valid unless taken at a meeting for which adequate notice has been duly given to or waived by all of the members of such committee. Such notice shall include a description of the general nature of the business to be transacted at the meeting and no other business may be transacted at such committee meeting. Any committee member unable to attend any committee meeting in person shall be given the opportunity to participate by telephone. Prior to the Initial Public Offering, the GSK Director designated to serve on any such committee may designate as his/her alternate another GSK Director.

SECTION 1.5. *Director Approval Required for Certain Actions*. (a) After, and so long as GSK's Percentage Interest is 50.1% or greater, the approval of a majority of GSK Directors (for clarity, should there be an even number of GSK Directors, such approval shall mean that more GSK Directors voted for approval than against) shall be required to approve any of the following:

(i) the acquisition by the Company of any business or assets that would constitute a substantial portion of the business or assets of the Company, whether such acquisition be by merger or consolidation or the purchase of stock or assets or otherwise;

(ii) the sale, lease, license, transfer or other disposal of a substantial portion of the business or assets, tangible or intangible, of the Company; provided, however, that the approval of a majority of the GSK Directors shall not be required for the sale, license or transfer to another party, in the ordinary course of business, of any Company asset (regardless of its value or what portion of the Company's business or assets it may represent) over which GSK has no contractual rights in accordance with the provisions of the Alliance Agreement; or

(iii) the repurchase or redemption of any Equity Security or other capital stock of the Company, other than (A) redemptions required by the terms thereof, (B) purchases made at fair market value in connection with any deferred compensation plan maintained by the Company and (C) repurchases of unvested or restricted stock at or below cost pursuant to any employee, officer, director or consultant compensation plan. For purposes of this Agreement, "Equity Security" means any (i) Voting Stock of the Company, (ii) securities of the Company convertible into or exchangeable for Voting Stock and (iii) options, rights and warrants issued by the Company to acquire Voting Stock. "Voting Stock" shall mean the outstanding securities of the Company having the right to vote generally in any election of directors of the Board.

(b) During the Interim Period, any of the actions described in Section 1.5(a) or Section 1.6(b) shall require the approval of a majority of the Independent Directors.

SECTION 1.6. *GSK Approval for Certain Issuances of Equity Securities*.

(a) Prior to the Call/Put Termination Date, the Company shall not, without the prior written consent of GSK, issue any Equity Security other than (i) shares of Common Stock, (ii) options to acquire Common Stock and (iii) to the extent constituting an Equity Security, Permitted Indebtedness; provided, however, the Company shall only issue such Equity Securities if as a consequence of such issuance, the aggregate number of Callable/Puttable Shares (as defined in Section 6.10) would not exceed 84,000,000 (such amount to be adjusted for stock splits, stock dividends, combinations and other recapitalizations); provided further, that, in determining such aggregate number of Callable/Puttable Shares, the number of any Callable/Puttable Shares subject to Executive Lock-Up Agreements entered into pursuant to the Class A Purchase Agreement shall not be included.

(b) If GSK's Percentage Ownership is 35.1% or greater on the Call/Put Termination Date, following the Call/Put Termination Date and until the End of the Equity Limitation Period (as defined below), the Company shall not issue any Equity Security other than Permitted Equity Issuances. "Permitted Equity Issuances" shall mean (i) the issuance of Equity Securities pursuant to any employee, officer, director or consultant compensation plan that has been approved by the majority of the Board or (ii) issuances by the Company of Equity Securities to third parties (other than as contemplated by the preceding clause (i)), including pursuant to the exercise, conversion or exchange of Equity Securities other than Callable/Puttable Shares issued prior to the Call Date or the final day of the Put Period, as the case may be, provided that, the aggregate number of shares of any such Equity Securities issued to such third parties following the Call/Put Termination Date and until the End of the Equity Limitation Period shall in no event exceed the equivalent of 25,000,000 shares of Common Stock (on an as converted basis) (such amount to be adjusted for stock splits, stock dividends, combinations and other recapitalizations). The "End of the Equity Limitation Period" shall mean: (x) September 1, 2012, if GSK's Percentage Interest is 50.1% or greater on the Call/Put Termination Date or if GSK's Percentage Interest is less than 50.1% on the Call/Put Termination Date, but exceeds 50.1% at any time on or prior to December 31, 2008 and (y) in all other cases, December 31, 2008.

SECTION 1.7. *Limitation on Indebtedness Prior to Call/Put Termination Date*. Except with respect to Permitted Indebtedness (as defined in Section 6.10), prior to the Call/Put Termination Date, the Company shall not borrow money or otherwise incur Indebtedness to the extent that the Company on a consolidated basis has financial Indebtedness that exceeds cash and cash equivalents under US generally accepted accounting principles at any time prior to the Call/Put Termination Date.

SECTION 1.8. *Directors and Officers Liability Insurance*. From and after the date that GSK nominates one or more directors to serve on the Board, the Company shall maintain directors and officers liability insurance coverage to the extent and in the amounts common to comparable companies. To the extent that such insurance coverage is in place, the GSK nominees shall be named as designated insureds under such policy.

SECTION 1.9. *Consolidation with GlaxoSmithKline*. At such time as GlaxoSmithKline is required by applicable accounting standards to include the Company's results in the consolidated financial results for GlaxoSmithKline, the Company (i) shall provide such information based on or derived from the Company's U.S. GAAP financial reporting and (ii) shall provide such additional information and take such steps that are reasonably requested by GlaxoSmithKline to comply with applicable law or to prepare its consolidated financial statements on such time schedule as GlaxoSmithKline may reasonably request for purposes of preparation of GlaxoSmithKline's consolidated financial results; provided, however, that GSK or any of its affiliates shall be required to pay all incremental documented expenses

(personnel or otherwise) arising out of the Company's obligations pursuant to subsection (ii) of this Section 1.9. The Company shall take all such steps necessary in order to comply with its obligations (if any) under the Sarbanes-Oxley Act of 2002 and the rules and regulations adopted pursuant thereto.

ARTICLE II

LIMITATIONS RELATING TO COMPANY EQUITY SECURITIES

SECTION 2.1. *Acquisition of Company Equity Securities*.

(a) *Acquisition of Equity Securities.* Except as contemplated by this Agreement, as permitted by Section 2.1(b), (c) or (d) or as otherwise agreed in writing by the Company (following approval of a majority of the Independent Directors), GSK and its Affiliates will not (and will not assist or encourage others to) directly or indirectly in any manner:

(i) acquire, or agree to acquire, directly or indirectly, alone or in concert with others, by purchase, gift or otherwise, any direct or indirect beneficial ownership (within the meaning of Rule l3d-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) or interest in any securities or direct or indirect rights, warrants or options to acquire, or securities convertible into or exchangeable for, any Equity Securities;

(ii) make, or in any way participate in, directly or indirectly, alone or in concert with others, any "solicitation" of "proxies" to vote (as such terms are used in the proxy rules of the Securities and Exchange Commission (the "SEC") promulgated pursuant to Section 14 of the Exchange Act); provided, however, that the prohibition in this Section 2.1(a)(ii) shall not apply to solicitations exempted from the proxy solicitation rules by Rule 14a-2 under the Exchange Act or any successor provision;

(iii) form, join or in any way participate in a "group" within the meaning of Section 13(d)(3) of the Exchange Act with any person not bound by the terms of this Agreement (other than persons deemed to be a member of such group solely by virtue of being an Affiliate of GSK) with respect to any Voting Stock;

(iv) acquire or agree to acquire, directly or indirectly, alone or in concert with others, by purchase, exchange or otherwise, (A) any of the assets, tangible or intangible, of the Company or (B) direct or indirect rights, warrants or options to acquire any assets of the Company, except for (X) such assets as are then being offered for sale by the Company or (Y) acquisitions of assets of the Company pursuant to or as contemplated by the Alliance Agreement or the Collaboration Agreement between GSK and the Company dated as of November 14, 2002 (the "Collaboration Agreement");

(v) enter into any arrangement or understanding with others to do any of the actions restricted or prohibited under Sections 2.1 (a) (i), (ii), (iii) or (iv);

(vi) otherwise act in concert with others, to seek to offer to the Company or any of its stockholders any business combination, restructuring, recapitalization or similar transaction to or with the Company or otherwise seek in concert with others, to control, change or influence the management, board of directors or policies of the Company or nominate any person as a director of the Company who is not nominated by the then incumbent directors, or propose any matter to be voted upon by the stockholders of the Company; or

(vii) prior to August 31, 2007, request that the Company (or the Board) amend or waive any provisions of this Section 2.1.

(b) *Exceptions for Certain Acquisitions of Equity Securities of the Company*. Nothing herein shall prevent GSK or its Affiliates (or in the case of Section 2.1(b)(v), their employees) from:

(i) purchasing the Class A Stock of the Company on the Effective Date;

(ii) purchasing additional Equity Securities of the Company pursuant to the provisions of Article III of this Agreement and Article IV of the Certificate of Incorporation;

(iii) purchasing additional Equity Securities of the Company after the Effective Date to maintain GSK's Percentage Interest in accordance with Section 2.1(d) hereof;

(iv) acquiring securities of the Company issued in connection with stock splits or recapitalizations or pursuant to Section 2.5 of that certain Investors' Rights Agreement dated as of May 11, 2004 (the "Investors' Rights Agreement");

(v) following the Company's initial public offering of Voting Stock (the "Initial Offering"), purchasing securities of the Company for (A) a pension plan established for the benefit of GSK's employees, (B) any employee benefit plan of GSK, (C) any stock portfolios not controlled by GSK or any of its Affiliates that invest in the Company among other companies, or (D) any account of a GSK employee in such employee's personal capacity;

(vi) acquiring securities of another biotechnology or pharmaceutical company that beneficially owns any of the Equity Securities, provided that any Equity Securities so acquired shall be subject to the provisions of Sections 2.1(a), 2.2 and 2.3 of this Agreement on the same basis as the Class A Common Stock purchased pursuant to the Class A Stock Purchase Agreement;

(vii) in the event that GSK's Percentage Interest is 50.1% or greater at any time on or after the Call/Put Termination Date, on or after September 1, 2012, GSK and/or its Affiliates may make an offer that does not include any condition as to financing to the Company's stockholders to merge the Company or otherwise to acquire outstanding Voting Stock that would bring GSK's Percentage Interest to 100%, provided that such offer is approved by a majority of the Independent Directors and includes a condition to consummation of the transaction that a majority of the shares of the then outstanding Voting Stock not owned by GSK or any of its Affiliates shall have accepted the offer by tendering such shares or voting such shares in favor thereof;

(viii) in the event that GSK's Percentage Interest is less than 50.1% on the Call/Put Termination Date, on or after September 1, 2008, GSK and/or its Affiliates may make an offer that does not include any condition as to financing to the Company's stockholders to acquire outstanding Voting Stock that would bring GSK's Percentage Interest to no greater than 60%, provided that such offer is approved by a majority of the Independent Directors and includes a condition to consummation of the transaction that a majority of the shares of the then outstanding Voting Stock not owned by GSK or any of its Affiliates shall have accepted the offer by tendering such shares in the offer; provided, further, that, any Equity Securities so acquired shall be subject to the provisions of Sections 2.1(a), 2.2 and 2.3 of this Agreement on the same basis as the Class A Common Stock purchased pursuant to the Class A Stock Purchase Agreement (for the avoidance of doubt, the parties acknowledge that, if the GSK Percentage Interest is less than 50.1% on the Call/Put Termination Date, GSK shall not, prior to September 1, 2012, be permitted to make an offer to acquire additional outstanding Equity Securities of the Company except as expressly permitted in this Section 2.1(b) or Sections 2.1(c) or (d));

(ix) at any time following the Call/Put Termination Date and prior to September 1, 2012 that the GSK Percentage Interest is 50.1% or greater, GSK and/or its Affiliates may make an offer that does not include any condition as to financing to acquire outstanding Voting Stock that would bring GSK's Percentage Interest to 100%; provided that, any such offer shall be approved by a majority of the Independent Directors and includes a condition to consummation of the transaction that a majority of the shares of the then outstanding Voting

Stock not owned by GSK or any of its Affiliates shall have accepted the offer by tendering such shares or voting such shares in favor thereof and that such offer be for not less than the greater of (i) the Fair Market Value Per Share (as defined in Section 6.10) on the date immediately preceding the date of the first public announcement of such offer or (ii) $105 per share of Common Stock or Common Stock equivalent (appropriately adjusted to take into account stock dividends, stock splits, recapitalizations and the like);

(x) only after, and so long as, GSK's Percentage Interest is 50.1% or greater, with such Voting Stock acquired in accordance with the terms of this Agreement and the Certificate of Incorporation, purchasing additional Equity Securities of the Company if the Company has otherwise determined to sell Equity Securities to pay all or any portion of the milestones that it may owe to GSK pursuant to Section 6.2.3 of the Collaboration Agreement. In this event, GSK shall have the first right to purchase such additional Equity Securities on the terms under which the Company intends to sell such Equity Securities.

(c) *Third Party Offers*. Nothing herein shall prevent GSK or its Affiliates from, in the event that (A) the Board formally acts to cause the Company to (i) enter into a written agreement pursuant to which a Change in Control transaction with a third party is provided for, (ii) amend the Rights Plan (as defined in Section 6.10) in order to render the Rights Plan inapplicable with respect to any third party or (iii) render inapplicable to any third party the restrictions contained in Section 203 of the DGCL or any similar anti-takeover provision or (B) a person or group (within the meaning of 13(d)(3) of the Exchange Act and not including and underwriter in connection with a public offering) (each, a "Third Party Acquiror") acquires 20% or more of the then outstanding Voting Stock (a "Significant Third Party Acquisition"), making an offer to acquire, and acquiring, Equity Securities pursuant to the terms of GSK's offer; provided that GSK's offer must be an offer for 100% of the Voting Stock of the Company that does not include any condition as to financing and includes a condition to consummation of the transaction that a majority of the shares of the then outstanding Voting Stock not owned by GSK or any of its Affiliates or by any such Third Party Acquiror (or its or their Affiliates) shall have accepted the offer by tendering such shares or voting such shares in favor of thereof.

(d) *Exceptions for Acquisitions to Maintain GSK's Percentage Interest*.

(i) In the event that the Company issues Equity Securities (other than pursuant to exercise of options or vesting of restricted shares issued as compensation to directors, officers, employees or consultants of the Company) GSK shall have the right to purchase such Equity Securities at the same price (where the consideration does not consist solely of cash, the fair market value of the non-cash consideration as determined in good faith by the Independent Directors) up to such amount as required to maintain GSK's Percentage Interest at the same level as immediately prior to such issuance to the third party.

(ii) With respect to exercise of stock options or vesting of restricted stock, on a quarterly basis, GSK shall be afforded the opportunity by the Company to purchase comparable Equity Securities sufficient to maintain GSK's Percentage Interest at the same level as prior to the exercises and vestings during such quarter. GSK or its Affiliates shall acquire such Equity Securities referred to in the immediately preceding sentence either from the Company at the then Fair Market Value Per Share or, at the discretion of the Company, through open market purchases.

(iii) If GSK's Percentage Interest is 50.1% or greater on the Call/Put Termination Date solely as a result of the exercise of the Put, if at any time following the Call/Put Termination Date and until September 1, 2012, the Company issues Equity Securities (other than pursuant to exercise of options or vesting of restricted shares issued as compensation to directors, officers, employees or consultants of the Company) and GSK declines to purchase additional

Equity Securities in such offering, GSK, for a period of six months following such issuance of Equity Securities by the Company, shall, nonetheless, have the right to cause the Company to issue Equity Securities to GSK in such amount as required to maintain GSK's Percentage Interest at the same level as GSK's Percentage Interest on the Call/Put Termination Date and at a price equal to the greater of (i) the Fair Market Value Per Share of Equity Securities at the time of purchase by GSK or (ii) the price per share of the Equity Securities issued by the Company in the transaction that resulted in GSK's rights pursuant to this subsection (iii).

(iv) If GSK's Percentage Interest is 50.1% or greater on the Call/Put Termination Date solely as a result of the exercise of the Call, if at any time following the Call/Put Termination Date and until September 1, 2012, the Company issues Equity Securities (other than pursuant to exercise of options or vesting of restricted shares issued as compensation to directors, officers, employees or consultants of the Company) GSK, for so long as the GSK Percentage Interest is 50.1% or greater, shall have the right to purchase such Equity Securities at the same price (where the consideration does not consist solely of cash, the fair market value of the non-cash consideration as determined in good faith by the Independent Directors) in such amount as required to maintain GSK's Percentage Interest at the same level as GSK's Percentage Interest on the Call/Put Termination Date.

(v) Notwithstanding anything contained in this Section 2.1(d)(i), (ii), (iii) and (iv), if the Company shall issue Permitted Indebtedness consisting of securities exchangeable or convertible into Voting Stock, the Company shall provide written notice to GSK of the conversion or exchange of any such Permitted Indebtedness within ten days following any such conversion or exchange. GSK shall notify the Company promptly following the receipt of such notice if it intends to purchase that number of Equity Securities from the Company required to maintain GSK's Percentage Interest as measured immediately prior to the date of such conversion or exchange of Permitted Indebtedness at a price per Equity Security equal to the greater of (x) the conversion or exchange price of such Permitted Indebtedness or (y) the Fair Market Value Per Share on the date of such purchase by GSK. If GSK notifies the Company of such intention, the Company shall issue such number of Equity Securities upon payment of such price.

(vi) In the event that GSK's Percentage Interest falls below 50.1% (or, in the case of Sections 1.3, 1.6 and 2.3, 35.1%, or in the case of Section 1.1(a), 19.0%) solely as a consequence of any issuance of Equity Securities with respect to which GSK has the right to acquire further Equity Securities under this Section 2.1(d), GSK's Percentage Interest shall be deemed to be greater than 50.1% for purposes of Articles I and II, 35.1% for purposes of Sections 1.3, 1.6 and 2.3, and 19.0% for purposes of Section 1.1(a), unless and until GSK declines to purchase the Equity Securities it is entitled to purchase under this Section 2.1(d) (GSK shall respond within a reasonable time with respect to its decision to accept or decline its opportunity to purchase additional Equity Securities).

(e) *Rights Plan*. The Company will, subject to the Board's exercise of its fiduciary duties, implement a Rights Plan on or before the Initial Offering. The Company shall take all necessary action to render inapplicable to GSK the Rights Plan, Section 203 of the Delaware General Corporation Law (the "DGCL") and any other applicable similar anti-takeover provision.

SECTION 2.2. *Disposition of Equity Securities*.

(a) *Prior to the Call/Put Termination Date*. Prior to the Call/Put Termination Date (as defined in Section 6.10), neither GSK nor any of its Affiliates shall dispose of beneficial ownership of any Voting Stock held by them without the prior approval of a majority of the Board other than any director nominated by GSK, except: (A) to any other Affiliate of GSK who agrees in writing to be bound hereunder; or (B) pursuant to a Change in Control transaction of the Company approved

by a majority of the Board other than any director nominated by GSK and consummated prior to August 1, 2007.

(b) *Following the Call/Put Termination Date*.

(i) Following the Call/Put Termination Date, neither GSK nor any of its Affiliates shall dispose of beneficial ownership of Voting Stock without the prior approval of a majority of the Independent Directors prior to (A) September 1, 2008 if GSK's Percentage Interest is less than 50.1% on the Call/Put Termination Date, or (B) September 1, 2012 if GSK's Percentage Interest is 50.1% or more on the Call/Put Termination Date. If GSK's Percentage Interest is less than 50.1% on the Call/Put Termination Date but is increased to 50.1% or more at any time prior to September 1, 2012 neither GSK nor any of its Affiliates shall dispose of any beneficial ownership of Voting Stock from and after the date GSK's Percentage Interest first equals or exceeds 50.1% until September 1, 2012. In the event that GSK's Percentage Interest is 50.1% or greater and GSK breaches its obligation not to dispose of beneficial ownership of Voting Stock prior to September 1, 2012 pursuant to Section 2.2(b)(i)(B), the "Research Term" under the Alliance Agreement shall lapse simultaneously with such breach and in accordance with Section 3.1.1 of the Alliance Agreement, GSK's future opt-in rights to the Company's Discovery Programs on or after the date of such breach shall terminate.

(ii) In the event that the prohibition on disposition of Voting Stock set forth in Subsection 2.2(b)(i) expires on September 1, 2008, neither GSK nor any of its Affiliates shall dispose of beneficial ownership of Voting Stock prior to September 1, 2012 except (A) pursuant to a public offering registered under the Securities Act of 1933, as amended (the "Securities Act") of either Company Voting Stock or securities exchangeable or exercisable for Voting Stock (in which public offering the securities are broadly distributed and neither GSK nor any of its Affiliates selects the purchasers); or (B) pursuant to Rule 144 under the Securities Act (provided that if Rule 144(k) is available, such disposition nevertheless is within the volume limits and manner of sale requirements applicable to non-144(k) transfers under Rule 144).

(iii) In the event that the prohibition on disposition of Voting Stock set forth in Section 2.2(b)(i) expires on September 1, 2012, if GSK or any of its Affiliates disposes of Voting Stock after that date, neither GSK nor any of its Affiliates may purchase any Voting Securities without the prior approval of a majority of Independent Directors for one year after the date of any such disposition.

(iv) Neither GSK nor any of its Affiliates may make any public disclosure of any holdings of or disposition of beneficial ownership of the Voting Stock unless such disclosure is approved in advance in writing by the Company, such approval not to be unreasonably withheld or delayed. Notwithstanding the foregoing, no consent of the Company shall be required for any filing that GSK or any of its Affiliates is required to make under applicable Law in any jurisdiction, including without limitation any Form 144 under the Securities Act, any Form 4 under the Exchange Act, or any Schedule 13D or 13G or any amendments thereto under the Exchange Act; provided that, prior to making any such filings, GSK shall use reasonable efforts to (A) to provide the Company notice and a copy of such proposed filings and (B) consult with the Company on the content of such filings.

(v) Notwithstanding the foregoing, GSK shall be permitted to dispose of beneficial ownership of any Voting Stock pursuant to a Change in Control transaction of the Company approved by a majority of Independent Directors.

(c) *Required Dispositions*. Notwithstanding anything to the contrary contained herein, GSK shall be permitted to dispose of beneficial ownership of Voting Stock as and to the extent (but

only to the extent) GSK reasonably determines such disposition to be necessary in order for it to comply with its obligations under Section 3.5.

SECTION 2.3. *Voting*. (a) Except as set forth in Sections 2.3(b) and 2.3(c), prior to the Initial Offering, GSK shall ensure that all Voting Stock beneficially owned by GSK and/or any GSK Affiliate is voted (i) for Company nominees to the Board in accordance with Article I and (ii) on all other matters to be voted on by stockholders, in accordance with the recommendation of a majority of the Board other than any GSK Director. Except as set forth in Sections 2.3(b) and 2.3(c), following the Initial Offering, GSK shall ensure that all Voting Stock beneficially owned by GSK and/or any GSK Affiliate shall be voted on all matters, at the election of GSK, either (i) in accordance with the recommendation of the Independent Directors of the Board or (ii) in proportion to the votes cast by the other holders of the Company's Voting Stock.

(b) Subject to paragraph (c) below with respect to the Interim Period, so long as GSK's Percentage Interest is less than 50.1%, GSK shall ensure that all Voting Stock beneficially owned by GSK and/or any GSK Affiliate is voted as set forth in Section 2.3(a), *unless* the matter being voted upon involves any of the following:

(i) any proposal to amend the provisions in the Certificate of Incorporation related to the Put and Call;

(ii) any proposal to issue Equity Securities to one or more parties in one transaction or a series of transactions that result in any person or group (within the meaning Section 13(d)(3) of the Exchange Act) owning or having the right to acquire or intent to acquire beneficial ownership of Equity Securities with aggregate voting power of greater than 20% or more of the aggregate voting power of all outstanding Equity Securities (for the avoidance of doubt, in no event shall any such proposed issuance covered by this clause (ii) include a sale of the Company's securities in a public offering); or

(iii) any Change in Control.

(c) (A) After, and so long as, GSK's Percentage Interest is 50.1% or greater and (B) during the Interim Period so long as the GSK Percentage Interest is 35.1% or greater, GSK shall ensure that all Voting Stock beneficially owned by GSK and/or any GSK Affiliate is voted as set forth in this Section 2.3(a), *unless* the matter being voted upon involves any of the following:

(i) any Change in Control;

(ii) the acquisition by the Company of any business or assets that would constitute a substantial portion of the business or assets of the Company, whether such acquisition be by merger or consolidation or the purchase of stock or assets or otherwise;

(iii) the sale, lease, license, transfer or other disposal of all or a substantial portion of the business or assets of the Company; provided, however that the sale, license or transfer to another party, in the ordinary course of business, of any Company asset (regardless of its value or what portion of the Company's business or assets it may represent) over which GSK has no contractual rights in accordance with the provisions of the Alliance Agreement shall be considered an ordinary matter pursuant to which GSK must vote its shares in accordance with the recommendation of the Independent Directors of the Board;

(iv) any proposal to issue Equity Securities to one or more parties in one transaction or a series of transactions that result in any person or group (within the meaning Section 13(d)(3) of the Exchange Act) owning or having the right to acquire or intent to acquire beneficial ownership of Equity Securities with aggregate voting power of greater than 20% or more of the aggregate voting power of all outstanding Equity Securities (for the avoidance of doubt, in

no event shall any such proposed issuance covered by this clause (iv) include a sale of the Company's securities in a public offering); or

(v) any proposal to amend the provisions in the Certificate of Incorporation related to the Put and Call.

(d) Notwithstanding anything to the contrary herein, following a Significant Third Party Acquisition, GSK shall be entitled to vote its Voting Stock without any restrictions.

(e) GSK hereby grants to the Board, and appoints the Board as, its irrevocable proxy to vote, or execute and deliver written consents or otherwise act with respect to all Voting Stock now owned or hereafter acquired by GSK in the manner in which GSK is obligated to vote, consent or act pursuant to this Section 2.3. Such proxy shall be irrevocable until this Agreement terminates pursuant to its terms or this Section 2.3 is amended to remove such grant of proxy in accordance with Section 6.2 hereof, and is coupled with an interest in all voting stock owned by GSK. This Agreement shall constitute the proxy granted pursuant hereto.

SECTION 2.4. *Prior Agreement*. The provisions of this Article II shall apply to all Equity Securities beneficially owned by GSK and/or its Affiliates and supersedes in its entirety Article 15 of the Collaboration Agreement.

ARTICLE III

REDEMPTION AND REPURCHASE OF COMMON STOCK

SECTION 3.1. *Redemption and Repurchase of Common Stock*.

(a) GSK shall, in the period between June 1, 2007 and July 1, 2007, inform the Company in writing whether or not it desires to request the redemption of certain Common Stock pursuant to Section C.4 of Article IV of the Certificate of Incorporation. If GSK does request the redemption, it shall provide the desired date for redemption of such Common Stock (the "Call Date") in such notice. Subject to Section 3.1(c), the Company shall, promptly upon receipt of such written request from GSK for the redemption of certain Common Stock, designate a depositary (the "Depositary") for such redemption in accordance with Section C.6(a) of Article IV of the Certificate of Incorporation and notify GSK of such designation. The Company shall give, or cause to be given, the Call Notification (as defined in Section C.4(b) of Article IV of the Certificate of Incorporation) in accordance with such Section C.4(b) of Article IV of the Certificate of Incorporation. The Company shall set as the date of redemption the Call Date; provided that such date shall be consistent with the notice requirements of such paragraph (b). The calculation of the Call Price per share of Common Stock, which shall be made in accordance with paragraphs (a) and (c) of Section C.4 of Article IV of the Certificate of Incorporation, shall be verified with GSK prior to the mailing of such notice. GSK or GlaxoSmithKline shall deposit with the Company at least one business day prior to the Call Price Deposit Date (as defined in Section C.6(a)(i) of Article IV of the Certificate of Incorporation) sufficient funds to pay the Call Amount (as defined in Section C.4(d) of Article IV of the Certificate of Incorporation) and the Company shall deposit those funds with the Depositary in accordance with Section C.6(a)(i) of Article IV of the Certificate of Incorporation. The Company shall only use the funds received from GSK, Glaxo or their Affiliates to fund the Depositary for the purposes of effecting the Call pursuant to this Article III. In exchange for such payment, the Company will issue to GSK (or to its designated Affiliate), on the Call Date as specified in the Call Notification, a number of duly authorized and validly issued shares of Class A Common Stock equal to the number of shares of Common Stock acquired thereby by the Company upon cancellation of the Common Stock subject to the Call pursuant to Section C.6(a) of Article IV of the Certificate of Incorporation.

(b) At least ten, but not more than thirty, days prior to the commencement of the Put Period (as defined in Section C.11(e) of Article IV of the Certificate of Incorporation), or, in the event of an acceleration of the Put in accordance with the terms of Section C.7 of Article IV of the Certificate of Incorporation, as soon as practicable following the date of the occurrence of the Insolvency Event (as defined in Section C.7 of Article IV of the Certificate of Incorporation) giving rise to such acceleration (but in no event later than the tenth day following such date), the Company shall (i) designate the Depositary for making payments to, and receiving shares from, holders of Common Stock in connection with exercises of the Put (as defined in Section C.5 of Article IV of the Certificate of Incorporation) in accordance with Section C.5 of Article IV of the Certificate of Incorporation and notify GSK and GlaxoSmithKline of such designation and (ii) give, or cause to be given, the Put Notification (as defined in Section C.11 of Article IV of the Certificate of Incorporation) in accordance with Section C.5(b) of Article IV of the Certificate of Incorporation or Section C.7 thereof, as the case may be. The Company shall set as the Put Period the period required to be set pursuant such Section C.5 or Section C.7, as the case may be.

(c) The Company's obligations under Sections 3.1(a) and 3.1(b) hereof shall be suspended during any period when, in the good faith judgment of the majority of the Company's Independent Directors, the redemption of the Common Stock would be prohibited under the DGCL or other applicable Laws.

(d) Subject to the provisions of Section 3.1(c), the Company hereby irrevocably appoints GSK and GlaxoSmithKline its attorneys-in-fact for purposes of redeeming the Common Stock in accordance with the terms of Sections 3.1(a) and 3.1(b) hereof and the Certificate of Incorporation.

(e) Any Depositary selected by the Company shall have at the time of its selection short-term credit ratings of not less than A-1 from Standard & Poor's Rating Services ("S&P") and not less than P-1 from Moody's Investors Service, Inc. ("Moody's"), and shall have at the time of its selection long-term credit ratings of not less than AA from S&P and not less than Aa2 from Moody's.

SECTION 3.2. *Indemnification*. GSK and GlaxoSmithKline shall indemnify the Company and its directors, officers, employees and agents against all losses, claims, damages, liabilities and expenses (including attorneys' fees) arising out of the redemption (pursuant to the Call or the Put (each as defined in the Certificate of Incorporation) of the Common Stock in accordance with the provisions of this Agreement (including, without limitation, in the event of the Company's consummation of the redemption of Common Stock in contravention of Section 160 of the DGCL or any other law for the protection of creditors), other than any such losses, claims, damages, liabilities and expenses that result primarily from actions taken or omitted in bad faith by the indemnified person or from the indemnified person's gross negligence or willful misconduct.

SECTION 3.3. *Options, Warrants and Other Convertible Securities*. GSK and the Company will make appropriate provisions to assure that any options, warrants, rights or securities issued by the Company, convertible into or exercisable or exchangeable for shares of Common Stock that constitute Callable/Puttable Shares, become convertible into or exercisable or exchangeable for consideration of the same type and amount as the holders thereof would have received had they converted, exercised or exchanged such options, warrants, rights or securities prior to the Call Date. If the Call is exercised by GSK, the consideration payable to a holder of options, warrants, rights or securities issued by the Company, convertible into or exercisable or exchangeable for shares of Common Stock that constitute Callable/Puttable Shares shall be paid upon the date of conversion, exercise or exchange of such option, warrant, right or security. Nothing herein shall be deemed or construed as a waiver of any other rights that a holder of any such securities may have.

SECTION 3.4. *Capital Contribution and Assumption of Put Obligations*.

(a) GSK or GlaxoSmithKline agree to, or to cause one or more of their Affiliates to, contribute to the Company, immediately prior to the time that any amounts become due and payable to the holders of Common Stock pursuant to Section C.5 of Article IV of the Certificate of Incorporation, (i) funds in an amount equal to the product of the number of Callable/Puttable Shares with respect to which the Put has been properly exercised multiplied by the Put Price (as defined in Section C.5 of Article IV of the Certificate of Incorporation) plus (ii) such additional funds, if any, sufficient to permit the Company to redeem the Callable/Puttable Shares with respect to which the Put has been properly exercised without violating Section 160 of the DGCL, any bankruptcy or insolvency law or other law or regulation for the protection of creditors. In exchange for such payment, the Company will issue to GSK (or to its designated Affiliate), within five business days following the end of the Put Period, a number of duly authorized and validly issued shares of Class A Common Stock equal to the number of shares of Common Stock acquired thereby by the Company. Notwithstanding the foregoing, in the event that GSK or GlaxoSmithKline is required to make any contributions under clause (ii) of the first sentence of this paragraph (a), GSK's or GlaxoSmithKline's obligation to make any such payment to the Company under this Section 3.4 shall be void and of no further force and effect if, in lieu thereof, GSK or GlaxoSmithKline shall (or shall cause one of its Affiliates to) elect to purchase, and make all arrangements necessary (including compliance by GSK or GlaxoSmithKline, or any such Affiliate or Affiliates, with the Exchange Act, the Securities Act (each as hereinafter defined) and any other applicable Federal or state securities laws) to purchase, at the expiration of the Put Period, directly from each holder of Common Stock, the Callable/Puttable Shares which such holders elect to have purchased (up to 50% of all Callable/Puttable Shares owned by such holder) at a price per share equal to the Put Price. Notwithstanding anything to the contrary contained herein or in the Certificate of Incorporation, unless otherwise agreed to in writing by GSK, in no event shall the amount required to be paid by GSK or GlaxoSmithKline to the Company and/or to holders of Common Stock in connection with the Put exceed $525,000,000.

(b) Notwithstanding any other term or provision hereof or of the Alliance Agreement, Section C of Article IV of the Certificate of Incorporation or any other agreement, GSK or GlaxoSmithKline agree that they shall either (i) make (or cause one or more of its Affiliates to make) the aggregate payments required to be made under the first sentence of Section 3.4(a) hereof or (ii) if such payments are not made for any reason, make (or cause one of its Affiliates to make) the election to purchase referred to in the third sentence of Section 3.4(a) hereof and comply (or cause one of its Affiliates to comply) fully with such sentence; provided, however, that if an Insolvency Event (as defined in Section C.7 of Article IV of the Certificate of Incorporation) occurs, GSK or GlaxoSmithKline shall, within 10 days after the occurrence of such Insolvency Event, either (x) contribute (or cause one or more of its Affiliates to contribute) to the Company an amount equal to the aggregate amount that would be required to be contributed to the Company under the first sentence of Section 3.4(a) hereof assuming (for purposes of clause (i) of such sentence) that the holders of all Callable/Puttable Shares were to exercise the Put with respect to 50% of the Callable/Puttable Shares owned by such holder or (y) elect (or cause one of its Affiliates to elect) to purchase, and make all arrangements necessary (including compliance by GSK or GlaxoSmithKline, or any such Affiliate, with the Exchange Act, the Securities Act and any other Federal or state securities laws) to purchase, at the expiration of the Put Period, directly from the holders of Common Stock at the Put Price the shares of Callable/Puttable Shares which such stockholders elect to have purchased (up to 50% of all Callable/Puttable Shares owned by such holder). In exchange for the payment by GSK or GlaxoSmithKline of the amount specified in clause (x) of the immediately preceding sentence (which amount shall be invested by the Company in a money market fund which holds primarily U.S. government obligations until such time as any amounts are paid to creditors or stockholders (it being specified that the returns on such

investment shall be paid to GSK or GlaxoSmithKline upon demand)), the Company will issue to GSK (or its designated Affiliate) a number of duly authorized and validly issued shares of Class A Common Stock equal to 50% the number of Callable/Puttable Shares. Immediately following the expiration of the Put Period, if the Put has not been exercised with respect to 50% of the then Callable/Puttable Shares and if GSK or GlaxoSmithKline shall have complied with clause (x) of the first sentence of this Section 3.4(b), (1) the Company shall refund to GSK or GlaxoSmithKline, as the case may be, (or their designated Affiliate) an amount (together with any interest actually earned thereon) equal to the product of the Put Price times the number of Callable/Puttable Shares with respect to which the Put has not been exercised and (2) GSK (or by its designated Affiliate) shall, in exchange for such payment by the Company, contribute to the Company a number of shares of Class A Common Stock equal to the number of Callable/Puttable Shares with respect to which the Put has not been exercised. In the event that GSK or GlaxoSmithKline pays the amount specified in clause (x) of the first sentence of this Section 3.4(b), GSK or GlaxoSmithKline and any of their Affiliates shall not be entitled to any payments or other distributions on or in respect of any Equity Security unless and until the Company has redeemed all of the shares of Common Stock with respect to which the Put has been properly exercised.

(c) It is understood and agreed that, if GSK so elects, the obligation of GSK or GlaxoSmithKline to purchase shares of Common Stock pursuant to any of the provisions in this Section 3.4 may, at the election of GSK, be assigned by GSK to any Affiliate of GSK (other than the Company). No assignment pursuant to this Section 3.4(c) shall relieve GSK or GlaxoSmithKline of any of its obligations under this Section 3.4 or otherwise.

(d) The Company shall take (and shall have no corporate power or capacity to refuse to take) such actions as may be necessary to enforce the obligations of GSK and GlaxoSmithKline under this Section 3.4 directly against GSK and GlaxoSmithKline, or in the event of assignment by GSK, against GSK and any Affiliate of GSK to which any assignment is made.

(e) The Company shall only use the funds received from GSK, Glaxo or their Affiliates to fund the Depositary for the purposes of effecting the Put pursuant to this Article III.

SECTION 3.5. *Required Regulatory Filings*. GSK, GlaxoSmithKline and the Company agree to take all actions necessary to make all required filings and thereafter make any other required submissions with respect to the transactions contemplated under this Agreement under any applicable law, including, without limitation, any applicable federal or state securities Law, the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act") and foreign antitrust regulations. With respect to the transactions contemplated by the Put and Call, in furtherance of the foregoing, GSK, GlaxoSmithKline and the Company agree to take all necessary actions to make any required filings under the HSR Act and any applicable foreign antitrust regulations prior to February 1, 2007. GSK, GlaxoSmithKline and the Company shall respond as promptly as practicable to all inquiries or requests received from any such antitrust regulator. The parties shall cooperate with each other in connection with the making of all such filings or requests. GSK, GlaxoSmithKline and the Company shall take all required action to cause any waiting period (and any extension thereof) applicable to the transactions contemplated hereunder to expire or be terminated under the HSR Act and any waiting period (and any extension thereof) applicable to the transactions contemplated hereunder under any foreign antitrust Law (or any approval thereunder) to expire or be terminated or be obtained prior to June 1, 2007.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

SECTION 4.1. *Representations of the Company*.

(a) The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby are within the Company's corporate powers and have been duly authorized by all necessary corporate action. This Agreement constitutes a valid and binding agreement of the Company.

(b) The execution, delivery and performance by the Company of this Agreement require no action by or in respect of, or filing with, any governmental body, agency, official or authority.

(c) The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby do not and will not (i) contravene or conflict with the Certificate of Incorporation or Bylaws of the Company, and (ii) contravene or conflict with or constitute a violation of any provision of any law, regulation, judgment, injunction, order or decree binding upon or applicable to the Company.

SECTION 4.2. *Representations of GSK, GlaxoSmithKline and GGL*.

Each of GSK, GlaxoSmithKline and GGL represent that:

(a) The execution, delivery and performance by it of this Agreement and the consummation by it of the transactions contemplated hereby are within its corporate powers and have been duly authorized by all necessary corporate action. This Agreement constitutes its valid and binding agreement.

(b) The execution, delivery and performance by it of this Agreement require no action by or in respect of, or filing with, any governmental body, agency, official or authority.

(c) The execution, delivery and performance by it of this Agreement and the consummation by it of the transactions contemplated hereby do not and will not (i) contravene or conflict with its charter or Bylaws, and (ii) contravene or conflict with or constitute a violation of any provision of any law, regulation, judgment, injunction, order or decree binding upon or applicable to it.

ARTICLE V

SEVERANCE ARRANGEMENTS

SECTION 5.1. *Severance Arrangements*. The Company will not and will not permit any of its subsidiaries to, (i) enter into any contract, agreement, plan or arrangement covering any director, officer or employee of the Company or any subsidiary that provides for the making of any payments, the acceleration of vesting of any benefit or right or any other entitlement contingent upon (A) the stock purchase by GSK pursuant to the Class A Stock Purchase Agreement or the exercise by GSK of any of its rights under this Agreement to representation on the Board (and its committees) or any acquisition by GSK of securities of the Company (whether by merger, tender offer, private or market purchases or otherwise) not prohibited by this Agreement or (B) the termination of employment after the occurrence of any such contingency if such payment, acceleration or entitlement would not otherwise have been provided but for such contingency or (ii) amend any existing contract, agreement, plan or arrangement to so provide.

ARTICLE VI

MISCELLANEOUS

SECTION 6.1. *Notices*. All notices, requests and other communications to any party hereunder shall be in writing (including facsimile or similar writing) and shall be given:

If to the Company:

Theravance, Inc.
901 Gateway Boulevard
South San Francisco, CA 94080
Facsimile: 650-808-6095
Attn: General Counsel

With a copy to:

Gunderson Dettmer et al.
155 Contitution Drive
Menlo Park, CA 94025
Facsimile: 650-321-2800
Attn: Christopher D. Dillon
Jay K. Hachigian

If to GSK:

SmithKline Beecham Corporation
One Franklin Plaza (FP2355)
200 N. 16th Street
Philadelphia, PA 19102
Attn: Company Secretary
Facsimile: 215-751-5349

With a copy to:

GlaxoSmithKline
One Franklin Plaza (FP2355)
200 N. 16th Street
Philadelphia, PA 19102
Facsimile: 215-751-5349
Attn: Corporate Law

and with a copy to:

GlaxoSmithKline
Greenford Road
Greenford
Middlesex
UB6 0HE
United Kingdom
Attn: Vice President, Worldwide Business Development
Facsimile: 011 44 208-966-5371

and with a copy to:

Glaxo Group Limited
Glaxo Wellcome House
Berkeley Avenue
Greenford
Middlesex UB6 0NN
United Kingdom
Attn: Company Secretary
Facsimile: 011 44 208-047-6904

or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. Each such notice, request or other communication shall be effective (i) if given by facsimile when such facsimile is transmitted to the facsimile number specified in this Section and the appropriate answerback is received or (ii) if given by any other means, when delivered at the address specified in this Section 6.1.

SECTION 6.2. *Amendments; Waivers*.

(a) Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by GSK and the Company, or in the case of a waiver, by the party against whom the waiver is to be effective; provided that, in the case of the Company, no such amendment or waiver shall be effective without the approval of a majority of the Independent Directors.

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

SECTION 6.3. *Successors and Assigns*. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the written consent of the other party hereto.

SECTION 6.4. *Governing Law*. This Agreement shall be governed by and construed in accordance with and governed by the law of the State of Delaware, without regard to the conflicts of laws principles thereof. Any action brought, arising out of, or relating to this Agreement shall be brought in the Court of Chancery of the State of Delaware. Each party hereby irrevocably submits to the exclusive jurisdiction of said Court in respect of any claim relating to the validity, interpretation and enforcement of this Agreement, and hereby waives, and agrees not to assert, as a defense in any action, suit or proceeding in which any such claim is made that it is not subject thereto or that such action suit or proceeding may not be brought or is not maintainable in such courts, or that the venue thereof may not be appropriate or that this agreement may not be enforced in or by such courts. The parties hereby consent to and grant the Court of Chancery of the State of Delaware jurisdiction over such parties and over the subject matter of any such claim and agree that mailing of process or other papers in connection with any such action, suit or proceeding in the manner provided in Section 6.1, or in such other manner as may be permitted by law, shall be valid and sufficient thereof.

SECTION 6.5. *Counterparts; Effectiveness*. This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original and which together shall constitute one and the same document.

SECTION 6.6. *Specific Performance*. Each party acknowledges and agrees that their respective remedies at law for a breach or threatened breach of any of the provisions of this Agreement would be inadequate and, in recognition of that fact, agrees that, in the event of a breach or threatened breach by the Company, on the one hand, or GSK, GGL and GlaxoSmithKline (the "Glaxo Parties"), on the other hand, of the provisions of this Agreement, in addition to any remedies at law, the Glaxo Parties and the Company, respectively, without posting any bond shall be entitled to obtain equitable relief in the form of specific performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy which may then be available.

SECTION 6.7. *Termination*. This Agreement (other than Sections 3.2 and 3.3 hereof) shall terminate at the earliest of (i) such time as GSK and its Affiliates beneficially own 100% of the outstanding Voting Stock, (ii) the effective time of a Change in Control, and (iii) September 1, 2015.

SECTION 6.8. *Severability*. In the event of the invalidity of any provisions of this Agreement or if this Agreement contains any gaps, the parties agree that such invalidity or gap shall not affect the validity of the remaining provisions of this Agreement. The parties will replace an invalid provision or fill any gap with valid provisions which most closely approximate the purpose and economic effect of the invalid provision or, in case of a gap, the parties' presumed intentions. In the event that the terms and conditions of this Agreement are materially altered as a result of the preceding sentences, the parties shall renegotiate the terms and conditions of this Agreement in order to resolve any inequities. Nothing in this Agreement shall be interpreted so as to require either party to violate any applicable laws, rules or regulations.

SECTION 6.9. *Registration and Filing of This Agreement*. To the extent, if any, that either the Company or the Glaxo Parties concludes in good faith that such party or the other party is required to file or register this Agreement or a notification thereof with any governmental authority, including without limitation the Securities and Exchange Commission, the Competition Directorate of the Commission of the European Communities or the U.S. Federal Trade Commission, in accordance with Law, such party shall inform the other party thereof. Should the Company and the Glaxo Parties jointly agree that either of them is required to submit or obtain any such filing, registration or notification, they shall cooperate, each at its own expense, in such filing, registration or notification and shall execute all documents reasonably required in connection therewith. In such filing, registration or notification, the parties shall request confidential treatment of sensitive provisions of this Agreement, to the extent permitted by Law. The parties shall promptly inform each other as to the activities or inquiries of any such Governmental Authority relating to this Agreement, and shall reasonably cooperate to respond to any request for further information therefrom on a timely basis.

SECTION 6.10. *Certain Definitions.*

(a) As used in this Agreement, the following terms shall have the following meanings:

(i) "Affiliate" of a party means any Person, whether de jure or de facto, which directly or indirectly controls, is controlled by, or is under common control with such Person for so long as such control exists, where "control" means the decision-making authority as to such Person and, further, where such control shall be presumed to exist where a Person owns more than fifty percent (50%) of the equity (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) having the power to vote on or direct the affairs of the entity; it being specified that for purposes of this Agreement, the Company and its direct and indirect subsidiaries, if any, shall not be deemed to be Affiliates of GSK.

(ii) "Call" shall have the meaning set forth in Section 4 of Article IV of the Certificate of Incorporation.

(iii) "Callable/Puttable Shares" means (i) all outstanding shares of Common Stock that are not subject to repurchase by the Company pursuant to any employee, officer, director or consultant compensation plan as of the Call Date or the final day of the Put Period, as the case may be, (ii) all shares of Common Stock subject to issuance upon the exercise of options to acquire Common Stock granted pursuant to any employee, officer, director or consultant compensation plan that are or will be fully vested as of the Call Date or the final day of the Put Period, as the case may be, (iii) all shares of Common Stock subject to issuance upon the exercise, exchange or conversion of warrants, exchangeable or convertible securities (other than any such options described in clause (ii)) that are by their terms exercisable, exchangeable or convertible as of the Call Date or the final day of the Put Period, as the case may be.

(iv) "Call/Put Termination Date" shall have the meaning set forth in Section C.8 of Article IV of the Certificate of Incorporation.

(v) "Change in Control" means, with respect to (A) the Company, any transaction or series of related transactions (including mergers, consolidations and other forms of business consolidations) following which continuing stockholders of the Company hold less than 50% of the outstanding voting securities of either the Company, the entity surviving such transaction or any direct or indirect parent entity of such continuing or surviving entity or (B) the sale, lease, license, transfer or other disposal of all or substantially all of the business or assets of the Company (provided, however, that the sale, license or transfer to another party, in the ordinary course of business, of any Company asset (regardless of its value or what portion of the Company's business or assets it may represent) over which GSK has no contractual rights in accordance with the provisions of the Alliance Agreement shall not be considered a Change in Control transaction); it being understood that GSK's exercise of its rights or performance of its obligations pursuant to the Put or Call shall not be deemed a Change in Control.

(vi) "Effective Date" means the first business day following the date on which the last of the conditions contained in Section 15.14 of the Alliance Agreement has been satisfied.

(vii) "Fair Market Value Per Share" means, with respect to an Equity Security as of a particular date, (a) if the Equity Security is traded on a securities exchange or through the Nasdaq National Market, the closing price of the Equity Security on such exchange or system on such date or (b) if the Equity Security is not traded on a securities exchange or through the Nasdaq National Market, the value on such date as determined in good faith after consultation with a nationally recognized financial advisor by a majority of the Independent Directors.

(viii) "Indebtedness" of any Person means, without duplication, the following, (a) all Obligations of such Person for borrowed money, (b) all Obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all Obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable or accruals arising in the ordinary course of business, (d) all Obligations of such Person in respect of any capital lease, (e) all Obligations of such Person to repurchase or redeem equity securities, whether or not pursuant to the terms thereof, other than the Put and except to the extent such Obligations are payable solely in the form of other equity securities, and (f) all Obligations of such Person with respect to any financial hedging arrangements. For purposes of this definition, "Obligations" shall mean any principal, interest, penalties, fees, guarantees, reimbursements, damages, costs of unwinding and other liabilities payable under the documentation governing any Indebtedness.

(ix) "Initial Offering" means the closing of the Company's sale of its securities pursuant to a bona fide, firmly underwritten public offering of shares of Common Stock, registered under the Securities Act.

(x) "Law" means any law, statute, rule, regulation, ordinance and other pronouncement having the binding effect of any court, tribunal, arbitrator, agency, legislative body, commission, official or other instrumentality of (x) any government of any country, (y) a federal, state, province, county, city or other political subdivision thereof or (z) any supranational body.

(xi) "Permitted Indebtedness" means any Indebtedness of the Company that is issued prior to the Call/Put Termination Date and in an amount equal to or less than $100 million; *provided*, *however*, if such indebtedness may be convertible or exchangeable into Voting Stock, the terms of such indebtedness shall provide that any such conversion or exchange may not occur prior to the Call/Put Termination Date.

(xii) "Person" means any natural person, corporation, general partnership, limited partnership, limited liability company, joint venture, proprietorship or other business organization.

(xiii) "Put" shall have the meaning set forth in Section 5 of Article IV of the Certificate of Incorporation.

(xiv) "Rights Plan" means any rights plan adopted by the Company that has the effect (or similar effect) of providing, upon the acquisition of a specified percentage of Voting Stock by a third party without the approval of the Board, stockholders (other than such acquiring party) the right to acquire Voting Stock of the Company in a manner designed to significantly dilute the ownership stake of such acquiring party.

(b) The following terms shall have the meanings defined for such terms in the Sections of this Agreement set forth below:

Term	Section
Agreement	Preamble
Alliance Agreement	Recitals
Board	1.1(a)
Certificate of Incorporation	1.1(a)
Common Stock	Recitals
Class A Stock Purchase Agreement	Recitals
Collaboration Agreement	2.1(a)(iv)
Company	Preamble
DGCL	2.1(e)
Depositary	3.1(a)
End of the Equity Limitation Period	1.6(b)
Equity Security	1.5(a)(iii)
Exchange Act	2.1(a)(i)
Glaxo Parties	6.6
GSK	Preamble
GSK Directors	1.2(a)
GSK Independent Nominees	1.2(b)
GSK's Percentage Interest	1.2(b)
HSR Act	3.5
Independent Directors	1.2(a)
Initial Offering	2.1(b)(v)
Investors' Rights Agreement	2.1(b)(iv)
Non-GSK Directors	1.2(b)
Call Date	3.1(a)
SEC	2.1(a)(ii)
Securities Act	2.2(b)(ii)
Third Party Acquiror	2.1(c)
Voting Stock	1.5(a)(iii)

SECTION 6.11. *Captions*. The captions, headings and arrangements used in this Agreement are for convenience only and do not in any way limit or amplify the terms and provisions hereof.

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

THERAVANCE, INC.

By: /s/ RICK E WINNINGHAM

Name: Rick E Winningham

Title: Chief Executive Officer

SMITHKLINE BEECHAM CORPORATION

By: /s/ DONALD F. PARMAN

Name: Donald F. Parman

Title: Vice President & Secretary

GLAXOSMITHKLINE plc
[solely with respect to Articles III, IV and VI]

By: /s/ GLAXOSMITHKLINE PLC

Name:

Title:

GLAXO GROUP LIMITED
[solely with respect to Articles II, IV and VI]

By: /s/ GLAXO GROUP LIMITED

Name:

Title:

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

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Exhibit 10.16

License Agreement

executed as of the date last below written (hereinafter referred to as "Effective Date") by and between

JANSSEN PHARMACEUTICA, Naamloze Vennootschap, a business corporation organized under the laws of Belgium, entered in the Trade Register of Turnhout under Nr. 4203, having its principal office at B-2340 Beerse (Belgium), Turnhoutseweg 30, facsimile: +32 14 602 443 (hereinafter referred to as "JANSSEN")

and

Theravance, INC., a businesses corporation organized under the laws of Delaware, United States of America, and having its principal office at South San Francisco, CA 94080, 901 Gateway Boulevard, facsimile: +1650-808-6095 (hereinafter referred to as "THERAVANCE")

WITNESSETH

WHEREAS, JANSSEN has developed through its research a drug delivery system on the basis of [*]; and

WHEREAS, JANSSEN has accumulated and is the owner of certain proprietary information in connection with the use of hydroxypropyl-beta-cyclodextrin ("HPBCD") in pharmaceutical applications; and

WHEREAS, JANSSEN owns or controls certain patent and/or patent applications in connection with the use of HPBCD in pharmaceutical applications; and

WHEREAS, THERAVANCE intends [*], and has requested a license from JANSSEN under the above-mentioned patents and proprietary information for said purpose; and

WHEREAS, JANSSEN is willing to grant such a license under the terms and conditions set forth hereinafter.

NOW, THEREFORE, in consideration of the premises, mutual covenants and obligations herein contained, it is agreed by and between the parties hereto as follows

Article 1: Definitions

Each term defined below shall, for the purpose of this Agreement, have the following meaning unless the context clearly requires otherwise and the singular shall include the plural and vice versa:

1.1 "Affiliate" of a party to this Agreement shall mean any company which owns or controls at least forty per cent (40%) of the voting stock of such party or any other company at least forty per cent (40%) of whose voting stock is owned by or controlled by such owning or controlling company or by a party to this Agreement.

1.2 "Field" shall mean [*].

1.3 "HPBCD" shall mean [*].

1.4 "Know-How" shall mean [*]. Know-How shall include but shall not be limited to [*], all as indicated in Exhibit II hereto and made a part hereof.

1.5 "Major Countries" shall mean any or all of the following: [*].

1.6 "Net Sales" shall mean [*], less:

(a) Customary trade, quantity, or cash discounts and non-affiliated brokers' or agents' commissions actually allowed and taken, discounts, refunds, chargebacks, retroactive price adjustments, rebates, including but not limited to government mandated rebates, and any other allowances which effectively reduce the net selling price;

(b) Amounts repaid or credited by reason of rejections or return; and/or

(c) Any freight or other transportation costs, insurance charges, duties, tariffs and all sales and excise taxes based directly on sales or turnover or delivery or use of material produced under this Agreement and/or

(d) Any other similar and customary deductions (as defined and accepted by generally accepted accounting principles ("GAAP")), actually incurred.

Net Sales shall not include sales of Product by THERAVANCE to its sub-licensees.

1.7 "Patents" shall mean the patents and patent applications owned or controlled (including patents that can be sublicensed) by JANSSEN or by any JANSSEN Affiliate claiming the use of HPBCD in pharmaceutical applications, including any continuations, continuations-in-part, divisions, reissues, renewals or extensions thereof or any supplementary protection certificate granted on the basis of the marketing authorisations obtained by THERAVANCE for the Product. An updated list of the Patents is attached hereto as Exhibit 1.

1.8 "Process Patents" shall mean [*], including any extensions thereof or any supplementary protection certificate relating thereto or any other patent or patent application hereafter acquired by JANSSEN under which JANSSEN is licensed with the right to sub-license and [*].

1.9 "Product" shall mean any pharmaceutical product in finished dosage form containing [*].

1.10 "Specifications" shall mean the basic specifications of HPBCD described in Exhibit III hereto and made a part hereof.

1.11 "Territory" shall mean [*].

1.12 "Valid Claim" shall mean a claim in a Patent which has not lapsed or become abandoned and which claim has not been declared invalid or that has not been finally rejected by a court of competent jurisdiction or a patent authority such as the European Patent Office or which has not been admitted to be invalid or unenforceable through reissue or disclaimer.

Article 2: Grant

2.1 Subject to the terms and conditions of this Agreement, JANSSEN hereby grants THERAVANCE a world-wide sole license in the Field under the Patents (i.e. "sole license" means JANSSEN solely retains the right to practice under the Patents in the Field without the right to transfer, other than to an Affiliate, any rights under the Patents in the Field and THERAVANCE has an exclusive license under the Patents in the Field subject only to JANSSEN's retained right) and a world-wide sole license in the Field under the Know-How for the sole purpose of developing, registering, making, having made, using and selling the Products and a non-exclusive license under the Process Patents for the sole purpose of making or having HPBCD made for the benefit of THERAVANCE, THERAVANCE's Affiliates or THERAVANCE's sublicensees for the Product in accordance with Article 5 below.

[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

2.2 Promptly following the Effective Date, and thereafter during the term of this Agreement, JANSSEN shall disclose the Know-How to THERAVANCE or to regulatory agencies as THERAVANCE deems necessary for the exercise of its rights hereunder.

2.3 All rights herein granted, are personal to THERAVANCE and are indivisible and non-transferable, subject to Article 2.4 below, except that the rights granted to THERAVANCE may be exercised by any of THERAVANCE's Affiliates.

2.4 THERAVANCE will be entitled to grant sublicenses for the Product to third parties. THERAVANCE will notify JANSSEN of any third party so sublicensed by THERAVANCE. THERAVANCE shall procure that any such third party so sublicensed will abide by the obligations of this Agreement. In the event such a sublicense pertains to one or more Major Countries, THERAVANCE shall require Janssen's prior written approval, such approval not to be unreasonably withheld.

2.5 THERAVANCE acknowledges JANSSEN's representation that, depending on the nature and scope of the responsibilities sublicensed to such a third party in the United States, it may be necessary for JANSSEN to consult with the Public Health Services Office of Technology ("OTT") further to an agreement entered into between Janssen and OTT on March 26, 1998 ("OTT Agreement").

Article 3: Royalties—Milestone payments

3.1 In consideration of the rights and licenses granted by JANSSEN to THERAVANCE, THERAVANCE agrees to pay a royalty of [*].

3.2 THERAVANCE's obligation to pay Patent royalties hereunder will remain in effect on a country-by-country basis until [*].

THERAVANCE's obligation to pay Know-How royalties shall remain in effect for a period of [*]. No further Know-How royalties shall be payable after the expiry of [*].

Notwithstanding the above, it is understood that the combined Patent and Know-How royalties payable by THERAVANCE shall amount to no less than [*].

3.3 In consideration of the rights and licenses granted hereunder, THERAVANCE agrees to pay milestone payments to JANSSEN in accordance with the following schedule:

— [*] shall be paid within thirty (30) days following the execution of this Agreement;

— [*] shall be paid within thirty (30) days following [*];

— [*] shall be paid within thirty (30) days following [*];

— [*] shall be paid within thirty (30) days following [*].

The foregoing milestone payments are non-refundable and not creditable against future royalties. In the event that the Product fails at any stage prior to any of the above milestone payments becoming due, such remaining milestone payments shall be payable if the failed Product is replaced by THERAVANCE with a back-up compound in the Field which requires HPBCD for its development and/or commercialisation.

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Article 4: Sales and Royalty Reports—Royalty Payments

4.1 Ninety (90) days following each calendar quarter, THERAVANCE shall submit to JANSSEN a sales report showing its total sales of Product in Territory in units and Net Sales value. Such sales report shall also include a royalty report containing a calculation of the royalty due and payable to JANSSEN.

4.2 Together with such royalty report, THERAVANCE shall pay the royalty due and payable. All royalty payments to be made by THERAVANCE to JANSSEN shall be converted into US Dollars at the average rate of exchange for the calendar quarter for which royalty payments are being remitted according to THERAVANCE's normal procedures, as consistently applied by THERAVANCE for its other products.

All payments shall be made by wire transfer to a designated JANSSEN account within ninety (90) days following the end of each calendar quarter. In the event that royalties are payable with respect to Net Sales in a country whose currency cannot be freely converted, such currency shall be converted in accordance with the normal procedures consistently applied by THERAVANCE

4.3 Any income or other taxes which THERAVANCE is required by law to pay or withhold on behalf of JANSSEN with respect to milestones or royalties payable to JANSSEN under this Agreement shall be deducted from the amount due. THERAVANCE shall furnish JANSSEN with proof of such payments. Any such tax required to be paid or withheld shall be an expense of and borne solely by JANSSEN. THERAVANCE shall provide JANSSEN with a certificate or other documentary evidence to enable JANSSEN to support a claim for a refund or a foreign tax credit with respect to any such tax so withheld or deducted by THERAVANCE.

4.4 THERAVANCE shall keep true and accurate books clearly specifying its sales per country of Territory in Net Sales value as well as in units sold for the purpose of making such reports.

JANSSEN shall have the right to nominate an independent certified public accountant acceptable to and approved by THERAVANCE who shall have access, on reasonable notice, to THERAVANCE and its Affiliates' records during reasonable business hours for the purpose of verifying the royalties payable as provided in this Agreement for the two preceding years. This right may not be exercised more than once in any calendar year, and once a calendar year is audited it may not be re-audited. The said accountant shall disclose to JANSSEN only information for the purpose of verifying the accuracy of the royalty report and the royalty payments made according to this Agreement.

Any adjustment required by such audit shall be made within thirty (30) days of the determination by the accountants. If the adjustment payable to JANSSEN is greater than [*], then the cost to JANSSEN for the audit shall be paid by THERAVANCE.

Article 5: Supply of HPBCD

5.1 In order to be assured of a source being able to supply constant standard quality of pharmaceutical grade HPBCD complying with the Specifications and the toxicological and pharmacokinetic data contained in JANSSEN's Know-How, JANSSEN has entered into an agreement with ROQUETTE FRERES a manufacturer of cyclodextrins which agreement provides that HPBCD produced by ROQUETTE FRERES shall comply with the Specifications. The data contained within the JANSSEN Know-How have been validated utilising HPBCD supplied by the said supplier.

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5.2 It will be the responsibility of THERAVANCE to procure supplies of HPBCD either from ROQUETTE FRERES or from an alternative supplier under terms and conditions to be agreed separately with such supplier, provided that, at THERAVANCE's request, JANSSEN shall assist THERAVANCE in its negotiations with ROQUETTE FRERES regarding the terms and conditions of supply of HPBCD. If despite good faith efforts ROQUETTES FRERES and THERAVANCE would be unable to enter into a supply agreement, THERAVANCE and JANSSEN will meet following THERAVANCE's request to discuss in good faith potential course of action, including the use of alternative suppliers. It is understood by THERAVANCE that to the extent it wants to utilise an alternative supplier, JANSSEN can not provide a guarantee that such supplier is capable of supplying pharmaceutical grade HPBCD nor that the specifications of such alternative supplier would comply with the data contained within the JANSSEN Know-How.

Article 6: Warranties

6.1 JANSSEN represents and warrants to the best of its knowledge, that as of the date hereof it has title to and ownership of the Patents and Know-How.

6.2 JANSSEN makes no representation or warranty, express or implied, that the use of HPBCD shall eventually result in marketable Product. No further statement of warranty covering HPBCD shall be binding on JANSSEN without the written consent of an authorised officer of JANSSEN.

6.3 Each party further warrants that it has the right to enter into this Agreement and that it is under no obligation to any third party, express or implied, conflicting with the terms and conditions of this Agreement.

6.4 Nothing in this Agreement shall be considered as a warranty, either express or implied, that the use of HPBCD in Products will not infringe any third party's patent rights.

Article 7: Product liability

7.1 THERAVANCE agrees to indemnify and hold JANSSEN harmless from and against all claims, actions, direct damages, losses, costs and expenses of any kind resulting from or arising out of claims by third parties based on product liability or similar theories relating to the development, manufacturing, transportation, storage, promotion or sale of the Product, except to the extent such losses arose or resulted from faulty conduct or negligence by JANSSEN in supplying the Know-How and so long as (i) JANSSEN allows THERAVANCE to participate in or, at THERAVANCE's sole option but without any obligation, to conduct at THERAVANCE's expense the defense of a claim or action for which indemnification is sought under this Article, and (ii) JANSSEN does not compromise or settle such claim or action without THERAVANCE's prior written consent, which shall not be unreasonably withheld.

7.2 In no event shall THERAVANCE be liable for any consequential or indirect damage of JANSSEN whatsoever.

Article 8: Patent Infringement

8.1 If either party learns of an infringement of a Patent by a third party, using HPBCD in the promotion or sale of a product substantially similar to a Product, the party learning of the alleged infringement shall promptly inform the other party.

8.1.1 In case of such an infringement, JANSSEN shall have the right (but not the obligation), in its own name and at its own cost, to either bring an enforcement action to stop the alleged infringement or settle with the alleged infringer; provided, however, that no such settlement shall diminish or otherwise affect THERAVANCE's rights hereunder, unless THERAVANCE gives its prior written consent. THERAVANCE will give reasonable assistance to JANSSEN in such action against a third

party, including making available to JANSSEN records, information and evidence relevant to the infringement and, if necessary, being named a party in such action.

All sums awarded or received in settlement of such suit shall be equally divided between JANSSEN and THERAVANCE, after having reimbursed both parties for all reasonable out of pocket expenses incurred in bringing or assisting in such action.

8.1.2 Whenever JANSSEN elects not to take action against such infringement within a reasonable period of time not to exceed three (3) months THERAVANCE will have the right but not the obligation to take action in its own name, at its own expense and by counsel of its own choice.

JANSSEN will give all reasonable assistance in taking such action, including being a named party and making available to THERAVANCE records, information and evidence relevant to the infringement. THERAVANCE will be entitled to all recovery monies awarded or received in settlement of such suit. Any out of pocket expenses incurred by JANSSEN in assisting THERAVANCE in such action will be reimbursed by THERAVANCE out of the recovery monies awarded or received.

Whenever THERAVANCE so elects to take action JANSSEN will at any time be entitled to be represented in such action at its own cost and by counsel of its own choice.

THERAVANCE will in no event settle or consent to a judgement or other final disposition of a suit without the prior written approval of JANSSEN, which shall not unreasonably be withheld. Furthermore, whenever during such action, the infringing party would invoke a declaration of invalidity of the Patents, JANSSEN will be entitled to take over the direction of the suit.

8.1.3 In the event that all of the claims included within the Patents under which THERAVANCE is developing, registering, or selling the Product shall be held invalid or not infringed by a court of competent jurisdiction, whether or not there is a conflicting decision by another court of jurisdiction, THERAVANCE may pay the royalties which would have otherwise been due under the Patent on sales covered by such claims into an escrow account until such judgement shall be finally reversed by an unappealed or unappealable decree of a court of competent jurisdiction of higher authority, in which event royalty payments shall be resumed and the full amount in escrow shall become due and payable. In the event the judgement is upheld, the full escrow amount will revert to THERAVANCE and no further royalties under the Patents will be due.

8.2 THERAVANCE shall be responsible at its own cost and responsibility to defend against any claim or allegation that the development, manufacturing or commercialisation of the Product infringes a third party patent.

Article 9: Regulatory Matters

9.1 THERAVANCE shall be responsible at its own cost to file and maintain the marketing authorisation applications in connection with Product and in general to procure any license, registration or approval required to use HPBCD in the import, manufacture and sale of the Product in any country of Territory where THERAVANCE decides to commercialise Product.

All scientific and technical data, information and knowledge developed by THERAVANCE with respect to the Product, including the registration file shall be exclusively owned by THERAVANCE and JANSSEN shall have no right to use such THERAVANCE's information.

9.2 JANSSEN shall reasonably assist THERAVANCE whenever the regulatory authorities in any country of the Territory have questions in relation to HPBCD and the use thereof in pharmaceutical applications. Any request for additional information specifically related to HPBCD shall be referred to JANSSEN and JANSSEN shall use reasonable efforts to address the same in

due time in consultation with THERAVANCE. To the extent necessary representatives of both parties will meet to discuss any such requests.

Article 10: Adverse Drug Reporting

Each party will notify the other in writing of any adverse drug reaction or other unusual physiochemical, pharmacologic, toxicological or pharmacokinetic finding in relation to the use of HPBCD in the Product including, without limitation, any experimental or clinical use. The parties will establish a standard operating procedure in relation to ADE-reporting.

Article 11: Commercialisation

All business decisions, including but not limited to the selection of the trademark(s) for Product, pricing, reimbursement, package design, sales and promotional activities and the decision to launch or continue to market a Product in a particular country in the Territory, shall be within the sole discretion and responsibility of THERAVANCE.

Notwithstanding the above it is agreed that THERAVANCE shall otherwise use reasonable efforts consistent with its normal business practices to market and promote Product. In doing so it will use the same level of effort as with its other, similar products of similar sales potential. Failure to use reasonable efforts as qualified herein can be considered a material breach in accordance with the provisions of Article 14.1.

Article 12: Confidentiality—Limitations on Use

12.1 Neither party shall disclose proprietary or confidential information of the other party to any third party without prior written consent of the other party, except and to the extent as required by law, including without limitation to governmental regulatory agencies, and is thereafter publicly disclosed or made available to the public by operation of law, or except that any of such confidential and proprietary information can be shown by the receiving party's written records:

(i) to be in its possession or in the possession of its employees prior to such disclosure to the receiving party; or

(ii) is now or hereafter becomes available as public knowledge or literature through no fault of the receiving party; or

(iii) is received by such party from an independent third party who did not receive the information directly or indirectly from the other party.

Such proprietary and confidential information shall be disclosed to each party's personnel only on a strict need-to-know basis.

The obligation of confidentiality contained in this Article, shall survive the expiration and/or termination of this Agreement for [*].

12.2 In the event that THERAVANCE licenses the Product to third parties or otherwise involves third parties in the manufacturing and/or commercialisation of Product and such third party needs to receive certain Know-How, THERAVANCE shall, prior to disclosing any such Know-How enter into a confidentiality undertaking that is essentially similar to the one contained herein and shall in any event provide such Know-How on a strict need-to-know basis.

[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

Article 13: Term

Unless sooner terminated in accordance with the provisions of Article 14, this Agreement shall remain in full force and effect from the Effective Date until [*].

Upon [*], THERAVANCE [*].

Article 14: Termination

14.1 In the event JANSSEN or THERAVANCE or their respective Affiliates (or licensees or distributors in case of THERAVANCE) are in breach of any of the respective obligations and conditions contained in this Agreement the other party shall be entitled to give the party in breach notice requiring it to make good such breach. If such breach constitutes a material breach and is not cured or there is no commencement of cure within sixty (60) days after receipt of such notice, including good faith efforts by senior management of both parties to overcome the issue, the notifying party shall be entitled (without prejudice to any of its other rights conferred on it by this Agreement) to terminate this Agreement by giving a notice to take effect immediately. The right of either party to terminate this Agreement in accordance with this Article 14.1 shall not be affected in any way by its waiver of, or failure to take action with respect to any previous breach.

14.2 In the event that one of the parties hereto shall go into liquidation, a receiver or a trustee be appointed over a significant and/or material property or estate of that party and said receiver or trustee is not removed within sixty (60) days, or the party makes an assignment for the benefit of creditors, and whether any of the aforesaid events be the outcome of the voluntary act of that party, or otherwise, the other party shall be entitled to terminate this Agreement forthwith by giving a written notice to the first party.

14.3 THERAVANCE may terminate this Agreement in its entirety upon [*] written notice to JANSSEN.

Article 15: Effects of Termination

In case of termination of this Agreement in accordance with Article 14 and if there is no good faith dispute between the parties, THERAVANCE shall immediately refrain from formulating and selling or offering for sale Product in Territory and return all proprietary and confidential Know-How and information relative to HPBCD together with all physical embodiments thereof shall be returned to JANSSEN. Furthermore THERAVANCE shall make all payments accrued under this Agreement prior to the effective termination date

Notwithstanding the above, THERAVANCE may reasonably sell out its remaining stock of Product which THERAVANCE has in stock at the moment of termination of this Agreement, provided it shall pay the royalties due and payable on such sales.

Article 16: Force Majeure

Neither party hereto shall be liable to the other party for failure or delay in meeting any obligation hereunder due to circumstances beyond such party's reasonable control such as, but not limited to, strikes, lockouts, acts of God, riots, war, fire, flood, embargoes, failure of power, acts of government or of any agency, provided that the party affected shall immediately inform the other party about the cause of such delay. The party so affected shall use its reasonable efforts to eliminate, cure and overcome any such causes and resume performance of its covenants with all possible speed.

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Article 17: Severability

If any clause or provision of this Agreement or the application of any such clause or provision in a particular context or to a particular situation or circumstance should be held unenforceable or otherwise in conflict with or in violation of any applicable law, by, or as a result of determination of any court, tribunal or authority acting in a judicial capacity of competent jurisdiction, the decision of which is binding upon the parties, the parties agree that such determination shall not affect the validity and application of such clause or provision in contexts, situations or circumstances other than that in or to which it is held unenforceable and shall only apply for those countries of the Territory amenable under the law applied by such tribunal, court or authority.

Parties further agree to replace any clause or provision so held unenforceable in a lawful manner, reflecting to the extent possible, the economic, business and other purposes of the clause or provision held void or unenforceable in such specific contexts, situations or circumstances.

Article 18: General provisions

18.1 No damages shall be owed by either party to the other if this Agreement or any part of it is held invalid or void at any time by virtue of future acts of legislation.

18.2 Neither party shall assign or otherwise dispose of the whole or any part of its rights under this Agreement without the prior written consent of the other party, except that either party may assign this Agreement to one of its Affiliates and except as provided in 18.5.

18.3 Neither party nor its employees or representatives are under any circumstances to be considered as employees or agents or representatives of the other party. Neither party nor its employees have the authority or power to bind the other party or contract in the other party's name.

18.4 Save as required by law, no announcement or circular in connection with the subject matter of this Agreement shall be made by or on behalf of JANSSEN or THERAVANCE without the prior approval of the other party, such approval not to be unreasonably withheld. This Agreement may be filed with regulatory authorities as required by law.

18.5 A change of control of THERAVANCE through a merger, acquisition or sale of substantially all assets (including the assets relating to the development of the Product) shall not by and of itself give rise to the right for JANSSEN to terminate the License, provided always that prior to the closing of any such transaction the acquiring party has agreed in writing to abide by the terms and conditions of the License Agreement.

18.6 No rights are granted by either party to the other except those expressly set forth in this Agreement.

Article 19: Dispute Resolution—Applicable Law

The Parties hereto shall attempt to settle any dispute arising out of or relating to this Agreement in an amicable way. In the event that such attempts should fail, then the Parties can take such actions as are available at law under the laws of the State of New York, United States of America, with venue for any such dispute being New York City, New York..

Article 20: Notices

Any notice required or permitted under this Agreement shall be made in writing either by registered mail or facsimile to the parties at their respective addresses first above written or as subsequently changed by notice duly given.

Notices by registered mail are deemed to be given after three (3) days of mailing. Notices by facsimile shall be deemed to be given one day after the date on which such notice has been given.

Article 21: Headings

The section headings in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, JANSSEN and THERAVANCE have caused this instrument to be executed in duplicate by their respective duly authorised officers.

THERAVANCE, INC.
This 14th day of May, 2002

/s/ BRAD SHAFER

(title) Brad Shafer
Senior Vice President
General Counsel

By /s/ DAVID BRINKLEY

(title) David Brinkley
Senior Vice President
Commercial Development

JANSSEN PHARMACEUTICA N.V.
This 14th day of May 2002

/s/ RIK CARLIER

Rik Carlier
Licensing Director

/s/ GUY VERCAUTEREN

Guy Vercauteren
International Vice President,
Business Development

EXHIBIT I

PATENTS

SCHEDULE A

Hydroxypropyl-ß-cyclodextrin patents (Müller)

[*]

Country	Type	Application Number	Filing Date	Patent Number	Grant Date	Expiry Date	Abandonment Date
[*]	[*]	[*]	[*]	[*]	[*]	[*]	
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[*]=CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

Schedule B

Patents re the manufacture of hydroxypropyl-ß-cyclodextrin

[*]

Country	Type	Application Number	Filing Date	Patent Number	Grant Date	Expiry Date	Abandonment Date
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EXHIBIT II

KNOW-HOW TO BE PROVIDED UPON THE EFFECTIVE DATE

- **Pharmaceutical data**

— Physical, chemical and microbiological specifications + analysis methodology and validation

— Reference substance sample

— Production method with specification of solvents used

— Quality of the starting materials used for the production and controls during production

— Evidence of Chemical Structure:

— Physical and chemical data (solubility,...)

— Impurities (related impurities—residual solvents—inorganic impurities...):

  - Nature
  - Control method and validation
  - Limits

- **Summary of [*].**
- **Summary of [*].**
- **Access to the Drug Master File and/or similar regulatory documents on a need-to-know basis in connection with [*].**

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EXHIBIT III

SPECIFICATIONS

Test description	Specifications	Method
Appearance	[*]	[*]
Identity by IR spectroscopy	[*]	[*]
Identity by Fehling's reagent tests: Determination 1 Determination 2	[*]	[*]
Assay ß-cyclodextrin	[*]	[*]
Relative complexation capacity	[*]	[*]
Molar substitution degree	[*]	[*]
Light absorbing impurities	[*]	[*]
Appearance of solution [*]	[*]	[*]
pH	[*]	[*]
Loss on drying	[*]	[*]
Sulphated ash	[*]	[*]
Reducing Substances	[*]	[*]
Heavy metals	[*]	[*]
Specific optical rotation	[*]	[*]
Total viable aerobic count: Bacteria Fungi and yeasts	[*]	[*]
Pathogens: [*]	[*]	[*]
Bacterial endotoxins	[*]	[*]
Residual solvent: [*]	[*]	[*]
Propylene oxide (if tested)	[*]	[*]

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QuickLinks

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Exhibit 10.17

Advanced Medicine

August 23, 2001

Via Courier

Mr. Rick E Winningham
12 Weatherfield Drive
Newtown, PA 18940

Dear Rick:

On behalf of Advanced Medicine, Inc. (the "Company"), I am pleased to offer you the position of President and Chief Executive Officer. Your starting salary will be $600,000 per year. You will be eligible to receive a bonus up to 50% of your salary, which for the balance of 2001 and for 2002 will be guaranteed. In addition, you will receive a signing bonus upon your first day of employment in the amount of $100,000, which will be grossed up to cover the taxes associated with receiving this bonus. You will be eligible to receive additional bonus compensation based upon extraordinary accomplishments at the discretion of the Board of Directors. You will also be appointed to the Board of Directors of the Company.

Subject to the approval of the Company's Board of Directors, you will be granted options to purchase 1,200,000 shares of Common Stock of the Company at a purchase price of $5.50 per share. Such options will vest over a four-year period after the date of hire at a rate of 25% after the first year and ratably each month thereafter. The options granted to you will be contingent on your execution of the Company's Standard Stock Option Agreement and will be subject to all terms of the Company's 1997 Stock Option Plan. In 2003, you will receive an additional stock option grant for the greater of (i) 100,000 shares or (ii) two times the number of shares under the next highest "follow-on" stock option grant received by any Company employee that year, all on the standard terms and conditions applicable to all such grants made by the Company.

The Company will provide you with short-term rental reimbursement through December 31, 2001, in a reasonable amount to assist you while you locate appropriate permanent housing. The Company will also reimburse you for the reasonable costs associated with moving personal effects to California (including short-term storage costs, if necessary) and will reimburse you for the standard, one-time closing costs incurred by you when you sell your home in Newtown, Pennsylvania and when you purchase your home in California. In addition, the Company will reimburse you for any non-refundable tuition expenses incurred by you relating to your children's Fall 2001 school programs. The above reimbursement payments will be "grossed up" to cover the taxes associated with them.

If by January 1, 2002 you have not sold your Pennsylvania home the Company will continue to reimburse you (on a fully grossed up basis for tax purposes) for your reasonable California rental expense for an additional 3 months, provided you are actively marketing the Pennsylvania home. If by April 1, 2002 you still have not sold your Pennsylvania home, the Company will thereafter continue to reimburse you for 50% of your reasonable rental expense (not grossed up) until the Pennsylvania home is sold, provided you continue to actively market the home. If by January 1, 2002 you have sold your Pennsylvania home but have not yet purchased a California home, the Company will thereafter reimburse you for 50% of your reasonable rental expense (not grossed up) until you purchase a California home. In addition, if you purchase a California home before you sell your Pennsylvania home, the Company will reimburse you for the after-tax cost of your mortgage payments on your Pennsylvania home until you sell your Pennsylvania home or June 30, 2002, whichever date occurs first.

The Company will loan you up to $3.75 million to assist you with the purchase of a home in the Bay Area. This loan will be interest-free and will be secured by a second deed of trust on your home and by a stock pledge agreement relating to your option shares. Fifty percent (50%) of the original principal balance of the loan will be forgiven on the fifth anniversary of your employment with the

Company, and an additional sixteen percent (16%) of the original principal balance of the loan will be forgiven on the seventh anniversary of your employment with the Company. Repayment of the balance of the loan will be required 10 years from the date the loan is made; provided, however, that in the event you sell any of your option shares prior to the 10-year maturity date, you agree to apply 25% of any gain realized on such sale(s) to a reduction in the outstanding principal. If you have not sold your Pennsylvania home when you purchase your California home, the Company will provide you with an interest-free bridge loan in an amount up to the value of the equity in your Pennsylvania home.

Given your concerns about California real estate, the Company will agree to share any realized loss on the sale of your California home $^{50}/_{50}$, provided you remain as an employee of the Company for at least five years. We anticipate that this protection will take the form of a cash payment to you in the amount of 50% of your realized loss, grossed up to cover the taxes associated with such a payment. In return, you agree to share with the Company $^{50}/_{50}$ any gain realized on the sale of your California home. This arrangement will be documented separately once you have purchased a home in California.

If the location of your permanent home in the Bay Area is in Marin County, the Company will, at your request, either provide a car and driver for you or lease a full-size luxury automobile for you.

As a regular employee of Advanced Medicine, Inc., you will be eligible for a number of Company-sponsored benefits. These are described in the Summary Plan Description that you will receive when you begin work; however, they include enrollment in our Aetna PPO or HMO plan and in our Vision and Dental plans for you and your family. The Company also provides life, LTD and AD&D insurance, and you will be able to participate in our 401(k) program. In addition to the Company's generous allotment of standard holidays, you will be eligible for three weeks of paid vacation per year.

Your employment pursuant to this offer is contingent on you executing the Company's standard form of Proprietary Information and Inventions Agreement. Also, the United States Immigration and Naturalization Service requires that employers establish the eligibility of each employee as a U.S. citizen, permanent resident or individual authorized for employment in the United States.

While we hope that your employment with the Company will be mutually satisfactory, employment with Advanced Medicine, Inc. is for no specific period of time. As a result, either you or the Company is free to terminate your employment relationship at any time for any reason, with or without cause. This is the full and complete agreement between us on this term. Although your job duties, title, compensation and benefits, as well as the Company's personnel policies and procedures, may change from time-to-time, the "at-will" nature of your employment may only be changed in an express writing signed by you and the Chairman of the Board of the Company. Notwithstanding the foregoing, if your employment is terminated by the Company without cause, the Company will make a lump sum payment to you (less taxes) of:

(i) 12 months salary plus current target annual bonus if the termination occurs before October 1, 2002; and

(ii) 24 months salary plus 2 times your then current target bonus if the termination occurs on or after October 1, 2002.

For purposes of this provision, a termination "without cause" shall mean termination for any reason *other than*: (i) unauthorized use or disclosure of the confidential information or trade secrets of the Company, which use causes material harm to the Company, (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. You agree, as a condition to receiving the severance payment set forth above, to sign the Company's standard form of Release required of all employees who receive any severance pay.

This letter sets forth the terms of your employment with us and supersedes any prior representations or agreements, whether written or oral. A duplicate original of this offer is enclosed for your records. To accept this offer, please sign and return this letter to me, in which event your

employment will begin on a date mutually agreed to, but no later than October 1, 2001. This offer will expire if not accepted by you before August 24, 2001.

Rick, we look forward to having you join us. If you have any questions, please call me at (908) 658-3108 or (508) 645-5133.

Sincerely,

/s/ P. ROY VAGELOS

P. Roy Vagelos
Chairman of the Board

I have read and accept this employment offer:

/s/ RICK E WINNINGHAM

Rick E Winningham

Date: August , 2001.
8/29/01 Advanced Medicines Inc.

1) The $300,000 annual guaranteed bonus is payable $300,000 in 2001 and $300,000 in 2002.

2) The investment in the house for the purposes of calculating the realized gain or loss will include purchase price plus improvements which increase the cost basis of the house.

QuickLinks

Exhibit 10.18

FULL RECOURSE NOTE
SECURED BY DEED OF TRUST AND STOCK PLEDGE

$3,750,000.00 **July 1, 2002**
South San Francisco, California

FOR VALUE RECEIVED, the undersigned Maker promises to pay to the order of Theravance, Inc. (the "Company"), at its principal offices at 901 Gateway Boulevard, South San Francisco, California 94080, the principal sum of Three Million Seven Hundred Fifty Thousand Dollars ($3,750,000.00), upon the terms and conditions specified below.

1. *Principal.* The entire principal balance of this Note shall be due and payable on July 1, 2012, subject to paragraphs 5 and 10 below.

2. *Interest.* No interest shall accrue on the unpaid principal balance of the Note.

3. *Application of Payment.* Payment shall be made in lawful tender of the United States. Prepayment of the principal balance of this Note may be made in whole or in part at any time without penalty.

4. *Purpose and Security.* The proceeds of the loan evidenced by this Note shall be applied solely to the purchase of the Maker's principal residence in the Town of Hillsborough, County of San Mateo, State of California. Payment of this Note shall be secured by a Deed of Trust on such principal residence, as such residence is more particularly described in Exhibit "A" to the Deed of Trust, a copy of which is attached hereto as Exhibit I. Payment of this Note also shall be secured by a Stock Pledge Agreement to be executed and delivered by Maker covering shares of the Company's Common Stock. Maker, however, shall remain personally liable for payment of this Note, and all assets of the Maker, in addition to the collateral under the Deed of Trust and the Stock Pledge Agreement, may be applied to the satisfaction of the Maker's obligations hereunder.

5. *Events of Acceleration.* The entire unpaid principal balance of this Note shall become immediately due and payable upon any one of the following events:

A. the date thirty (30) days after the Maker ceases to be in service as an employee of the Company if such cessation of service is due to Maker's (i) voluntary resignation or (ii) termination for cause (which for purposes of this Note shall mean (A) the unauthorized use or disclosure of the confidential information or trade secrets of the Company which causes material harm to the Company, (B) conviction of a felony under the laws of the United States or any State thereof, (C) gross misconduct, or (D) repeated failure to perform assigned duties for thirty days after receiving notice from a senior officer of the Company); or

B. the sale, transfer, mortgage, assignment, encumbrance or lease, whether voluntarily or involuntarily or by operation of law or otherwise, of the property covered by the Deed of Trust, or any portion thereof or interest therein, without the prior written consent of the Company; or

C. the insolvency of the Maker, the commission of any act of bankruptcy by the Maker, the execution by the Maker of a general assignment for the benefit of creditors, the filing by or against the Maker of any petition in bankruptcy or any petition for relief under the provisions of the federal bankruptcy act or any other state or federal law for the relief of debtors and the continuation of such petition without dismissal for a period of thirty (30) days or more, the appointment of a receiver or trustee to take possession of any property or assets of the Maker, or the attachment of or execution against any property or assets of the Maker; or

D. the failure of the Maker to execute and deliver to the Company a Deed of Trust on Maker's principal residence within 5 days of a request from the Company; or

E. the sale or other disposition for value by Maker of any of the shares of Common Stock (or other collateral) that secure the repayment of this Note, but only to the extent of 25% of the gain realized by Maker from such sale or disposition (net of commissions). If such proceeds are not sufficient to repay in full the principal and accrued interest under this Note, Maker will execute and deliver a new promissory note to the Company on substantially the same terms as this Note but reflecting the remaining unpaid principal and accrued interest (if any); or

F. the occurrence of any event of default under the Deed of Trust or the Stock Pledge Agreement securing this Note or any obligation secured thereby.

6. *Assignment.* This Note shall be binding on the Maker and his successors, assigns, personal representatives, heirs, and legatees, and shall be binding upon and inure to the benefit of the Company, any future holder of this Note and their respective successors and assigns. The Maker may not assign or transfer this Note or any of his obligations hereunder.

7. *Collection.* If action is instituted to collect this Note, the Maker promises to pay all costs and expenses (including reasonable attorney fees) incurred in connection with such action.

8. *Waiver.* No previous waiver and no failure or delay by the Company in acting with respect to the terms of this Note, the Deed of Trust or the Stock Pledge Agreement shall constitute a waiver of any breach, default, or failure of condition under this Note, the Deed of Trust, the Stock Pledge Agreement or the obligations secured thereby. A waiver of any term of this Note, the Deed of Trust, the Stock Pledge Agreement or of any of the obligations secured thereby must be made in writing and shall be limited to the express terms of such waiver.

The Maker hereby waives presentment, demand for payment, notice of dishonor, default or delinquency, notice of acceleration, notice of protest and non-payment, notice of costs, expenses or losses and interest thereon, notice of interest on interest, and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights or interests in or to properties securing payment of this Note.

9. *Conflicting Agreements.* In the event of any inconsistencies between the terms of this Note and the terms of any other document related to the loan evidenced by the Note, the terms of this Note shall prevail.

10. *Loan Forgiveness.* The principal balance of this Note shall be subject to forgiveness as follows: One Million Eight Hundred Seventy-Five Thousand Dollars ($1,875,000.00) shall be forgiven upon Maker's continuation in employment with the Company through October 1, 2006, and Six Hundred Thousand Dollars ($600,000.00) shall be forgiven upon Maker's continuation in employment with the Company through October 1, 2008.

Maker shall, however, be responsible for the payment of all income and employment withholding taxes applicable to such loan forgiveness and imputed interest and shall make appropriate arrangements with the Company for the satisfaction of such tax liability, if appropriate. In no event shall any portion of this Note which remains outstanding at the time of Maker's cessation of employment with the Company be subject to the loan forgiveness provisions of this Paragraph 10.

11. *Governing Law.* This Note shall be construed in accordance with the laws of the State of California.

/s/ RICK E WINNINGHAM

MAKER: Rick E Winningham

CONSENT OF SPOUSE

To: Theravance, Inc.

I acknowledge that I have been provided copies of the Promissory Note, Deed of Trust and Stock Pledge Agreement each dated as of July , 2002 between Rick E Winningham and Theravance, Inc. (the "Secured Party") any and all related collateral documents and agreements (collectively, the "Collateral Documents"); and that I am familiar with the contents of the Collateral Documents. I acknowledge and agree that any interest I may have, whether direct, community or otherwise, in the property and assets constituting the collateral contemplated by the Collateral Documents (the "Collateral") shall be subject to all of the terms and conditions of the Collateral Documents. Without limiting the generality of the foregoing, I am aware that in the Collateral Documents Rick E Winningham grants to the Secured Party a security interest in the Collateral as security for the obligations referred to in the Collateral Documents. The granting of a security interest in the Collateral includes and encumbers any property interest I may have therein, whether direct, community or otherwise, and I consent to such encumbrance.

I agree that I will not make or cause to be made any transfer of my interest in the Collateral except to the extent expressly permitted by the Collateral Documents.

I further agree that this Consent shall bind my successors, assigns (including, but not limited to, the trustee of any trust), personal representatives, heirs, and legatees.

Dated: July 1, 2002.

/s/ GALE E. WINNINGHAM

Gale E. Winningham

EXHIBIT I

DEED OF TRUST

EXHIBIT A

LEGAL DESCRIPTION OF PRINCIPAL RESIDENCE

The land referred to is situated in the State of California, County of San Mateo, Town of Hillsborough, and is described as follows:

Parcel "C", as delineated upon that certain Map entitled 'PARCEL MAP BEING A RESUBDIVISION OF LOTS 2 AND 3, 'BRIDGE CERRITO,"' filed for record in the Office of the Recorder of the County of San Mateo, State of California, on July 30th, 1974 in Book 25 of Maps, at Page 33.

A.P.N. 032-400-270 J.P.N. 32-40-400-19.04

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Exhibit 10.19

STOCK PLEDGE AGREEMENT

In order to secure payment of the promissory note dated July 1, 2002 (the "Note") payable to Theravance, Inc., a Delaware corporation (the "Company"), at its principal offices in the principal amount of Three Million Seven Hundred and Fifty dollars ($3,750,000.00), which Note the Borrower delivered in connection with a loan extended to the Borrower by the Company, the Borrower hereby grants the Company a security interest in, and assigns, transfers and pledges to the Company, the following securities and other property:

(a) The 1,200,000 shares of the Company's Common Stock (the "Common Stock") issuable upon exercise of outstanding stock options delivered to and deposited with the Company as collateral for the Note; and

(b) Any and all new, additional or different securities or other property subsequently distributed with respect to the shares identified in Subsection (a) above that are to be delivered to and deposited with the Company pursuant to the requirements of Section 3 of this Agreement; and

(c) Any and all other property and money that is delivered to or comes into the possession of the Company pursuant to the terms and provisions of this Agreement; and

(d) The proceeds of any sale, exchange or disposition of the property and securities described in Subsection (a), (b) or (c) above.

All securities, property and money to be assigned to, transferred to and pledged with the Company shall be herein referred to as the "Collateral" and shall be accompanied by one or more stock power assignments properly endorsed by the Borrower. The Company shall hold the Collateral in accordance with the following terms and provisions:

1. **Warranties.** The Borrower hereby warrants that the Borrower is the owner of the Collateral and has the right to pledge the Collateral and that the Collateral is free from all liens, advance claims and other security interests (other than those created hereby).

2. **Rights and Powers.** The Company may, without obligation to do so, exercise one or more of the following rights and powers with respect to the Collateral:

(a) Accept in its discretion, but subject to the applicable limitations of Section 7, other property of the Borrower in exchange for all or part of the Collateral and release Collateral to the Borrower to the extent necessary to effect such exchange, and in such event the money, property or securities received in the exchange shall be held by the Company as substitute security for the Note and all other indebtedness secured hereunder;

(b) Perform such acts as are necessary to preserve and protect the Collateral and the rights, powers and remedies granted with respect to such Collateral by this Agreement; and

(c) Transfer record ownership of the Collateral to the Company or its nominee and receive, endorse and give receipt for, or collect by legal proceedings or otherwise, dividends or other distributions made or paid with respect to the Collateral, but only if there exists at the time an outstanding event of default under Section 8 of this Agreement.

Any action by the Company pursuant to the provisions of this Section 2 may be taken without notice to the Borrower. Expenses reasonably incurred in connection with such action shall be payable by the Borrower and form part of the indebtedness secured hereunder, as provided in Section 10.

So long as there exists no event of default under Section 8 of this Agreement, the Borrower may exercise all stockholder voting rights and be entitled to receive any and all regular cash dividends paid on the Collateral. Accordingly, until such time as an event of default occurs under this Agreement, all

proxy statements and other stockholder materials pertaining to the Collateral shall be delivered to the Borrower at the address indicated below.

Any cash sums that the Company may receive in the exercise of its rights and powers under this Section 2 shall be applied to the payment of the Note and any other indebtedness secured hereunder, in such order of application as the Company deems appropriate. Any remaining cash shall be paid over to the Borrower.

3. **Duty to Deliver.** Any new, additional or different securities that may now or hereafter become distributable with respect to the Collateral by reason of (i) any stock dividend, stock split or reclassification of the capital stock of the Company or (ii) any merger, consolidation or other reorganization affecting the capital structure of the Company shall, upon receipt by the Borrower, be promptly delivered to and deposited with the Company as part of the Collateral hereunder. Such securities shall be accompanied by one or more properly endorsed stock power assignments.

4. **Care of Collateral.** The Company shall exercise reasonable care in the custody and preservation of the Collateral but shall have no obligation to initiate any action with respect to, or otherwise inform the Borrower of, any conversion, call, exchange right, preemptive right, subscription right, purchase offer or other right or privilege relating to or affecting the Collateral; provided, however, that the Company will notify the Borrower of any such rights of the Borrower to protect against adverse claims or to protect the Collateral against the possibility of a decline in market value. The Company shall not be obligated to take any action with respect to the Collateral requested by the Borrower unless the request is made in writing and the Company determines that the requested action will not unreasonably jeopardize the value of the Collateral as security for the Note and other indebtedness secured hereunder.

The Company may at any time release and deliver all or part of the Collateral to the Borrower, and the receipt thereof by the Borrower shall constitute a complete and full acquittance for the Collateral so released and delivered. The Company shall accordingly be discharged from any further liability or responsibility for the Collateral, and the released Collateral shall no longer be subject to the provisions of this Agreement. However, any and all releases of the Collateral shall be effected in compliance with the applicable limitations of Section 7(a) and (c).

5. **Payment of Taxes and Other Charges.** The Borrower shall pay, prior to the delinquency date, all taxes, liens, assessments and other charges against the Collateral, and in the event of the Borrower's failure to do so, the Company may at its election pay any or all of such taxes and charges without contesting the validity or legality thereof. The payments so made shall become part of the indebtedness secured hereunder and, until paid, shall bear interest at the minimum per annum rate, compounded annually, required to avoid the imputation of interest income to the Company and compensation income to the Borrower under the federal tax laws.

6. **Transfer of Collateral.** In connection with the transfer or assignment of the Note (whether by negotiation, discount or otherwise), the Company may transfer all or any part of the Collateral, and the transferee shall thereupon succeed to all the rights, powers and remedies granted the Company hereunder with respect to the Collateral so transferred. Upon such transfer, the Company shall be fully discharged from all liability and responsibility for the transferred Collateral.

7. **Release of Collateral.** Provided (i) all indebtedness secured hereunder (other than payments not yet due and payable under the Note) shall at the time have been paid in full or cancelled and (ii) there does not otherwise exist any event of default under Section 8, the pledged shares of Common Stock, together with any additional Collateral that may hereafter be pledged and deposited hereunder,

shall be released from pledge and returned to the Borrower in accordance with the following provisions:

(a) Upon payment or prepayment of principal under the Note, one or more shares of Common Stock held as Collateral hereunder shall (subject to the limitation of Subsection (d) below) be released to the Borrower within three days after such payment or prepayment. The number of shares to be so released shall be equal to the number obtained by multiplying (i) the total number of shares of Common Stock held under this Agreement at the time of the payment or prepayment by (ii) a fraction, the numerator of which shall be the amount of the principal paid or prepaid and the denominator of which shall be the unpaid principal balance of the Note immediately prior to such payment or prepayment. In no event, however, shall any fractional shares be released.

(b) One or more shares of Common Stock held as Collateral hereunder shall (subject to the limitation of Subsection (d) below) be released to a stockbroker designated in writing by the Borrower and acceptable to the Company for the sole purpose of effecting an immediate sale of the released shares, provided that such stockbroker agrees to forward from the proceeds at least 25% of the gain realized by Borrower (net of commissions) directly to the Company to be used to satisfy the Note.

(c) Any additional Collateral that may hereafter be pledged and deposited with the Company (pursuant to the requirements of Section 3) with respect to the shares of Common Stock pledged hereunder shall be released at the same time the particular shares of Common Stock to which the additional Collateral relates are to be released in accordance with the applicable provisions of Subsection (a) or (b) above. Under no circumstances, however, shall any shares of Common Stock or any other Collateral be released if previously applied to the payment of any indebtedness secured hereunder.

(d) In no event shall any shares of Common Stock be released pursuant to the provisions of Subsections (a), (b) and (c) above if, and to the extent, the fair market value of the Common Stock and all other Collateral that would otherwise remain in pledge hereunder after such release is effected would be less than the unpaid principal balance of the Note.

8. **Events of Default.** The occurrence of one or more of the following events shall constitute an event of default under this Agreement:

(a) The failure of the Borrower to pay the principal when due under the Note;

(b) The failure of the Borrower to perform a material obligation imposed upon the Borrower by reason of this Agreement; or

(c) The breach of any warranty of the Borrower contained in this Agreement.

Upon the occurrence of any such event of default, the Company may, at its election, declare the Note and all other indebtedness secured hereunder to be immediately due and payable and may exercise any or all of the rights and remedies granted to a secured party under the provisions of the California Uniform Commercial Code (as now or hereafter in effect), including (without limitation) the power to dispose of the Collateral by public or private sale or to accept the Collateral in full payment of the Note and all other indebtedness secured hereunder.

Any proceeds realized from the disposition of the Collateral pursuant to the foregoing power of sale shall be applied first to the payment of reasonable expenses incurred by the Company in connection with the disposition, then to the payment of the Note and finally to any other indebtedness secured hereunder. Any surplus proceeds shall be paid over to the Borrower. However, in the event such proceeds prove insufficient to satisfy all obligations of the Borrower under the Note, then the Borrower shall remain personally liable for the resulting deficiency.

9. **Other Remedies.** The rights, powers and remedies granted to the Company and the Borrower pursuant to the provisions of this Agreement shall be in addition to all rights, powers and remedies granted to the Company and the Borrower under any statute or rule of law. Any forbearance, failure or delay by the Company or the Borrower in exercising any right, power or remedy under this Agreement shall not be deemed to be a waiver of such right, power or remedy. Any single or partial exercise of any right, power or remedy under this Agreement shall not preclude the further exercise thereof, and every right, power and remedy of the Company and the Borrower under this Agreement shall continue in full force and effect, unless such right, power or remedy is specifically waived by an instrument executed by the Company or the Borrower, as the case may be.

10. **Costs and Expenses.** All reasonable costs and expenses (including reasonable attorneys fees) incurred by the Company in the exercise or enforcement of any right, power or remedy granted it under this Agreement shall become part of the indebtedness secured hereunder and shall constitute a personal liability of the Borrower payable immediately upon demand and bearing interest until paid at the Company's bank interest rate then being earned by the Company on its deposits.

11. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California and shall be binding upon the executors, administrators, heirs and assigns of the Borrower.

12. **Arbitration.** Any controversy between the parties hereto involving the construction or application of any terms, covenants or conditions of this Agreement or the Note, or any claims arising out of or relating to this Agreement or the Note, or the breach hereof or thereof, will be submitted to and settled by final and binding arbitration in San Francisco, California in accordance with the rules of the American Arbitration Association then in effect, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. In the event of any arbitration under this Agreement or the Note, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees and costs incurred therein or in the enforcement or collection of any judgment or award rendered therein. The "prevailing party" means the party determined by the arbitrator to have most nearly prevailed, even if such party did not prevail in all matters, not necessarily the one in whose favor a judgment is rendered.

13. **Severability.** If any provision of this Agreement is held to be invalid under applicable law, then such provision shall be ineffective only to the extent of such invalidity, and neither the remainder of such provision nor any other provisions of this Agreement shall be affected thereby.

IN WITNESS WHEREOF, this Agreement has been executed by the Borrower on this 1st day of July 2002.

/s/ RICK E WINNINGHAM

Signature of Borrower

Rick E Winningham

Print Name of Borrower

Address: 270 Stonehedge Road
Hillsborough, CA 94010

Agreed to and Accepted by:

ADVANCED MEDICINE, INC.

By: /s/ BRAD SHAFER

Title: Senior Vice President

Dated: July 1, 2002

CONSENT OF SPOUSE

To: Theravance, Inc.

I acknowledge that I have been provided copies of the Promissory Note, Deed of Trust and Stock Pledge Agreement each dated as of July 1, 2002 between Rick E Winningham and Theravance, Inc. (the "Secured Party") any and all related collateral documents and agreements (collectively, the "Collateral Documents"); and that I am familiar with the contents of the Collateral Documents. I acknowledge and agree that any interest I may have, whether direct, community or otherwise, in the property and assets constituting the collateral contemplated by the Collateral Documents (the "Collateral") shall be subject to all of the terms and conditions of the Collateral Documents. Without limiting the generality of the foregoing, I am aware that in the Collateral Documents Rick E Winningham grants to the Secured Party a security interest in the Collateral as security for the obligations referred to in the Collateral Documents. The granting of a security interest in the Collateral includes and encumbers any property interest I may have therein, whether direct, community or otherwise, and I consent to such encumbrance.

I agree that I will not make or cause to be made any transfer of my interest in the Collateral except to the extent expressly permitted by the Collateral Documents.

I further agree that this Consent shall bind my successors, assigns (including, but not limited to, the trustee of any trust), personal representatives, heirs, and legatees.

Dated: July 1, 2002.

/s/ GALE E. WINNINGHAM

Gale E. Winningham

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Exhibit 10.20

June 4, 2004

CONFIDENTIAL

Mr. Rick E Winningham
270 Stonehedge Road
Hillsborough, CA 94010

Dear Rick:

The Board of Directors of Theravance, Inc. (the "Company") has approved the following arrangement for you at its meeting on May 27, 2004. If you agree to the terms set forth herein, please sign below.

On December 28, 2001, we granted you an option to purchase 1,181,819 shares of our common stock at an exercise price of $5.50 per share (the "First Option"). You are vested as of June 4, 2004 in 782,954 of the shares purchasable under the First Option. On December 28, 2001, we granted you an option to purchase 18,181 shares of our common stock at an exercise price of $5.50 per share (the "Second Option" and together with the First Option, the "Options"). You are vested as of May 1, 2004 in 12,045 of the shares purchasable under the Second Option. On July 1, 2002, we loaned you $3,750,000 pursuant to the terms of a promissory note (the "Note"), a stock pledge agreement pursuant to which you agreed to pledge the shares purchasable under the Options as security for the Note (the "Stock Pledge Agreement"), and a deed of trust covering your residence located at 270 Stonehedge Road, Hillsborough, California 94010 (the "Deed of Trust" and together with the Note and Stock Pledge Agreement, the "Loan Documents"). On May 11, 2004, you entered into a Lock-Up Agreement by and among the Company, SmithKline Beecham Corporation (the "Lock-Up Agreement") pursuant to which you agreed to lockup certain shares you have the right to purchase under Company options.

In consideration for your entering into the Lock-Up Agreement and of the services you have provided to date as well as the promises set forth herein, we agree to forgive the loan in full and to pay you a bonus to assist you in paying the Federal and state income and employment taxes you will incur upon the Note being forgiven (the "Tax Bonus"). The Tax Bonus shall be calculated as follows: At the Effective Date (as defined below), the Company will calculate the income and withholding taxes due immediately to the state and Federal tax authorities and that amount will be remitted on your behalf at the time the Company is required to remit to the appropriate tax authorities. To the extent that you incur income or employment taxes in excess of the withholding taxes paid on your behalf, the Company will pay you an additional amount equal to the additional taxes owed on or about April 15, 2005, whether or not you are employed by the Company on that date. The additional portion of the Tax Bonus will be calculated using your actual tax rate, taking into account your actual income and actual deductions for the year. You agree to provide sufficient information to the Company to enable it to calculate your actual tax rate.

The loan shall be considered extinguished on the date that this letter Agreement is fully executed by you and the Company and such date shall be referred to as the Effective Date. Upon the Effective Date, we will return the Note and Stock Pledge Agreement to you, marked cancelled, and we will file a notice of reconveyance with the County of San Mateo to remove the Deed of Trust that we have recorded on your principal residence.

In consideration of the promises set forth herein, you and the Company agree to subject 200,000 of the shares (the "Escrow Shares") purchasable under the First Option to an escrow as of the Effective Date. Should you exercise the First Option, then you agree to deposit up to 200,000 of the shares you acquire on exercise into escrow with the Company's outside counsel serving as escrow agent, to be held until the shares are released or forfeited under the schedule set forth below. No shares need to be deposited in escrow if each time you exercise the First Option the number of vested and unexercised shares remaining under the First Option is equal to or greater than 200,000 (or such lesser

number of shares as is then subject to the escrow obligation). If you exercise the First Option and the number of vested and unexercised shares remaining is less than 200,000 (or such lesser number of shares as is then subject to the escrow obligation), then you agree to deposit a number of exercised shares that when added to the number of vested and unexercised shares remaining under the First Option equals 200,000 (or such lesser number of shares as is then subject to the escrow obligation). The shares under the First Option and Second Option shall vest at the same time they would have under the First Option and Second Option without regard to this Agreement. Should you leave our employ due to voluntary resignation or a termination by us for Cause, then you will forfeit any shares deposited into escrow and not yet released. We will release these 200,000 shares from escrow over the following periods provided you are employed on each applicable date: 25% on December 31, 2005, 25% on December 31, 2006, and the balance on September 7, 2007 and will release the shares immediately should you die or leave our employ due to disability or termination by us without Cause. If at the time of forfeiture you have not deposited any shares into escrow, then the forfeiture shall be effected by reducing the number of shares purchasable under the First Option by the applicable number of forfeited shares. All share numbers in this letter Agreement shall be adjusted for stock splits and other adjustments pursuant to Section 8 of the Company's 1997 Stock Plan.

For purposes of this provision, a termination "without Cause" shall mean termination for any reason *other than*: (i) unauthorized use or disclosure of the confidential information or trade secrets of the Company, which use causes material harm to the Company, (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.

You and the Company entered into an equity sharing arrangement covering your residence located at 270 Stonehedge Road, Hillsborough, California 94010 as set forth in your employment offer letter dated August 23, 2001 (the "Equity Sharing Arrangement"). In consideration of the promises set forth herein, you and the Company agree to terminate the Equity Sharing Arrangement on the Effective Date.

This Agreement shall be binding upon the Company, its successors and assigns and shall be construed and interpreted under the laws of the State of California. This letter Agreement supersedes all prior agreements between you and the Company relating to the Loan Documents and the Equity Sharing Arrangement. However, your employment offer letter dated August 23, 2001 shall remain in full force and effect except to the extent necessary to give effect to this Agreement.

Please indicate your acceptance of the foregoing by signing the enclosed copy of this letter Agreement and returning it to the Company.

Sincerely,

/s/ P. ROY VAGELOS

P. Roy Vagelos
Chairman of the Board of Directors

Accepted and agreed to:

/s/ RICK E WINNINGHAM

Rick E Winningham
Date:

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Exhibit 10.21

Revised Offer

April 6, 2001

Patrick P.A. Humphrey, Ph.D., D.Sc.
Arcadia House
Church Lane
Wrestlingworth
Bedfordshire
SG19 2EU
United Kingdom

Dear Pat:

On behalf of Advanced Medicine, Inc. (the "Company"), I am pleased to offer you the position of Senior Vice President of Research at a starting salary of $275,000 per year. You will be eligible to receive a bonus up to 30% of your salary, which for the first year of your employment will be guaranteed. In addition, you will receive a signing bonus upon your first day of employment in the amount of $75,000, less applicable taxes. Until April 2002 you will report to Burt Christensen, our current Executive Vice President of Research. Upon Burt's resignation on or before April 2002, and assuming satisfactory performance by you, it is expected that you would be promoted to Executive Vice President of Research and you would then report to the President and Chief Executive Officer.

Subject to the approval of the Company's Board of Directors, you will be granted options to purchase 300,000 shares of Common Stock of the Company at a purchase price determined at the Board meeting following your date of hire. The current purchase price for options is $5.50 per share, and I anticipate that would be the purchase price for any options granted in the next three months. Such options will vest over a four-year period after the date of hire at a rate of 25% after the first year and ratably each month thereafter. The options granted to you will be contingent on your execution of the Company's Standard Stock Option Agreement and will be subject to all terms of the Company's 1997 Stock Option Plan.

The Company will pay for 50% of the rental cost of local Bay Area housing for you. In addition, the Company will provide you with three months of temporary living expenses (rent and auto expense) to assist you while you locate appropriate permanent rental housing. The Company will also reimburse you for the reasonable costs associated with moving personal effects to California. You will be responsible for the taxes associated with the rental assistance, temporary living and moving expenses. Should you instead decide to purchase a home, the Company will, at your election, loan you up to $1 million to assist you with this purchase. The loan will be interest free and secured by (i) a first priority deed of trust and (ii) any shares of Company Common Stock purchased by you upon exercise of your options. The loan would be due at the earlier to occur of (i) your receipt of first proceeds from any sale of your Company Common Stock, or (ii) the tenth anniversary of the loan.

We will review any potential tax consequences to you of starting work at the Company prior to July 1, 2001 relating to your severance payments from Glaxo. Based on that review we will reach mutual agreement on the level of service to be provided to the Company prior to July 1, 2001 and/or how much "tax protection" the Company will provide to you.

As a regular employee of Advanced Medicine, Inc., you will be eligible for a number of Company-sponsored benefits. These are described in the Summary Plan Description that you will receive when you begin work; however, they include enrollment in our Aetna PPO or HMO plan and in our Vision and Dental plans for you and your family. The Company also provides life, LTD and AD&D insurance, and you will be able to participate in our 401(k) program. In addition to the Company's generous allotment of standard holidays, you will be eligible for three weeks of paid vacation per year.

Your employment pursuant to this offer is contingent on you executing the Company's standard form of Proprietary Information and Inventions Agreement. Also, the United States Immigration and Naturalization Service requires that employers establish the eligibility of each employee as a U.S. citizen, permanent resident or individual authorized for employment in the United States. The Company will sponsor you for an H1-B visa upon acceptance of this offer.

While we hope that your employment with the Company will be mutually satisfactory, employment with Advanced Medicine, Inc. is for no specific period of time. As a result, either you or the Company is free to terminate your employment relationship at any time for any reason, with or without cause. This is the full and complete agreement between us on this term. Although your job duties, title, compensation and benefits, as well as the Company's personnel policies and procedures, may change from time-to-time, the "at-will" nature of your employment may only be changed in an express writing signed by you and the Chairman of the Board or the President of the Company.

Until you begin employment with the Company we are willing to offer you a short-term consulting arrangement with us upon the terms of the Consulting Agreement enclosed with this letter. This Agreement provides that we would pay you a consulting fee of $1,000 per day for services provided to the Company while you are at the Company's offices between the date of this letter and your employment start date. The Company will also pay for your reasonable living and transportation expenses during the term of your consultancy.

This letter sets forth the terms of your employment with us and supersedes any prior representations or agreements, whether written or oral. A duplicate original of this offer is enclosed for your records. To accept this offer, please sign and return this letter to me, in which event your employment will begin on a date mutually agreed to, but no later than July 1, 2001. This offer will expire if not accepted by you before April 13, 2001.

Pat, we look forward to having you join us. If you have any questions, please call me at (908) 658-3108.

Sincerely,

/s/ P. ROY VAGELOS

P. Roy Vagelos
Chairman of the Board

I have read and accept this employment offer.

/s/ PATRICK P.A. HUMPHREY

Patrick P.A. Humphrey

Date:

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Exhibit 10.22

FULL RECOURSE NOTE SECURED BY
DEED OF TRUST AND STOCK PLEDGE

$1,000,000.00 **February 27, 2002**
South San Francisco, California

FOR VALUE RECEIVED, the undersigned Maker promises to pay to the order of Advanced Medicine, Inc. (the "Company"), at its principal offices at 901 Gateway Boulevard, South San Francisco, California 94080, the principal sum of One Million Dollars ($1,000,000.00) upon the terms and conditions specified below.

1. *Principal.* The entire principal balance of this Note shall be due and payable on February 27, 2012, subject to paragraph 5 below.

2. *Interest.* No interest shall accrue on the unpaid principal balance of the Note.

3. *Application of Payment.* Payment shall be made in lawful tender of the United States and shall be applied first to any accrued and unpaid interest on this Note and the balance to principal. Prepayment of the principal balance of this Note, together with any accrued and unpaid interest, may be made in whole or in part at any time without penalty.

4. *Purpose and Security.* The proceeds of the loan evidenced by this Note shall be applied solely to the purchase of the Maker's principal residence in the Town of Burlingame, County of San Mateo, State of California. Payment of this Note shall be secured by a Deed of Trust on such principal residence, as such residence is more particularly described in Exhibit "A" to the Deed of Trust, a copy of which is attached hereto as Exhibit I. Payment of this Note also shall be secured by a Stock Pledge Agreement to be executed and delivered by Maker covering shares of the Company's Common Stock. Maker, however, shall remain personally liable for payment of this Note, and all assets of the Maker, in addition to the collateral under the Deed of Trust and the Stock Pledge Agreement, may be applied to the satisfaction of the Maker's obligations hereunder.

5. *Events of Acceleration.* The entire unpaid principal balance of this Note shall become immediately due and payable upon any one of the following events:

A. the date thirty (30) days after the Maker ceases to be in service as an employee of the Company if such cessation of service is due to Maker's (i) voluntary resignation or (ii) termination for cause (which for purposes of this Note shall mean (A) the unauthorized use or disclosure of the confidential information or trade secrets of the Company which causes material harm to the Company, (B) conviction of a felony under the laws of the United States or any State thereof, (C) gross misconduct, or (D) repeated failure to perform assigned duties for thirty days after receiving notice from a senior officer of the Company); or

B. the sale, transfer, mortgage, assignment, encumbrance or lease, whether voluntarily or involuntarily or by operation of law or otherwise, of the property covered by the Deed of Trust, or any portion thereof or interest therein, without the prior written consent of the Company; or

C. the insolvency of the Maker, the commission of any act of bankruptcy by the Maker, the execution by the Maker of a general assignment for the benefit of creditors, the filing by or against the Maker of any petition in bankruptcy or any petition for relief under the provisions of the federal bankruptcy act or any other state or federal law for the relief of debtors and the continuation of such petition without dismissal for a period of thirty (30) days or more, the appointment of a receiver or trustee to take possession of any property or assets of the Maker, or the attachment of or execution against any property or assets of the Maker; or

D. the failure of the Maker to execute and deliver to the Company a Deed of Trust on Maker's principal residence within 5 days of a request from the Company; or

E. the sale or other disposition for value by Maker of any of the shares of Common Stock that secure the repayment of this Note, unless Maker has agreed to remit to the Company in repayment of all or a portion of this Note at least 25% of the gross proceeds received by him from such disposition; if such proceeds are not sufficient to repay in full the principal and accrued interest under this Note, Maker will execute and deliver a new promissory note to the Company on substantially the same terms as this Note but reflecting the remaining unpaid principal and accrued interest (if any); or

F. the occurrence of any event of default under the Deed of Trust or the Stock Pledge Agreement securing this Note or any obligation secured thereby.

6. *Assignment.* This Note shall be binding on the Maker and his successors, assigns, personal representatives, heirs, and legatees, and shall be binding upon and inure to the benefit of the Company, any future holder of this Note and their respective successors and assigns. The Maker may not assign or transfer this Note or any of his obligations hereunder.

7. *Collection.* If action is instituted to collect this Note, the Maker promises to pay all costs and expenses (including reasonable attorney fees) incurred in connection with such action.

8. *Waiver.* No previous waiver and no failure or delay by the Company in acting with respect to the terms of this Note, the Deed of Trust or the Stock Pledge Agreement shall constitute a waiver of any breach, default, or failure of condition under this Note, the Deed of Trust, the Stock Pledge Agreement or the obligations secured thereby. A waiver of any term of this Note, the Deed of Trust, the Stock Pledge Agreement or of any of the obligations secured thereby must be made in writing and shall be limited to the express terms of such waiver.

The Maker hereby waives presentment, demand for payment, notice of dishonor, default or delinquency, notice of acceleration, notice of protest and non-payment, notice of costs, expenses or losses and interest thereon, notice of interest on interest, and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights or interests in or to properties securing payment of this Note.

9. *Conflicting Agreements.* In the event of any inconsistencies between the terms of this Note and the terms of any other document related to the loan evidenced by the Note, the terms of this Note shall prevail.

10. *Governing Law.* This Note shall be construed in accordance with the laws of the State of California.

/s/ PATRICK P.A. HUMPHREY

MAKER: Patrick P.A. Humphrey

CONSENT OF SPOUSE

To: Advanced Medicine, Inc.

I acknowledge that I have been provided copies of the Promissory Note, Deed of Trust and Stock Pledge Agreement, each dated as of February 27, 2002, between Patrick P.A. Humphrey and Advanced Medicine, Inc. (the "Secured Party") any and all related collateral documents and agreements (collectively, the "Collateral Documents"); and that I am familiar with the contents of the Collateral Documents. I acknowledge and agree that any interest I may have, whether direct, community or otherwise, in the property and assets constituting the collateral contemplated by the Collateral Documents (the "Collateral") shall be subject to all of the terms and conditions of the Collateral Documents. Without limiting the generality of the foregoing, I am aware that in the Collateral Documents my spouse grants to the Secured Party a security interest in the Collateral as security for the obligations referred to in the Collateral Documents. The granting of a security interest in the Collateral includes and encumbers any property interest I may have therein, whether direct, community or otherwise, and I consent to such encumbrance.

I agree that I will not make or cause to be made any transfer of my interest in the Collateral except to the extent expressly permitted by the Collateral Documents.

I further agree that this Consent shall bind my successors, assigns (including, but not limited to, the trustee of any trust), personal representatives, heirs, and legatees.

Dated: February 27, 2002

/s/ MARY HUMPHREY

Signature
Print Name: Mary Humphrey

EXHIBIT I

DEED OF TRUST

EXHIBIT A

LEGAL DESCRIPTION OF PRINCIPAL RESIDENCE

LOT 2, BLOCK 49, AS DELINEATED UPON THAT CERTAIN MAP ENTITLED, "MAP OF EASTON ADDITION TO BURLINGAME NO.4, SAN MATEO COUNTY, CALIFORNIA", FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON MARCH 4th, 1907 IN BOOK "A" OF ORIGINAL MAPS, AT PAGE 45, AND COPIED INTO BOOK 4 OF MAPS AT PAGE 57.

ASSESSOR'S PARCEL NUMBER: 026-014-020 JPN 026-001-014-02

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Exhibit 10.23

STOCK PLEDGE AGREEMENT

In order to secure payment of the promissory note dated February 27, 2002 (the "Note") payable to Advanced Medicine, Inc., a Delaware corporation (the "Company"), at its principal offices in the principal amount of One Million dollars ($1,000,000.00), which Note the Borrower delivered in connection with a loan extended to the Borrower by the Company, the Borrower hereby grants the Company a security interest in, and assigns, transfers and pledges to the Company, the following securities and other property:

(a) The 600,000 shares of the Company's Common Stock (the "Common Stock") issuable upon exercise of outstanding stock options delivered to and deposited with the Company as collateral for the Note; and

(b) Any and all new, additional or different securities or other property subsequently distributed with respect to the shares identified in Subsection (a) above that are to be delivered to and deposited with the Company pursuant to the requirements of Section 3 of this Agreement; and

(c) Any and all other property and money that is delivered to or comes into the possession of the Company pursuant to the terms and provisions of this Agreement; and

(d) The proceeds of any sale, exchange or disposition of the property and securities described in Subsection (a), (b) or (c) above.

All securities, property and money to be assigned to, transferred to and pledged with the Company shall be herein referred to as the "Collateral" and shall be accompanied by one or more stock power assignments properly endorsed by the Borrower. The Company shall hold the Collateral in accordance with the following terms and provisions:

1. **Warranties.** The Borrower hereby warrants that the Borrower is the owner of the Collateral and has the right to pledge the Collateral and that the Collateral is free from all liens, advance claims and other security interests (other than those created hereby).

2. **Rights and Powers.** The Company may, without obligation to do so, exercise one or more of the following rights and powers with respect to the Collateral:

(a) Accept in its discretion, but subject to the applicable limitations of Section 7, other property of the Borrower in exchange for all or part of the Collateral and release Collateral to the Borrower to the extent necessary to effect such exchange, and in such event the money, property or securities received in the exchange shall be held by the Company as substitute security for the Note and all other indebtedness secured hereunder;

(b) Perform such acts as are necessary to preserve and protect the Collateral and the rights, powers and remedies granted with respect to such Collateral by this Agreement; and

(c) Transfer record ownership of the Collateral to the Company or its nominee and receive, endorse and give receipt for, or collect by legal proceedings or otherwise, dividends or other distributions made or paid with respect to the Collateral, but only if there exists at the time an outstanding event of default under Section 8 of this Agreement.

Any action by the Company pursuant to the provisions of this Section 2 may be taken without notice to the Borrower. Expenses reasonably incurred in connection with such action shall be payable by the Borrower and form part of the indebtedness secured hereunder, as provided in Section 10.

So long as there exists no event of default under Section 8 of this Agreement, the Borrower may exercise all stockholder voting rights and be entitled to receive any and all regular cash dividends paid on the Collateral. Accordingly, until such time as an event of default occurs under this Agreement, all

proxy statements and other stockholder materials pertaining to the Collateral shall be delivered to the Borrower at the address indicated below.

Any cash sums that the Company may receive in the exercise of its rights and powers under this Section 2 shall be applied to the payment of the Note and any other indebtedness secured hereunder, in such order of application as the Company deems appropriate. Any remaining cash shall be paid over to the Borrower.

3. **Duty to Deliver.** Any new, additional or different securities that may now or hereafter become distributable with respect to the Collateral by reason of (i) any stock dividend, stock split or reclassification of the capital stock of the Company or (ii) any merger, consolidation or other reorganization affecting the capital structure of the Company shall, upon receipt by the Borrower, be promptly delivered to and deposited with the Company as part of the Collateral hereunder. Such securities shall be accompanied by one or more properly endorsed stock power assignments.

4. **Care of Collateral.** The Company shall exercise reasonable care in the custody and preservation of the Collateral but shall have no obligation to initiate any action with respect to, or otherwise inform the Borrower of, any conversion, call, exchange right, preemptive right, subscription right, purchase offer or other right or privilege relating to or affecting the Collateral; provided, however, that the Company will notify the Borrower of any such rights of the Borrower to protect against adverse claims or to protect the Collateral against the possibility of a decline in market value. The Company shall not be obligated to take any action with respect to the Collateral requested by the Borrower unless the request is made in writing and the Company determines that the requested action will not unreasonably jeopardize the value of the Collateral as security for the Note and other indebtedness secured hereunder.

The Company may at any time release and deliver all or part of the Collateral to the Borrower, and the receipt thereof by the Borrower shall constitute a complete and full acquittance for the Collateral so released and delivered. The Company shall accordingly be discharged from any further liability or responsibility for the Collateral, and the released Collateral shall no longer be subject to the provisions of this Agreement. However, any and all releases of the Collateral shall be effected in compliance with the applicable limitations of Section 7(a) and (c).

5. **Payment of Taxes and Other Charges.** The Borrower shall pay, prior to the delinquency date, all taxes, liens, assessments and other charges against the Collateral, and in the event of the Borrower's failure to do so, the Company may at its election pay any or all of such taxes and charges without contesting the validity or legality thereof. The payments so made shall become part of the indebtedness secured hereunder and, until paid, shall bear interest at the minimum per annum rate, compounded annually, required to avoid the imputation of interest income to the Company and compensation income to the Borrower under the federal tax laws.

6. **Transfer of Collateral.** In connection with the transfer or assignment of the Note (whether by negotiation, discount or otherwise), the Company may transfer all or any part of the Collateral, and the transferee shall thereupon succeed to all the rights, powers and remedies granted the Company hereunder with respect to the Collateral so transferred. Upon such transfer, the Company shall be fully discharged from all liability and responsibility for the transferred Collateral.

7. **Release of Collateral.** Provided (i) all indebtedness secured hereunder (other than payments not yet due and payable under the Note) shall at the time have been paid in full or cancelled and (ii) there does not otherwise exist any event of default under Section 8, the pledged shares of Common Stock, together with any additional Collateral that may hereafter be pledged and deposited hereunder,

shall be released from pledge and returned to the Borrower in accordance with the following provisions:

(a) Upon payment or prepayment of principal under the Note, one or more shares of Common Stock held as Collateral hereunder shall (subject to the limitation of Subsection (d) below) be released to the Borrower within three days after such payment or prepayment. The number of shares to be so released shall be equal to the number obtained by multiplying (i) the total number of shares of Common Stock held under this Agreement at the time of the payment or prepayment by (ii) a fraction, the numerator of which shall be the amount of the principal paid or prepaid and the denominator of which shall be the unpaid principal balance of the Note immediately prior to such payment or prepayment. In no event, however, shall any fractional shares be released.

(b) One or more shares of Common Stock held as Collateral hereunder shall (subject to the limitation of Subsection (d) below) be released to a stockbroker designated in writing by the Borrower and acceptable to the Company for the sole purpose of effecting an immediate sale of the released shares, provided that such stockbroker agrees to forward any proceeds (up to the balance of the principal due under the Note) directly to the Company to be used to satisfy the Note.

(c) Any additional Collateral that may hereafter be pledged and deposited with the Company (pursuant to the requirements of Section 3) with respect to the shares of Common Stock pledged hereunder shall be released at the same time the particular shares of Common Stock to which the additional Collateral relates are to be released in accordance with the applicable provisions of Subsection (a) or (b) above. Under no circumstances, however, shall any shares of Common Stock or any other Collateral be released if previously applied to the payment of any indebtedness secured hereunder.

(d) In no event shall any shares of Common Stock be released pursuant to the provisions of Subsections (a), (b) and (c) above if, and to the extent, the fair market value of the Common Stock and all other Collateral that would otherwise remain in pledge hereunder after such release is effected would be less than the unpaid principal balance of the Note.

8. **Events of Default.** The occurrence of one or more of the following events shall constitute an event of default under this Agreement:

(a) The failure of the Borrower to pay the principal when due under the Note;

(b) The failure of the Borrower to perform a material obligation imposed upon the Borrower by reason of this Agreement; or

(c) The breach of any warranty of the Borrower contained in this Agreement.

Upon the occurrence of any such event of default, the Company may, at its election, declare the Note and all other indebtedness secured hereunder to be immediately due and payable and may exercise any or all of the rights and remedies granted to a secured party under the provisions of the California Uniform Commercial Code (as now or hereafter in effect), including (without limitation) the power to dispose of the Collateral by public or private sale or to accept the Collateral in full payment of the Note and all other indebtedness secured hereunder.

Any proceeds realized from the disposition of the Collateral pursuant to the foregoing power of sale shall be applied first to the payment of reasonable expenses incurred by the Company in connection with the disposition, then to the payment of the Note and finally to any other indebtedness secured hereunder. Any surplus proceeds shall be paid over to the Borrower. However, in the event such proceeds prove insufficient to satisfy all obligations of the Borrower under the Note, then the Borrower shall remain personally liable for the resulting deficiency.

9. **Other Remedies.** The rights, powers and remedies granted to the Company and the Borrower pursuant to the provisions of this Agreement shall be in addition to all rights, powers and remedies granted to the Company and the Borrower under any statute or rule of law. Any forbearance, failure or delay by the Company or the Borrower in exercising any right, power or remedy under this Agreement shall not be deemed to be a waiver of such right, power or remedy. Any single or partial exercise of any right, power or remedy under this Agreement shall not preclude the further exercise thereof, and every right, power and remedy of the Company and the Borrower under this Agreement shall continue in full force and effect, unless such right, power or remedy is specifically waived by an instrument executed by the Company or the Borrower, as the case may be.

10. **Costs and Expenses.** All reasonable costs and expenses (including reasonable attorneys fees) incurred by the Company in the exercise or enforcement of any right, power or remedy granted it under this Agreement shall become part of the indebtedness secured hereunder and shall constitute a personal liability of the Borrower payable immediately upon demand and bearing interest until paid at the Company's bank interest rate then being earned by the Company on its deposits.

11. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California and shall be binding upon the executors, administrators, heirs and assigns of the Borrower.

12. **Arbitration.** Any controversy between the parties hereto involving the construction or application of any terms, covenants or conditions of this Agreement or the Note, or any claims arising out of or relating to this Agreement or the Note, or the breach hereof or thereof, will be submitted to and settled by final and binding arbitration in San Francisco, California in accordance with the rules of the American Arbitration Association then in effect, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. In the event of any arbitration under this Agreement or the Note, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees and costs incurred therein or in the enforcement or collection of any judgment or award rendered therein. The "prevailing party" means the party determined by the arbitrator to have most nearly prevailed, even if such party did not prevail in all matters, not necessarily the one in whose favor a judgment is rendered.

13. **Severability.** If any provision of this Agreement is held to be invalid under applicable law, then such provision shall be ineffective only to the extent of such invalidity, and neither the remainder of such provision nor any other provisions of this Agreement shall be affected thereby.

IN WITNESS WHEREOF, this Agreement has been executed by the Borrower on this 27th day of February 2002.

/s/ PATRICK P.A. HUMPHREY

Signature of Borrower

PATRICK P.A. HUMPHREY

Print Name of Borrower

Address: 1473 Balboa Avenue
Burlingame, California 94010

Agreed to and Accepted by:

ADVANCED MEDICINE, INC.

By: /s/ BRAD SHAFER

Title: Senior Vice President

Dated: February 27, 2002

CONSENT OF SPOUSE

To: Advanced Medicine, Inc.

I acknowledge that I have been provided copies of the Promissory Note, Deed of Trust and Stock Pledge Agreement, each dated as of February 27, 2002, between Patrick P.A. Humphrey and Advanced Medicine, Inc. (the "Secured Party") any and all related collateral documents and agreements (collectively, the "Collateral Documents"); and that I am familiar with the contents of the Collateral Documents. I acknowledge and agree that any interest I may have, whether direct, community or otherwise, in the property and assets constituting the collateral contemplated by the Collateral Documents (the "Collateral") shall be subject to all of the terms and conditions of the Collateral Documents. Without limiting the generality of the foregoing, I am aware that in the Collateral Documents my spouse grants to the Secured Party a security interest in the Collateral as security for the obligations referred to in the Collateral Documents. The granting of a security interest in the Collateral includes and encumbers any property interest I may have therein, whether direct, community or otherwise, and I consent to such encumbrance.

I agree that I will not make or cause to be made any transfer of my interest in the Collateral except to the extent expressly permitted by the Collateral Documents.

I further agree that this Consent shall bind my successors, assigns (including, but not limited to, the trustee of any trust), personal representatives, heirs, and legatees.

Dated: February 27, 2002

/s/ MARY HUMPHREY

Signature

Print Name: Mary Humphrey

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Exhibit 10.24

June 4, 2004

CONFIDENTIAL

Patrick P.A. Humphrey, Ph.D., D.Sc.
1473 Balboa Avenue
Burlingame, CA 94010

Dear Pat:

The Board of Directors of Theravance, Inc. (the "Company") has approved the following arrangement for you at its meeting on May 27, 2004. If you agree to the terms set forth herein, please sign below.

On June 30, 2001, we granted you an option to purchase 300,000 shares of our common stock at an exercise price of $5.50 per share (the "First Option"). You are vested as of May 1, 2004 in 218,750 of the shares purchasable under the First Option. On February 24, 2002, we granted you options to purchase 300,000 shares of our common stock at an exercise price of $5.50 per share (collectively, the "Second Option" and together with the First Option, the "Options"). You are vested as of May 1, 2004 in 162,500 of the shares purchasable under the Second Option. On February 27, 2002, we loaned you $1,000,000 pursuant to the terms of a promissory note (the "Note"), a stock pledge agreement pursuant to which you agreed to pledge the shares purchasable under the Options as security for the Note (the "Stock Pledge Agreement"), and a deed of trust covering your residence located at 1473 Balboa Avenue, Burlingame, California 94010 (the "Deed of Trust" and together with the Note and Stock Pledge Agreement, the "Loan Documents"). On May 11, 2004, you entered into a Lock-Up Agreement by and among the Company, SmithKline Beecham Corporation (the "Lock-Up Agreement") pursuant to which you agreed to lockup certain shares you have the right to purchase under Company options.

In consideration for your entering into the Lock-Up Agreement and of the services you have provided to date as well as the promises set forth herein, we agree to forgive the loan in full and to pay you a bonus to assist you in paying the Federal and state income and employment taxes you will incur upon the Note being forgiven (the "Tax Bonus"). The Tax Bonus shall be calculated as follows: At the Effective Date (as defined below), the Company will calculate the income and withholding taxes due immediately to the state and Federal tax authorities and that amount will be remitted on your behalf at the time the Company is required to remit to the appropriate tax authorities. To the extent that you incur income or employment taxes in excess of the withholding taxes paid on your behalf, the Company will pay you an additional amount equal to the additional taxes owed on or about April 15, 2005, whether or not you are employed by the Company on that date. The additional portion of the Tax Bonus will be calculated using your actual tax rate, taking into account your actual income and actual deductions for the year. You agree to provide sufficient information to the Company to enable it to calculate your actual tax rate.

The loan shall be considered extinguished on the date that this letter Agreement is fully executed by you and the Company and such date shall be referred to as the Effective Date. Upon the Effective Date, we will return the Note and Stock Pledge Agreement to you, marked cancelled, and we will file a notice of reconveyance with the County of San Mateo to remove the Deed of Trust that we have recorded on your principal residence.

In consideration of the promises set forth herein, you and the Company agree to subject 97,180 of the shares (the "Escrow Shares") purchasable under the First Option to an escrow as of the Effective Date. Should you exercise the First Option, then you agree to deposit up to 97,180 of the shares you acquire on exercise into escrow with the Company's outside counsel serving as escrow agent, to be held until the shares are released or forfeited under the schedule set forth below. No shares need to be deposited in escrow if each time you exercise the First Option the number of vested and unexercised shares remaining under the First Option is equal to or greater than 97,180 (or such lesser number of

shares as is then subject to the escrow obligation). If you exercise the First Option and the number of vested and unexercised shares remaining is less than 97,180 (or such lesser number of shares as is then subject to the escrow obligation), then you agree to deposit a number of exercised shares that when added to the number of vested and unexercised shares remaining under the First Option equals 97,180 (or such lesser number of shares as is then subject to the escrow obligation). The shares under the First Option and Second Option shall vest at the same time they would have under the First Option and Second Option without regard to this Agreement. Should you leave our employ due to voluntary resignation or a termination by us for Cause, then you will forfeit any shares deposited into escrow and not yet released. We will release these 97,180 shares from escrow over the following periods provided you are employed on each applicable date: 25% on December 31, 2005, 25% on December 31, 2006, and the balance on September 7, 2007 and will release the shares immediately should you die or leave our employ due to disability or termination by us without Cause. If at the time of forfeiture you have not deposited any shares into escrow, then the forfeiture shall be effected by reducing the number of shares purchasable under the First Option by the applicable number of forfeited shares. All share numbers in this letter Agreement shall be adjusted for stock splits and other adjustments pursuant to Section 8 of the Company's 1997 Stock Plan.

For purposes of this provision, a termination "without Cause" shall mean termination for any reason *other than*: (i) unauthorized use or disclosure of the confidential information or trade secrets of the Company, which use causes material harm to the Company, (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.

This Agreement shall be binding upon the Company, its successors and assigns and shall be construed and interpreted under the laws of the State of California. This letter Agreement supersedes all prior agreements between you and the Company relating to the Loan Documents. However, your employment offer letter dated April 6, 2001 shall remain in full force and effect except to the extent necessary to give effect to this Agreement.

Please indicate your acceptance of the foregoing by signing the enclosed copy of this letter Agreement and returning it to the Company.

Sincerely,

/s/ P. ROY VAGELOS

P. Roy Vagelos
Chairman of the Board of Directors

Accepted and agreed to:

/s/ PATRICK P.A. HUMPHREY, PH.D.

Patrick P.A. Humphrey, Ph.D.
Date:

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EXHIBIT 21.1

List of Subsidiaries

SUBSIDIARY	JURISDICTION OF ORGANIZATION
AMI East, Inc.	Delaware

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Exhibit 23.2

Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated May 21, 2004 (except for Note 14 as to which the date is May 27, 2004) in the Registration Statement (Form S-1) and related Prospectus of Theravance, Inc. for the registration of shares of its common stock.

/s/ ERNST & YOUNG LLP

Palo Alto, California
June 9, 2004

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